

Judgment of 18th May 2004, [SK 38/03](#)
**EXCLUSION OF INJURED PERSON FROM PROCEEDINGS
 TO QUASH A FIXED FINE**

Type of proceedings: Constitutional complaint Initiators: Natural persons	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Absence of injured person's competence to participate in judicial proceedings to quash a fixed fine [Petty Offences Procedure Code 2001: Article 101 § 2]	Rule of law Right to court Right of appeal against first instance decisions [Constitution: Articles 2, 45, 78]

The complainants were injured as a result of a road traffic accident whose perpetrator was punished by the police with a fixed fine. The fine was subsequently quashed by the court which found that the act punished by the fixed fine was not a petty offence. The injured persons appealed against this decision, but the court rejected the appeal, since the decision to quash a fixed fine becomes final immediately upon being pronounced.

In accordance with the law in existence at the time the aforementioned court decisions were pronounced, a valid fixed fine (i.e. where the perpetrator paid the fine or acknowledged receipt of a credit fixed fine) may be quashed by the court should it appear that the fine was imposed erroneously for an act other than a petty offence, as defined by substantive law provisions on petty offences. In light of the challenged Article 101 § 2 of the Petty Offences Procedure Code 2001 a fixed fine may be quashed by a court sitting in camera, i.e. without holding a public hearing. The injured person, therefore, has no procedural rights.

In the constitutional complaint it was alleged that the challenged provision makes it impossible for the injured person to participate in such proceedings and, in particular, to appeal against the court's decision. In the complainants' opinion, such a legal provision is inconsistent with the principle of the rule of law (Article 2), the right to court (Article 45) and the right of appeal against first instance decisions (Article 78 of the Constitution).

In the present case the Constitutional Tribunal, alongside examining the allegations on their merits, also considered the question concerning the legal consequences of [delaying the loss of binding force](#) of the challenged provision, in respect of the person initiating the review of norms by lodging a [constitutional complaint](#) (cf. part II of the ruling and point 12 below). The Tribunal also expressed its opinion on the significance of the ruling (as in this case) that the examined provision is defective, given the absence of certain necessary elements therein (cf. points 13 and 14 below).

RULING

I

1. Article 101 § 2 of the Petty Offences Procedure Code 2001, insofar as it deprives an injured person of the right to participate in proceedings to quash a fixed fine, does not conform to Article 45 of the Constitution.

2. The challenged provision conforms to Article 78 of the Constitution and **is not inconsistent** with Article 2 of the Constitution.

II

The Tribunal ruled that the loss of binding force of the challenged provision **shall be delayed** until 1st January 2005. Nevertheless, as regards the upholding of this constitutional complaint, this delay does not preclude realisation of the complainants' rights as envisaged in Article 190(4) of the Constitution, in the individual case representing the factual background to the present proceedings before the Tribunal.

PRINCIPAL REASONS FOR THE RULING

1. The constituent elements of the right to court (Article 45(1) of the Constitution) are as follows: the right of access to a court, i.e. the right to initiate proceedings before an independent and impartial court; the right to a fair and public judicial procedure; the right to a court judgment, i.e. to receive a binding ruling on the case before the court.
2. The scope of guarantees of the right to court, as contained in Article 45(1) of the Constitution, is not the same as that in Article 6 of the European Convention of Human Rights. The right to court in the Constitution relates to every type of case, whereas the ECHR right applies only to the category of cases specified therein.
3. The right to court implies the prohibition of limiting, within procedural provisions, the possibility of protecting personal rights. However, the right to court is not an absolute right which is incapable of being subject to limitations. Since it is possible that the right to court may conflict with other constitutional norms protecting values of an equal or greater significance for the State or the individual, such limitations may be justified in the light of Article 31(3) or of other provisions of the Constitution. Nevertheless, any limitations upon the right to court are permissible only to the extent necessary, should realisation of the defined constitutional value not be possible by alternative means (cf. Article 31(3) of the Constitution). The scope of permissible limitations of the aforementioned right is also defined in Article 77(2) of the Constitution. Whereas Article 45(1) states a positive formulation of the right to court, Article 77(2) contains a prohibition on barring recourse to the courts in pursuit of claims alleging infringement of freedoms and rights; thus the latter provision complements the discussed right.
4. The notion of "a case" whose examination may be demanded by the authorised entity is of crucial significance in defining the scope of the constitutional right to court. This term is not, however, defined in the Constitution. It has an autonomous constitutional character, i.e. it may not be interpreted with reference to any particular branch of law. The discussed notion should be interpreted in connection with the fundamental, and

