

Judgment of 10th December 2002, P 6/02
**FEES FOR PARKING ON PUBLIC ROADS AND FOR PASSAGE
 OF OVERSIZED VEHICLES**

Type of proceedings: Abstract review; Question of law referred by a court Initiators: Commissioner for Citizens' Rights; Supreme Administrative Court	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal Provisions under review	Basis of review
Public Roads Act 1985: Article 13(4) insofar as it authorises the Council of Ministers to adopt regulation detailing the rules concerning the introduction of fees for parking vehicles on public roads and to specify the organ competent to determine the level of such fees Regulation of the Council of Ministers Concerning Detailed Rules for the Introduction of Parking Fees for Vehicles on Public Roads 2000: § 3(1), § 4(1), § 8(2) Regulation of the Council of Ministers on Road Fees 2000: § 9(1) point 2 and § 9(2)	Constitution: Articles 2, 7, 92(1), 94, 217 Public Roads Act 1985: Articles 13(4) and 21(1)

Article 92(1) of the Constitution permits the adoption of regulations only on the basis of special statutory authorisation, which should determine in particular the scope of matters delegated for regulation and guidelines regarding the contents of the regulation. Article 92(2) of the Constitution furthermore prevents so-called sub-delegation, whereby a public authority empowered to adopt a regulation attempts to delegate its competences stemming from statutory authorisation to another body. In particular, no such sub-delegation may be made in favour of organs of local self-government. Such organs may only adopt acts of local law on the basis of, and within the limits of, statutory authorisation which empowers this, according to Article 94 of the constitution.

Several provisions of the Constitution refer to matters which may be regulated only by statutes (so-called legal reservation). One such provision is Article 217 of the Constitution which relates to the imposition of taxes and other public burdens.

Article 13(4) of the Public Roads Act 1985, which was challenged in the present case, authorises the Council of Ministers to adopt regulation detailing the rules concerning the introduction of parking fees and the organs competent to set the rates of such fees and to collect revenue resulting therefrom. The Regulation regarding these matters provided that the organs of territorial self-government (City or Commune Councils) shall introduce parking fees and decide the manner in which they are collected. The Regulation furthermore allowed City or Commune Councils to authorise other non-governmental entities to enforce and collect such fees. At the relevant time, the central Warsaw Commune Council (which no longer legally exists, due to territorial administrative changes) made use of this possibility and delegated responsibility for the aforementioned matters to a private company. The aforementioned legal provisions were challenged

before the Constitutional Tribunal by the Commissioner for Citizens' Rights and the Supreme Administrative Court.

The Public Roads Act 1985 furthermore authorised the Council of Ministers to adopt regulation determining higher fees for the thoroughfare or passage on public roads of so-called oversized vehicles (i.e. having mass, axel-loading or physical dimensions exceeding values defined in separate regulations). The Supreme Administrative Court expressed reservations about whether the statute authorising the adoption of such regulation fulfilled the appropriate constitutional requirements and whether the fees specified in the Council of Ministers' Regulation on Road Fees, adopted on the basis of this authorisation (i.e. the second of the Regulations challenged in this case), fell within the definition of an "increased fee", and did not, in reality, have the nature of an administrative penalty, imposed alongside any penalty for having committed an offence.

Having concurred that the challenged provisions were unconstitutional, the Constitutional Tribunal recognised the problems that would be caused by the immediate entry into force of its judgment in regard to fees already paid on the basis of these provisions. In part II of the ruling, the Tribunal excluded the possibility that any such paid fees were recoverable. In the judicial practice of the Tribunal, such temporal limitations on the entry into force of its judgments are rare and occur only when special circumstances demand it.

The Constitutional Tribunal decided in part III of the ruling to allow the challenged provisions of 1985 Act and related Regulations to continue in force until the end of November 2003, insofar as they formed the current legal basis for the collection of parking fees. This solution, based on the authorisation contained in Article 190(3) of the Constitution, was intended to allow the legislature sufficient time in which to adopt a new, and conforming to the Constitution, legal regime for the collection of parking fees on public roads and thereby avoid the legal difficulties which would arise if the current system, based on an unconstitutional legal regime, was to be struck-down immediately.

In relation to the provisions regulating fees for the passage of oversized vehicles there was no need to delay the entry into force of the Tribunal's judgment, since the legislator had already repealed these regulations.

RULING

I

1. Article 13(4) of the Public Roads Act 1985, to the extent challenged in the present case, does not conform to Article 217 of the Constitution.

2. § 3(1) of the Regulation of the Council of Ministers Concerning Detailed Rules for the Introduction of Parking Fees for Vehicles on Public Roads (which authorises City and Commune Councils to introduce such fees and to determine the means of their collection) does not conform to Article 7, Article 92(1) and Article 94 of the Constitution.

3. § 4(1) of the aforementioned Regulation (which authorises City and Commune Councils to set the rates of the fees) does not conform to Article 7 and Article 94 of the Constitution.

4. § 8(2) of the aforementioned Regulation (which allows those responsible for the management of public roads to delegate their powers in respect of enforcing and collecting such fees) does not conform to Article 92(1) of the Constitution, as well as to Article 13(4) and Article 21(1) of the Public Roads Act 1985.

5. The challenged provision of the Regulation of the Council of Ministers on Road Fees does not conform to Article 92(1) of the Constitution and is not inconsistent with Article 2 of the Constitution.

II

Any fees paid or collected on the basis of the provisions cited in points I.2–I.5 of this ruling are not recoverable.

III

The Tribunal ruled that the loss of binding force of the provisions cited in points I.1–I.4 of this ruling shall be delayed until 30th November 2003.

PRINCIPAL REASONS FOR THE RULING

1. The principle of the rule of law applies both to actions of the State and to the conduct of its citizens. It means, in particular, that no-one may derive benefits from unlawful conduct.
2. When a judgment of the Constitutional Tribunal corrects previous infringements of the law, this may not legitimise those previous infringements.
3. A ruling on the unconstitutionality of legal provisions for formal reasons, when the substance of those provisions has not been challenged, may influence the Tribunal's decision as to the effect of such a judgment. In such cases, it should be considered whether it is necessary for the ruling to entail the irreversibility of the effects of the challenged provisions, having taken into account the full range of constitutional values and maintained necessary prudence.
4. A normative resolution of a commune organ (i.e. concerning the rates of local taxes, levies or other fiscal duties) does not amount to a judgment, decision or other settlement within the meaning of Article 190(4) of the Constitution.
5. Article 84 and Article 217 of the Constitution form the legal basis for the imposition of taxes and allow the State to impose fiscal burdens on its subjects within its authority for the purpose of financing its functions. Of crucial importance in this matter is the principle that the only permissible manner by which fiscal burdens, such as taxes, fees and customs, may be imposed only by statute (so-called legal reservation).
6. A fee is a public-legal fiscal burden which differs from a tax or a customs by being a price paid in consideration for a particular service. Fees are collected in relation to certain services and activities of State or self-government organs, conducted for the benefit of particular subjects. In their traditional form, fees are characterised by their full equivalency (i.e. the value of the service provided by the administration is equal to the level of the fee).

7. The enumeration contained in Article 217 of the Constitution should be construed as requiring statutory regulation of all relevant elements of the fiscal burden relationship, including, *inter alia*, the definition of the subject and object of the taxation and the rules regarding tax reliefs or remissions and the categories of taxpayers exempt from taxation. This enumeration is not exhaustive in character and is not a closed list, meaning that all relevant elements of the fiscal burden relationship should be regulated directly by statute. Only those matters which are essentially irrelevant to the fiscal burden relationship may be delegated for supplementary regulation by way of regulations, in accordance with the conditions laid down in Article 92(1) of the Constitution.
8. The subject-matter of Article 217 of the Constitution is connected with the content of Article 168, according to which local self-government organs have the right to fix the level of local taxes and charges. This formula allows for specific local conditions to be taken into account. At the same time, Article 94 stipulates that provisions of local law may only be adopted on the basis of, and within the limits of, statutory authorisation. It is therefore unacceptable for the regulation to authorise City or Commune Councils to introduce a new category of public fiscal burden.
9. Parking fees, which are the subject of the Council of Ministers' Regulation Concerning Detailed Rules for the Introduction of Parking Fees for Vehicles on Public Roads of 27th June 2000, possess certain features characteristic of a local charge. This would justify the conclusion that the basis for review of this Regulation would be Article 168 of the Constitution if not for the fact that the legislator, in Article 13(4) (read in conjunction with Article 2(4)) of the Public Roads Act 1985, stated that such fees should be governed by Council of Ministers' Regulation, hence giving them the character of a national fee. This justifies the conclusion that Article 217 is the appropriate basis of review.
10. Two elements of the statutory delegation contained in Article 13(4) of the Public Roads Act 1985 are incompatible with Article 217 of the Constitution. Executive measures (such as the Regulation in this case) adopted on the basis of a statute may not lawfully determine the rules of introducing fees or the organs competent to fix the levels of such fees.
11. § 3(1) and § 4(1) of the Council of Ministers' Regulation Concerning Detailed Rules for the Introduction of Parking Fees for Vehicles on Public Roads are legally defective, not merely because they are based on an unconstitutional statutory authorisation (cf. point 10 above) but also because the Council of Ministers, by transferring to City or Commune Councils the competence to introduce and fix the level of the relevant fees, effectively authorised those councils to adopt acts of local law in contravention of the need for statutory authorisation to adopt such laws, as described in Article 94 of the Constitution. Furthermore, the Council of Ministers did this in such a way as to infringe the constitutional prohibition of "sub-delegation" in Article 92(2) of the Constitution. The provisions of the Regulation are therefore also incompatible with Article 7 of the Constitution, which requires organs of public authority to act on the basis of, and within the limits of, the law.
12. § 8(2) of the same Regulation, allowing those responsible for the management of public roads to authorise other organs to enforce and collect parking fees, was adopted without statutory authorisation, in contravention of Article 13(4) of the Public Roads

Act 1985 which merely authorises the Council of Ministers to appoint an “organ competent for the collection of fees”. This part of the Regulation is therefore incompatible with Article 92 of the Constitution. The provision allowing other undefined organisational units to enforce the payment of fees and collection thereof is also contrary to Article 21(1) of the Public Roads Act 1985 (read in conjunction with Article 19(2) points 2-4 and Articles 5 and 6), which provides that those responsible for the management of public roads (i.e. the management board of the relevant unit of local self-government) may execute their duties in conjunction with the assistance of an organisational unit (called the “road management board”) set up by the appropriate legislative organ of the relevant local self-government unit.

13. The aforementioned provisions create a situation which is incompatible with the principle of the rule of law. The law treats parking fees as part of the public revenue of local self-government units, to be used to fulfil public functions that are strictly defined by statute. The relevant fees should be collected and spent in a manner which guarantees due care and concern for the common good. The manner of their expenditure and redistribution must be strictly defined in legal provisions. The legislator’s failure to define such appropriate standards does not mean that they may be determined by way of civil law contracts with such undefined organisational units as referred to above, particularly without due normative safeguards preventing the emergence of pathological phenomena.
14. The formal repeal of a legal provision does not automatically mean that such a provision loses all binding legal force; this is also true when amendments are made to previous legal provisions. The question as to whether or not a particular provision, once repealed or amended, loses all binding force and may not be applied at all, must be determined by reference to the contents of the amending or transitional (interim) provision. Where it remains possible to apply the repealed provision to any situation from the past, present or future, such a provision has not lost all binding force and there are no grounds for discontinuing proceedings under Article 39(1) point 3 of the Constitutional Tribunal Act.
15. Although § 9(1) and (2) of the Council of Ministers’ Regulation on Road Fees, in respect of “increased fees” for passage of oversized vehicles without due permission, have been formally repealed, they have not yet lost all binding force within the meaning of Article 39(1) point 3 of the Constitutional Tribunal Act.
16. In relation to aforementioned provisions of the Regulation of 27th June 2000, the Tribunal’s conclusion is similar to that of the Tribunal’s judgment of 27th April 1999 (P 7/98).
17. In ascertaining the character of a specific legal institution, it is the substance of that institution which is of prime importance and not merely the name given to it. For this reason, the Constitutional Tribunal in this case does not find that a direct violation of Article 2 of the Constitution occurs from the fact that § 9 of the aforementioned Regulation refers to an “increased fee”, although in fact it creates a kind of punishment for illegal passage of an oversized vehicle (cf. Article 13(2a) and (2b) and also the Appendix to the current version of the Public Roads Act 1985).
18. This judgment does not constitute grounds for claims to recover any parking fees collected on the basis of the provisions declared unconstitutional herein whilst such pro-

visions retain their binding force (cf. points I.1–I.4 of the ruling). This conclusion is justified in particular by the link between parking fees and the services provided to the persons required to pay such fees and the dual nature of such a fee – as a public fiscal burden and as price for a service. Any attempt to separate the amount representing the public fiscal burden from the amount representing the price for the service, to identify the true cost of the service (which is not, in any case, recoverable) and to identify persons entitled to claim reimbursement would be fraught with considerable evidential difficulties and costs. It is also relevant that the constitutional concerns of these provisions relate mainly to the formal-legal aspect of the adopted provisions; the Constitutional Tribunal does not therefore call into question the reasonableness *per se* of introducing a legal norm imposing a duty to pay parking fees. Upon the entry into force of this judgment, the re-opening of judicial or administrative proceedings (Article 190(4) of the Constitution) will not be possible because the duty to pay the fee was imposed by the law itself, without the need to deliver individual decisions (cf. points 1-4 above).

19. Furthermore, the declaration of unconstitutionality on formal grounds of the provisions of the Regulation on “increased fees” for passage of oversized vehicles (cf. point I.5 of the ruling) does not mean that the fees collected on the basis of these provisions are recoverable. Any alternative conclusion would lead to an unjustifiable impoverishment or enrichment of the addressees of the challenged provisions. From the perspective of the Constitution, the justification of imposing negative consequences on the passage of oversized vehicles is not questionable. No substantial legal change occurs as a result of amending the current legal provisions (as referred to in point 17 above), so as to bring them into conformity with the Constitution; the relevant fees currently bear the name “fiscal fines” and are directly regulated in the statute. If the Tribunal were to rule that the unconstitutionality of these provisions entitled unlawful users of public roads to recover the so-called increased fee, it would also be necessary to conclude that the State Treasury has the right to claim payment from such users for unlawful use of these roads and for possible deterioration of their condition (cf. points 1-3 above).
20. The decision to delay the entry into force of this judgment, to the degree specified in part III of the ruling, has been taken as a result of the problems that would occur in the event that Article 13(4) of the Public Roads Act 1985 was declared immediately inapplicable. In particular, this would create a lacuna in the law and would cause problems relating to the validity of other provisions of the Act which were not challenged in the present case. Such delay does not, however, prevent the possibility of challenging resolutions of City or Commune Councils, which were adopted in the procedure contrary to the law, or civil law contracts with parking companies, which were concluded in violation of the law.

Provisions of the Constitution and the Constitutional Tribunal Act

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

Art. 84. Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.

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.

Art. 94. On the basis of and within limits specified by statute, organs of local self-government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute.

Art. 168. To the extent established by statute, units of local self-government shall have the right to set the level of local taxes and charges.

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.

4. A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

Art. 217. The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.

CT Act

Art. 39. 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

[...]

3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.