[PL] Method of Introduction of Certain Provisions of the Act Amending the Act on Access to Public Information found unconstitutional

IRIS 2012-6:1/29

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On 18 April 2012 the Constitutional Tribunal recognised the motion submitted by the President of the Republic of Poland to examine the constitutionality of the method of introducing certain provisions of the Act of 16 September 2011 Amending the Act on Access to Public Information (see IRIS 2012-1/36).

The Amending Act adopted by the Sejm (lower chamber of the Parliament) concerned in its entirety the implementation of Directive 2003/98/EC on the re-use of public sector information into Polish law. After passing it to the Senate (upper chamber of the Parliament) new rules extending restrictions to the right to public information in order to protect public order, security and important economic State interests were added.

At an advanced stage of the proceedings the Senate proposed that a new set of rules, unconnected with the principal aim of the Amending Act, should be included. These provisions raised the concerns of journalists and non-governmental organisations advocating freedom of speech. The additional provisions in question restrict the right to public information for the protection of important State economic interests in regard to providing information in that it would:

1) weaken the bargaining ability of the State Treasury in the management of its property or the negotiating capacity of the Republic of Poland concerning international agreements or decision making by the European Council or the Council of the EU;

2) significantly undermine the protection of the property interests of the Republic of Poland or the State Treasury in proceedings before a court, tribunal or other adjudicating authority.

The President has been concerned about the possibility of a breach of the procedure required by provisions of the law to promulgate the Act (in regard to the Senate's amendments). He submitted an application to the Constitutional Tribunal to examine this aspect of the case.

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The Tribunal adjudicated that the provisions of Art. 1 para. 4 (a) and (b) of the Amending Act of 16 September 2011 were inconsistent with Art. 121 para. 2 in conjunction with Art. 118 para. 1 of the Polish Constitution, due to the addition of Art. 5 para. 1a and para. 3 to the Act on Access to Public Information. The Tribunal did not assess the substantive content of these rules, but only the constitutionality of the method of their introduction into the Act. It underlined that there was the well-established jurisprudence of the Constitutional Tribunal and a doctrine supporting that jurisprudence, both of which specified the scope of admissible amendments that might be proposed by the Senate with regard to a bill passed by the Sejm. The limitation on the scope of matters regulated by such amendments serves the main purpose of legislative proceedings, which consists in ensuring that the basic content that is ultimately included in the final version of a parliamentary act has been subjected to the complete procedure carried out by the Sejm (three readings).

The Tribunal issued a reminder that the Senate was bound by the substantive content of the bill passed by the Sejm; the Senate may modify and amend measures adopted therein, but it may not add completely new normative elements to the bill, i.e., those that have not been provided for in the text of the bill.

The Senate has the right to introduce legislation (right to initiate new bills). Still, this right cannot be understood as the competence to add - through Senate amendments - entirely new normative proposals to an Act passed by Sejm. The challenged amendments concerned matters not covered by the Act as passed by the Sejm; they certainly went beyond the scope of the issues regulated in the Act sent to the Senate for examination.

The Tribunal also noted that in this case there were additional limitations referring to the scope of the Senate’s amendments; these were connected with the character of the bill (the amending Act) and the procedure in accordance with which it had been examined (the expedited procedure). The challenged amendments constituted an interference with the content of the Amending Act, with disregard to the purpose of the Amending Act of justifying the expedited procedure of examining the Act.

Komunikat prasowy po rozprawie dotyczącej dostępu do informacji publicznej (ograniczenie prawa do informacji z uwagi na ważny interes państwa)

http://www.trybunal.gov.pl/Rozprawy/2012/k_33_11.htm

Operative part of the Tribunal’s judgment of 18 April 2012 in case K 33/11 and press release on this case

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