

Judgment of 20<sup>th</sup> January 2004, [SK 26/03](#)  
**LIMITING LIABILITY FOR HARM CAUSED BY A COURT JUDGMENT  
 ENFORCEMENT OFFICER**

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| <b>Type of proceedings:</b><br><b>Constitutional complaint</b><br><b>Initiator:</b><br>A joint stock company | <b>Composition of Tribunal:</b><br>5-judge panel | <b>Dissenting opinions:</b><br>0 |
|--|--|----------------------------------|

| Legal provisions under review   | Basis of review  |
|---|--|
| Liability of a court judgment enforcement officer and – jointly and severally – of the State Treasury for harm intentionally or negligently caused by him during enforcement proceedings, where the injured party could not have prevented the harm by relying on means envisaged in the Civil Procedure Code<br>[Civil Procedure Code 1964: Article 769] | Right to compensation for harm caused by a public authority organ<br>[Constitution: Article 77(1)] |

Article 769 of the Civil Procedure Code 1964, challenged in the case summarised herein, is located amongst other provisions regulating enforcement proceedings. It contains restrictive conditions regarding liability for harm caused by court judgment enforcement officers (hereinafter referred to as “enforcement officers”), whilst simultaneously providing for joint and several liability of the enforcement officer and the State Treasury. One of the conditions for such liability is that the enforcement officer acted intentionally or negligently, following which it was not possible for the injured party to have relied on procedural means envisaged in the Code to prevent the harm occurring.

A joint stock company lodged a constitutional complaint against such restrictive formulation of the requirements for liability. The factual background of this complaint was that the complainant lost a civil action for compensation, brought against an enforcement officer linked with a regional court, for harm occurring through the officer’s failure to properly execute enforcement proceedings concerning real estate. Although the District Court allowed in full the civil claim, the Appellate Court changed this judgment and dismissed the claim. The Appellate Court did not share the view of the first instance court that the claimant company undertook procedural actions aimed at preventing the harm. The Supreme Court dismissed the claimant’s cassation.

The constitutional complaint alleged that the challenged provision – in conditioning the liability of an enforcement officer and the State Treasury (jointly and severally) upon the harm having been intentionally or negligently caused by the enforcement officer, and impossibility for the claimant to rely on means envisaged in the Civil Procedure Code to prevent the harm occurring – narrowed the scope of liability for harm in a manner inconsistent with Article 77(1) of the Constitution.

This allegation was supported by the Commissioner for Citizens’ Rights, who announced his participation in the proceedings on the basis of Article 51(2) of the Constitutional Tribunal Act.

As a result of the Constitutional Tribunal's judgment, the challenged provision lost its binding force. From that moment onwards, the consequences of harm caused by enforcement officers are regulated on the basis of a civil liability regime contained in the Civil Code.

The Tribunal's judgment in this case constituted another decision on the basis of Article 77(1) of the 1997 Constitution which, *nota bene*, introduced a new concept into Polish constitutional law. For the other judgments concerning this Article, see the judgments in cases [SK 18/00](#) and [K 20/02](#) (summarised separately).

## RULING

### **The challenged provision does not conform to Article 77(1) of the Constitution**

#### PRINCIPAL REASONS FOR THE RULING

1. It stems from Article 77(1) of the Constitution that a right to compensation exists whenever harm is unlawfully caused by a public authority – there is no need to show the existence of fault on the part of a State functionary. Accordingly, citizens may not be burdened with the economic risk of faults and errors within the functioning of organs of public authority. This legal concept, introduced into the Polish legal system by the 1997 Constitution, expresses not only the principle of protecting ownership (*sensu largo*), but also the guarantee that organs of public authority will aim to eliminate unwelcome situations, in respect of which a duty to compensate harm exists, and thereby contributes to realisation of the constitutional principle that organs of public authority shall function on the basis of, and within the limits of, the law (Article 7 of the Constitution). Accordingly, Article 77(1) of the Constitution fulfils two functions: on the one hand, it is the source of a constitutional right of the injured party whilst, on the other hand, it constitutes one of the institutional guarantees for realising the constitutional principle expressed in Article 7.
2. Article 77(1) of the Constitution does not provide a sufficient and exhaustive legal basis for demanding full compensation for harm which is causally linked, albeit remotely, with any kind of impropriety in the conduct of an organ of public authority. The reviewed constitutional provision does not specify the nature or extent of the harm to be compensated, nor does it define the factors to be taken into account when deciding whether the criteria of unlawfulness has been met, nor does it regulate the procedure for realising the right to compensation. Such matters may, in principle, be regulated by ordinary statutes.
3. The concept of “public authority”, within the meaning of Article 77(1) of the Constitution, includes all authorities in the constitutional sense – legislative, executive and judicial. The terms “an organ of the State” and “an organ of public authority” are not identical. Institutions other than those of the State or local self-government are included within the concept of “organs of public authority” providing they execute public functions granted or delegated to them by an organ of the State or local self-government. The exercise of public authority includes all forms of activity of the State, local self-government and other public institutions undertaking a wide variety of activities. Accordingly, Article 77(1) of the Constitution applies to situations where harm

