

Judgment of 4th April 2006, [K 11/04](#)
SEQUENCE OF ENFORCEMENT OF DUE PAYMENTS FOR WORK

Type of proceedings: Abstract review Initiator: Polish Seafarers' Union	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
Legal provisions under review		Basis of review
Differentiation of the sequence in which payments due for work are satisfied in the course of enforcement proceedings <small>[Civil Procedure Code 1964: Article 1025 § 1 points 3 and 6 (in the wording introduced in 2001)]</small>		Rule of law Principles of social justice Principle of equality Equal protection of property rights <small>[Constitution: Articles 2, 32 and 64(2)]</small>

One of the principles laid down in the Civil Procedure Code 1964 regulating enforcement in civil cases is the principle of the priority (preferential) system for the satisfying of claims. In Article 1025 § 1, the Code specifies the sequence in which different categories of claims are to be satisfied from a monetary amount acquired through enforcement.

The summarised judgment concerns a change in this sequence in respect of the satisfying of claims as regards payments due for work. The modification challenged by the applicant was introduced by the Enforcement Proceedings in Administration Act and Certain Other Acts Amendment Act 2001 (hereinafter referred to as: “the Amendment Act 2001”).

According to wording in place hitherto, all payments due for work were enforceable in third place – following enforcement costs and alimony payments. The challenged amendment provided for the dividing of claims constituting payments due for work into two categories. Thus, from the date of entry into force of the Amendment Act 2001 (i.e. as of 30th November 2001), it is only payments due for work for a period of 3 months and not exceeding the level of the minimum wage that are enforceable in the third turn (Article 1025 § 1 point 3 of the Civil Procedure Code in the newly-introduced wording). The remaining claims of this kind only take sixth place in terms of the order of enforcement (Article 1025 § 1 point 6 in the newly-introduced wording); claims secured by a mortgage or a registered pledge are among those satisfied earlier.

The review of constitutionality in the present case was of an [abstract review](#) nature. However, it is worth mentioning that the background to the application initiating the proceedings before the Constitutional Tribunal was constituted by several court cases regarding the payment of overdue remuneration instituted on behalf of sailors by the applicant – the Polish Seafarers' Union (*Ogólnopolski Związek Zawodowy Oficerów i Marynarzy*). The judgments pronounced within these proceedings, endorsed by the enforcement clause, were addressed to a marine vessel for enforcement. While the ship was sold prior to the entry into force of the Amendment Act 2001, the plan for the division of the amount acquired through enforcement from the sale of the vessel had already been drawn up on the basis of the newly-introduced wording of

Article 1025 of the Civil Procedure Code. This resulted in a non-beneficial situation for the sailors represented by the applicant.

The applicant alleged that the challenged provision infringes the constitutional principles of the rule of law and social justice (Article 2), equality (Article 32) and protecting acquired rights. The latter rule has been derived by the applicant from Article 64(2) of the Constitution (the requirement of equal protection of property rights).

RULING

Article 1025 § 1 points 3 and 6 of the Civil Procedure Code, in its challenged wording, is not inconsistent with Articles 2, 32 and 64(2) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In line with the *falsa demonstratio non nocet* principle, where the reconstruction of a legal norm challenged by an applicant requires that account also be taken of part of a statute not indicated directly within the application, the Constitutional Tribunal should review all provisions constituting the challenged normative content.
2. The applicant challenges the norm requiring application of Article 1025 § 1 of the Civil Procedure Code in the newly-introduced wording to enforcement proceedings instituted prior to entry into force of the Amendment Act 2001. The applicant derives the norm from Article XV § 1 of the Introductory Provisions to the Civil Procedure Code Act 1964, arguing that the Amendment Act 2001 fails to contain a transitional provision regulating this issue. However, such reasoning is unjustified, for the indicated content is contained within Article 13 of the Amendment Act 2001, envisaging application of the newly-introduced provisions also in regard to enforcement proceedings instituted prior to its entry into force.
3. From the rule of law clause (Article 2 of the Constitution) there stems, in principle, the prohibition on retroactivity of law, i.e. on the applying of new legal norms to the so-called closed factual state, fully shaped under earlier operative provisions. A distinction should be drawn between retroactivity construed thus and so-called retrospectivity, i.e. the application of a new law to legal relationships concluded under the former provisions, whenever all significant elements of such relationships have not yet been substantiated. Retrospectivity understood in such a manner is not encompassed by the prohibition arising from Article 2 of the Constitution. The assumption of a different position would excessively limit the legislator's discretion in adjusting the law to social changes.
4. The principle of protecting acquired rights not only concerns property rights but also different kinds of rights – including ones that lack a constitutional basis. It is closely linked to the principles of legal security and protecting trust in the State and its laws, and thus stems from the rule of law principle (Article 2 of the Constitution). There is therefore no justification for the applicant's derivation of the principle of protecting acquired rights from Article 64(2) of the Constitution (equal protection of property rights).

