98/9/A/2010

JUDGMENT

of 9 November 2010

Ref. No. K 13/07*

In the Name of the Republic of Poland

The Constitutional Tribunal, in a bench composed of:

Andrzej Rzepliński – Presiding Judge
Zbigniew Cieślak - Judge Rapporteur
Adam Jamróz
Ewa Łętowska
Marek Mazurkiewicz,

Krzysztof Zalecki – Recording Clerk,

having considered, at the hearing on 9 November 2010, in the presence of the applicant, the Sejm and the Public Prosecutor-General, an application by the Polish Ombudsman (hereinafter: the Ombudsman) to determine the conformity of:

Article 755(2) of the Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws - Dz. U. No. 43, item 296, as amended) to Article 14 as well as Article 54(1) in conjunction with Article 31(3) of the Constitution of the Republic of Poland,

adjudicates as follows:

I

Article 755(2) of the Act of 17 November 1964 – The Code of Civil Procedure (Journal of Laws - Dz. U. No. 43, item 296, as amended) **is inconsistent with Article 14**

*The operative part of the judgment was published on 19 November 2010 in the Journal of Laws - Dz. U. No. 217, item 1435.

as well as Article 54(1) in conjunction with Article 31(3) of the Constitution of the Republic of Poland, due to the fact that it does not set a time-limit for a ban on publication imposed as a protective measure to secure claims in cases concerning the protection of personal rights, which have been brought against the means of social communication.

II

The provision indicated in Part I above ceases to be binding after the lapse of 15 (fifteen) months from the day the judgment is published in the Journal of Laws of the Republic of Poland.

STATEMENT OF REASONS

[…]

III

The Constitutional Tribunal has considered as follows:

1. Constitutionally protected values, rights and freedoms may clash with each other, as regards their legal regulation granted to them by positive law (as a result of the legislator's activity); the regulation determines the scope of protection, the possibilities of interference by public authorities as well as guarantees which are related to the implementation thereof. In other words, completeness and reliability of legal guarantee of some goods, rights and freedoms protected constitutionally must take place – out of necessity – at the expense of others. In such cases, it is a constitutional matter to determine the proportions of protection and guarantee of each of the protected personal interests, rights and freedoms. The freedom of speech, or even more broadly – as Article 54 of the Constitution stipulates – "the freedom to acquire and to disseminate information" and the protection of privacy, as expressed (*inter alia)* in Article 47 of the Constitution – are personal interests (freedoms) which remain in such a relation. It happens that guaranteeing one more fully with legal measures results in diminishing the legal protection and guarantee of another. On the one hand, that situation forces the legislator to work out a compromise at the moment of enacting the law; on the other hand, what this poses as a

problem (related to the Constitution, to the Convention: the problem of protection of human rights) is the issue of assessment whether the choice of a solution made this way by the ordinary legislator is consistent with principles. The assessment in this regard is carried out by constitutional courts and – alternatively – courts which ensure the protection of human rights. The above-mentioned dilemma (which is not rare within the scope of *acquis constitutional*) lies at the basis of the application in the present case, examined by the Constitutional Tribunal, within the scope of abstract review of constitutionality.