is caused by the conduct of an entity exercising authority functions that are typical for public authority, even though this entity may not itself be considered as a public authority (functional approach).

4. In the light of provisions of the Civil Procedure Code and the Court Judgment Enforcement Officers and Enforcement Proceedings Act 1997, such officers are enforcement organs, amounting to a special type of State organ; organisationally and functionally connected to the judicial power but not forming part of the judiciary. The fact that enforcement officers undertake their activities “on their own account” (cf. Article 3a of the 1997 Act) indicates the “privatisation” of financing enforcement officers’ activities and remuneration, whilst not altering the fact that, when undertaking enforcement proceedings, such officers are classified as State functionaries obliged to exercise public authority powers. Such an approach locates any harm caused by enforcement officers within the scope of Article 77(1) of the Constitution.
5. Article 769 § 1 of the Civil Procedure Code did not lose its binding force upon the entry into force of Article 23 of the 1997 Act (cf. above), which provides that enforcement officers shall be liable for harm caused whilst undertaking their activities (without any further limitations). Such an interpretation is supported by the principle *lex posterior generalis non derogat legi priori speciali*.
6. Article 769 § 2 of the Civil Procedure Code, which provides that the State Treasury shall be jointly and severally liable with an enforcement officer, has been applied by the courts so as to allow the State Treasury to limit its liability on the same grounds that are contained in Article 769 § 1, which expressly states that these limitations shall apply as regards an enforcement officer’s “individual” liability. This provision conditions an enforcement officer’s liability upon the existence of fault on their behalf and the inability of the injured party to rely upon procedural means envisaged in the Code to prevent the harm occurring. Article 769 § 2 of the Civil Procedure Code, understood in such a manner, does not conform to Article 77(1) of the Constitution.
7. Furthermore, it follows indirectly from Article 77(1) of the Constitution that the limitations contained in Article 769 § 1 of the Civil Procedure Code, concerning an enforcement officer’s individual liability, should also be evaluated negatively. Merely eliminating the aforementioned limitations as regards the State Treasury’s liability for an enforcement officer, without also eliminating the same requirements as regards the officer’s individual liability, would mean that the risk concerning harm caused without fault by an enforcement officer, or concerning harm that the injured party could have prevented, would be borne exclusively by the State Treasury. Concomitantly, whilst enforcement officers exercise public authority (cf. above, point 4), they may be distinguished from “classical” State functionaries by virtue of the fact that they undertake their activities within the framework of a private chambers run on their own account. Allocation of risk within the sphere of civil liability should be undertaken on rational principles, including the principle that “risk lies with the profit-maker”. This principle is especially important where – as in the present case – two entities are liable for the same harm: the first (an enforcement officer) is the direct perpetrator and the second (the State Treasury) is jointly and severally liable with the direct perpetrator in order to facilitate the injured party’s ability to receive compensation. Maintaining the limitations on an enforcement officer’s liability would mean in practice that the State Treasury, having redressed the harm caused by an enforcement officer, would not always be

able to recover payment from the enforcement officer. Accordingly, whilst eliminating the limitations on State liability would suffice from the perspective of the first function of Article 77(1) of the Constitution (an individual's right to compensation for harm suffered), the second function mentioned in that section – to provide an institutional guarantee of the legality of exercising public authority – would not be fulfilled. A legal rule stating that the State shall exclusively bear the risk of redressing harm caused, during the unlawful execution of enforcement proceedings, by an enforcement officer acting on his own account, would not conform to Article 77(1) of the Constitution.

#### **Provisions of the Constitution and the Constitutional Tribunal Act**

##### **Constitution**

**Art. 7.** The organs of public authority shall function on the basis of, and within the limits of, the law.

**Art. 77.** 1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.

##### **CT Act**

**Art. 51.** 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly.

2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings.