Judgment of 3rd March 2004, K 29/03

COMPENSATION FOR ACCIDENTS AND ILLNESSES CONNECTED WITH THE POLICE SERVICE

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0

Legal provisions under review	Basis of review
Limiting compensation for the consequences of accidents or illnesses connected with the Police service [Compensation for Accidents and Illnesses Connected with the Police Service Act 1972: Article 17]	Principle of equality Right to compensation for harm caused by a public authority organ Guarantee of recourse to the courts to allege an infringement of rights and freedoms [Constitution: Article 32(1) and Article 77]

The (frequently amended) Compensation for Accidents and Illnesses Connected with the Police Service Act 1972 regulates the principles concerning the granting of, and levels of, benefits for Police officers where an officer suffered a permanent detriment to their health resulting from an accident that occurred in connection with fulfilment of their service or in consequence of an illness resulting from the particular features or conditions of their service. This also concerns the family members of an officer who died as a result of such an accident or illness. Concomitantly, Article 17 of the 1972 Act contains a significant limitation on State liability for harm and liability of functionaries and employees of the government department of internal affairs: benefits granted on the basis of the aforementioned Act, or other provisions regulating benefits for Police officers, constitute "compensation for all harm" encompassed by the aforementioned Act "with respect to units of the government department of internal affairs, as well as functionaries and employees of the government department of internal affairs who unintentionally caused harm in performing the service-related tasks entrusted to them". Accordingly, where an accident or illness caused to a Police officer in connection with their service results in a permanent detriment to their health or results in the loss of their family's breadwinner, it is not possible to claim full compensation (i.e. exceeding the benefits obtainable on the basis of the aforementioned provisions) from the government department of internal affairs or directly from the perpetrator, whenever the latter is a person professionally linked to the department of internal affairs and did not intentionally commit the harm.

The aforementioned provision was challenged by the Commissioner for Citizens' Rights, who alleged its non-conformity with Articles 32(1) (the principle of equality) and 77 of the Constitution (the right to compensation for harm caused by public authority action contrary to the law; and guarantee of the possibility to bring a claim alleging infringement of rights and freedoms by recourse to the courts).

RULING

The challenged provision does not conform to Article 77(1), read in conjunction with Article 32(1), of the Constitution and is not inconsistent with Article 77(2) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The content of Article 77(1) of the Constitution is not a simple repetition of principles shaped within civil law but, rather, introduces a new and independent substance which must be taken into account at the level of statutory regulation. The significance of this provision consists in establishing aggravated liability for harm vis-à-vis liability for harm based on general civil law principles (conditional upon the existence of fault) as regards the actions of every public authority organ contrary to the law. Such aggravation consists primarily in correlating liability with the objective prerequisite of "contrariness to the law". The liability for harm envisaged by Article 77(1) of the Constitution does not depend upon whether the organ's actions were culpable, but solely upon whether or not they were consistent with the law.

2. Within contemporary legal systems, the basic rule of liability for harm is the principle of full compensation. This general tendency must also be taken into account when interpreting the part of Article 77(1) of the Constitution dealing with compensation for harm. This reference to "harm" should be understood as any detriment to legally protected interests, whether of a proprietary or non-proprietary nature. The scope and manner of determining the level of harm, and the compensation for such harm, are specified by the general rules of civil law. This does not, however, signify that Article 77(1) of the Constitution excludes the possibility to differentiate compensation obligations and that each occasion of public authority liability must be categorically linked to an obligation to fully compensate for the harm. Nevertheless, any departure from the principle of full compensation in the event of harm encompassed by the hypothesis of Article 77(1) of the Constitution always requires convincing arguments, referring to the constitutional values indicating the need to shape the scope of compensation differently. The legislator's discretion in this field of regulation is relative in nature and may not lead to accidental and arbitrary solutions.

3. According to the protective tendency, as expressed by the guarantee contained in Article 77(1) of the Constitution, aiming for increasingly effective protection of an injured person, limitation of the right to compensation for harm may not be recognised as necessary within a democratic State governed by the rule of law from the perspective of the prerequisites specified in Article 31(3) of the Constitution.

4. Pursuant to the challenged Article 17 of the 1972 Act, benefits granted on the basis of this Act, or other provisions indicated in Article 16 thereof, constitute "compensation for all harm" with respect to units of the government department of internal affairs, as well as functionaries and employees thereof who unintentionally caused harm in performing the service-related tasks entrusted to them. Accordingly, this limitation does not concern harm caused intentionally by third persons or by units of the government department of internal affairs, nor functionaries and employees thereof. Equally, it should be stressed that it does not concern harm caused unintentionally by third per-

sons. Application of the general rules of liability in tort for harm is excluded with respect to units of the government department of internal affairs, as well as functionaries and employees thereof, who unintentionally caused harm in performing the service-related tasks entrusted to them, even when all prerequisites for such liability have been met. *A fortiori*, this exclusion operates in the event that the behaviour of such persons does not bear the attributes of fault but is merely characterised by the objective irregularity of conduct in the form of unlawfulness.

