

JUDGEMENT OF 17th APRIL 2007, SK 20/05
RESCISSION OF ACKNOWLEDGEMENT OF PATERNITY
(OBK ZU 2007, No. 4A, item 38)

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
<p>Exclusive right of a child, acknowledged before coming of age, to demand rescission of acknowledgement of paternity where the man who acknowledged paternity of the child is not their father.</p> <p>[Act of 25th February 1964 – Family and Guardianship Code: Article 81]</p>	<p style="text-align: right;">Right to court</p> <p style="text-align: center;">Prohibition on barring recourse to courts in order to assert one's claims</p> <p style="text-align: center;">Principle of the protection of the rights of the child</p> <p style="text-align: center;">Principle of proportionality</p> <p>[Constitution: Article 45 paragraph 1, Article 77 paragraph 2, Article 72 paragraph 1, as well as Article 31 paragraph 3]</p>

Within the Polish legal system, acknowledgment of paternity is not preceded by any determination of facts that could make it possible to verify a declaration filed by a man. The sole compliance with the biological truth does not constitute the element that, in an absolute manner, decides upon the validity of such an act of acknowledgement. Admittedly, the legislator indirectly assumes that the act of acknowledgement of paternity is performed by a person who is the biological father of a child, and not by a person who is not one. However, the declaration of acknowledgement of paternity is inadmissible only in instances where it is evident that a given child does not descend from the man who has acknowledged them.

Pursuant to the content of Article 81 of the Family and Guardianship Code, a child who had been acknowledged before coming of age may demand rescission of such acknowledgment if the man who acknowledged paternity of the child is not their father. Such demand may also be admitted once the child has attained majority, yet no later than three years following the date of the child's coming of age.

The subject of the constitutional review in the present case, initiated by way of a constitutional complaint, was a legislative omission consisting in the determination of a too narrow a circle of subjects entitled to demand rescission of acknowledgement of paternity.

In the opinion of the complainant, deprivation a biological father of the right to demand rescission of acknowledgement of paternity of his child performed (with the consent of a mother) by a man not related to the child does not conform to the Constitution. The complainant alleges that this regulation contradicts the principle of protection of the rights of the child (Article 72 paragraph 1 of the Constitution), given the impossibility to determine the child's civil status in accordance with the so-called biological truth, which in turn limits the rights of the biological father. Moreover, the complainant alleges an infringement of the right to court, since the scope of the notion "case", as used in Article 45 paragraph 1 of the Constitution, also encompasses cases for the determination of civil status rights, which vests the complainant with the constitutional right to initiate proceedings in this regard.

RULING

Article 81 of the Act of 25th February 1964 – Family and Guardianship Code – (Journal of Laws – Dz. U. No. 9, item. 59, as amended), insofar as it excludes the right of a man who is convinced of his biological paternity to demand rescission of another man’s acknowledgment of paternity, conforms to Article 45 paragraph 1 and Article 77 paragraph 2, as well as to Article 72 paragraph 1 sentence 1, read in conjunction with Article 31 paragraph 3 of the Constitution of the Republic of Poland.

Moreover, the Tribunal, pursuant to Article 39 paragraph 1 point 1 of The Constitutional Tribunal Act of 1st August 1997, decided to discontinue proceedings within the remaining scope, given the inadmissibility of pronouncing judgement.

PRINCIPAL REASONS FOR THE RULING

1. The obligation to protect the child’s best interests is the fundamental and supreme principle of the Polish family law. All provisions regulating relations between parents and children are subordinate thereto. This also concerns the manner of determination of a child’s parentage (filiation mechanisms).
2. The principle of the protection of the child’s best interests finds its fullest realisation in the possibility of bringing up the child in a family, particularly a biological one. However, biological bonds do not always constitute the basis for the shaping of family relations, since this is the interest of the child and providing them with adequate environment for their upbringing and development are of utmost importance. Accordingly, closeness, stability of family relations, child’s safety and decent (satisfactory) conditions for the child’s upbringing and development are amongst the protected values.
3. It is impermissible to declare provisions unconstitutional solely on the grounds that they allow for a situation where inconsistency exists between the official parentage of a child with their real parentage (material truth). The Constitution does not provide for the forms or mechanisms for the determination of a child’s parentage. This matter rests with the legislator. Furthermore, no rating of the mechanisms has been undertaken. International law, which is binding upon the Republic of Poland, as well as the interpretation thereof (including, in particular, The European Convention of Human Rights and the jurisprudence of the European Court of Human Rights), confirm that attempts to ensure consistency of the civil status with the so-called biological truth shall be limited by the child’s interest.
4. In its jurisprudence, the Constitutional Tribunal has confirmed the right of a biological father to determine his paternity before a court (Judgement of 28th April 2003, case number K 18/02, published in the Official Collection of the Constitutional Tribunal’s Decisions – OTK ZU of 2003, No. 4A, item 32). Based on the right, one may not, however, argue that the biological father also has the right to request rescission of acknowledgement of his natural child performed by another man. As a result of acknowledgement of paternity of a minor by a man who is not their biological father, a civil status of the child has been shaped. Taking into account the child’s interest their civil status should not be changed. In turn, vesting the alleged biological father with the right to demand rescission of another man’s acknowledgment of paternity would undermine the already-shaped civil status of the child as well as the family bonds arising therefrom, since the admittance of such a demand would not oblige anyone (not even the alleged father) to initiate proceedings to establish a new

civil status of the child (i.e. acknowledgment of paternity of the child by the alleged biological father).

5. The competence of the Constitutional Tribunal to review a normative act in force also encompasses the determination of whether the act in question does not lack regulations, the absence of which may give rise to the finding of unconstitutionality thereof. The assessment always encompasses the normative content of the provision, i.e. both the content that has been expressed and the content that has not been contained therein.

Provisions of the Constitution

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. 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. 72. The Republic of Poland shall ensure protection of the rights of the child. [...]

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.