



Andrzej Milczanowski

Lawyer, prosecutor in the People's Republic of Poland, active in the political opposition. A recognised member of the Solidarity trade union.

During the period of martial law in Poland, Andrzej Milczanowski was directing the strike at the Szczecin Shipyard. He was arrested and sentenced to five years in prison. In August 1988, he was one of the leaders managing the strike in the Szczecin Harbour.

Participant of the Round Table negotiations.

Following the collapse of the Communist regime head of the State Security Office and, in 1992-1995, Minister of the Interior.

When the security services of democratic Poland were being established, Andrzej Milczanowski headed the Qualification Committee for Central Human Resources that determined the employment of former Security Service officers in the State Security Office based on the criterion of their professional as well as ethic and moral usefulness for the purposes of the democratic State.

Suggestions

of possible measures to defend Polish citizens of the European Union

Further to the adoption of the Uniformed Services Pensions Act on 16 December 2016 that represses former officers of the Polish secret services, the following measures should be taken into consideration:

1. lodging a complaint with the Court of Justice of the European Union in Luxembourg against the provisions of the Act of 16 December 2016 that for the second time drastically reduced the retirement and disability pensions received by officers who served in the security services of the People's Republic of Poland, including those who continued their service in democratic Poland after 31 July 1990; these provisions are in violation of both the Polish Constitution and the EU law but, in particular, of the values stipulated in Article 2 of the Treaty on European Union (consolidated text);
2. seeking injunctive relief through obligating Polish authorities to pay the retirement and disability pensions to the aforementioned officers in the amounts determined under the regulations in force before 16 December 2016.

Current status

1. The aforementioned Act of 16 December 2016 has drastically reduced retirement and disability pensions received by thousands of the abovementioned officers. Most of them appealed from the decision issued by the Director of the Pension Office of the Ministry of the Interior and Administration to the Regional Court in Warsaw.
2. In its decision of 24 January 2018, case file no. XIII 1 U 326/18, the Regional Court filed a legal inquiry with the Constitutional Tribunal regarding:
 - a) the compliance of the amendments to the Uniformed Services Pensions Act of 18 February 1994 (uniform text of 6 May 2016, Journal of Laws Dz.U. of 2016 item 708) introduced under the Act of 16 December 2016 with the Constitution;
 - b) the compliance of Article 1 and 2 of the Act of 16 December 2016 with the Constitution on account of the mode and manner of adopting the provisions complained against and the reservations whether the substantive requirements for adopting them had been met.

In the opinion of the Regional Court, *"...there are justified doubts whether the Pensions Act in the wording determined under Article 1 of the Amending Act of 2016 complies with Article 2 of the Constitution which proclaims the principle of a democratic State under the rule of law, comprising the principles constituting the core of a democratic State under the rule of law, such as protection of acquired rights and the principle of trust in the State and the law made by the State... "*

At another place, the Regional Court stated that *"...there may be doubts whether the principle of trust in the State and law is not broken by a legislator who, for the second time already, reduces retirement and disability pensions paid to the same group of people and, in doing so for the second time, seems to be violating a number of constitutional principles and values, including in particular crossing the lines determined in the grounds for the verdict of the Constitutional Tribunal of 24 February 2010, and violating the essence of the right to social security. Does a legislator who reduces retirement and disability pensions paid also to officers who earned them through their service for independent Poland after 31 July 1990 under the same rules as officers who first joined the service after that date deserve such trust? These measures seems to be repressive and discriminating. ..."*

The Regional Court also stated that *"... The reduction of the basis for calculating the retirement pension to 0.0% for each year of service before 31 July 1990 as introduced under Article 15c sec. 1*

item 1 can be assessed similarly. It is an unprecedented ratio, absent from any other regulation pertaining to retirement and disability pensions, and as such its introduction may violate the principle of the citizens' trust in the State and law (and the rule of equality in the eyes of the law). This measure may be excessive and is not justified by any circumstances. ..."

Having carefully analysed the provisions of the Act of 16 December 2016, the Regional Court in Warsaw identified a profound incompliance of its provisions with the Polish Constitution, the verdicts of the Constitutional Tribunal, and multilateral international agreements to which Poland is party, including among others Article 4 sec. 1 of Protocol no. 7 to the European Human Rights Convention (EHRC) and Article 14 sec. 7 of the International Pact on Civil and Political Rights (IPCPR).

The Constitutional Tribunal has not set a date for reviewing the inquiry of the Regional Court until this day (mid-January 2019).