2. In accordance with Article 14 of the Constitution, the Republic of Poland shall ensure the freedom of the press and of other means of social communication. This is a systemic principle (see L. Wiśniewski, "Wolność prasy w świetle Konstytucji RP, ustaw oraz wiążącego Polskę prawa międzynarodowego", [in:] *Wolność słowa w mediach, od* D. Góreckiego (ed.), Łódź 2004, pp. 20-22), regarded as one of the inalienable bases for the functioning of the system of democratic pluralism. In that system, means of social communication are considered to be certain tools for a necessary social discourse, the exchange of views and information and its dissemination; they may even manifest the social oversight with regard to the factors of public authority (see L. Garlicki, P. Sarnecki, commentary to Article 14 of the Constitution of the Republic of Poland [in:] *Konstytucja Rzeczypospolitej Polskiej*. *Komentarz*, L. Garlicki (ed.), Vol. V, Warszawa 2007, p. 3). The content of constitutional freedom reserved for the means of social communication should be specified with regard to the understanding of the individual's freedom to express opinions, to acquire and to disseminate information, which correlates with the provisions of Article 54 of the Constitution. The content of that freedom is perceived through the prism of its three fundamental elements: the freedom to establish the means of social communication and the freedom to shape the ownership structure of the means of social communication. From the point of view of the case under examination, the most crucial element of the freedom of the media is the freedom to carry out activity by the means of social communication. The said freedom amounts to free and unrestrained expression and communication of opinions as well as acquisition and dissemination of information. A particular guarantee of that freedom is, in that regard, prohibition against preventive censorship, understood as the publication or broadcast of a certain message being contingent on the permission of an organ of public authority. At the same time, there is no doubt it is constitutionally admissible to introduce various forms of subsequent liability for the content of a publication or broadcast (see L. Garlicki, P. Sarnecki, *op.cit.*, p. 7).

However, it should be borne in mind that the freedom of the means of social communication is not absolute and may be subject to restrictions. As it has been expressed in the previous rulings of the Constitutional Tribunal, the principle of the primacy of freedom of the media over other constitutional principles (in particular, over the constitutionally protected rights of the individual) may not follow from the provisions of Article 14 of the Constitution; neither may this regulation serve as the basis for derivation of an unjustified (contrary to Article 31(3) of the Constitution, and thus disproportionate) restriction on constitutional rights and freedoms. In the judgment of the Constitutional Tribunal in the case P 10/06, dated 30 October 2006 (OTK ZU No. 9/2006, item 128), the Constitutional Tribunal stated that "rights and freedoms expressing the essence of the dignity of the person and being the manifestation thereof, including honour, good reputation and privacy (enshrined in Article 47 of the Constitution), may take precedence in a clash with the freedom of speech and the freedom of the press and other means of social communication and, as a consequence, may result in their restriction, regardless of the fact that they have not only an individual dimension, but also a social one, being the guarantees of a public debate which is indispensable in a democratic state ruled by law". The constitutional guarantee of the freedom to express opinions, to acquire and to disseminate information has been expressed in Article 54(1) of the Constitution of the Republic of Poland. This principle remains in a close relation to the aforementioned constitutional guarantee of the freedom of the means of social communication. The freedom of speech and the freedom of the mass media have on a number of occasions been discussed in the previous jurisprudence (see e.g. the judgment in the case P 10/06, the judgments of the Constitutional Tribunal of: 22 February 2005, Ref. No. K 10/04, OTK ZU No. 2/A/2005, item 17; of 20 February 2007, Ref. No. P 1/06, OTK ZU No. 2/A/2007, item 11). In the judgment in the case K 4/06 (the judgment of 23 March 2006, OTK ZU No. 3/A/2006, item 32), the Constitutional Tribunal (in full bench) presented the view that "the freedom of speech is one of the cornerstones of a democratic society, a condition for its development and the self-fulfilment of individuals. The said freedom may not be limited to information and views which are approved of, or perceived as harmless or without any significance. The role of journalists is to disseminate information and ideas which are the subject of public interest and which are of significance to the public. This remains in a close relation to the right of the public to be informed. Obviously, pursuant to Article 31(3) of the Constitution, the freedom of speech may be subject to restrictions". As it is indicated in the literature on the subject, the freedom of

