

Procedural decision of 3rd February 2004, [SK 12/02](#)
CONSTITUTIONAL COMPLAINT AGAINST REPEALED PROVISION

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
--	--	----------------------------------

Pursuant to the Act of 15th February 1962, renunciation of Polish citizenship requires the consent of the President of the Republic of Poland. In 2001 Józef B., the author of the constitutional complaint in this case, submitted a declaration renouncing his citizenship but the President refused to grant consent, without providing any reasons for this decision. The interested person challenged this decision before the Supreme Administrative Court. In October 2001, the Supreme Administrative Court rejected the complaint as inadmissible, stating that cases concerning citizenship fell outside the scope of the court's competence.

Subsequently, Józef B. submitted a constitutional complaint alleging the non-conformity of Articles 1, 16 and 20 of the Supreme Administrative Court Act 1995 with constitutional provisions guaranteeing access to the courts (Article 45(1) and Article 77(2) of the Constitution). In the complainant's opinion the challenged provisions, governing the Supreme Administrative Court's scope of jurisdiction, constituted an obstacle to the court's examination on the merits of his complaint against the President's decision. Accordingly, these provisions rendered it impossible for the complainant to realise the right to renounce his Polish citizenship, as derived from Article 34(2) of the Constitution.

During the course of proceedings before the Constitutional Tribunal, the challenged Supreme Administrative Court Act 1995 ceased to have binding force and was replaced by the 2002 Acts introducing administrative courts reforms.

RULING

The Tribunal discontinued the proceedings – by reason of the loss of binding force of the challenged provision, pursuant to Article 39(1) point 3 of the Constitutional Tribunal Act 1997.

PRINCIPAL REASONS FOR THE RULING

1. The legal solution adopted in Article 39(1) point 3 of the Constitutional Tribunal Act, treating the loss of binding force of the challenged normative act as a reason for discontinuing proceedings, respects the general functions and assumptions regarding the scope of the Constitutional Tribunal's competence to examine the hierarchical conformity of normative acts. The principle is that only such acts as have binding force and determine rules governing the defined subjects' conduct (i.e. addressees of such norms) are subject to review.
2. The possibility of reviewing legal provisions that have ceased to have binding force, which remains a possibility under Article 39(3) of the Constitutional Tribunal Act,

arises when three conditions are fulfilled: such review must be necessary for the protection of constitutional rights and freedoms; the new legal solution must have unequivocally failed to create legal instruments protecting such rights; and no systemic change of organs for defence of legal rights must have occurred (such as happened, for example, in the context of the discussed case) so as to require new procedures to be applied that would render utilisation of the previous procedures impossible by virtue of alterations to the scope of functions and competences of such organs. For the legislator, the primary reason for creating Article 39(3) of the Constitutional Tribunal Act as a norm representing an exception to the general rule expressed in section 1 point 3 of the same Article, was the creation of grounds for re-opening proceedings in favour of persons whose rights and freedoms were infringed (cf. Article 190 (4) of the Constitution).

3. The repealing of a normative act does not always lead to its loss of binding force within the meaning of Article 39(1) point 3 of the Constitutional Tribunal Act. On the basis of this provision, it is necessary to distinguish between the temporal binding scope and the temporal scope of applicability of the normative act. A legal provision which has been formally repealed may still constitute the subject of the Tribunal's review, provided that it may, even to a limited degree, entail further legal consequences with reference to specific factual states.
4. As of 1st January 2004, new Acts regulating the organisation of administration courts and proceedings before those courts (adopted in 2002) entered into force. Concomitantly, the challenged Supreme Administrative Court Act 1995 was repealed. The content of the new legal provisions differs quite significantly from the hitherto binding norms, creating more extensive procedural guarantees for the protection of constitutional rights and freedoms.
5. In this case, no situation arises such as to justify examination on the merits of the constitutional complaint, as discussed in paragraphs 2 and 3 (above). The procedural decision of the Supreme Administrative Court regarding the complainant's case was not a decision on the merits possessing substantive legal force to which the principle of *res iudicata* applies (i.e. a matter that has been decided). Such a decision does not render it impossible to repeat the renunciation of citizenship, since Polish law does not provide for any limitations on the possibility of submitting subsequent applications on this matter. Where any future applications were met with subsequent refusals of the President of the Republic of Poland, the process of challenging his decision before the administrative court would be examined in the light of the new provisions, in particular Articles 1 and 3 of the Proceedings before the Administrative Courts Act 2002. Any potential allegations regarding the new legal system may justify the lodging of a constitutional complaint in the future.
6. The Tribunal's ruling on the merits of the present case would not only be inadmissible pursuant to Article 39(1) point 3 of the Constitutional Tribunal Act, read in conjunction with section 3 of the same Article, but also superfluous within the meaning of Article 39(1) point 1. Without creating any effective means for protecting constitutional rights and freedoms, and adjudicating on legal norms which are no longer binding, such a ruling would in fact be groundless and legally irrelevant for the complainant as well as for the administrative courts.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 34 [...] 2. A Polish citizen shall not lose Polish citizenship except by renunciation thereof.

Art. 45. 1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

Art. 77. [...] 2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.

Art. 137. The President of the Republic shall grant Polish citizenship and shall give consent for renunciation of Polish citizenship.

Art. 142. 1. The President of the Republic shall issue regulations and executive orders in accordance with the principles specified in Articles 92 and 93.

2. The President of the Republic shall issue decisions within the scope of discharge of his other authorities.

Art. 190. [...] 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.

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 superfluous 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.