

Judgment of 7th May 2001, [K 19/00](#)
**COUNTERACTING EXCESSIVE REMUNERATION
 IN THE PUBLIC SECTOR**

Type of proceedings: Abstract review Initiator: Confederation of Polish Employers	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
--	--	----------------------------------

Legal provisions under review	Basis of review
Imposition of statutory restrictions on State and local self-government legal persons pursuing economic activity, companies where the majority of shares belong to the State Treasury or to units of local self-government, and so-called management entities [Remuneration of Persons Managing Certain Legal Entities Act 2000: Article 1 points 2–7, Article 2 points 1–7 and Article 3(1), read in conjunction with Articles 5–13]	Principles of social justice Principle of social market economy Protection of ownership Freedom of economic activity Principle of proportionality Principle of equality Prohibition of discrimination Requirement for statutory specification of a minimum wage [Constitution: Articles 2, 20, 21(1), 22, 31(3), 32, 64 and 65(4)]
Requirement for persons, subject to the restrictions envisaged in the Act, to resign membership of certain supervisory boards of companies in the event that such persons are members of more than one supervisory board [<i>Ibidem</i> : Article 4(2)]	Rule of law [Constitution: Article 2]
Invalidity of provisions, within acts constituting the basis of employment, allowing for levels of remuneration in excess of the amounts permitted by the Act [<i>Ibidem</i> : Article 26(1)]	

For the purpose of counteracting the payment of remuneration for persons holding senior positions within the public sector which was, in the legislator's opinion, exceedingly high, the Sejm adopted the Remuneration of Persons Managing Certain Legal Entities Act on 3rd March 2000. The Act contains strict rules governing the determination of maximum levels of the various remuneration components of persons to whom the Act applies. Furthermore, information regarding any benefits received by such persons is public and not covered by laws protecting personal data or trade secrets.

According to the provisions of the Act indicated in point 1 of the ruling, the Act applies to specified posts, inter alia, in State enterprises and other State legal persons, legal persons of communes, and companies in which the majority of shares are held by the State Treasury or by units of local self-government. These provisions apply concomitantly to entities having concluded civil-law contracts with

any of the subjects falling within the scope of the Act, where such contracts concern the provision of management services (so-called management entities).

The Confederation of Polish Employers (*Konfederacja Pracodawców Polskich* – CPE) alleged that the provisions of the Act indicated in point 1 of the ruling failed to conform to the principle of freedom of economic activity (Article 22 of the Constitution) and infringed the individual's right to remuneration adequate to the value of service supplied, stemming from the principle of social justice (Article 2 of the Constitution), together with the principle of a social market economy (Article 20 of the Constitution). In the CPE's opinion, the statutory fixation of a maximum remuneration for work also contradicted Article 65(4) of the Constitution, which permits the legislative fixing of a minimum remuneration level but says nothing as regards the fixing of an upper limit. The applicant further argued that the reviewed regulation failed to conform to the constitutional principles of: equality and non-discrimination (Article 32), the principle of proportionality (Article 31(3)) and protection of ownership and other property rights (Articles 21(1) and 64 of the Constitution).

Article 4 of the challenged Act stipulates that any individual may be a member of a supervisory board of only one of the companies to which the Act applies (Article 4(1)). Where, on the date of the Act's entry into force, an individual is a member of more than one such supervisory board, he/she should resign membership of the appropriate number of supervisory boards within a period of three months following the Act's entry into force; otherwise, such an individual will be deemed to maintain membership of only the first of the supervisory boards he/she joined (Article 4(2)). The applicant submitted that this latter prohibition failed to conform to the constitutional principles of: legal certainty, the citizen's trust in the State and its laws, non-retroactivity of law and protection of acquired rights, as derived from the principle of the rule of law (Article 2 of the Constitution).

The final of the challenged provisions – Article 26(1) of the 2000 Act – stipulates that contractual provisions, as well as the provisions of other acts constituting the basis for employment, fixing an individual's monthly remuneration or other benefits at a level exceeding the maximum amount permitted by the Act, shall become void *ex lege* following the expiry of three months from the date of the Act's entry into force. In relation to this provision, the CPE alleged that it failed to conform to the principles of legal certainty, the citizen's trust in the State and its laws, non-retroactivity of law, protection of acquired rights, non-interference of the State in contractual relations and the enforceability of validly concluded contracts (*pacta sunt servanda*), as stemming from the principle of the rule of law (Article 2 of the Constitution).

Prior to considering the submissions of the Confederation of Polish Employers on their merits, the Constitutional Tribunal considered the CPE's *locus standi* to initiate the constitutional review of norms under Article 191(1) point 4, read in conjunction with Article 191(2), of the Constitution (cf. points 22 and 23 below). The CPE is an association of organisations constituting unions of employers, as opposed to employers themselves.

RULING

1. Article 1 points 1 and 4–7, together with points 2 and 3 of this Article, insofar as they refer to State or local self-government organisational units possessing legal personality and pursuing economic activity, Article 2 points 1–7 and Article 3(1), read in conjunction with Articles 5–13, of the Remuneration of Persons Managing Certain Legal Entities Act 2000 conform to the provisions of the Constitution indicated by the applicant.