speech denotes "the freedom of unrestrained expression of opinions, views or actual information in various forms (by means of words, print, images, sound or gesture), but always in a way which is visible to others, and thus in the process of interpersonal communication" (W. Sokolewicz, "Wolność prasy i jej konstytucyjne ograniczenia", *PiP* No. 6/2008, p. 22). Moreover, it is stressed in the jurisprudence of the Constitutional Tribunal that, in the light of Article 54 of the Constitution, one may speak of three separate freedoms: the freedom to express opinions, the freedom to acquire information and the freedom to disseminate information (see e.g. the judgment in the case P 1/06, OTK ZU No. 2/A/2007, item 11). In accordance with the principle of interpreting constitutional wording as broadly as possible (see P. Sarnecki, Commentary to Article 54, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, Warszawa 2003, p. 1), these terms should be interpreted in a broad sense, and in particular the freedom to acquire information and to disseminate information should also concern views, and not only facts. As regards the significance of the freedom to express one's views, especially in the context of public life, and in particular political one, the Constitutional Tribunal presented its stance in the case P 1/06, linking it with the individual's freedom to be active in public life. It should be underlined that "making the public aware of the fact that the individual's status of *hominem politicus* also comprises the freedom to express opinions, directly or via the media, and not merely by means of public demonstrations or membership in an organisation, may lead to greater involvement in public life and assuming more responsibility for the common good, such as the Polish State" (P. Sarnecki, *op.cit.*, pp. 4-5).

3. The previous jurisprudence of the Constitutional Tribunal indicates that the Tribunal holds the view that any protection of the freedom of the media has a character of a constitutional principle (Chapter I of the Constitution), and the protection of private life and the good reputation of the individual is rendered in the Constitution as the freedom of the individual, and therefore it may not *a priori* be assumed that, in each case of a clash, precedence should be assigned to the freedom of the media. Thus, as the Tribunal pointed out, the assessment requires the situational application of the criterion of proportionality (Article 31(3) of the Constitution).

4. The problem looks similar in the light of the jurisprudence of the European Court of Human Rights (summed up in the judgments of the Grand Chamber of

17 December 2004: Pedersen and Baadsgaaard v. Denmark as well as Cumpana and Mazare v. Romania). The ECHR regards the existence of the free press as a necessary guarantee of the proper functioning of a democratic society. Particular emphasis has been placed on – one may say increased – freedom of the press in the realm of politics, where the role of the press has been famously described as that of "watchdog" which should react to any wrongdoing and provide the public with complete and reliable information. However, the boundary of the freedom of the media – even in the case of the increased freedom – should be delineated by means of a prohibition against interference with the sphere of privacy imposed on the media (see e.g. the judgment of the ECHR of 24 June 2004, von Hannover v. Germany).

5. The constitutional guarantee of the freedom to express opinions, to acquire and to disseminate information has been contained in Article 54(1) of the Constitution of the Republic of Poland. The principle remains in a close relation to the aforementioned constitutional guarantee of the freedom of the means of social communication. The freedom of speech and the freedom of means of social communication has on a number of occasions been discussed in the previous jurisprudence of the Tribunal (see e.g. the judgment in the case P 10/06, the judgments of the Constitutional Tribunal of: 22 February 2005, Ref. No. K 10/04, OTK ZU No. 2/A/2005, item 17; 20 February 2007, Ref. No. P 1/06, OTK ZU No. 2/A/2007, item 11). In the judgment in the case K 4/06 (the judgment of 23 March 2006, OTK ZU No. 3/A/2006, item 32). The Constitutional Tribunal (full bench) stated that "the freedom of speech is one of the cornerstones of democratic society, a condition for its development and the self-fulfilment of individuals. The said freedom may not be limited to information and views which are approved of or perceived as harmless or without any significance. The role of journalists is to disseminate information and ideas which are the subject of public interest and which are of significance to the public. This remains in a close relation to the right of the public to be informed. Obviously, pursuant to Article 31(3) of the Constitution, the freedom of speech may be subject to restrictions". As it is indicated in the literature on the subject, the freedom of speech denotes "the freedom of unrestrained expression of opinions, views or actual information in various forms (by means of words, print, images, sound or gesture), but always in a way which is visible to others, and thus in the process of interpersonal communication" (W. Sokolewicz, "Wolność prasy i jej konstytucyjne ograniczenia", *PiP* No. 6/2008, p. 22). Moreover, it is stressed in the jurisprudence of the Constitutional

Tribunal that, in the light of Article 54 of the Constitution, one may speak of three separate freedoms: the freedom to express opinions, the freedom to acquire information and the freedom to disseminate information (see e.g. the judgment in the case P 1/06, OTK ZU No. 2/A/2007, item 11). In accordance with the principle of interpreting constitutional wording as broadly as possible (see P. Sarnecki, Commentary to Article 54, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, Warszawa 2003, p. 1), these terms should be interpreted in a broad sense, and in particular the freedom to acquire information and to disseminate information should also concern views, and not only facts. As regards the significance of the freedom to express one's views, especially in the context of public life, and in particular political one, the Constitutional Tribunal presented its stance in the case P 1/06, linking it with the individual's freedom to be active in public life. It should be underlined that "making the public aware of the fact that the individual's status of *hominem politicus* also comprises the freedom to express opinions, directly or via the media, and not merely by means of public demonstrations or membership in an organization, may lead to greater involvement in public life and assuming more responsibility for the common good, such as the Polish State" (P. Sarnecki, *op.cit.*, pp. 4-5).

6. The doubts expressed by the Ombudsman which have been indicated in the substantiation of the application in the case under examination, have been raised in the context of the amendments to the provisions of the Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws - Dz. U. No. 43, item 296, as amended; hereinafter: the Code of Civil Procedure) introduced by the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts (Journal of Laws - Dz. U. No. 172, item 1804). Article 755 of the Code of Civil Procedure, in its original version, stipulated the following:

"§ 1 Where the object of a protective measure to secure a claim is not a financial claim, the court issues an order, which it regards as suitable in given circumstances, without excluding orders provided for securing financial claims. Where necessary, in relation to the subject of a given case, such an order may also consist in regulating relations during the period of proceedings.

§ 2. When choosing a protective measure to secure a claim, the court will take into account the interests of parties, insofar as the creditor can be satisfied or his/her rights can be protected, and the debtor is not excessively burdened".

As a result of the amendments introduced by the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts, Article 755(2) of the Code of Civil Procedure reads as follows:

"§ 2. In cases concerning the protection of personal rights, which have been brought against the means of social communication, the court shall refuse to impose a ban on publication as a protective measure to secure a claim, if such a protective measure is contrary to an important public interest".

The amendment was related to the new shape of the character of the proceedings to secure claims as auxiliary proceedings, which ensures the guarantee of immediate and temporary protection for the eligible entities. It should be noted that a protective measure to secure a claim in cases against the means of social communication was not taken into consideration in the original wording of the draft amendment (see the Sejm Paper No. 965, 4th term of the Sejm). The proposal to introduce a special regulation with regard to a protective measure to secure a legal action in cases against the means of social communication was put forward in the course of legislative work (see Bulletin No. 3017/IV of the Special Committee for Changes in Codification of 31 March 2004, 4th term of the Sejm). However, the final regulation of the content of Article 755(2) of the Code of Civil Procedure was introduced during the subsequent session of the Sejm Committee, in a version which was proposed by an expert of the Committee (see Bulletin No. 3017/IV of the Special Committee for Changes in Codification of 14 April 2004, 4th term of the Sejm). It follows from the explanatory note to the draft amendments that introduced Article 755(2) of the Code of Civil Procedure was to have a special character with regard to other types of protective measures to secure claims. In accordance with the adopted assumption, by ordering a ban on publication, the court would not censor publication, but would state that its content infringes the personal rights of the claimant. However, if in a given case the public interest proved to be more important, the court would refuse to grant the protective measure to secure a claim. According to the authors of the draft amendments, such a solution would be sufficient as: on the one hand, it would allow for the use of protective measures to secure claims in all civil cases and, on the other hand, in special cases, the court was to juxtapose the public interest with the interest of the individual whose rights have been infringed, by refusing to grant the protective measure to secure a claim. An additional argument was that such wording eliminated the risk of applying Article 730 of the Code of Civil Procedure in a way that would be contrary to the aim of those provisions (see Bulletin No. 3017/IV). Also, it should be emphasised that in

