

Judgment of 13<sup>th</sup> September 2005, [K 38/04](#)  
**CONTRACTS IN FOREIGN LANGUAGES**

<b>Type of proceedings:</b> <a href="#">Abstract review</a> <b>Initiator:</b> Group of Deputies	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
<b>Legal provisions under review</b>		<b>Basis of review</b>
Conditions for permissibility and legal consequences of drafting consumer contracts or labour law contracts in a language other than Polish [Polish Language Act 1999: Article 8(2) and (3) (in the wording introduced in 2004)]		Rule of law Official language status of the Polish language Principle of equality Consumer protection Obligation to observe Polish law [Constitution: Articles 2, 27, 32, 76 and 83]

The Polish Language Act 1999 (amended several times) specifies, inter alia, the extent to which the Polish language must be used in civil-legal transactions. Article 8(1) thereof, read in conjunction with Article 7(1) (in its wording operative on the date the Tribunal’s judgment was delivered), states that documents, including contracts, involving consumers or labour law shall be drafted in Polish whenever, at the time of their conclusion, the consumer or employee is resident in Poland and the contract is intended to be performed in this country.

Article 8(2) and (3), successfully challenged in the present case, partially complements the rule expressed in Article 8(1) but partially introduces exceptions to this rule.

Article 8(2) allows certain documents, including contracts, to be drafted in a foreign language, in addition to a Polish version which represents the basis for interpreting the contract, “unless the parties agree otherwise”.

Simultaneously, Article 8(3) of the 1999 Act permits contracts or other documents to be drafted in a foreign language (without the need for a Polish version to exist) “upon the request of the person performing the work or the consumer”, on the condition that such a person is a citizen of an EU Member State other than Poland, and, concomitantly, following a prior instruction regarding the “right to draft the contract in Polish”. Within the sphere of labour law, a contract or other document may also be drafted in a foreign language “upon the request of the person performing the work, such person not being a Polish citizen” provided that the employer “possesses citizenship of a Member State of the European Union or has its seat in any such country”.

A group of Deputies of the Sejm (i.e. first chamber of Polish Parliament) challenged the two aforementioned provisions, alleging that they infringed the requirements of correct legislation, as derived from the rule of law principle (Article 2 of the Constitution), as well as the constitutional official language status of the Polish language (Article 27) and principles of equality and consumer protection (Articles 32

and 76). Article 83 of the Constitution, establishing the obligation for everyone to observe Polish law, was also cited (in a rather unclear manner) as a basis of review.

## RULING

### I

#### **1. Article 8(2) and (3) of the Polish Language Act 1999**

- **is not inconsistent** with Articles 27 and 83 of the Constitution;
- **does not conform to Article 2 of the Constitution, since it infringes the principles of correct legislation;**
- **does not conform to Article 76 of the Constitution, since it fails to provide for appropriate protection of consumers and persons performing work against dishonest market practices.**

**2. Article 8(2) of the aforementioned Act conforms to Article 32 of the Constitution.**

**3. Article 8(3) of the aforementioned Act does not conform to Article 32 of the Constitution, since it differentiates levels of consumer protection on the basis of the consumer's citizenship.**

### II

**The Tribunal ruled that the loss of binding force of the provisions cited above shall be delayed until 30<sup>th</sup> June 2006.**

## PRINCIPAL REASONS FOR THE RULING

1. The scope of the “official language” notion, used in Article 27 of the Constitution, does not encompass the language used between natural and legal persons, or organisational units lacking legal personality, in non-public factual relations or in private-legal relations, whenever such relations do not concern the exercise of public functions by these entities, as determined by the relevant provisions of public law. Accordingly, the indicated provision of the Constitution does not, in principle, restrict the freedom of entities subject to Polish civil law to create declarations of will in languages other than Polish.
2. The obligation to use the Polish language may, however, be extended by statute to spheres falling outside of the scope of Article 27 of the Constitution. Such a restriction on the parties' autonomy may be justified, especially as regards transactions involving consumers and transactions within labour relations, by virtue of the principle protecting the safety of legal transactions and postulates concerning protection of the weaker contractual party (cf. points 4-8 below).
3. The autonomy of contractual parties represents one of the central values of private law and is most clearly expressed in the freedom of contract principle. The requirement to respect the autonomy of will within private-legal relations has a constitutional basis in, on the one hand, the principle of freedom of the person (Article 31(1)) and, on the other hand, the principles of social market economy and freedom of economic activity

(Article 20 and 22). One of the elements of such freedom of contract is the possibility for parties to choose the language in which their contract is concluded.

