[PL] Constitutional Tribunal Judgment on the Issue of Election Campaigns in the Media

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On 20 July 2011 the Constitutional Tribunal decided on the conformity of certain new rules on conducting elections and election campaigns, envisaged in the Act: Electoral Code of 5 January 2011 (Dz. U. Nr 21, item 112, with further amendments), with the Constitution of the Republic of Poland (case K 9/11).

The judgment referred to various topics relating to organising elections (inter alia two-day elections, proxy voting, postal voting and single-member constituencies in elections to the Senate) and election campaigns (inter alia the question whether television and radio advertising, as well as billboards could be ruled out).

One of the issues examined was whether the newly-introduced ban on paid election advertising on radio and television is consistent with the Constitution. The Act of 3 February 2011 introduced this restriction in order to improve the quality of political discourse and to optimise the spending of public funds allocated to election campaigns which, in the case of a political party, mostly come from the State budget. The other Electoral Code provisions on conducting election campaigns on radio and television were not changed. The election campaign on radio and television was to take place in the form of free-of-charge election programmes broadcast on the public radio and television programme services at the cost of these broadcasters, starting on the 15th day before the election day until the end of the election campaign.

In the judgment the Constitutional Tribunal adjudicated that the Act of 3 February 2011 is inconsistent with Art. 2 of the Constitution (democratic State under the rule of law) and with Art. 54 para. 1 (freedom to express opinions, to acquire and to disseminate information) in conjunction with Art. 31 para. 3 of the Constitution (”Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”).

Moreover the Tribunal adjudicated that Art. 110 para. 4 in conjunction with Art. 495 para. 1 point 4 of the Electoral Code is inconsistent with Art. 54 para. 1 in conjunction with Art. 31 para. 3 of the Constitution. The abovementioned

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provisions ban, on penalty of a fine, the use of election posters and slogans the surface area of which is greater than two square meters.

The Tribunal observed that freedom of speech is both a personal freedom used in private life and a political freedom used in the context of public life. Those entitled to use the freedom of speech are both natural persons and collective entities, such as political parties and election committees. The Tribunal underlined the importance of the role that, in a democratic society, the freedom to express opinions and to disseminate information plays in political parties and election committees. An equally important role is played by the freedom to acquire information by citizens, who need to learn about parties participating in elections and their candidates.

The ban on the use of big election posters and slogans and the ban on broadcasting paid election radio and television advertising restrict both freedom to express opinions and to disseminate information and freedom to acquire information. These restrictions do not fulfil the proportionality criteria specified in Art. 31 para. 3 of the Constitution.

Stating the unconstitutionality of the abovementioned provisions means that they are eliminated from the Polish legal system from the day of the publication of the judgment in the Official Journal. Publication took place on the same day as the announcement (20 July 2011). The Electoral Code entered into force on 1 August 2011.

Wyrok Trybunału Konstytucyjnego z dnia 20 lipca 2011 r. sygn. akt K 9/11

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Judgment of the Constitutional Court of 20 July 2011 (K 9/11)

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