an expert opinion prepared by the Bureau of Research of the Chancellery of the Sejm upon request from the Special Committee, similar argumentation was presented, and it was clearly stated that the judicial branch was not an administrative authority. Therefore, the actions of courts may not be regarded as censorship, but as the oversight of the observance of law in a preventive sense. In the conclusion of the expert opinion, it was explicitly stated that a temporary protective measure to secure a claim was implemented by means of an instrument which protects against the abuse of the freedom of speech (*ibidem*). Consequently, as it follows from the course of legislative work, the reason weighing in favour of the amendments to the provisions on protective measures to secure claims was the intention to introduce a special regulation with regard to securing a legal action in cases against the means of social communication, so as to enhance (and not weaken) the guarantee of the freedom of the media, by creating a premiss of refusing to grant a protective measure to secure a claim due to the public interest. This issue has aptly been emphasised in the stance presented by the Public Prosecutor-General.

7. Introduced by the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts, the regulation of Article 755(2) of the Code of Civil Procedure stresses the extraordinary character of a protective measure to secure a legal action in cases against the means of social communication in relation to other protective measures aimed at securing claims. It should be pointed out that, in accordance with general provisions concerning proceedings to secure claims, each party or participant in proceedings may require that his/her claim be secured, if s/he makes it probable that there is a claim and a legal interest in having the claim secured (Article 730^1(1) of the Code of Civil Procedure), and in particular that the lack of a protective measure will make it impossible or will seriously hinder the execution of a ruling delivered in a given case. At the same time, when choosing a protective measure to secure a claim, the court is obliged to take into account the interests of parties or participants in proceedings, to the extent this guarantees proper legal protection to the eligible party, and does not excessively burden the party on which the obligation is imposed (Article 730^1(3) of the Code of Civil Procedure). By contrast, on the basis of Article 755(2) of the Code of Civil Procedure, the court which considers grounds for securing a legal action, by imposing a ban on publication in cases against the means of social communication, is obliged to juxtapose the public interest and the interest of a person whose personal interests have been infringed, and not the interests of parties to the proceedings. This entails that, amending the Code of Civil Procedure, within the

indicated scope, the legislator even more forcefully – in comparison with general provisions on securing claims – stressed the necessity to take into account the mission of the means of social communication. The amended provisions on securing claims emphasise the unique character of proceedings in cases against the means of social communication. With regard to these proceedings, during the process of weighing interests in any general proceedings to secure a legal action for the protection of personal interests infringed by a party, what has been underlined is the significance of interests, highly valued from the point of view of the Constitution, which have been defended by the party that has caused the infringement. This entails drawing the attention of courts, which decide about protective measures to secure claims in such cases, to additional circumstances arising from the special mission of the means of social communication.

For the reasons mentioned above, Article 755(2) of the Code of Civil Procedure, as amended by the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts, rules out the admissibility of imposing a ban on publication by the court in proceedings to secure claims, if this is contrary to an important public interest. The admissibility of imposing a ban on publication to secure a claim follows from the assumption that a publication infringing personal interests, more often than not, brings about harmful and usually irrevocable consequences for the person concerned. In the literature on the subject, it is assumed that "making relevant statements by the offender (e.g. apologies), referred to in Article 24(1) of the Civil Code, as an action necessary to eliminate the effects of an infringement, may somewhat alleviate the unpleasant consequences of the infringement, but nothing will expunge the fact itself. Neither can the consequences of the infringement of dignity as well as of other personal interests be eliminated by financial claims for redress or for a remedy for the harm that has been caused (A. Jakubecki**,** *Uwagi do art. 755 kodeksu postępowania cywilnego*, [in:] J. Bodio, T. Demendecki, A. Jakubecki, O. Marcewicz, P. Telenga, M.P. Wójcik, *Kodeks postępowania cywilnego*. *Komentarz*, Warszawa 2008, 3rd edition, p. 1083). For these reasons, there is no doubt that, in some cases, it is justified to secure a claim by imposing a ban on publication. Also, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Journal of Laws - Dz. U. of 1993 No. 61, item 284, as amended) does not rule out the possibility of imposing preventive restrictions (this includes securing a legal action with the protective measure indicated here). The aim of a ban on publication should, at the same time, be the protection of a specific personal interest, without ruling out, in principle, (D. Bychawska-Siniarska, „Witajcie w życiu" znowu NIE

