

Interim procedural decision of 18<sup>th</sup> January 2006, [Ts 196/04](#)  
**STAYING EXECUTION OF A CUSTODIAL SENTENCE  
 BEFORE CONSIDERATION OF THE DEFENDANT'S  
 CONSTITUTIONAL COMPLAINT**

<b>Type of proceedings:</b> <a href="#">Preliminary consideration of a constitutional complaint</a> <b>In this case:</b> interim procedural decision <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 3-judge panel	<b>Dissenting opinions:</b> 0
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Andrzej M., the editor-in-chief of a regional weekly newspaper, was sentenced by the District Court to 3 months imprisonment for defamation of the press spokesman of a certain commune through mass media, this being a criminal offence contrary to Article 212 § 2 of the Criminal Code. The defendant's appeal was not upheld and the Supreme Court dismissed the cassation.

Subsequently, on the basis of Article 79(1) of the Constitution, Andrzej M. lodged a constitutional complaint to the Constitutional Tribunal alleging that the legal basis for judgment in his case, i.e. Article 212 § 2 of the Criminal Code, infringes constitutional and international guarantees of the freedom of expression (Articles 14 and 54 of the Constitution and Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms), read in conjunction with the principle of proportionality (Article 31(3) of the Constitution).

During the preliminary consideration of the constitutional complaint (Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act 1997), a Tribunal judge refused to proceed further with the complaint, due to its evident groundlessness ([procedural decision of 15<sup>th</sup> March 2005, Ts 196/04](#)). The reasoning for this decision emphasised that the conscious publication of false information falls outside the scope of freedom of expression. Furthermore, the complaint was found excessively general, given the complainant's failure to indicate the manner in which the challenged provision infringed his constitutional rights or freedoms.

Andrzej M. challenged this procedural decision (by lodging a so-called complaint, cf. Article 36(4), read in conjunction with Article 49, of the CT Act). The challenge was upheld by a 3-judge panel of the Constitutional Tribunal ([procedural decision of 17<sup>th</sup> January 2006](#), reference number as above). This led to admission of the constitutional complaint for further consideration, the case being directed for the hearing to be considered on its merits.

Pursuant to the court decision ordering execution of the custodial sentence, on 16<sup>th</sup> January 2006 (i.e. one day prior to that on which the Constitutional Tribunal issued the aforementioned procedural decision, upholding the challenge) the complainant arrived at the custodial institution.

Pursuant to Article 50(1) of the Constitutional Tribunal Act, where execution of a judicial decision, delivered in proceedings concerning which a constitutional complaint was lodged, could have "irreversible consequences linked with great detriment" for the complainant, the Tribunal may issue an interim

procedural decision regarding the stay or suspended execution of such a judicial decision. The Tribunal will reverse such a procedural decision where the reasons for which it was issued no longer exist (Article 50(3) of the CT Act). Such action may be taken either during preliminary consideration of a constitutional complaint or during consideration on its merits. In the present case, the interim procedural decision was issued during preliminary consideration of the complaint.

The procedural decision in the present case was issued *ex officio* by the Tribunal.

## RULING

**1. On the basis of Article 50(1) of the Constitutional Tribunal Act, the Tribunal ruled that execution of the District Court's decision, insofar as ordering execution of a 3 months custodial sentence, shall be stayed until such time as proceedings before the Tribunal, initiated on the basis of Andrzej M.'s constitutional complaint, are concluded.**

**2. Furthermore, the Tribunal decided to deliver the procedural decision immediately to the complainant's representative and the District Court.**

## THE PRINCIPAL REASON FOR THE RULING

Execution of the District Court's procedural decision, ordering execution of a 3 months custodial sentence, could lead to consequences linked with great detriment for the complainant. Accordingly, the prerequisite for issuing a preliminary procedural decision, mentioned in Article 50(1) of the Constitutional Tribunal Act, is fulfilled.

### Provisions of the Constitution, the Constitutional Tribunal Act and the (European) Convention for the Protection of Human Rights and Fundamental Freedoms

#### Constitution

**Art. 14.** The Republic of Poland shall ensure freedom of the press and other means of social communication.

**Art. 31.** [...] 3. 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.

**Art. 54.** 1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.  
2. Preventive censorship of the means of social communication and the licensing of the press shall be forbidden. Statutes may require the receipt of a permit for the operation of a radio or television station.

#### CT Act

**Art. 36.** 1. The President of the Tribunal shall direct the application [...] to a judge of the Tribunal, designated by him/her, for preliminary consideration at proceedings in camera.

2. Where the application fails to satisfy the formal requirements, the judge of the Tribunal shall order the defects therein to be repaired within a period of seven days from the date of notification thereof.

3. Where the application is evidently groundless or its defects have not been repaired within the specified period of time, the judge of the Tribunal shall refuse to proceed with further action.

4. The person submitting the application shall, with respect to the decision concerning refusal to proceed with further action, be entitled to lodge a complaint to the Tribunal within a period of seven days from the date of delivery of the said decision.

5. The Tribunal, sitting in camera, shall decide not to proceed with consideration of the complaint filed after the expiry of the period specified in paragraph 4.

6. The President of the Tribunal shall, having found that the complaint has been filed in due time, refer the same for consideration of the Tribunal at proceedings in camera and shall determine the date for consideration thereof.

7. The Tribunal shall, having admitted the complaint, refer the case for consideration at a hearing. The decision concerning non-admittance of the complaint shall not be subject to appellate proceedings.

**Art. 49.** The [constitutional] complaint shall be subject to preliminary examination; Article 36 shall apply as appropriate.

**Art. 50.** 1. The Tribunal may issue an interim procedural decision to suspend or stop the enforcement of the judgment in the case to which the complaint refers if the enforcement of the said judgment, decision or another ruling might result in irreversible consequences linked with great detriment to the person making the complaint or where a vital public interest or another vital interest of the person making the complaint speaks in favour thereof.

2. The interim procedural decision shall be forthwith delivered to the person making the complaint and to the appropriate court organ or enforcement organ.

3. The Tribunal shall reverse the interim procedural decision if the reasons for which it was given are no longer in effect.

#### **European Convention**

**Art. 10.** 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.