Judgment of 18th December 2002, K 43/01

STATUTORY PAY INCREASE IN PUBLIC HEALTHCARE INSTITUTIONS ("LEX 203")

Type of proceedings:	**Composition of Tribunal:**	**Dissenting opinions:**
Abstract review; Question of law referred by a court **Initiators:** Federation of Employers' Associations of Healthcare Institutions; District Court – Labour Court in Chełm	Plenary session	0

Legal provisions under review	**Basis of review**
Ex lege monthly pay increase of 203 Polish Zloty for employees of independent public healthcare institutions [Negotiable System for Determining Average Pay Increases in Undertakings and Modifying Certain Statutes Act 1994: Article 4a, as inserted by the 2000 Act Amending: the Negotiable System for Determining Average Pay Increases in Undertakings and Modifying Certain Statutes Act; and the Healthcare Institutions Act]	Rule of law Principle of legality of public authority functioning Freedom of economic activity Principle of equality [Constitution: Articles 2, 7, 20, 32]
Retrospective entry into force of the aforementioned provision [2000 Act (above): Article 3]	Rule of law Principle of legality of public authority functioning [Constitution: Article 2 and Article 7]

At the end of the year 2000, nurses and midwifes organised various forms of protest against their low pay. On 22nd December 2000, under the pressure of intensifying demonstrations, Parliament adopted the Act Amending: the Negotiable System for Determining Average Pay Increases in Undertakings and Modifying Certain Statutes Act; and the Healthcare Institutions Act. Inter alia, the amending Act envisaged – via the insertion of Article 4a into the Negotiable System for Determining Average Pay Increases in Undertakings Act 1994 – an increase in average monthly pay for employees of independent public healthcare institutions (mainly hospitals) of at least 203 Polish Zloty; this resulted in the Act becoming known as the "lex 203".

The aforementioned provision gave rise to numerous interpretational doubts and financial difficulties. A fundamental problem was that the legislator, having imposed the duty to increase the pay of hospital employees, failed to indicate the sources from which such an increase should be financed. Hospitals incurred financial losses as a result since, one the one hand, they were unable to ignore the duty to increase their employees' pay but, on the other hand, they were allocated insufficient resources by regional healthcare funds to allow them to fulfil all the obligations of the public healthcare system. Further employees' protests followed and numerous claims were brought before the labour courts.

The discussed legal provision of December 2000 entered into force on 1st January 2001 and, two years later, was the subject of Constitutional Tribunal review, on the basis of an application by the Federa-

tion of Employers' Associations of Healthcare Institutions and a question of law referred by a District Court – the Labour Court in Chełm.

Both initiators of the proceedings alleged that the challenged provision neither conformed to the principle of citizens' trust in the State and its laws, nor to the principle of correct legislation, as stemming from the rule of law principle (Article 2 of the Constitution). It was argued that this provision failed to meet the requirement of sufficient clarity and precision, since it did not specify the subject required to cover the expenses, the sources of financing, or the mechanism for transferring funds for the pay increases. Moreover, the provision failed to appropriately regulate transitional issues and its content resulted in divergent, and often absurd, interpretations.

The Federation of Employers (mentioned above) also alleged that, whilst the challenged provision envisages a pay increase for every healthcare institution employee, with no differentiation made between the financial situations of those entitled to the increase, the failure to indicate the sources of financing meant that not all employees would receive the pay increase. In the applicant's opinion, this infringed the constitutional principle of equality (Article 32). Moreover, it was submitted that it infringed the freedom of economic activity (Article 20 of the Constitution) to determine a specific amount for an *ex lege* pay increase in self-financed, i.e. non-public-financed, public healthcare institutions.

Furthermore, the District Court alleged that, since Article 3 of the Amendment Act 2000 – introducing the pay increase – acquired binding force prior to the date of its publication in the Journal of Laws (i.e. 1st January 2001), there was an infringement of the principle requiring an appropriate *vacatio legis* and the principle of non-retrospective effect of law, as stemming from the rule of law clause (Article 2 of the Constitution). In relation to both challenged provisions, the District Court also cited Article 7 of the Constitution as a basis of review (the principle that organs of public authority shall function on the basis of, and within the limits of, the law).

Point 1 of the ruling of the judgment summarised herein has the character of a so-called interpretative ruling. In such judgments, the Tribunal declares that the reviewed provision conforms (or does not conform) to the Constitution provided that it is interpreted in a particular way.

RULING

1. Article 4a of the Negotiable System for Determining Average Pay Increases in Undertakings and Modifying Certain Statutes Act 1994, understood as making the public finances system jointly responsible for the fulfilment of the tasks defined therein:

a) conforms to Articles 2, 7 and 32 of the Constitution.

b) is not inconsistent with Article 20 of the Constitution.

