

Judgment of 21st March 2001, [K 24/00](#)
AMBIGUOUS CONCEPT OF THE “TRANSFER OF TRADE MARKS”

Type of proceedings: Preliminary review of an Act Initiator: President of the Republic of Poland	Composition of Tribunal: Plenary session	Dissenting opinions: 0
Legal provisions under review The “transfer of trade marks” from the legal successors of former foreign trade enterprises to the producers of goods [Industrial Property Act 2000: Article 322]		Basis of review Rule of law [Constitution: Article 2]

A trade mark is a sign, perceptible by the senses, serving to distinguish goods originating from a particular producer. The aim of a trade mark is, principally, to enable the consumer to identify a product with a particular producer. The property right known as the right flowing from registration of a trade mark guarantees an owner of the mark exclusive use thereof and appropriate protection in the event that a third party infringes such exclusivity. A trade mark may be registered in many countries.

The provision challenged in the present case aimed to restore order to the law concerning rights to trade marks, which had become most confused during Communist times when the State held a monopoly in the field of foreign trade; the import and export of goods took place with the intermediation of specialised State enterprises – so-called foreign trade centres. According to the provisions issued by the government organs responsible for managing the economy, operative during the period 1951–1971, a trade mark owned by a domestic producer manufacturing goods for export would be registered abroad by the appropriate foreign trade centre. Such practice also occurred in later years, despite amendment of these provisions. In consequence, a “split” occurred between the ownership of trade marks and the rights flowing from registration of such trade marks abroad. Following 1989, this situation came to represent one of the complications concerning the privatisation of State enterprises.

Article 322 of the new Industrial Property Act (adopted on 30th June 2000), located in the final section of the Act, was intended to adjust the pre-existing legal situation to the principle of uniform protection of trade marks, according to which the rights flowing from registration are vested in the owner of a trade mark. This provision was worded in the following manner: “A trade mark registered domestically or abroad for the benefit of a State foreign trade centre, a State-cooperative foreign trade centre or a legal successor of the aforementioned entities shall be transferred, both in Poland and abroad, to the producer if it was used to mark goods continuously produced by that producer for a period of at least 10 years prior to the entry into force of this Act.”

This provision was challenged by the President of the Republic of Poland before the Constitutional Tribunal within the procedure for preliminary review of an Act (Article 122(3) of the Constitution). The applicant indicated that the legislator used a mechanism unknown to the Polish legal order for transferring

registered trade marks; such transfer may involve only the “rights flowing from the trade mark” and not the trade mark *per se*. The President also alleged that the challenged provision constitutes unjustified legislative interference with rights acquired lawfully in the past by foreign trade enterprises.

For these reasons, the applicant considered that the challenged provision does not conform to the principles of correct legislation, trust in the State and its laws and the protection of acquired rights, as stemming from the rule of law clause (Article 2 of the Constitution), as well as to constitutional guarantees of the protection of ownership (Articles 21, 64(1) and (2)).

RULING

The challenged provision does not conform to Article 2 of the Constitution, since it infringes the requirement, stemming from this Article, that legal provisions be sufficiently specific.

The Tribunal discontinued proceedings in relation to the remaining challenges.

PRINCIPAL REASONS FOR THE RULING

1. Certain principles stem from the principle of the democratic State governed by the rule of law (expressed in Article 2 of the Constitution) including, *inter alia*, the principle of protecting acquired rights and the principle of trust in the State and its laws, encompassing the principle of correct legislation.
2. The principle of correct legislation comprises, *inter alia*, the requirement of specificity of legal provisions, which must be formulated appropriately, precisely and clearly. This signifies that each legal provision should, primarily, be formulated correctly from a linguistic and logical perspective. The requirement of clarity signifies the instruction to enact provisions that are clear and understandable for their addressees, precisely specifying the obligations imposed and rights granted.
3. Whilst the Council of Ministers’ Resolution 1991 on the Principles of the Legislative Technique is not formally binding upon the Sejm, the legislator may not ignore the rules expressed therein when enacting legal provisions. The legislator’s autonomy concerns the content of enacted solutions (provided they do not infringe the Constitution) but not their form, which should be subject to uniform rules. The aforementioned Resolution, and in particular § 3 thereof (the instruction to formulate statutes in a manner understandable for their addressees) and § 7 thereof (the instruction to use identical terms for identical concepts), constitutes a praxeological canon that should be respected by the legislator in a democratic State governed by the rule of law.
4. The challenged provision, according to which a trade mark registered for the benefit of a foreign trade enterprise or its legal successor shall, in certain circumstances, “be transferred, both in Poland and abroad, to the producer”, infringes the requirement, stemming from Article 2 of the Constitution, that legal provisions be sufficiently specific. The legal institution of “transfer of a trade mark” did not exist in hitherto Polish law and the new Act also failed to define this concept. Equally, the method for accomplishing the legal effect specified in the challenged provision was also not regulated.

5. Where the Constitutional Tribunal, within the procedure for preliminary review of an Act, rules that a legal provision does not conform to one of the constitutional bases of review referred to in the application and simultaneously – pursuant to Article 122(4) of the Constitution – permits the President of the Republic of Poland to sign the Act whilst omitting this provision, it is superfluous to analyse whether the same provision conforms to other constitutional bases of review.

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. 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. 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.

Art. 122. [...] 3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.

4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.