

Judgment of 10th January 2005, [K 31/03](#)
LOWER MINIMUM WAGE FOR YOUNG EMPLOYEES

Type of proceedings: Abstract review Initiator: National Commission of the Independent and Self-Governing Trade Union <i>Solidarność</i>	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Decrease of the minimum wage with respect to employees whose length of employment does not exceed 2 years [Minimum Remuneration for Work Act 2002: Article 6(2)]	Principle of social justice Equality before the law [Constitution: Article 2 and Article 32(1)]

Article 65(4) of the Constitution of the Republic of Poland requires statutory specification of the minimum level of remuneration for work, or of the manner for determining such a level. The legislator adopted a provision of the latter type in the 2002 Act. The minimum remuneration level for work is negotiated annually within the Tripartite Commission for Socio-Economic Issues (a forum of representatives of government, trade unions and employers' organisations). The amount agreed upon is announced in the official journal *Monitor Polski*. If, by 15th July of each year, the Commission has failed to reach agreement on the minimum remuneration amount for the following year, the Council of Ministers determines this independently, before 15th September, in the form of a Regulation, i.e. an act promulgated in the Journal of Laws.

At the moment that the judgment summarised herein was delivered, the minimum wage amounted to 849 Polish Zloty (from 1st January 2005), i.e. about 200 €

Article 6(1) of the 2002 Act contains a prohibition on determining the remuneration of a person employed on a monthly full time basis at a level below that of the minimum wage. Article 6(2), challenged in the present case, envisages an exception with respect to employees having a short length of employment (the latter is calculated, as a rule, by adding together all periods for which retirement contributions were paid). Until the end of 2005, the remuneration of an employee in their first year of employment may not be lower than 80% of the minimum remuneration level whereas, in the second year of employment, it may not be lower than 90% of this amount.

The National Commission of *Solidarność* alleged that the challenged provision constitutes an infringement of the principle of equality (Article 32(1) of the Constitution). In the applicant's view, the differentiation of minimum remuneration depending on the length of employment is not based on a relevant criterion, since it does not remain in direct conjunction with the aim and principal content of the Act and, moreover, the application thereof lacks rational justification. Minimum remuneration is intended to fulfil an alimentative function by ensuring employees and their families a decent (satisfactory) standard of living. According to the applicant, the manner of differentiating the level of minimum remuneration severs the link between remuneration and value of work and depreciates education as a measure of professional qualifica-

tions, as well as physical and intellectual capacity which is often higher amongst young persons. In the applicant's view, the challenged provision is inadequate with respect to its aim, i.e. the legislator's intention to effectively combat unemployment.

The applicant also alleged that the challenged provision infringes the principle of social justice (Article 2 of the Constitution), since it differentiates civil rights at their minimum level.

RULING

The challenged provision conforms to Articles 2 and 32(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In Article 65(5), the Constitution obliges public authorities – both the State and local self-governments – to pursue policies aiming at full, productive employment by means of implementing programmes to counter-act unemployment, including the organisation and supporting of professional advice and training, as well as public works and intervention works. A corollary of the obligation placed on public authorities is an individual's right to, at least, a minimum level of fulfilment of this obligation. Concomitantly, the cited constitutional provision has features of a so-called programme norm, i.e. a norm which, having indicated a certain goal (task), allows public authority organs some freedom as regards the choice of means intended to realise this goal. The methods of counter-acting unemployment are, whilst insufficiently stipulated in this provision, nevertheless obligatory in nature, in the sense that public authorities are obliged to apply them first when unemployment occurs.
2. In a market economy system, public authorities may not create new jobs (beyond the public sector) independently, for the purpose of limiting unemployment. In pursuing "a policy aiming at full, productive employment" (Article 65(5) of the Constitution), they must make use of measures placed at their disposal by the Constitution. The authority to determine the minimum wage falls within these measures (Article 65(4)).
3. Pursuant to the constitutional principle of equality (Article 32(1)), all entities characterised to an equal degree by a certain feature should be treated equally, without favourable or discriminatory differentiation. However, the principle of equality allows for the differential treatment of similar entities provided that three cumulative conditions are met. Such differentiation must, firstly, be rationally justified, i.e. it must 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 differentiating the situation of similar entities must remain in appropriate proportion to the importance of interests that will be infringed in consequence of the unequal treatment of norm's addressees. Thirdly, differentiation of similar entities must be based on constitutional values, principles or norms.
4. Equality before the law in labour relations does not signify identical rights and duties for all employees. Labour law must shape the situation of each individual employee differently with regard paid to the work executed by them and their personal characteristics.

5. There exist no constitutional prerequisites that would generally exclude the possibility to differentiate the minimum remuneration amount.
6. The length of employment criterion, upon which such differentiation is based in the light of the challenged Article 6(2) of the Minimum Remuneration for Work Act 2002, does not contravene the principle of equality. The existence, in the reviewed provision, of this criterion, which fulfils a significant role in the sphere of labour relations (the length of employment influences a number of entitlements as well as the level of numerous employee's benefits), is not coincidental. The introduction of a decreased minimum remuneration level for employees whose length of employment does not exceed 2 years, constitutes a solution dictated by the particular situation in the labour market. It may encourage employers to create new jobs. The discussed criterion primarily takes into account the fact that persons lacking professional experience have less chance to be employed than persons with a defined length of employment; the possibility to remunerate in accordance with "competitive" conditions increases these chances.
7. Differentiation of the minimum remuneration also corresponds to the requirements of social justice, since it takes into account the interests of persons seeking first employment. It creates a chance to obtain a job, albeit with a relatively low income.
8. In the light of criteria formulated by acts of international law, binding with respect to Poland (International Covenant on Economic, Social and Cultural Rights, European Social Charter and Convention no. 131 of the International Labour Organisation), the minimum remuneration level stipulated on the basis of the 2002 Act deviates from the real needs of employees and their families, failing, therefore, to fulfil the requirement of a fair minimum wage. However, the relations between the minimum remuneration, as stemming from the Act, and the fair remuneration or social minimum are not subjects of the Constitutional Tribunal's assessment in the present case.

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. 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. 65. [...] 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 professional advice and training, as well as public works and intervention works.