

Judgment of 21<sup>st</sup> February 2001, [P 12/00](#)  
**LIABILITY OF MINISTER OR PRIME MINISTER  
 FOR A CRIMINAL OFFENCE**

<b>Type of proceedings:</b> <a href="#">Question of law referred by a court</a> <b>Initiator:</b> Warsaw Regional Court	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
Legal provisions under review		Basis of review
Competence of the Tribunal of State or of the common courts of law with regard to criminal liability for offences committed in connection with the duties of the office of Prime Minister or Member of the Council of Ministers  <small>[Tribunal of State Act 1982: Article 2(5), read in conjunction with Article 1(1) point 2]</small>		Constitutional responsibility and criminal liability of the Prime Minister and Member of the Council of Ministers to the Tribunal of State  <small>[Constitution: Article 156(1)]</small>

Persons holding the highest State offices may be held constitutionally responsible to the Tribunal of State (cf. Article 198(1) of the Constitution). The prerequisite for such responsibility is the violation by the aforementioned person of the Constitution or statute – within his/her office or within the scope thereof, i.e. committing a so-called constitutional delict. A different type of accountability to the Tribunal of State is criminal liability for the commission of a criminal offence by: the President of the Republic of Poland (this applies to all criminal offences, cf. Article 145 of the Constitution), the Prime Minister and Members of the Council of Ministers (this applies in respect of criminal offences committed in connection with the duties of his/her office – cf. Article 156(1) of the Constitution). The decision as to whether or not to hold the aforementioned persons accountable to the Tribunal of State may be taken by the National Assembly (in respect of the President of the Republic) or by the Sejm (in respect of the Prime Minister and Members of the Council of Ministers).

Detailed provisions governing the aforementioned types of accountability are contained in the Tribunal of State Act 1982. Following the entry into force of the new Constitution, a number of questions were raised as regards the relationship between its provisions and the provisions of the 1982 Act.

This particular case required the Constitutional Tribunal to consider provisions concerning accountability of the Prime Minister and Members of the Council of Ministers (Ministers). Doubts arose in respect of the wording of Article 2(5) of the Tribunal of State Act. This provision, read in conjunction with Article 1(1) point 2, of the 1982 Act, stipulates that the Prime Minister and members of the government may be held accountable to the Tribunal of State in respect of criminal offences committed in connection with the duties of their offices, whereas the Sejm, in its resolution on holding such a person constitutionally responsible, considered it expedient to hold such a person both constitutionally responsible and criminally liable. In such circumstances, where criminal proceedings are already pending before a common court, the Tribunal of State shall take over (from the court) the case for consideration within its own scope of compe-

tence. It was unclear whether, as of the date on which the new Constitution entered into force (i.e. 17<sup>th</sup> October 1997), a person having committed a criminal offence in connection with the duties of the office of Prime Minister or Minister shall be held criminally liable solely by the Tribunal of State or, alternatively, whether the common courts may also issue a ruling in such cases. More precisely, it was unclear whether – when a (former) Prime Minister or Minister was brought to account before the Tribunal of State in respect of constitutional responsibility, but not also criminal liability – it would be permissible for the common courts to consider the accusation regarding the criminal offence, in accordance with general rules, and whether an interpretation of the 1982 Act permitting such a possibility would conform to the principle of the accountability of the Prime Minister and Members of the Council of Ministers to the Tribunal of State, as contained in Article 156(1) of the Constitution.

The Warsaw Regional Court referred a question of law to the Constitutional Tribunal (pursuant to Article 193 of the Constitution), which was necessary to resolve a case pending before it, involving persons that were former Members of the Council of Ministers. Since the provisions of the 1997 Constitution do not permit the Constitutional Tribunal to provide a universally binding interpretation of statutory provisions where the constitutionality of such provisions has not been challenged, the aforementioned legal issue was formulated as a question regarding the conformity of the said statutory provisions with Article 156(1) of the Constitution.