trafia na ekrany, *Biuletyn informacyjny Obserwatorium wolności mediów w Polsce*, No. 10/ 2009, p. 5) the possibility of taking a stand on the matter; thus, it must be imposed in accordance with the requirements and conditions arising from Article 10(2) of the Convention. The last-mentioned provision makes it necessary to arrive at a proportional compromise as regards conflicting values.

What is more, legal institutions within the scope of securing procedural claims which are analogical to Polish solutions are known in a majority of legal systems of European countries.

The institution of securing a legal action, in accordance with Article 755(2) of the Code of Civil Procedure, may be applied by the court only with regard to the defendant, i.e. it is implemented only in the context of a certain procedural relation. Indeed, securing a claim constitutes a specific and situational procedural decision which is closely related to pending court proceedings; the purpose and basis for the decision is the necessity to protect the legal interests of a party (see J. Sadomski, *Naruszenie dóbr osobistych przez media. Analiza praktyki sądowej*, Warszawa 2003, p. 124). On the other hand, it follows from the literal wording of Article 755(2) of the Code of Civil Procedure that the court is unconditionally obliged to refuse to secure a legal action by means of a ban on publication – where such a protective measure would be contrary to an important public interest. However, this does not mean that the court is obliged to grant such a measure, even if it stated that the measure would not be contrary to an important public interest. The court examines the premiss of an important public interest only if – in the opinion of the court – the basic premises of securing a claim are fulfilled, i.e. both the claim and the related legal interest have been made probable (see T. Targosz, [in:] *Media a dobra osobiste*, J. Barta (ed.), K. Markiewicz, Warszawa 2009, p. 313). Therefore, the actual restriction of the freedom of the press may only occur in an exceptional situation, justified by given circumstances, and may only be imposed by an independent court in the context of a specific procedural-law relation. Moreover, it should be mentioned that the defendant (the media) may appeal against the decision of the court, which would allow him to present his reasons and show the existence of a threat to an important public interest which would oblige the court to refrain from the application of the indicated measure to secure a legal action.

The Constitutional Tribunal has assumed that challenged Article 755(2) of the Code of Civil Procedure, in its basic mechanism, entirely takes into account the degree of sensitivity and the individual character of cases concerning a ban on publication imposed

on the means of social communication in proceedings regarding the protection of personal interests, which makes it virtually impossible for the legislator to classify and generalise the premises of refusal to secure a claim by imposing a ban on publication. The court adjudicating on a protective measure to secure a claim by imposing a ban on publication, moves in the realm of determination and evaluation governed by the following values: the freedom of speech of the defendant and the freedom of the press related thereto – the interest of the claimant, the immediacy of publication – the difficulty in revoking the effects of publication – an important public interest. The court almost always faces a difficult task of weighing those values, determining their "significance" in given circumstances, drawing conclusions as to the extent of interaction among values and taking a decision as to the scope of the protection of personal interests. For these reasons, the legislator assigned taking a decision about the imposition of a ban on publication to an independent court, which is still obliged to refuse to secure a claim with such a protective measure if this is contrary to an important public interest.

"Public interest" is a term which lacks sufficient specificity, the function of which in the process of applying the law amounts to that of a decisive factor which allows for reactions in actual circumstances which are legally, socially and economically serious, and which fall outside the scope of assessment of typical, individual and actual circumstances. To put it more vividly, by means of a term which lacks sufficient specificity, the legislator establishes a bridge for decision-making process, in a broadly understood normative environment, for a judge or official, in the name of flexible and fair adjudication on cases. Such rendering of the essence of the function of the term lacking sufficient specificity in the application of law does not rule out an analysis as to the content of the term, as well as specifying the elementary conditions for the proper understanding of "public interest". If we assume that a typical legal regulation, being justified as regards axiology and praxeology by the legislator, refers to the generalisation of individual situations which share an integral element – "the interest of the individual" (obviously greatly diversified in reality, e.g. the interest of an individual, every person, the family, a social group, a commune (Pl *gmina*); interest expressed in terms of objects – the environment, national culture and heritage), then "public interest" not only exceeds the dimension of the individual, but also in a sense it completes him/her, indicating a proper direction for fair and proper determination. It is easy to notice that a judge adjudicating on a case (for instance the one referred to in the Ombudsman's application), faces a complex, complicated and heterogeneous matter which defies simple evaluation, as it consists in

weighing values. In fact, it should be assumed that a judge delivering a decision imposing a ban on publication for a journalist, takes into account, *inter alia*, the rich context of other values, in which a given case is set, and in particular the interests of other people. The amendment where the challenged provision comes from, by singling out the security of action against the means of social communication, it points out to courts the necessity of taking into account particular constitutional criteria which are present in that context, when taking a decision about securing a claim.

The Constitutional Tribunal shares the Ombudsman's views on the role and tasks of the press in a democratic state ruled by law, as regards the provision of reliable information to citizens, the transparency of public life, as well as social oversight and criticism. The press plays, and should play, a special and vital role in maintaining and enhancing social dialogue, where a crucial role is, in turn, played by information, evaluation and critical analyses of actions, as well as by the opinions of persons who hold public offices. Here the public interest clearly manifests itself in an extensive presentation of views and profiles of persons who are active in the public sphere, and the boundaries of openness and transparency of a social debate are pushed further than with regard to persons who do not hold public offices. The ban on publication provided for in Article 755(2) of the Code of Civil Procedure should therefore be exceptional and justified by the additional personal interest of third parties, as well as by a threat posed by publication to the values indicated in Article 31(3) of the Constitution.

8. The Constitutional Tribunal also noted that the challenged provision, in comparison with the version prior to the entry into force of the Act of 2 July 2004 amending the Code of Civil Procedure and certain other acts, constitutes a better legal solution, from the point of view of the protection of the freedom of speech and the freedom of expression, as it introduces premisses which limit the possibility of applying such a protective measure to secure a claim. On the basis of Article 755 of the Code of Civil Procedure, in its original wording, the refusal to secure a claim could occur only on the basis of general premisses, and thus by weighing the interests of parties. By contrast, as the Public Prosecutor-General has aptly noted, Article 755(2) of the Code of Civil Procedure does not introduce – as a principle – the admissibility of a ban on publication of particular material as a way of securing a claim, but on the contrary – it supplements the criteria for the admissibility of its application and makes them more stringent. For these reasons, the Constitutional Tribunal has not agreed with the view presented in the application that

amended Article 755(2) of the Code of Civil Procedure leads to the opposite of the principle that restrictions on the exercise of constitutional rights and freedoms are imposed by way of an exception, establishing a ban on publication as a principle. Neither has the Constitutional Tribunal shared the view that the ban on publication which arises from Article 755(2) of the Code of Civil Procedure leads to the use of preventive censorship.

9. In the view of the Constitutional Tribunal, the admissibility of the institution of securing claims does not weigh in favour of the conformity of the reviewed provision to the Constitution. In the literature on the subject, at the time when the original wording of Article 755 of the Code of Civil Procedure was still in force, it was clearly indicated that: "for many years the observation of practice has made the doctrine lean towards a proposal for carrying out proceedings to secure claims in a more efficient and expeditious way. However, it does not seem possible to achieve better results without overcoming the basic problems of the Polish judicial system, mainly as regards organisational and financial aspects" (M. Cieśliński, I. Kondak, "Postanowienie zabezpieczające a wolność prasy", *Przegląd Sądowy*, 2000, Issue No. 3, p. 32). The correlation of securing a claim with the main adjudication in cases against the means of social communication, as regards the protection of personal interests, results in a situation where a ban on publication may be imposed for many years, which may pervert the essence of the proceedings. In fact, in instances where at stake is the protection of the dignity of the person as the supreme value, it is indispensable that the case be settled with the utmost urgency. For this reason, in the view of the Constitutional Tribunal, what is indispensable is a temporary restriction on a ban on publication, by introducing significant legal guarantees of expeditious way of settling cases against the means of social communication, as regards the protection of personal interests, where a claim has been secured with that protective measure. The task of the legislator is to shape the provisions of the Code of Civil Procedure in such a way so as to eliminate the lengthiness of the said proceedings. At the same time, there are numerous legal solutions which, in respect of various values, could guarantee the expeditious pace of proceedings. In particular, one may consider the introduction of a statutory time-limit for the examination of a case where a claim has been secured by imposing a ban on publication.

An exemplary statutory time-limit for the examination of a case is the time-limit specified in Article 80 of the Act of 27 September 1990 on the Election of the President of the Republic of Poland (Journal of Laws - Dz. U. of 2010 No. 72, item 467), with regard to

posters, slogans, leaflets, speeches or other forms of election propaganda and campaigning which contain false data and information. In those cases, any person concerned has the right to apply to a circuit court and request it, inter alia, to impose a ban on publication of such data and information, demand that the information be corrected, and order that an apology be made to the defamed person. Pursuant to Article 80(2) of the Act of 27 September 1990 on the Election of the President of the Republic of Poland, the circuit court shall examine the application within 24 hours in non-trial proceedings. The court may examine the case in the event of an unjustified default of an applicant or participant in the proceedings who has been properly notified about the date of the hearing. A decision settling the case is forthwith served on the person concerned who submitted the application in accordance with Article 80 of the Act of 27 September 1990 on the Election of the President of the Republic of Poland, on the relevant constituency electoral commission and on a person who is obliged to carry out the court order. The decision of circuit court may be appealed against to a court of appeal within 24 hours; the court of appeal shall consider the appeal with 24 hours. The legal constructs of regulations of that type occur in Polish legislation, and hence the legislator has at his disposal a wide range of solutions in that regard, specific regulations and special measures aimed at enhancing the pace and fairness of proceedings. There is no doubt that there may not be a situation where a temporary ban on publication changes into a permanent one. Indeed, such practice would be inconsistent with the Constitution.

Also, different solutions may be considered here, e.g. by introducing a maximum time-limit for the said protective measure aimed at securing a claim. Exceeding that time-limit would weigh in favour of the public interest, and the court would lift the ban on publication, despite the fact that the civil law dispute has not yet been resolved. The choice of a specific legislative model is to be made by an ordinary legislator.

The Constitutional Tribunal merely states the fact, without advocating any particular legislative solution. However, it sees a need for appropriate legislative steps to be undertaken in that regard.

10. The legislator has numerous effective mechanisms at his disposal to discipline courts so that cases could be settled expeditiously. Also, he has the power to undertake appropriate legislative actions aimed at the introduction of appropriate improvements in the existing provisions. Therefore, the Constitutional Tribunal has decided to defer the

entry into force of this judgment in order to give the legislator time to take appropriate actions.

For the above reasons, the Constitutional Tribunal has adjudicated as in the operative part of the judgment.