[BG] The Constitutional Court Annulled the Lustration Provisions in the Radio and Television Act

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Through its Decision No 8 of 11 October 2013 in constitutional case No 6 of 2013 the Constitutional court of the Republic of Bulgaria has declared that Article 26, point 3 and Article 59 (2), point 3 of the Radio and Television Act are unconstitutional and incompatible with the international treaties to which Bulgaria is a party.

The proceedings were instituted on 16 January 2013 on an initiative from 57 Members of the 41st National Assembly (i.e. the previous composition of the National Assembly). In the petition instituting proceedings it is alleged that the contested dispositions of Article 26, point 3 and Article 59 (2), point 3 of the Radio and Television Act are inconsistent with the principle of the rule of law (Article 4 (1) of the Constitution), the principle of the supremacy of the Constitution (Article 5 (1) of the Constitution), the principle that all citizens shall be equal before the law (Article 6 (2) of the Constitution), and that these provisions also restrict the free choice of occupation and place of work in violation of Article 48 (3) of the Constitution. According to the petitioners the contested provisions of the Radio and Television Act establish explicit prohibition for a specific category of persons who had occupied specific public service posts in the past to be currently employed at certain public service positions. In that regard the Court held, that belonging to structural bodies of the former State Security may not serve as a ground on which a restriction of the constitutional rights may be based nor as a ground for the above-mentioned restriction to be employed at certain public service positions, since the nature of the latter restriction is discriminatory.

Besides, the contested provisions of the Radio and Television Act according to the petitioners are incompatible with the generally recognised international law provisions and with the international treaties, to which Bulgaria is a party, since they constitute disproportionate human rights restriction within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). According to the petitioners these provisions are in breach of Article 14 of the ECHR, Article 2 (2) and Article 5 of the International Covenant on Economic, Social and Cultural Rights, Article 25, c) and Article 26 of the International Covenant on Civil and Political Rights, Article 1, points 1 and 2, Articles 2 and 3, b) of the Convention No 111 concerning Discrimination in Respect of Employment and Occupation of the International Labour Organisation,

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Articles 20 and 21 of the EU Charter of Fundamental Rights, the European Social Charter and the Universal Declaration of Human Rights.

The contested provisions of the Radio and Television Act violate the principle that all citizens shall be equal before the law (Article 6 (2) of the Constitution). Inasmuch as any lustration constitutes extraordinary and isolated legislative means to restrict rights, based on facts from the past about a group of people, it is inadmissible under Article 6 (2) of the Constitution of the Republic of Bulgaria.

The contested provisions constitute disproportionate human rights restriction within the meaning of the ECHR and the case-law of the European Court of Human Rights (the Court) in Strasbourg. In its settled case-law the Court holds that the introduction of lustration provisions restricts human rights, guaranteed under the ECHR (Sidabras and Dziautas vs Lithuania - Applications Nos 55480/00 and 59330/00; Rainys and Gasparavicius vs Lithuania - Applications Nos 70665/01 and 74345/01; Zdanoka vs Latvia - Application No 58278/00). The contested provisions are incompatible with Article 1, points 1 and 2, Articles 2 and 3, b) of the Convention No 111 concerning Discrimination in Respect of Employment and Occupation of the International Labour Organisation (promulgated in the State Gazette No 35 of 2 May 1997). By implicitly prohibiting discrimination in the area of employment and occupation, in the Convention it is provided that, “any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination”. It is even more unacceptable to associate the established restrictions with the realisation of the disposition of the Article 40 (1) of the Constitution according to which the press and the other mass information media shall be free and shall not be subjected to censorship. It is unacceptable in modern democratic states to guarantee any freedom by means of legislative restrictions of the constitutional rights of the citizens. The Decision of the Constitutional court has been promulgated in the State Gazette No 91 of 18 October 2013. Three among the twelve judges of which the Constitutional Court is composed delivered a "dissenting opinion" by voting in favour of the lustration provisions in the law.

This is the second occasion on which the Constitutional Court has the opportunity to deliver a decision with regard to these legal dispositions. At the time when the Radio and Television Act was adopted in 1998 the lustration provisions in the law were contested by Decision No 10 of 25 June 1999 of the Constitutional Court of the Republic of Bulgaria in constitutional case No 36 of 1998 where the Court has ruled that those texts are not incompatible with the Constitution. Fifteen years later the collaborators with the services of the former State Security have been rehabilitated in the mass media sector.

Решение № 8 от 11 октомври 2013 г. по конституционно дело № 6 от 2013 г. на Конституционния съд на Република България

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http://www.constcourt.bg/Pages/eFolders/Item.aspx?ConstLawSuitID=106

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