sole, function of the courts (cf. Article 175(1) Constitution) – the administration of justice, the essence of which is ruling on legal litigations. The term “case” refers to litigation between natural and legal persons. It does not, however, comprise litigation which does not involve at least one private law subject, such as internal disputes within the State administration (concerning, inter alia, relationships of superiority and subordination).

5. The realisation of particular rights stemming from the general right to court may occur by way of criminal or civil proceedings; the choice depends on the character of the “case” and the will of the party initiating the proceedings. The different character of both aforementioned procedures is justified by the dissimilarity of interests protected within each of these procedures. The main function of civil proceedings is compensation; as regards criminal proceedings, emphasis is placed on sanctions, whereas compensation has secondary significance. By way of criminal proceedings, the injured person, together with financial compensation for incurred damages, also demands non-material satisfaction which may not be substituted by the protection guaranteed within civil proceedings. The existence of the aforementioned injured person’s interests is of legal significance. This fact is confirmed by the system of law by ensuring them a particular status within criminal and petty offence proceedings. The impossibility of realising the aforementioned interests of the injured person within particular proceedings is subject to appraisal in the light of Article 45 of the Constitution.
6. Adjudication as to liability for a petty offence, insofar as it refers to the act having infringed the injured person’s legally protected values, is an adjudication concerning their legal interests. Accordingly, such an adjudication falls within the scope of the notion of their “case”.
7. In cases concerning petty offences, the purpose of fixed fine proceedings is to ensure the rapidity and efficiency of decision-making, whereas as regards proceedings to quash a fixed fine, their objective is to consider whether or not such a quashing is justified. In both stages of the aforementioned proceedings, participation of the injured person is excluded. Whereas the legal interests of the injured person are fully protected in the case of imposing fixed fines, their interests may be adversely affected in the second type of proceedings, i.e. if the court rules that the fixed fine should be quashed. The essence of fixed fine proceedings (i.e. rapidity of proceedings) is “consumed” in the first stage – the offender, having accepted the fixed fine, admits his guilt and accepts the penalty, and accordingly the object of the proceedings is accomplished. In the second of the aforementioned stages, which has an extraordinary character, a comprehensive and diligent consideration of the grounds for quashing the fixed fine is of greater significance than the rapidity of proceedings. In this stage of proceedings, there are no reasons to deprive the injured person from the right to participate in the proceedings.
8. In the Petty Offences Procedure Code 2001 there is no provision which would directly provide for the limitation of an injured person’s rights in fixed fine proceedings, including proceedings to quash a fixed fine. The aforementioned restrictions may only be inferred from the entirety of the regulations governing this type of proceedings. The alleged deprivation of the complainants’ right to appeal against a decision quashing a fixed fine is not directly related to the contents of the second sentence of Article 101 § 2 of the Petty Offences Procedure Code 2001 (stating that applications to quash

a fixed fine shall be considered by the court sitting in camera). The impermissibility of appealing against decisions on quashing a fine stems only from the entirety of provisions governing the discussed proceedings.

