

Procedural decision of 28th June 2006, [SK 25/06](#)
**THE *NE BIS IN IDEM* PRINCIPLE WITHIN PROCEEDINGS BEFORE
THE CONSTITUTIONAL TRIBUNAL**

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

In the constitutional complaint lodged in June 2005, Mr. Jerzy K. demanded that the Tribunal finds Article 15(5) of the Pensions from the Social Insurance Fund Act 1998, whose application adversely influenced his pension level, as non-conforming to the Constitution, in particular to Article 2 (the rule of law), Article 32(1) (the principle of equality) and Article 67(1) (the citizen's right to social security).

Doubts arose for the Constitutional Tribunal, sitting as a 5-judge panel, in the course of the consideration of this constitutional complaint on its merits, as to whether Mr. K.'s complaint is still admissible since on 24th October 2004 the Tribunal, sitting as a different (still a 5-judge) panel, pronounced judgment in the case numbered [P 13/04](#) (as a result of considering a [question of law referred by a court](#)), where it ruled that the provision challenged in the present case conformed to Articles 2 and 32(1) of the Constitution.

The procedural decision on discontinuation of the proceedings in the present case is one of the examples of the application by the Tribunal of the *ne bis in idem* principle, as derived from Article 39(1) point 1 of the Constitutional Tribunal Act 1997. The said provision demands the discontinuation of proceedings, whenever pronouncing a judicial decision would be "superfluous or inadmissible".

A view prevails within the Tribunal's jurisprudence according to which the *ne bis in idem* principle has its basis in the first part of the aforementioned alternative (the superfluity of pronouncing a judicial decision on the merits). A similar position was, for example, taken by the Tribunal in cases numbered [K 29/98](#), [SK 3/01](#) and [P 26/02](#); see, however, the procedural decision in case [U 5/02](#) summarised separately, where the Tribunal found the existence of the precondition for inadmissibility of pronouncing the judicial decision.

RULING

The Tribunal discontinued the proceedings, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act 1997, given that it would be superfluous to pronounce judgment.

PRINCIPAL REASONS FOR THE RULING

1. If in proceedings before the Constitutional Tribunal the subject of the challenge is identical to the subject of a challenge in another case, earlier finalised by the Tribunal

(i.e. the *materiae* aspect), however both cases are not identical as regards the initiator of proceedings (i.e. the *personae* aspect), there exists no basis for assuming the pronouncement of the judicial decision is impeded by the *res iudicata* principle. This, however, does not signify that considering the constitutionality of a specific legal provision previously from the point of view of the same allegations may be deemed as neutral from the legal perspective; in such events the *ne bis in idem* principle serves to ensure stabilisation of situations emerging as a result of an earlier final judicial decision.

2. Whilst in the event of the existence of the *res iudicata* prerequisite the Tribunal would, on the basis of Article 39(1) point 1 of the Constitutional Tribunal Act, be required to discontinue the proceedings due to inadmissibility of pronouncing judgment, in the case of the *ne bis in idem* prerequisite the relevant basis for discontinuation of proceedings is the superfluity of adjudication within the meaning of the provision of the Constitutional Tribunal Act referred to above.
3. The subject of the challenge in the present case is the same provision as in case numbered P 13/04, concluded by a judgment finding the conformity of the provision under review with the Constitution. Although in light of the ruling of the said judgment the bases of review were only Articles 2 and 32(1) of the Constitution, whereas in the present case the complainant also alleges non-conformity with Article 67(1) of the Constitution, in the reasoning for the former judgment the Tribunal also referred to the question of conformity of the challenged provision with Article 67 of the Constitution insofar as the right to social security is concerned and this with a positive result. This position remains valid in the present case as well.

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. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 67. 1. A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.
2. A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute.

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.