

Judgment of 7th July 2003, [SK 38/01](#)
COMMA IN THE CRIMINAL CODE

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
Rectification of a provision of the Criminal Code 1997 involving the addition of a comma in the part defining the ingredients of a criminal offence of causing a grievous detriment to health [Prime Minister's Announcement on the Rectification of Errors 1997: point 3, referring to Article 156 § 1 point 2 of the Criminal Code 1997]	Rule of law <i>Nullum crimen sine lege</i> principle Closed list of the sources of universally binding law Procedure after adopting a statute in the Parliament [Constitution: Articles 2, 42(1), 87(1) and 122(1)]

In accordance with the Polish Constitution, any bill adopted by the Sejm (i.e. the first chamber of the Polish Parliament) is signed by the President of the Republic of Poland, ordering its promulgation in the Journal of Laws. This Journal is published by the President of the Council of Ministers (Prime Minister). Legal provisions concerning the publication of so-called promulgation organs (i.e. the official publications, in which the normative acts are published, e.g. the Journal of Laws) state that, where the text of the promulgated statute differs from the original text, the Prime Minister shall rectify any such error by publishing an appropriate announcement in one of the subsequent volumes of the Journal of Laws.

An Announcement of this type was published in the Journal of Laws of 1997 No. 128. A number of provisions of the new Criminal Code, which was promulgated in the Journal of Laws of 1997 No. 88, were rectified. Point 3 of the Announcement referred to Article 156 § 1 point 2 of the Criminal Code. In accordance with the wording of the initially promulgated version of the Code, this provision established an aggravated type of criminal responsibility for causing any “grievous detriment to health” including, inter alia, the infliction of “grievous incurable diseases or long-lasting life-endangering illnesses”. The rectification in question involved the addition of a comma following the words “long-lasting”. This rectification was based on the content of the Code submitted to the President for signature by the Marshal of the Sejm. In accordance with the interpretation of this provision, as assumed by the courts, the addition of the aforementioned comma extended the range of cases in which the aggravated criminal responsibility would apply, since – in contrast with the originally promulgated version – it was of no significance whether or not a “life-endangering illness” was a long-lasting disease.

The applicant lodging the constitutional complaint in this case had been convicted by the criminal court on the basis of the aggravated offence created by this provision, following the aforementioned rectification. The applicant alleged that the rectified version of provision did not correspond to that which was adopted by the Sejm. In effect, the applicant argued that the fundamental principle of *nullum crimen sine*

lege had been infringed. This principle states that a person may be held criminally responsible only for acts which were unlawful at the time they were committed, on the basis of a statute which was adopted in accordance with the proper legislative procedures. The applicant's constitutional claim concerned an alleged infringement of Article 42(1) of the Constitution, read in conjunction with other constitutional provisions governing the adoption of statutes and the principle of the rule of law.

The constitutional complaint was supported by the Commissioner for Citizens' Rights, in accordance with procedures contained in Article 51(2) of the Constitutional Tribunal Act.

During its examination of the legislative history of the challenged provision, the Tribunal ascertained that the Sejm had voted on a version of the Criminal Code which did not contain the comma. The comma was added subsequently, in the text which the Marshal of the Sejm submitted to the President for signature.

RULING

Point 3 of the challenged Prime Minister's Announcement 1997, concerning the rectification of the contents of Article 156 § 1 point 2 of the Criminal Code 1997, does not conform to the first sentence of Article 42(1), read in conjunction with Article 2, Article 87(1) and Article 122(1), of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The constitutional provisions governing the Constitutional Tribunal's competence (Articles 188 and 79(1)) use the term "normative act" in its substantive meaning. Each statement of the supreme or central State organ, which introduces any normative novelty into the system of binding law, amounts to such a "normative act", regardless of the name and form of such a measure. As a result, an announcement which rectifies previous errors in promulgated legislation is a normative act within the meaning of the aforementioned provisions, insofar as it contains new normative content (i.e. not contained in the original version of the rectified act).
2. In accordance with Article 42 of the Constitutional Tribunal Act, the Tribunal examines not only the content of normative acts, but also the competence of the law-maker and the procedural requirements relating to its adoption. The legal adoption of an act involves, in particular, the proper promulgation thereof (cf. Article 88(1) of the Constitution).
3. An act will only take effect if, during its adoption, the appropriate legislative procedures, as dictated by the Constitution, were observed. The competencies of individual organs during the legislative procedure are clearly delineated. Strict compliance with legislative procedures guarantees the legality of adopted measures, which is strengthened by the fact that the provisions concerning this matter enjoy the constitutional status.
4. In accordance with Article 10(1) of the Constitution, legislative power shall be vested in the Sejm and the Senate (i.e. the second chamber of the Polish Parliament). It is un-