2. Articles 4(2) and 26(1) of the aforementioned Act are not inconsistent with Article 2 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The principle of freedom of economic activity (including freedom of contract in relation to contracts concluded in pursuit of this activity) does not apply to an equal degree to all entities actually engaged in economic activity. The guarantee of freedom of economic activity expressed in Articles 20 and 22 of the Constitution refers to natural persons and non-public institutions – entities exercising human and civil rights and freedoms.
2. The State and other public institutions are not addressees of rights and privileges stemming from the constitutional guarantee of freedom of economic activity. From the perspective of this guarantee, the State is merely an entity obliged to respect the rights and privileges of natural persons and other subjects outside the public sector.
3. The status of local self-government is not specified by provisions concerning human and civil rights and freedoms but by provisions of Chapter VI of the Constitution. Since local self-government participates in the exercise of public authority and performs public tasks (Articles 16(2) and 163 of the Constitution), the economic activity of its organisational units forms part of the public sector and is referred to, in particular, by the second sentence of Article 165(1) as well as Articles 165(2) and 167(2) of the Constitution.
4. Article 31(3) of the Constitution is not applicable when assessing legislative initiatives concerning matters of the public economic sector, broadly construed (*sensu largo*), since such a situation does not involve a limitation on the rights and freedoms of entities capable of exercising constitutionally guaranteed basic rights arising from human dignity (cf. Article 30).
5. From Article 20 of the Constitution stems the exceptional nature of the pursuit of economic activity by the State and its organisational units. Such activity should be justified by the realisation of other constitutional values. In particular, it should serve to ensure the social nature of the national economy and sustainable development (cf. Article 5). Furthermore, the State's economic activity may not infringe the principle of free competition that is fundamental for the market economy, which is linked to the prohibition of preferential treatment of State entities and discrimination against non-State entities. The principle of social market economy also requires that the State and other public institutions remain active in economic relations with private sector entities, in accordance with the principles of the market and in forms suitable thereto.

6. In light of Article 20 of the Constitution, public entities should not only act in accordance with the law of demand and supply but should also introduce social elements to the economy. In this respect, certain restrictions and regulations may apply to their economic activities that would constitute additional impediments and burdens from the perspective of competitiveness.
7. When, in justified cases, the State decides to participate in economic life, it has freedom to shape legal institutions aimed at the fulfilment of such participation. To this end, the State may choose institutions already existing in the legal system and typical for private law (e.g. companies), it may create new organisational forms and endow them with distinct legal personality (e.g. State enterprises), or it may allow budgetary units to pursue economic activities directly. The status of each of these “public economic entities” differs in essence from the status of a private entity, since the State retains the power to create or liquidate them, to specify the scope and form of their activities and to define or modify their organisational structure.
8. Although Article 216(2) of the Constitution mentions merely the most important activities concerning management of the property of the State Treasury or State legal persons, this does not mean that the legislator is not also authorised to regulate additional issues. Conversely, the content of Article 216(2), read in conjunction with Article 218, may be recognised as constitutional assent to extensive legislative interference with the economic activity of State legal persons.
9. The aforementioned statements concerning the scope of the legislator’s freedom concerning matters of the public economic sector *sensu largo* apply equally (in accordance with the *a maiori ad minus* principle) to shaping the internal structure and principles for the functioning of public economic entities, including the method of remunerating their managerial staff.
10. In the case of companies with mixed capital (“public-private” companies), the economic criterion referring to the actual share of the State Treasury’s or local self-government unit’s assets in the initial or stock capital of a particular company is not deprived of importance in assessing whether this company may, according to the Constitution, fall within the restrictions applicable to public economic entities; account should also be taken of the influence of the State Treasury and units of local self-government on adopting resolutions by the company’s collective organs. From this perspective, it should be assumed that the State Treasury or units of local self-government also exercise control over a particular company where the majority of shares in that company are held by public-private companies whose positions as shareholders of the first company are determined by the State Treasury or units or self-government (since they control management decisions taken by the constitutive organs of those shareholder companies), despite the fact that, from an economic perspective, the share of public property in the first company’s initial (stock) capital represents a minority of the overall capital.
11. In a democratic State governed by the rule of law, the legislature is, by its very nature, authorised not only to “execute” constitutional delegation but also to directly regulate certain domains and spheres of social life in a primary manner, provided that such regulation does not contravene norms of a constitutional status. The relationship be-

tween the Constitution and a statute is distinct from the relationship between the statute and a regulation issued on the basis thereof.

