

Judgment of 27th January 2004, P 9/03
“PARKING ZONE” TRAFFIC SIGN

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
Authorisation for appropriate Ministers to issue a regulation specifying traffic signs and signals, together with the definition and binding scope thereof [Road Traffic Act 1997: Article 7(2)]	Conditions for authorising the issuing of a regulation Prohibition of sub-delegation [Constitution: article 92(1) and (2)]
Establishment of the “Parking Zone” traffic sign as an information sign [Regulation of the Minister of Transport and Marine Economy and of the Minister of Internal Affairs and Administration 1999 on traffic signs and signals: § 58(4)]	Regulatory scope of the Road Traffic Act 1997 [Road Traffic Act 1997: Article 1]

The Warsaw Regional Court referred a question of law to the Constitutional Tribunal, arising from a petty offence case before that court, concerning Article 92 § 1 of the Petty Offences Code which states that: “Anyone failing to observe a traffic sign or signal [...] shall be subject to a fine or a reprimand”. It was alleged that the defendant had failed to comply with the “Parking Zone” traffic sign (Symbol D-44), by parking in such a zone without having made the appropriate payment.

The court referring the question of law expressed doubts as to whether Article 7(2) of the Road Traffic Act 1997, authorising the appropriate Ministers to issue a regulation specifying “traffic signs and signals, together with the definition and binding scope thereof”, was sufficiently “specific”, as required by Article 92(1) of the Constitution. A related question was whether the appropriate Ministers were permitted, on the basis of this statutory authorisation, to issue a regulation designating the sign “Parking Zone” as an information sign, when this sign contained a prohibition on parking without payment, given that Article 7(1) of the Act created a division – mutually exclusive, in the opinion of the Regional Court – between traffic signs and signs containing “warnings, prohibitions, orders or information”. The Regional Court alleged that designation of the sign “Parking Zone” was beyond the regulatory scope of the Road Traffic Act, as defined in Article 1 thereof. It is unquestionable that, as an executive act to the statute, the regulation was not allowed to exceed the regulatory scope of the statute itself. The Court’s principal doubt concerned whether failure to pay the fee for parking in an area designated by a “Parking Zone” sign may constitute the grounds for imposition of a penalty on the basis of the Petty Offences Code, given the reservations concerning the establishment and contents of that sign.

RULING

1. Article 7(2) of the Road Traffic Act 1997 conforms to Article 92(1) and is not inconsistent with Article 92(2) of the Constitution.

2. § 58(4) of the Regulation of the Minister of Transport and Marine Economy and of the Minister of Internal Affairs and Administration, of 21st June 1999, on traffic signs and signals, in the wording as amended by Regulation of 24th August 2000, conforms to Article 1 of the Road Traffic Act 1997.

The Tribunal discontinued proceedings in relation to the remaining challenges (i.e. insofar as the Court refers to Article 92 § 1 of the Petty Offences Code), pursuant to Article 39(1) point 1 and 2 of the Constitutional Tribunal Act – given that it would be inadmissible to pronounce judgment on this question.

PRINCIPAL REASONS FOR THE RULING

1. The constituent elements of the statutory authorisation to issue a regulation, as required by Article 92(1) of the Constitution, may be reconstructed not merely from the authorising provision itself but also from other provisions of the authorising statute. In particular, when assessing the degree of “specificity” of the statutory delegation, reference must sometimes be made to the contents of several provisions of the statute.
2. It does not stem from Article 7(1) of the Road Traffic Act 1997 that the particular traffic sign categories listed therein (warnings, prohibitions, orders or information) are mutually exclusive. On the contrary, it is conceivable that the contents of a single traffic sign may conjoin a number of these functions (e.g. information and prohibition). The meaning of the contents of a prohibition or order should be derived principally on the provisions of the 1997 Act and, complementarily, on the traffic signs regulation issued on the basis thereof.
3. It is unjustified to allege that the authorisation to issue a regulation, contained in Article 7(2) of the Road Traffic Act, contravenes the constitutional requirement to issue regulations on the basis of a “specific authorisation” which, in the referring Court’s opinion, relates to the excessively brief description of the meaning and the binding scope of traffic signs. It is also unjustified to allege, primarily by reference to an inappropriate interpretation of Article 7(1) (cf. point 2 above), that the authorisation lacks the requisite specificity.
4. The information sign D-44 (“Parking Zone”), designating entrance to a zone where a fee is payable for parking a vehicle and where parking without payment is prohibited, was described in the reviewed § 58(4) of the Regulation (cf. point 2 of the Tribunal’s ruling), issued on the basis of Article 7(2) of the Road Traffic Act. The description of this sign’s contents, within the aforementioned legal provisions, unambiguously expresses the prohibitive function thereof.
5. It is unjustified to allege that the challenged provision of the Regulation falls outside the regulatory scope of the Road Traffic Act 1997, as defined in Article 1 thereof, since the notion of “parking a vehicle” (cf. Article 2 point 30 of the 1997 Act) also represents an element of the statutory regulation governing “road traffic”. Accordingly, the traffic sign informing about entrance to a zone where parking without pay-

ment is prohibited clearly regulates a particular feature of road traffic, whose principles are governed by the Road Traffic Act (i.e. the statute on which basis the challenged regulation was issued).

6. It is permissible for the Constitutional Tribunal to review the legal provision indicated in point 2 of the ruling, despite the fact the challenged Regulation has already been repealed and replaced by the Regulation of 31st July 2002. As stems from the question of law referred in the present case, this provision may represent the grounds for criminal prosecution of an individual failing to comply with the sign defined in this provision. The answer to the referred question of law is thus related to the protection of constitutional rights and freedoms of the party to the judicial proceedings upon whose basis the court formulated the question of law, which – pursuant to Article 39(3) of the CT Act – justifies the consideration thereof.
7. The formulation of a question of law does not permit the Tribunal to review the challenged provision of the Regulation in the context of Article 92 § 1 of the Petty Offences Code, which is taken into account as the basis for eventual punishment of a person accused of unlawfully parking without payment in an area designated as a “Parking Zone”. The scope of the referred question of law does not indicate the aforementioned provision of the Petty Offences Code as the subject of the question of law, nor as the basis of review of the challenged provision of the Regulation, but rather serves to “assure” the referring Court as to its view regarding whether the scope of application of Article 92 § 1 of the Petty Offences Code also covers a failure to comply with the traffic sign described in the challenged provision of the Regulation. Such a formulation of a question of law would, in reality, be seeking interpretation of the statute, which falls outside the Constitutional Tribunal’s scope of jurisdiction (cf. Article 188, read in conjunction with Article 193, of the Constitution). Accordingly, to that extent, it is inadmissible to adjudicate on this issue (Article 39(1) point 1 of the CT Act).

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

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.

Art. 188. The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79(1).

Art. 193. Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.

CT Act

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

- 1) if the pronouncement of a judicial decision is useless or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;
- 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.

2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.
3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment is necessary for protecting constitutional freedom and rights.