4. Restrictions on the freedom of contract enjoy constitutional justification not only by virtue of the principle of proportionality (Article 31(3)) but also, within the sphere of economic relations, in the very notion of a social market economy, requiring a fair balancing of the positions of participants in economic transactions. It must be remembered that there also exist formal restrictions on the freedom of contract which do not seek to limit the contractual parties' autonomy of will but, conversely, seek to restore contractual balance where it is weakened because of the *de facto* inequality of the contractual parties' positions. Solutions of this kind are typical within regulation of legal transactions involving consumers, given the weaker position of the consumer vis-à-vis the professional entity. Within the sphere of employment relationships, restrictions on the parties' autonomy of will are, given the protective tendencies of labour law, so strong that it is justifiable to question the operation of the principle of freedom of contract in this area.
5. The inevitable introduction of the aforementioned protective standards has an explicit basis in Article 76 of the Constitution, insofar as consumers are concerned. Whilst this provision does not directly refer to employees, there is no doubt that the axiology contained therein (protection of health, privacy and safety, as well as protection against dishonest market practices) has broader relevance and should be understood as including categories of persons who, whilst not directly mentioned in this constitutional provision, are exposed to similar threats by virtue of them being the weaker party in contractual relations. This especially concerns employees, in respect of whom a direct constitutional basis exists regarding protection of basic employee rights connected with safe work conditions, guarantees of a minimum remuneration level and social security in the event of incapacity for work (Articles 65-67).
6. Whilst Article 76 of the Constitution does not directly create rights or bases for citizens' claims, it obliges public authorities to undertake actions to protect the life, health, privacy and safety of consumers and to protect them against dishonest market practices. Normative acts intended to facilitate consumer protection are subject to review from the perspective of the legislator's use of adequate legal means to achieve the intended protective goal. Concomitantly, realisation of the protection mentioned in Article 76 of the Constitution may not be divorced from the principles and demands of European Law. The European model of consumer protection is based on broadening the knowledge and scope of accessible information, so as to enable consumers to fulfil their perceived needs autonomously and in accordance with their own interests. The principles of transparency and genuine public access to clear, comprehensive and comprehensible commercial information are therefore assumptions of modern consumer protection. Article 54(1) of the Constitution is the constitutional equivalent of a consumer's right to be informed.
7. European Union legislation does not comprehensively regulate language issues within private-legal relations. Nevertheless, it shows an explicit tendency towards consumer protection, as may be seen, inter alia, in the requirement for transactions to use language easily understandable by purchasers of goods and services.

