

Judgment of 21st July 2006, P 33/05
**REFERENCE TO "ORDERS AND INSTRUCTIONS"
 IN A CRIMINAL LAW PROVISION**

Type of proceedings: Question of law referred by a court Initiator: Warsaw Regional Court	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
A petty offence entailing failure to carry out the orders and instructions of an airport administrator in connection with the ensuring of flight safety and maintenance of order at an airport [Aviation Law 2002: Article 210(1) point 5]	Legal reservation (i.e. exclusivity of statutes) in relation to criminal law Requirement for acts prohibited under criminal law to be sufficiently defined [Constitution: Article 42(1)]

Article 42(1) of the Constitution requires that a prohibited act subject to punishment be specified "by a statute" (i.e. Act of Parliament).

Doubts arose for Warsaw Regional Court, which referred to the Constitutional Tribunal a question of law in the present case, concerning Article 210(1) point 5 of the Aviation Law 2002. The challenged provision establishes a petty offence, subject to a fine, that entails a failure to carry out "orders and instructions issued by an airport administrator in connection with the ensuring of flight safety or maintenance of order at an airport, as referred to in Article 82 point 3 [of the Aviation Law 2002]". The latter statutory provision lays down the responsibilities of airport administrators, inter alia as regards the issue of orders or prohibitions connected with ensuring flight safety and security, as well as maintaining order at an airport. The orders and instructions issued by authorities of an airport are binding upon all persons finding themselves present there at the given time.

In the view of the Regional Court, the more precise defining of the content of this offence within an order, which is not an act of universally binding law (cf. Article 87 of the Constitution), infringes the principle of the exclusivity of statutes in relation to repressive law, as well as requirements regarding the specificity of repressive provisions – as stemming from Article 42(1) of the Constitution.

RULING

The challenged provision does not conform to Article 42(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. Article 42(1) of the Constitution encompasses not only criminal liability *sensu stricto*, i.e. responsibility for the committing of an offence, but also other forms of legal liability related to the imposition of some form of punishment upon an individual.

2. Article 42(1) of the Constitution expresses several fundamental principles as regards repressive law. Firstly, while the nature of a prohibited act, the sort and level of the penalty therefor and the principles regarding the imposition of the said penalty must be stipulated directly by statute (the principle of the exclusivity of statutes), the possibility of some elements thereof being specified more fully in sub-statutory acts is not excluded. The role of the latter, as issued in accordance with Article 92 of the Constitution, in this case entails the more precise description of certain elements of the act whose direct prohibition was achieved by the legislator. Secondly, the main elements (ingredients) of the prohibited act in question must be specified by statute in a manner consistent with the minimum requirements as regards precision, such that the addressee of the legal norm knows, solely on the basis of that statute, the essential content of the prohibition (the principle of the specificity of legal provisions). Thirdly, it is impermissible that penalties might be imposed for a prohibited act not subject to a penalty in a statute in force at the time of committing thereof (the *lex poenalis retro non agit* principle).
3. In accordance with the principle of the specificity of legal provisions, the main ingredients of a prohibited act shall be worded in such an unambiguous, precise and clear manner as to make the risk of punishment comprehensible to addressees of a norm. Alongside the so-called complete criminal law provisions, i.e. those on the basis of which direct decoding of a criminal law norm is made possible, there are also, in practice, the so-called incomplete criminal law provisions, i.e. provisions referring to other provisions or blanket provisions. In both of these cases, the ingredients of the prohibited act are specified in normative acts other than that containing the sanctioning norm. The difference between a provision referring to another provision and a blanket provision is that the former expressly indicates the regulations constituting a given criminal law norm, while the latter refers, in a general manner, to regulations which have been, or are to be, enacted and promulgated.
4. In its Article 42(1), the Constitution precludes neither the possibility of referral to a different statute (normative act), with a view to the ingredients of a prohibited act being defined more closely, nor the application by the legislator – to a limited degree and within strictly defined limits – of general clauses or blanket norms. However, the said application of instruments of this kind should be of an extraordinary character, only taking place where, from the perspective of a rational legislator, it is not possible to apply the complete regulation within a given criminal law provision. It is impermissible to depart from the precise specification of the elements of a criminal law norm, where this might lead to discretion as regards the application of such a norm by public authorities or to the “appropriation” of certain spheres of life by these authorities and the penalisation of behaviours which have not been prohibited *expressis verbis* in a criminal law provision.
5. The challenged provision of the Aviation Law 2002 is in the nature of a complete blanket norm, since all the ingredients of the prohibited act have been specified in sub-statutory regulations. The wording of the provision does not allow the addressee thereof to understand the content of the prohibition which only obtains direct formulation in an order issued by the airport administrator. The notion “orders and instructions of an airport administrator” may encompass a variety of prohibitions and orders – from the purely administrative and organisational through to such as may seriously interfere with the sphere of freedom, including the freedom of movement or privacy of

persons making use of an airport. The reviewed provision does not differentiate between different categories of orders and nor does it determine the content of the kind of orders and instructions that are being referred to. Neither are the prerequisites for the use of particular measures defined, even in general terms. In consequence, those making use of an airport might be made subject to orders and instructions issued by airport administrators in an arbitrary manner, such that verification is rendered impossible, even at the level of subsequent court proceedings.

6. The referral contained in the reviewed provision encompasses regulations issued by an airport administrator that are of a purely internal character. That signifies reference to a regulation that is not in the nature of universally binding law (cf. Article 87 of the Constitution).

Provisions of the Constitution

Art. 42. 1. Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally liable. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.

Art. 87. 1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

Art. 92. 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.