## RULING

**Article 2(5), read in conjunction with Article 1(1) point 2, of the Tribunal of State Act 1982, understood as permitting a Member of the Council of Ministers to be held liable by a common court for a criminal offence committed in connection with the duties of his/her office, where the Sejm did not adopt the resolution on holding him/her accountable to the Tribunal of State, conforms to Article 156(1) of the Constitution.**

## PRINCIPAL REASONS FOR THE RULING

1. The principle of legality, as expressed in Article 7 of the Constitution, creates, in the context of criminal procedure, an absolute obligation to prosecute offences; the primary purpose being to ensure that every perpetrator of crime is held criminally liable. This principle is developed in Article 10 of the Criminal Procedure Code 1997.
2. In light of Article 145(1) of the Constitution, the President of the Republic of Poland may not be held accountable for a criminal offence to the common courts. For infringement of the Constitution or statute, or for commission of an offence, the President may be held accountable solely to the Tribunal of State. Such accountability may be either joint, i.e. relating to both constitutional delicts and criminal offences, or it may relate to solely constitutional delicts or to solely criminal offences. The President's accountability to the Tribunal of State in respect of criminal offences involves all offences committed during his term of office and not merely those committed in connection with the duties of this office.

3. Pursuant to Article 156 of the Constitution, interpreted in the light of the principles of legality (Article 7) and equality (Article 32) and taking into account the differences in constitutional regulation of President's criminal liability (Article 145(1)), the Tribunal of State's competence, as regards the liability of Members of the Council of Ministers having committed a criminal offence, is neither automatic nor exclusive. The possibility for the Tribunal of State to hold a Member of the Council of Ministers criminally liable is made dependent upon the existence of a previous, or simultaneous, allegation that such person has also committed a constitutional delict. The Tribunal of State may only consider criminal offences committed by Members of the Council of Ministers in connection with the duties of their office and any such examination is conditional upon the adoption, by the Sejm, of a resolution, pursuant to the procedure provided for in Article 156(2) of the Constitution (such a regulation governs the so-called competitive competence of the Tribunal of State).
4. Should the Sejm, for any reason, fail to consider holding a Member of Council of Ministers accountable both for a constitutional delict and criminal offence, the consideration of the criminal case still remains within the common courts' scope of competence. The common courts would cease to be competent only where the Sejm adopted a resolution on holding the Member of the Council of ministers accountable for a criminal offence to the Tribunal of State and, in certain cases, this competence could be "revived", should the Tribunal fail to pronounce judgment on the case concerning criminal offence.
5. The implied repeal of a pre-constitutional statute's provision, as a result of the entry into force of the new Constitution, would only be possible where symmetry of contents exists between the provisions of the Constitution and those of such a statute, which would make it possible to declare the existence of an evident inconsistency between the provisions of the Constitution and the statute in question.
6. It is unjustified to claim that the entry into force of Article 156(1) of the new Constitution resulted in the implied repeal of Article 2(5) of the Tribunal of State Act 1982, insofar as this provision allows Members of the Council of Ministers to be held criminally liable by the Tribunal of State, whilst making such liability conditional upon the adoption of a resolution by the Sejm.

#### Provisions of the Constitution

**Art. 7.** The organs of public authority shall function on the basis of, and within the limits of, the law.

**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. 145.** 1. The President of the Republic may be held accountable to the Tribunal of State for an infringement of the Constitution or statute, or for commission of an offence.  
2. Bringing an indictment against the President of the Republic shall be done by resolution of the National Assembly passed by a majority of at least two-thirds of the statutory number of members of the National Assembly, on the motion of at least 140 members of the Assembly.  
3. On the day on which an indictment, to be heard before the Tribunal of State, is brought against the President of the Republic, he shall be suspended from discharging all functions of his office. The provisions of Article 131 shall apply as appropriate.

**Art. 156.** 1. The members of the Council of Ministers shall be accountable to the Tribunal of State for an infringement of the Constitution or statutes, as well as for the commission of an offence connected with the duties of his office.  
2. On the motion of the President of the Republic or at least 115 Deputies, resolution to bring a member of the Council of Ministers to account before the Tribunal of State shall be passed by the Sejm by a majority of three-fifths of the statutory number of Deputies.

**Art. 198.** 1. For violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally responsible to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces.

2. Deputies and Senators shall also be constitutionally responsible to the Tribunal of State to extent specified in Article 107.

3. The types of punishment which the Tribunal of State may impose shall be specified by statute.