8. It stems from the discussion above (in points 5-7) that the language of communication in consumer transactions and employment relationships should be comprehensible to consumers and employees and should constitute an effective tool for conveying information concerning the rights and obligations of the parties to those relations. Accordingly, an appropriate contractual language, comprehensible to both parties, represents a fundamental prerequisite for fulfilling the informational obligations imposed upon the professional party at the time legal relations are entered into and, subsequently, upon performance of the contractual obligations.
9. Article 8(2) of the Polish Language Act 1999 infringes the protective guarantees contained in Article 76 of the Constitution by permitting the use of a language which is incomprehensible to consumers and employees within consumer transactions and employment relationships. Nevertheless, it is unconvincing to allege that this provision does not conform to Article 32 of the Constitution (principle of equality). The mere possibility to conclude contracts in a foreign language and treat the foreign-language version as the basis for interpretation does not amount to discrimination. In such cases, any inequality between the parties is factual, as opposed to legal, in nature. Such factual inequality should be balanced via a more cautious approach by the legislator to a purely formal prerequisite for abandoning use of the Polish language, such as the will of the parties. This is, however, a problem of a different nature to an infringement of the principle of equal treatment and relates to the deficit of instruments necessary to realise protection of the weaker contractual party in line with the requirements contained in Article 76 of the Constitution.
10. It is justified to allege that particular categories of parties to legal transactions are treated unequally on the basis of Article 8(3) of the discussed Act. This provision permits contracts to be drafted in languages other than Polish only insofar as relating to subjects being citizens of EU Member States. *Ipsa facto*, as regards consumers who are not citizens of an EU Member State but who reside in Poland, where the contract is to be performed, this provision creates no possibility to draft a contract in a language other than Polish (at least insofar as concerns the version constituting the basis for interpretation). The only instance where it is possible for an employee (and only an employee), not being a citizen of another EU Member State, to demand that a contract or other document is drafted in a foreign language is where their employer is a citizen of an EU Member State or has its seat in such a country. Such narrowing of the parties' ability to conclude a contract in a language comprehensible to them – being conditional not only upon the situation of the weaker contractual party (i.e. the employee or consumer) but also upon the situation of the other party (i.e. the employer) – are not only unjustified from the perspective of the appropriate standards of consumer and employee protection on the basis of Article 76 of the Constitution, but also infringe the requirement, stemming from that provision, to protect the weaker contractual party.
11. Where the legislator formulates legal solutions in a manner which is imprecise, ambiguous and leads to significant legal uncertainties, or where the legislator uses undefined notions, this infringes the requirements of correct legislation, as stemming from the constitutional principle of the rule of law (Article 2). It is justified to conclude that a legal provision does not conform to the Constitution for this reason where it is ambiguous to such a degree that the divergences stemming therefrom may not be removed by ordinary measures to eliminate ambiguities in the application of law. Depriving a particular legal provision of binding force in consequence of its am-

biguity should be treated as a measure of last resort, to be utilised only where alternative methods for removing the effects of the provision's vague content are insufficient.

12. It is justified to allege that the two statutory provisions mentioned in the ruling infringe the principles of correct legislation. The regulation contained in these provisions causes serious and irremediable interpretational difficulties, both as concerns determination of its scope of application and as concerns the meaning of particular terms (notions) therein. Similar difficulties arise in respect to establishing the appropriate relationship between these provisions and other regulations contained in provisions of private international law and in provisions referring to consumer transactions and obligations concerning the labelling of goods in Polish.
13. It is justified to delay the loss of binding force of the provisions found in the present judgment to be unconstitutional (see part II of the ruling), on the basis of Article 190(3) of the Constitution, since the immediate elimination of these provisions would remove the possibility, within the aforementioned types of legal relations, to choose the language of a contract and would prevent the application of effective instruments to protect weaker contractual parties (consumers and employees) to an even greater degree than the current normative position. The setting of a relatively distant date is dictated primarily by current circumstances connected with the holding of parliamentary elections, making it likely that the legislator will be in a position to amend the Polish Language Act 1999 no earlier than at the end of 2005.
14. Despite this delay, until such times as appropriate amendments are made to the provisions their practical application should, to the greatest extent possible, take account of the argumentation contained in the reasoning for the Tribunal's judgment.

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

**Art. 27.** Polish shall be the official language in the Republic of Poland. This provision shall not infringe upon national minority rights resulting from ratified international agreements.

**Art. 31.** 1. Freedom of the person shall receive legal protection.

2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.

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. 54.** 1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.

**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 professional advice and training, as well as public works and intervention

works.

**Art. 66.** 1. Everyone shall have the right to safe and hygienic conditions of work. The methods of implementing this right and the obligations of employers shall be specified by statute.

2. An employee shall have the right to statutorily specified days free from work as well as annual paid holidays; the maximum permissible hours of work shall be specified by statute.

**Art. 67.** 1. A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.

2. A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute.

**Art. 76.** Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute.

**Art. 83.** Everyone shall observe the law of the Republic of Poland.

**Art. 190.** [...] 3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.