acceptable for amendments to be made to the contents of a statute which has been validly adopted by the Sejm where such amendments are not made in accordance with existing legal procedures or are introduced by unauthorized organs (persons), even where such amendments would accord with the legislator's intentions. In particular, it is unacceptable to enact such amendments by virtue of the procedure for rectifying errors in statutes promulgated in the Journal of Laws. Errors, in the sense of substantive or formal errors made by the legislator, may not be corrected in accordance with this procedure, since it is limited to the correction of contradictions between the content of a statute as adopted by the Parliament and the text which was subsequently promulgated.

5. The Constitutional Tribunal's review of the legislative history of the provision in question indicates that, at various stages during the adoption of the Criminal Code, the binding legislative procedure was infringed. First and foremost, the Marshal of the Sejm, in violation of Article 122(1) of the Constitution, submitted to the President for signature a version of the statute containing the challenged comma in Article 156 § 1 point 2, whereas this text was different to the one adopted by the Sejm on 6th June 1997, which contained no such comma. Following the President's signature, this text was passed on for promulgation, in accordance with the procedure laid down in Article 122(2) of the Constitution. In the publication promulgating the text (i.e. Journal of Laws 1997 No. 88) the comma in question was omitted. In effect, the text initially promulgated was convergent with that which was adopted by the Sejm. Subsequently (in the Journal of Laws No. 128) the President of the Council of Ministers, considering the omission of the comma to be a error, rectified it in accordance with the procedure laid down in Article 6(1) of then binding Act of 30th December 1950 on the publishing of the Journal of Laws of the Republic of Poland and the Official Gazette of the Republic of Poland "Monitor Polski". In fact this meant a substantive modification of the provision, with the result that the new contents differed from the original version adopted by the Sejm, which should be considered the binding version. It is irrelevant that such an amendment was made with "the knowledge and approval of authors of the bill", especially since the bill introduced to the Sejm, which took its final shape only after a legislative process that lasted many years, did not contain the comma in question. Any possible modifications could be implemented only if the legislator chose to amend the Criminal Code.
6. It amounts to an infringement of the principle of *nullum crimen sine lege*, as expressed in the first sentence of Article 42(1) of the Constitution, to apply the challenged penal provision whose contents differs from that adopted by the Sejm. This principle provides that criminal responsibility shall be limited only to those who have committed an act prohibited by a statute in force at the time of its commission. A provision whose wording was formulated in violation of the Constitution may not be deemed to constitute adequate legal grounds for the imposition of criminal responsibility – such a provision does not constitute part of a "statute" within the meaning of the cited constitutional norm.
7. The result of the failure to comply with the constitutional requirement of specifying statutorily the scope of criminal responsibility is that Article 2 of the Constitution is infringed, in particular the principle of protecting citizens' trust in the State and its laws which, assuming legal certainty and the predictability of public authorities' be-

haviour, guarantees legal security to the individual. An important aspect of this guarantee is that all provisions promulgated in the Journal of Laws have been issued in accordance with procedures laid down by the Constitution.

8. This judgment results in the modification of the contents of Article 156 § 1 point 2 of the Criminal Code and, in accordance with Article 190(4) of the Constitution and Article 540 § 2 of the Criminal Procedure Code, constitutes the basis for re-opening criminal proceedings where judgment in such proceedings was delivered on the basis of the unconstitutional contents of that provision.

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. 10. 1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

Art. 42. 1. Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.

Art. 79. 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

Art. 87. 1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

Art. 88. 1. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.

Art. 122. 1. After the completion of the procedure specified in Article 121, the Marshal of the Sejm shall submit an adopted bill to the President of the Republic for signature.

2. The President of the Republic shall sign a bill within 21 days of its submission and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).

Art. 188. The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79 (1).

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.

5. Judgments of the Constitutional Tribunal shall be made by a majority of votes.

CT Act

Art. 42. The Tribunal shall, while adjudicating on the conformity of the normative act or ratified international agreement to the Constitution, examine both the contents of the said act or agreement as well as the power and observance of the procedure required by provisions of the law to promulgate the act or to conclude and ratify the agreement.

Art. 51. 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings [on the basis of a constitutional complaint]. 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.