

Judgment of 6<sup>th</sup> September 2004, [SK 10/04](#)  
**SECURITY ON PROPERTY IN CRIMINAL CASES**

<b>Type of proceedings:</b> <b>Constitutional complaint</b> <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Possibility for a prosecutor to issue a procedural decision securing payment of a fine, and certain other penalties, on a suspect's property during preparatory proceedings [Criminal Procedure Code 1997: Article 291 § 1]	Rule of law Principle of proportionality Presumption of innocence Protection of ownership [Constitution: Articles 2, 31(3), 42(3), 64]
Single-instance system of judicial review of the aforementioned procedural decision [ <i>Ibidem</i> : Article 293 § 2, read in conjunction with Articles 437 § 1 and 426 § 1]	Rule of law Principle of the two-instance system of judicial proceedings [Constitution: Article 2 and Article 176(1)]

The Tribunal considered a constitutional complaint lodged by a former member of a public fund's supervisory board. The prosecutor alleged that the complainant, who was under investigation as the suspect in a criminal case, had, whilst occupying the aforementioned position, participated in the adoption of a resolution granting a loan which exposed the fund to serious losses. In the course of preparatory proceedings (i.e. prior to filing the indictment), the prosecutor issued a procedural decision (similar to a "freezing order") imposing a security on the suspect's property, in order to guarantee execution of the payment of compensation and penalty fine capable of being imposed on the suspect (i.e. in the event of him being found guilty). The security on property was to consist in: the forfeiture of the suspect's employment remuneration and debt claims from his bank accounts; a prohibition on disposing or encumbering the cooperative ownership right in an apartment; and the creation of a compulsory mortgage on a piece of real estate. The suspect brought court proceedings to complain against the prosecutor's procedural decision, but the court upheld it and the court judgment enforcement officer began to execute the decision, by way of "securing actions".

Several provisions of the Criminal Procedure Code, applied in this case, were challenged in the constitutional complaint. Firstly, the complainant alleged that permitting the prosecutor to issue, within the preparatory proceedings, a procedural decision imposing a security on the property of a person who has been charged with committing an offence but has not yet been proved guilty of that offence, as envisaged in Article 291 § 1 of the Criminal Procedure Code, infringes Article 31(3) (principle of proportionality), Article 42(3) (presumption of innocence) and Article 64 (protection of ownership) of the Constitution. Secondly, the complainant submitted that Article 293 § 2, read in conjunction with Articles 437 § 1 and 426 § 2, of the Criminal Procedure Code, providing merely for a single-

instance system of judicial review of such decisions, infringes Article 176(1) of the Constitution (guarantee of a two-instance system of judicial proceedings). The complainant also referred to the principle of the rule of law (Article 2 of the Constitution) in respect of both of the challenged provisions.

#### RULING

**1. Article 291 § 1 of the Criminal Procedure Code conforms to Articles 2, 31 (3), 42(3) and 64 of the Constitution.**

**2. Article 293 § 2, read in conjunction with Articles 437 § 1 and 426 § 1, of the aforementioned Act conforms to Articles 2 and 176(1) of the Constitution.**

#### PRINCIPAL REASONS FOR THE RULING

1. The imposition of a security on property – regardless of whether its goal is to ensure the debtor’s solvency in relation to civil proceedings (Article 730 of the Civil Procedure Code) or to ensure the effectiveness of enforcing pecuniary sanctions imposed in criminal proceedings (Article 291 of the Criminal Procedure Code) – is directly related to the limitation of ownership and other property rights, restricting, in particular, the possibility to dispose of such property. Such security, however, meets the standards indicated in Articles 64(3) and 31(3) of the Constitution. The temporary burden for the potential debtor or accused serves the purpose of ensuring the enforceability of courts’ judgments, which is one of the basic assumptions of a democratic State governed by the rule of law.
2. It follows from the essence of the security on property in criminal cases, and the temporary nature thereof, that imposing a security in the course of preparatory proceedings may not be regarded as an infringement of the presumption of innocence principle, as expressed in Article 42(3) of the Constitution. The security is not a sanction imposed upon the accused but merely a method of guaranteeing the reality of a possible future sanction finally imposed by the court. Securities are also imposed in civil proceedings (cf. Article 730 *et seq.* of the Civil Procedure Code), including cases concerning proprietary claims that relate neither to criminal liability nor even to a tort. The reference in Article 292 § 1 of the CPC to provisions concerning a security imposed in civil cases is evidence that the institution of a security on property is not associated with the guilt of the person upon whose property the security is imposed.
3. The two-instance system mentioned in Article 176(1) of the Constitution (the principle of double degree of jurisdiction) refers to judicial proceedings. This provision does not concern proceedings which do not have a clearly judicial nature, in connection with fulfilling the courts’ functions in relation to the administration of justice, but are rather mixed in nature, such as where the court conducts activities concerning legal protection that are not final decisions in a legal dispute. The situation regulated in those provisions of the Criminal Procedure Code indicated in point 2 of the ruling is an example of the latter: at the stage of preparatory proceedings, the prosecutor issues a procedural decision imposing a security on property, in accordance with his authority, without deciding upon the suspect’s criminal liability; the court acts as an organ control-

ling the prosecutor's actions. The proper standard of assessment of such situations is set out by Article 78, and not Article 176(1), of the Constitution.

4. It follows from the finding that the reviewed provisions conform to Article 176(1) of the Constitution that the allegation of their non-conformity with the constitutional principle of the rule of law (Article 2) is unjustified.
5. The Constitutional Tribunal is called upon to review the conformity of normative acts with the Constitution and not to remove errors relating to application of these acts.

#### 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. 31.** [...] 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. 42.** [...] 3. Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

**Art. 64.** 1. Everyone shall have the right to ownership, other property rights and the right of succession.

2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

**Art. 78.** Each party shall have the right to appeal against judgments and decisions made at first instance. Exceptions to this principle and the procedure for such appeals shall be specified by statute.

**Art. 176.** 1. Court proceedings shall have at least two instances.