At this point, it is necessary to note some fundamental reservations regarding the current legal authority of the Constitutional Tribunal and the resulting ineffectiveness of its verdicts. The above results from, among other things, the illegitimate appointment of three Constitutional Tribunal justices by the current Sejm in which the Law and Justice party (PiS) has an absolute majority in place of three justices duly appointed by the previous Sejm whom the President of Poland refused to swear in.

As indicated above, the Constitutional Tribunal has not set a date for reviewing the inquiries of the Regional Court in Warsaw until this day.

In the meantime, the Constitutional Tribunal has passed verdicts in other questions which were submitted later than the inquiry of the Regional Court in Warsaw.

Given the above, the delay in reviewing said inquiries seems not to be a coincidence on the part of persons heading the Tribunal; it is clear they do not care for the fate of tens of thousands of retired officers whose retirement and disability pensions were again drastically reduced and whose basis of existence was radically undermined. It should be noted these officers are mostly elderly and often of poor health; their current retirement pensions, after indexation, amount to PLN 878 net per month (approx. EUR 205), while the disability pensions are even lower.

In the situation described above, the constitutional right "*...to a just and open review of the case without unjustified delay by a competent, independent, objective and autonomous court...*" (Article 45.1 of the Constitution of the Republic of Poland) is plain fiction.

Possible course of action

In light of the circumstances presented above, it is necessary to consider taking action aimed at garnering political support of opposition leaders, Members of the European Parliament and potentially other persons for the European Commission lodging a complaint with the Court of Justice of the European Union in Luxembourg regarding the provisions of the Act of 16 December 2016 which materially violate not only the provisions of the Polish Constitution but also the law of the European Union. After all, such basic rights and principles as the right to an independent, objective and autonomous court, the principle of protection of acquired rights, trust in the State and the law made, and the principle of equality in the eyes of the law are not only rights and principles guaranteed under the Constitution of the Republic of Poland but also rights and principles of the European Union.

A complaint lodged by the European Commission with the Court of Justice of the European Union in Luxembourg with respect to the provisions of the Act of 16 December 2016 should be accompanied

by an application for injunctive relief obligating the Polish authorities to pay out retirement and disability pensions to the aforementioned officers in the amounts stipulated by regulations in force before 16 December 2016. In particular, the following facts need to be highlighted:

1. The provisions of the aforementioned Act of 16 December 2016 materially violate the values stipulated under Article 2 of the Treaty on European Union (consolidated text). This was proved explicitly and in detail by the Regional Court in Warsaw in its decision of 24 January 2018, case file no. XIII 1 U 326/18 (please find the decision enclosed).
2. As indicated above, there are significant reservations as to the legal authority of the current Constitutional Tribunal that arise, among other things, from the illegitimate appointment of three justices of the Tribunal by the current Sejm in place of three justices who were duly appointed by the previous Sejm but whom the current President of the Republic of Poland refused to swear in.

According to the official release, the adjudication panel of the Constitutional Tribunal has been selected to review the aforementioned legal inquiries of the Regional Court in Warsaw.

The following justices were appointed to the adjudication panel:

- Justice Julia Przyłębska – as presiding justice,
- Justice Justyn Piskorski – as reporting justice,
- Justice Leon Kieres,
- Justice Stanisław Rymar,
- Justice Jarosław Wyrembak.

Both Mr Justyn Piotrowski and Ms Jarosław Wyrembak were appointed justices of the Constitutional Tribunal in violation of the law, as indicated above.

In consequence, given that the adjudication panel has been selected illegitimately and improperly, the proceeding will be invalid and the decision passed by the panel will be null and void.

The officers whose retirement and disability pensions were radically reduced by the Act of 16 December 2016 should not bear the negative consequences of this state of affairs. Several hundred of the former officers who appealed to the courts against the harmful decisions regarding their retirement and disability pensions issued under the Act of 16 December 2016 have already died. Several more thousand are waiting for the court to resolve their appeals, but to no avail.

Failure on the part of the European Commission to lodge a complaint with the Court of Justice of the European Union in Luxembourg with respect to the case discussed herein will result in a stalemate and the period of waiting for a substantive resolution of the appeals filed by the officers will be significantly extended.

It needs to be strongly emphasized that, should that be the case, the citizens' right to an objective and autonomous court will prove to be fictitious.

Should you require to familiarise yourself with the content of the laws and documents quoted herein, they will be delivered to you in English.

Andrzej Milczanowski

Szczecin, 18 January 2019