

Judgment of 28th November 2005, [K 22/05](#)
REGULATIONS ON MEDICAL DOCUMENTATION

Type of proceedings: Abstract review Initiator: President of the Supreme Administrative Court	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
<p>Authorisation for certain Ministers to issue Regulations specifying the types of medical documentation and the manner of managing and providing access to such documentation</p> <p>[Healthcare Institutions Act 1991: Article 18(6) and (7)]</p> <p>Provisions of Regulations, issued on the basis of the aforementioned authorisation, specifying the fees payable for access to medical documentation and the entities required to pay such fees</p> <p>[Minister of Health's Regulation 2001 concerning types of medical documentation in healthcare institutions, the manner of managing such documentation and detailed conditions regarding access thereto: the second sentence of § 53(3), § 54(6), § 54a; Minister of Transport and Marine Economy's Regulation 1999 concerning types of medical documentation and the manner of managing and providing access to such documentation by healthcare institutions established by the State enterprise "Polish National Railways" (<i>Polskie Koleje Państwowe</i>): the second sentence of § 16(3); Minister of Justice's Regulation 2002 concerning types of medical documentation and the manner of managing and providing access to such documentation in healthcare institutions for persons having been imprisoned: § 23(4); Minister of Internal Affairs and Administration's Regulation 2002 concerning medical documentation in healthcare institutions established by the Minister of Internal Affairs: § 22(4)]</p>	<p>Conditions for authorising the issuing of a regulation</p> <p>[Constitution: Article 92(1)]</p>

The present case, initiated upon the application of the President of the Supreme Administrative Court, concerned review of Article 18(6) and (7) of the Healthcare Institutions Act 1991, authorising four Ministers to issue Regulations specifying types of medical documentation and the manner of managing and providing access to such documentation. According to the applicant, the 1991 Act contained no guidelines concerning the content of the Regulations it authorised to be issued and, therefore, within this scope infringed Article 92(1) of the Constitution.

A further subject of the challenge were provisions of four Regulations (see the table above), issued on the basis of the challenged statutory authorisation, specifying the fees payable for access to medical documentation and the entities required to pay such fees. Furthermore, one of the challenged provisions set an upper fee limit per page of medical documentation. According to the applicant, regulation of such issues exceeded the statutory authorisation and, thereby, infringed Article 92(1) of the Constitution.

RULING

I

1. Article 18(6) and (7) of the Healthcare Institutions Act 1991 does not conform to Article 92(1) of the Constitution.

2. The challenged provisions of the Regulations do not conform to Article 92(1) of the Constitution.

II

The Tribunal ruled that the loss of binding force of the provisions cited above shall be delayed until 31st May 2006.

PRINCIPAL REASONS FOR THE RULING

1. In light of Article 92(1) of the Constitution, any statutory authorisation for issuing a regulation should be detailed as regards the authorised entity (i.e. specifying the appropriate organ to issue the regulation), the subject-matters to be regulated (i.e. specifying the scope thereof), and the contents (i.e. specifying detailed guidelines concerning them).
2. The aim of detailed guidelines is to ensure a close relationship between the regulation and the contents of the statute. In principle, the legislator enjoys discretion as to their form and content. Such guidelines may be positive in nature, i.e. indicating criteria to guide the organ issuing the regulation, the aims to be realised by the regulation or the functions of an institution which statute designates to be established by the regulation. Such guidelines may also be negative in nature, i.e. excluding certain matters from the scope of the regulation. These guidelines need not be contained within the provision authorising the issuing of a regulation and may be located in other provisions of the statute. Such provisions should enable precise reconstruction of the content of the guidelines.
3. Constitutional provisions operative prior to the entry into force of the 1997 Constitution were less restrictive as regards formulation of the conditions to be fulfilled by a provision authorising the issuing of a regulation (cf. Article 56(1) of the Constitutional Act 1992 on Mutual Relations Between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-Government). In particular, it was not necessary for authorising provisions to include guidelines concerning the content of the regulation. The 1997 Constitution neither envisages the quashing of authorising provisions lacking such guidelines, nor establishes a deadline within which they must be adjusted to the requirements of Article 92(1). Nevertheless, the constitutional review of legal acts is pursued on the basis of constitutional provisions operative on the date when judgment is pronounced. Accordingly, the absence of guidelines within the authorising provision – regardless of the date on which it was issued – leads to its nonconformity with Article 92(1).
4. The fee payable for access to medical documentation has the nature of a price paid for a service. Consequently – in contrast to public levies – the level of such a fee should relate to the cost of the service actually performed. Accordingly, the entitled person should receive from the healthcare institution mutual consideration having a value not lower than

this person's pecuniary consideration. Since the discussed fee does not have the nature of a public levy, it falls outside the scope of the requirements specified in Article 217 of the Constitution.

5. The executive nature of a regulation with respect to a statute means, in the light of Article 92(1) of the Constitution, that the Healthcare Institutions Act 1991 should specify the principal issues concerning the provision of access to medical documentation, i.e. determining the upper fee limits per page of documentation and appropriately differentiating within this scope between entities entitled on the basis of Article 18(3) and (4) of the 1991 Act.
6. The authorisations contained in Article 18(6) and (7) of the Healthcare Institutions Act 1991, insofar as concerning the obligation to provide and fund access to medical documentation, do not fulfill the requirement of sufficient specificity and do not specify guidelines concerning the contents of such Regulations. Accordingly, these provisions do not conform to Article 92(1) of the Constitution.
7. As regards the challenged provisions of the Regulations, a failure to conform to Article 92(1) of the Constitution also results by virtue of them having exceeded the limits of the statutory authorisation.
8. Had the hereby judgment entered into force on the date of its pronouncement, rules concerning the management and provision of access to medical documentation would cease to exist as of this date and until such time as regulations conforming to the Constitution were issued. In order to minimise such negative consequences, the Tribunal decided to [delay the loss of binding force](#) of the unconstitutional provisions, on the basis of Article 190(3) of the Constitution (cf. part II of the ruling).

Provisions of the Constitution

Art. 92. 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

Art. 217. The imposition of taxes, as well as other public levies, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax relief and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.