12. From Article 65 of the Constitution stems the legislator's obligation to issue norms in the scope specified by this Article. This does not mean, however, that the statutory regulation of other issues concerning the level of remuneration is forbidden.
13. From Article 65(4) stems the principle constituting a concrete illustration of the general principle of social justice (Article 2), according to which work must be remunerated fairly, regardless of its market value, in the sense that the wage suffices to fulfil certain justified necessities of a person's life (the minimum standard of dignified life).
14. For the Constitutional Tribunal, the question as to whether the new statutory regulations regulate remuneration levels in an unjust manner, within the meaning of Article 2 of the Constitution, is crucial. It is, however, not one of the Tribunal's tasks to assess whether the new model is more just than the preceding one; such assessments are carried out by organs exercising legislative power, and held accountable for such assessments by the electorate.
15. The retroactive operation of legal provisions occurs when the legislator orders an assessment of certain legally relevant facts, concluded prior to the entry into force of the new provisions, in the light of such provisions, creating the legal fiction that these provisions were already binding at the moment such facts occurred.
16. The principle of non-retroactivity (*lex retro non agit*) is not the sole restriction on the legislator's freedom to interfere into prior existing relations. Further restrictions stem from the principle of protecting acquired rights and the principle of protecting trust in the State and its laws including, in consequence of the latter principle, the prohibition to surprise addressees of legal provisions by new regulations.
17. The general principle of the rule of law and the principles protecting legal security, trust in the State and its laws and acquired rights, stemming from that general principle, do not amount to a general prohibition on amending binding provisions; this is particularly relevant in areas of social life that undergo frequent changes. The aforementioned principles indicate, however, the conditions upon fulfilment of which depends the assessment of the permissibility of alterations to an existing legal situation.
18. Taking into account the fact that the challenged provision enters into force "on the first day of the month following the expiry of a month from the date of publication" and persons whose remunerations are limited by virtue of this provision receive an additional three months period in which to adjust to the new regulation, one should not speak here of the existence of a surprise constituting an infringement of the principle of protecting trust in the State and its laws.
19. Given that the statutory regulation of employment relations permits alterations to work and wage conditions, the Constitutional Tribunal finds that the regulation stipulating an alternative method for calculating remuneration and allowing for a period of adjustment does not infringe the principle of protecting acquired rights, even in the event that it leads to a decrease in remuneration.
20. If the binding legal regulation fails to guarantee the stability of a certain legal relationship, one may not argue that the issuing of a provision leading to the premature termination of this relationship infringes the principle of protecting acquired rights or

nation of this relationship infringes the principle of protecting acquired rights or the principle of protecting trust in the State and its laws.

21. The legal position of a person appointed to the supervisory board of a company may not be understood in terms of “an acquired right” of membership of this board for the period of its term of office.
22. Article 191 of the Constitution indicates three basic prerequisites for the admissibility of applications submitted to the Constitutional Tribunal by organs referred to in Article 191(1) point 4. Firstly, the organisation whose organ (authority) submits the application must have the legal status of a trade union, an employers’ organisation or an occupational organisation. Secondly, the normative act (or any part thereof) challenged in the application should concern the scope of activity of the relevant entity, as specified by legal provisions or part of its corporate constitution (i.e. the articles of such entity); the burden of proving such circumstances, by indicating the relevant legal provision or part of the corporate constitution, lies on the applicant (Article 32(2) of the Constitutional Tribunal Act). Thirdly, the application should be submitted by the national organ (or national authority) of the relevant organisation, authorised by appropriate legal provisions or the corporate constitution to represent it and act on its behalf in external relations.
23. The confederations and federations of employers’ unions may be recognised as “employers’ organisations” within the meaning of Article 191(1) point 4 of the Constitution (assuming that autonomous meaning is given to this term on the grounds of the constitutional norm, similarly to the term “trade unions”) only when performing activities “delegated” by employers’ unions forming part of a certain organisation of a “higher rank”, undertaken in fulfilment of the representation function with regard to the interests of a certain group of employers.

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. 5. The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

Art. 16. [...] 2. Local self-government shall participate in the exercise of public power. The substantial part of public duties which local self-government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

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. 21. 1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

Art. 22. Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

Art. 30. The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

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. 1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

Art. 65. 1. Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute.
2. An obligation to work may be imposed only by statute.
3. The permanent employment of children under 16 years of age shall be forbidden. The types and nature of admissible employments shall be specified by statute.
4. A minimum level of remuneration for work, or the manner of setting its levels shall be specified by statute.
5. Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention.

Art. 163. Local self-government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.

Art. 165. 1. Units of local self-government shall possess legal personality. They shall have rights of ownership and other property rights.
2. The self-governing nature of units of local self-government shall be protected by the courts.

Art. 167. [...] 2. The revenues of units of local self-government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget.

Art. 191. 1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,
- 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
- 3) the constitutive organs of units of local self-government;
- 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
- 5) churches and religious organizations;
- 6) the subjects referred to in Article 79 to the extent specified therein.

2. The subjects referred to in para. 1 subparagraphs. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

Art. 216. [...] 2. The acquisition, disposal and encumbrance of property, stocks or shares, issue of securities by the State Treasury, the National Bank of Poland or other State legal persons shall be done in accordance with principles and by procedures specified by statute.

Art. 218. The organization of the State Treasury and the manner of management of the assets of the State Treasury shall be specified by statute.

CT Act

Art. 32. [...] 2. The application submitted by the organ or organisation specified in Article 191 paragraph 1, subparagraphs 3-5 of the Constitution shall also include reference to the provision of law or by-laws, indicating that the statute or another normative act called in question concerns issues within their scope of activities.