9. Article 78 of the Constitution guarantees that any decision may be reviewed upon appeal and does not refer to the principle of the “double degree of jurisdiction” (i.e. two-instance proceedings), since the latter principle is expressed in Article 176(1) of the Constitution. The aforementioned provision, however, concerns only those cases statutorily placed within the courts’ exclusive jurisdiction, i.e. examined by the courts “from the outset until conclusion”. Where judicial review does not occur until a certain stage of proceedings already underway (in this case, at the stage of proceedings to quash a fixed fine), it may not be assumed that such cases are examined by courts from the outset until conclusion and, accordingly, the principle of double degree of jurisdiction need not be respected. The objective of the discussed principle is to prevent errors and arbitrariness at first instance. Accordingly, since the imposition of a fixed fine is a ruling of a procedural character, an application to quash the fine should be considered as an appeal against this ruling, ensuring proper – judicial – review of the pronounced decision. Furthermore, even though there is no ordinary appellate measure against a decision imposing a fixed fine, there exists the possibility to challenge such a ruling in the event of a manifest breach of the law (i.e. cassation or re-opening of proceedings). For the aforementioned reasons, it is unjustified to allege an infringement of Article 78 of the Constitution.
10. Article 2 of the Constitution may constitute an independent ground of constitutional complaint, provided a complainant precisely indicates which of their constitutional rights, protected on the basis of this provision, have been infringed. Pursuant to Article 47(1) of the Constitutional Tribunal Act 1997, a constitutional complaint should not only contain an indication of the constitutional right or freedom whose infringement is alleged by the complainant, but also the factual and legal reasoning underpinning this allegation. Hence, a constitutional complaint may not be based on generally-formulated and imprecise allegations that Article 2 of the Constitution has been infringed, in the absence of any reference to constitutional rules and values inferred therefrom by the jurisprudence.
11. The constitutional right to court (Article 45 of the Constitution) is a value with an autonomous character and constitutes an independent ground of protection. Therefore, it is unnecessary to make additional reference to Article 2 of the Constitution in order to ensure sufficient protection of this right.
12. **Delaying the loss of binding force** of the provision challenged in the constitutional complaint means that the state of law remains unchanged until such future date. The Tribunal’s ruling defines the legal effects for the future and may not constitute a ground for challenging final judicial decisions issued to that date. This does not, however, apply to the legal situation of persons who, in lodging the **constitutional complaint**, initiated the constitutional review. The essential feature of the constitutional complaint, as the means of specific (concrete) review, is that upholding the complaint should result in an alteration of the final decision which led to the infringement of the complainant’s constitutional rights and freedoms (Article 79 of the Constitution). A ruling of the Constitutional Tribunal in favour of the complainant must be followed by further proceedings which should lead to quashing the final decision issued in their

individual case. Such a conclusion should be drawn from Article 79(1), read in conjunction with Article 190(4), of the Constitution. It would be inconsistent with the essence of the specific review to rule that the consequences of the Tribunal's judgment – with reference to the particular constitutional complaint (i.e. the complaint constituting the catalyst for the institution of the review of norms) – should only have effects for the future. Consequently, due to the re-opening of proceedings, the complainants should be allowed the possibility to participate in proceedings to quash a fixed fine, since – in the present case – this is the only manner in which protection of the complainants' right to court may be guaranteed.

13. The enforcement of point I.1 of the Tribunal's present ruling requires legislative intervention, with the aim of ensuring that Article 101 § 2 of the Petty Offences Procedure Code 2001 conforms to the Constitution, by enabling an injured person to participate in proceedings to quash a fixed fine. An explicit definition of an injured person's procedural rights will eliminate interpretational uncertainties and ensure a uniform level of protection of their interests.
14. The Tribunal's judgment is enforceable even in the event of the legislator's failure to act. Should the legislator fail to undertake the required action within the specified time limit, the normative situation, insofar as defined in point I.1 of the present ruling, will change. Consequently, as of 1st January 2005 – irrespective of whether or not appropriate amendments to the Petty Offences Procedure Code 2001 have been adopted – it shall be obligatory to allow an injured person's participation in the aforementioned proceedings.

Provisions of the Constitution, the Constitutional Tribunal Act and the (European) Convention for Protection of Human Rights and Fundamental Freedoms

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. 8. [...] 2. The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise.

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.

2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

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. 78. Each party shall have the right to appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute.

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.

2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.

Art. 175. 1. The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.

Art. 176. 1. Court proceedings shall have at least two instances.

2. The organizational structure and jurisdiction as well as procedure of the courts shall be specified by statute.

Art. 178. 1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

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. 47. 1. The complaint shall, apart from the requirements referring to the procedural letters, include the following:

- 1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,
- 2) indication as to which constitutional freedoms and rights and in what manner have, according to the person making the complaint, been infringed,
- 3) grounds of the complaint including precise description of the facts of the case.

European Convention

Art. 6. 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.