2. Article 3 of the 2000 Act amending the aforementioned statute conforms to Article 2 and Article 7 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In the system of values constituting the notion of the democratic State governed by the rule of law (Article 2 of the Constitution), the principle of citizens' trust in the State and its laws occupies prime position. In particular, this principle does not permit the State to play a "game" with citizens, creating entitlements that are illusory or incapable of realisation, due to legal or factual reasons or due to the vague definition of the conditions for the enjoyment thereof.

2. A special presumption stems from the principle of the citizens' trust in the State and its laws that, if the legislator enacts provisions constituting the basis for financial claims without unequivocally prescribing the obliged subject, the public finances system shall be responsible for fulfilling these claims.

3. The principles of the social market economy formulated in Article 20 of the Constitution do not determine the functioning of the public healthcare system. In this sphere, Article 68(2)-(4) of the Constitution is of primary importance, imposing upon public authorities the duty to ensure citizens access to healthcare services financed from public funds. Whilst the system of public healthcare services, as a fundamental instrument for realising these duties, should be constructed on the principles of economic rationality, certain impassable limits exist to such economisation.

4. There is no justification within constitutional norms for treating as absolute the reference to independence in the name "an independent public healthcare institution". The scope and content of this notion are shaped by statute. The reference to independence may not be treated as identical to the status of subjects pursuing commercial activity.

5. In assessing the constitutionality of Article 4a of the aforementioned 1994 Act, as inserted by the 2000 Act, entitling employees of independent public healthcare institutions to a monthly remuneration increase of 203 Zloty, account must be taken of the content of the aforementioned constitutional norms (points 1-3 above), which determine the direction of interpretation provided for in point 1 of the Tribunal's ruling (above). The statute, on whose basis employees based individual claims against independent public healthcare institutions, as their employers, burdens that segment of public finances serving to finance the fulfilment of public authority duties envisaged in Article 68(2) of the Constitution. This does not mean that independent public healthcare institutions are entitled to be fully compensated for the costs of the pay increase. Nevertheless, there should be a mechanism to prevent the conditions of functioning of such institutions worsening in consequence of them fulfilling the statutory duty to increase employees' pay. The Constitutional Tribunal is not competent as regards determining the organisational-legal form of appropriate solutions or the level of financial means necessary to satisfy the increased needs.

6. It is unfounded to claim that the challenged provision infringes the constitutional principle of equality (Article 32 of the Constitution) by virtue of its inapplicability to employees of non-public (privately administered) healthcare institutions. From the perspective of the challenged provision, employment in a healthcare institution is not the essential (relevant) common characteristic of the compared subjects. The dissimilarity in the legal status of public healthcare institutions and non-public institutions, as regards the principles governing their activities, does not allow for a comparison of the level of their employees' pay. There would be no rational justification for the legisla-

tor to treat such different subjects uniformly and to interfere with the private sector's sphere of activity.

7. In assessing the reviewed provisions, the Constitutional Tribunal is required to weigh, on the one hand, the legislator's shortcomings as regards the principle of correct legislation – infringement of the Sejm's rules of procedure when adopting the Amendment Act, the absence of sufficient precision in Article 4a of the amended Act, the failure to specify the sources necessary to realise the pursued aim – and, on the other hand, the constitutional protection of trust in the law, especially law enacted in the form of a statute. The loss of binding force of the challenged provisions would result in removing the legal basis for the pay increases awarded to employees of public healthcare institutions over the preceding two years and could lead to the possibility of reopening the procedures in cases decided in favour of employees bringing claims. It would jeopardise trust in the State and its laws in an area which is especially "sensitive" for every profession – their pay. The resulting collision of constitutional principles should be resolved in favour of the principle of trust, which results in recognising the constitutionality of the reviewed provision.

8. Certain special types of legal regulation exist in relation to which application of the rules governing *vacatio legis* and the principle of non-retroactive effect of the law shall not be absolute. This primarily concerns provisions guaranteeing that citizens shall be placed in a better situation than their present position.

9. It is unfounded to assume, on the basis of the principle of non-retroactivity of the law and the lack of *vacatio legis* (cf. point 2 of the Tribunal's ruling), that the subjects granted rights by the reviewed provision (i.e. employees of independent public healthcare institutions) and the obliged subjects, belonging to the system of public finances, are equal and deserve the same protection.

10. In its jurisprudence, the Constitutional Tribunal applies a legal presumption that the challenged provision conforms to the Constitution. Accordingly, submissions against a statute may justify a finding of its non-conformity with the Constitution only where, during the proceedings, it was proved that no acceptable interpretation of the challenged provision would allow it to be attributed with a meaning that would ensure its conformity with the norms, principles and values enshrined in the Constitution.

11. The function of an interpretative judgment of the Constitutional Tribunal (such as point 1 of the ruling) is to render the content of the reviewed provision compatible with the requirements specified in constitutional norms. Such judgments have universally binding application, in accordance with Article 190(1) of the Constitution.

Provisions of the Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

Art. 7. The organs of public authority shall function on the basis of, and within the limits of, the law.

Art. 20. A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 68. […] 2. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute.
3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.
4. Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.

Art. 190. 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.