5. The reviewed Act belongs to the system of employees' accident and illness insurance. It does not guarantee that benefits granted on the basis thereof will always be equivalent to the level of the actual harm suffered. The aim of such regulation, however, is to ensure the certainty of compensation, within explicit statutorily-specified limits, regardless, principally, of the circumstances of a particular accident. Such concept of liability for harm need not be connected with a substantive-legal limitation on the scope of the right to compensation. Such a limitation stems, however, from the explicit wording of Article 17 of the Act, which states that benefits granted on the basis thereof constitute, in the event of harm caused unintentionally, compensation for all harm and, *ipso facto*, excludes the possibility to supplement the scope of compensation by reference to the general rules of liability for harm. Accordingly, the 1972 Act attaches decisive importance to the degree of the perpetrator's fault (intentional or unintentional) from the perspective of the possibility to claim compensation, exceeding the awarded accident or illness benefit, on the basis of general civil law rules.

6. The aforementioned criterion of the degree of fault of the perpetrator of the harm, being decisive as regards the possibility to claim compensation, exceeding the awarded accident or illness benefit (and, *ipso facto*, to obtain full compensation for the harm), on the basis of general civil law rules, may not be reconciled with Article 77(1) of the Constitution (cf. points 1-3 above).

7. From the principle of equality before the law (Article 32(1) of the Constitution) stems the requirement to treat entities within a specified class (category) identically. All entities characterised to an equal degree by a certain significant (relevant) feature should be treated equally, i.e. subject to the same measures and without favourable or discriminatory differentiation. Concomitantly, there also stems from the principle of equality a requirement for there to exist a justified criterion for differential treatment of similar entities. Such criterion must, firstly, remain directly connected with the aim and principal content of the provisions containing the reviewed norm. Secondly, the importance of the problem to be remedied by the differentiation must remain in appropriate proportion to the importance of interests that will be infringed in consequence of unequal treatment. Thirdly, the differentiation criterion must remain in conjunction with other constitutional norms, principles and values that justify the legislator's differential treatment of similar entities.

8. In the 1970's and 1980's, the reviewed provision of the 1972 Act, excluding supplementary liability for harm based on general civil law rules within the scope specified therein, was similar to relevant labour law provisions in force at that time. Since then, however, analogous regulations concerning professional groups falling outside the scope of the reviewed 1972 Act have undergone a specific evolution. Within the labour system, the clause excluding concurrent bases of liability was abolished by the Certain Provisions on Retirement Benefits Amendment Act 1990. Equally, no such clause is envisaged by the currently operative Social Insurance for

clause is envisaged by the currently operative Social Insurance for Accidents at Work and Professional Illnesses Act 2002. A similar evolution took place within regulations concerning benefits granted in the event of accidents and illnesses connected with military service. Currently, it is no longer possible to speak of a tendency, within Polish legislation, according to which benefits envisaged in the Act concerning accidents at work and professional illnesses constitute satisfaction of all claims originating from such events. On the contrary, when the circumstances of an accident or illness justify the imposition of civil liability, the injured person may bring a claim, also against their employer, for compensation relating to such part of the harm that was not compensated by benefits granted on the basis of the 2002 Act. Accordingly, the limitation envisaged by the challenged provision of the 1972 Act currently applies only in respect of Police officers and their families, as well as those officers of the so-called uniformed services to whom the discussed Act applies within this scope by virtue of references contained in provisions concerning these particular services. The criterion constituting the basis for such differentiation of professional groups is arbitrary and fails to meet the conditions for differential treatment of similar entities, indicated in point 8 above, thereby amounting to an infringement of the constitutional principle of equality.

9. Differentiation of the legal situation within the category of uniformed services' officers and making the possibility to claim full compensation, beyond the accident or illness benefit granted, dependent upon whether the harm was caused intentionally or unintentionally, also both contradict the principle of equality. The criterion of the degree of fault of the perpetrator of the harm may under no circumstances be recognised as a relevant feature permitting differential treatment of officers injured as a result of intentional conduct and officers injured as a result of unintentional conduct and, in consequence, permitting differentiation of the situation of these groups from the perspective of the possibility to claim full compensation for the harm.

10. The content of Article 77(2) of the Constitution does not constitute an adequate basis of review for the challenged statutory provision, which is an element of a substantive law and does not regulate procedural issues connected with claiming the right to compensation.

Provisions of the Constitution

Art. 31. […] 3. Any limitation upon the exercise of constitutional freedoms and rights may by 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. 77. 1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.
2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.