

The influence of the Constitutional Court on the legal framework for intelligence oversight in Poland

The Constitutional Tribunal is often an unnoticed element of the oversight system of intelligence services. In public awareness, it is inferior to, for example, a specialized parliamentary committee (the Parliamentary Committee for Special Services). This is probably since constitutional courts do not strictly deal with this issue. However, we can look at the oversight and accountability system more broadly - as a set of institutions that influence the integration of intelligence services' activities into a democratic state's standards. With this research approach, constitutional courts and institutions such as the Supreme Audit Office, the Ombudsman, or even the media and non-governmental organizations will become part of the system.

Can the Constitutional Tribunal play an essential role in adjusting the activities of intelligence services to constitutional standards? The answer to this question is related to the rule of law in force in democratic countries. The legal basis for the functioning of intelligence services is relatively extensive. In a constitutional democracy, these institutions are no exception and function based on the law. The acceptance of the rule of law implies a significant role of the Constitutional Tribunal, which assesses the compliance of the legal basis for the functioning of secret services with the Constitution.

The Tribunal is not concerned with the permanent or incidental oversight of intelligence services' activities - it does not check how they function. However, it influences them through its jurisprudence, which may lead to changes in legislation. This function's importance is a product of the quality of the law passed by the intelligence services. Practice shows that it often deviates from constitutional standards. It sometimes happens that laws on this matter are characterized by inconsistency, and the provisions are unclear and imprecise. For many years, there has been a noticeable tendency to extend the powers of all intelligence services. Moreover, formal guarantees against excessive interference with human rights are very modestly regulated. There is also a lack of many accountability mechanisms to verify that the powers are exercised following the law.

The essential role of the Tribunal depends on the scale of legislative changes related to its rulings. In the past, these changes have been relatively profound. Looking from this perspective, one may risk a thesis that the Tribunal's real influence was more significant than that of many institutions whose participation in the system of civilian control over intelligence services does not raise any doubts. In this context, the Constitutional Tribunal's fundamental role is to find a balance between such constitutional values as the security of the state and its citizens, on the one hand, and human rights, on the other.

The project aims to examine the Constitutional Tribunal jurisprudence in the field of building the oversight system in Poland after 1990. However, we have a more ambitious goal than systematizing the law of intelligence services and the Tribunal's jurisprudence in this matter. We believe that to determine the impact of the Constitutional Tribunal on the system of accountability of intelligence services, it is necessary to assess the implementation of individual judgments comprehensively and their effects on intelligence law understood as a system. This approach to the problem allows us to ask many questions, including Has the Constitutional Tribunal's role changed over the years? What was the significance of the changes made in 2015 in this context? What is the real impact of the court's jurisprudence on the accountability system of intelligence services?