[BG] A Provision of the Film Industry Act Declared Unconstitutional

IRIS 2011-5:1/8

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On 31 March 2011, the Constitutional Court declared unconstitutional a provision of the Film Industry Act governing the financing of the film industry by the state. The request for constitutional review of para. 83 of the State Budget Act for 2011 which amended Art. 17 of the Film Industry Act was filed by a group of 56 members of the National Assembly. In their request, the claimants stated that para. 83 of the Act on the State Budget for 2011 does not constitute a legal norm, but rather represents a general wish. In addition, the applicability of the said provision is left to the subjective discretion of the state administration, which is completely unacceptable from a legal point of view.

Para 83 of the State Budget Act for 2011 amended Art. 17 of the Film Industry Act in the following manner:

“If possible, the Law on the State Budget of the Republic of Bulgaria shall provide annually for:

1. Subsidy for the National Film Centre, which is based on the amount of the average statistical budgets for the preceding year for up to 7 movies, 14 documentaries and 160 minutes of animation;

2. Financial contributions for membership in international organisations, funds and programs in the field of film industry in which Bulgaria participates;

3. Funds necessary for the support of the National Film Centre.”

Prior to its amendment, Art. 17 of the Film Industry Act read that the Law on the State Budget of the Republic of Bulgaria “shall provide annually for” without the mentioning of the term “if possible”.

In the view of the Constitutional Court the legal wording of the said provision was inappropriate. The Constitutional Court held that when the state created state agencies (e.g. the National Film Centre) it should have also provided funds for its support. Furthermore, the Constitutional Court stated that it would be inappropriate for the state to refuse the payment of annual subscription fees to international organisation for which the state had already decided to participate in. On the basis of those two main arguments the Constitutional Court confirmed

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that the current version of Art. 17 of the Film Industry Act is in contradiction to Art. 4 of the Constitution and therefore shall be declared unconstitutional.

The Constitutional Court also held that the term “if possible” used in Art. 17 of the Film Industry Act is in contradiction to the rule laid down in Art. 23 of the Constitution. According to the latter provision the state shall establish conditions conducive to the free development of the arts and shall assist that development. Thus, the Constitutional Court emphasized that the Constitution created an obligation for the state to promote the development of Bulgarian art. The said obligation means that the state shall act accordingly by developing adequate governmental policies in the various types of the arts. The implementation of these policies shall be supported financially by the state.

Решение № 1 София, 31 март 2011 г. по конституционно дело № 22 от 2010, съдия докладчик Красен Стойчев

http://www.constcourt.bg/Pages/Document/Default.aspx?ID=1526

Constitutional Court of the Republic of Bulgaria, Judgment No 1 of 31 March 2011

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