5. The moment at which the right to preferential satisfaction from an amount acquired as a result of enforcement (“the right to belong to the relevant category of privileged debtors”) arises is the day on which the plan of division is drawn up, or, to be more precise, the moment at which it is possible to commence with its implementation (cf. Article 1028 § 1 of the Criminal Procedure Code). It is not the day of submission of the application instituting the enforcement proceedings. It would be possible to speak of infringement of a specific acquired right (i.e. one specified by way of a judicial decision), were the legislator to order the withholding of implementation of already-enforceable plans of division and to demand their preparation anew, in a manner conforming to the newly-introduced provisions.
6. The challenged provision does not deprive the creditor of the “right to satisfaction from a debtor’s assets”. Nevertheless, non-satisfaction from an amount subject to division does not foreclose the creditor’s possibility of carrying out further enforcement.
7. The expression “payments due for work for the period of 3 months not exceeding the level of the minimum wage” used within the amended Article 1025 § 1 point 3 of the Civil Procedure Code may raise doubts as regards interpretation. Nevertheless, the lack of legislative precision in this case fails to exceed the level beyond which it is possible to speak of infringement of the constitutional principle of the rule of law.
8. Infringement of the principles of social justice (Article 2 of the Constitution) would take place where the legislator assigned a specified claim to a certain category in a groundless and arbitrary manner. Meanwhile, it is difficult to compare the types of claims enumerated by the ten points of Article 1025 § 1 of the Civil Procedure Code and determine, in a general manner, the issues of priority, since they constitute claims of different origin and different legal nature.
9. The division of payments due for work into two categories from the point of view of sequence of enforcement (points 3 and 6 of Article 1025 § 1 of the Civil Procedure Code) does not constitute an infringement of the principle of equality (Article 32 of the Constitution), as the bases for assigning different types of payments due to the privileged categories are not identical. Whenever the privileged payments due only remain in formal conjunction, it is impossible to argue that they should be treated in an entirely identical way.
10. When challenging the constitutionality of the division of employees’ claims, the applicant failed to mention Article 1025 § 1 point 1 of the Civil Procedure Code, ensuring absolute priority for enforcement costs although they concern, inter alia, a particular type of payment due for work, i.e. the remuneration of enforcement officers. A certain lack of cohesion of the legal system arises within this point.
11. The principle of protecting work, as expressed within the first sentence of Article 24 of the Constitution, also encompasses the protection of remuneration for work. When implementing this principle the legislator is obliged to take into account the particular nature of some employment relationships which are characterised by a far-reaching distinctiveness, including those connected with maritime navigation. The problem of protecting claims regarding such employment relationships will constitute the subject of a [signalising procedural decision](#) (cf. Article 4(2) of the Constitutional Tribunal Act) that will be directed by the Tribunal to the Sejm (i.e. the first chamber of the Polish Parliament).

Provisions of the Constitution and the Constitutional Tribunal Act

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. 24. Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.

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. 64. [...] 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

CT Act

Art. 4. [...] 2. The Tribunal shall submit to the competent law-making bodies observations concerning found inconsistencies and gaps in the law, removal of which would be indispensable to ensure the integrity of the legal system of the Republic of Poland.