

Judgment of 25<sup>th</sup> May 2004, [SK 44/03](#)  
**EXTENSION OF THE LIMITATION PERIODS FOLLOWING  
 THE COMMISSION OF AN OFFENCE**

<b>Type of proceedings:</b> <a href="#">Constitutional complaint</a> <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Application of limitation periods stipulated in the new Criminal Code to acts committed prior to its entry into force [Introductory Provisions to the Criminal Code 1997: Article 15]	Principle of non-retroactivity of law Prohibition on retrospective introduction or aggravation of criminal liability [Constitution: Article 2 and Article 42(1)]

Two types of limitation period exist in Polish criminal law: limitations on the possibility of prosecution (Articles 101 and 102 of the Criminal Code 1997) and limitations on the execution of an imposed penalty (Article 103 of the Criminal Code). The present case concerns the first type of limitation period, consisting in the following: where a certain time period has lapsed since the commission of an offence, it is prohibited to rule on a person's culpability for that offence, or to impose a penalty in respect thereof.

The new Criminal Code envisages limitation periods which are partially different from those envisaged by the previous Code of 1969. In respect of certain offences, these limitation periods were shortened whilst, in respect of other offences, these periods were extended.

Article 15 of the Introductory Provisions to the Criminal Code 1997, challenged in the present case, states that provisions of the 1997 Code shall apply to acts committed prior to its entry into force, provided that the appropriate limitation period has not already elapsed. This signifies, in particular, the extension of limitation periods for certain acts.

The constitutional complaint was lodged by an Australian citizen, whom the Polish courts had decided to extradite to Australia. The complainant was prosecuted in his home country, having been charged with the commission of economic offences. The permissibility of an extradition order depends, inter alia, upon whether the relevant act is punishable under Polish law and, also, upon whether or not the appropriate limitation period has already elapsed. During the extradition proceedings, an issue was raised concerning the extension, by virtue of the provision challenged in the present case, of limitation periods for prosecution in respect of the acts with which the complainant has been charged.

In the constitutional complaint, it was alleged that the extension of limitation periods for prosecution in respect of offences committed prior to the Code's entry into force infringed the prohibition on retrospective introduction or aggravation of criminal liability, as stemming from Article 42(1) of the Constitution (cf. point 1 of the principal reasons for the ruling below), as well as the general principle of non-retroactivity of law, as derived from Article 2 of the Constitution.

Furthermore, on the basis of Article 50(1) of the Constitutional Tribunal Act, the complainant's representatives demanded the suspension, or stay of execution, of the judicial decisions concerning extradition taken in the complainant's case.

## RULING

### **The challenged provision conforms to Articles 2 and 42(1) of the Constitution.**

*Furthermore, the Tribunal discontinued proceedings with respect to the motion to issue an interim measure, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act – given the superfluity of any such adjudication.*

## PRINCIPAL REASONS FOR THE RULING

1. As regards criminal law, a concrete representation of the principle of non-retroactivity of law (*lex retro non agit*), as stemming from the rule of law clause (Article 2 of the Constitution), is constituted by the principles *nullum crimen sine lege* and *lex severior poenali retro non agit*, which may be derived from Article 42(1) of the Constitution.
2. None of the Constitution's provisions directly express the principle that prosecution for an offence, or execution of a penalty imposed for commission thereof, shall be subject to a period of limitation. Neither may such a principle be derived from Article 2, Article 42(1), nor Articles 43 and 44, of the Constitution. Therefore, there exists no constitutional "right to limitation", nor even the expectation of such a right.
3. Liability for commission of an offence and the expiry of limitation periods for prosecution are not equivalent values. In criminal law, the institution of limitation periods is treated as an instrument of variable criminal policy. The citizen has the right to expect that they will only be subject to criminal liability within the limits specified in Article 42(1) of the Constitution. Having committed an offence, however, they may not expect to benefit from the expiration of limitation periods for prosecution. No constitutional reasons justify a different interpretation of the expiry of limitation periods; on the contrary, such an interpretation would lead to an infringement of the sense of justice.
4. For the aforementioned reasons, it should be recognised that the reviewed extension of limitation periods, whilst capable of review from the perspective of the rule of law principle, remains unconnected with the infringement of acquired rights or protection of trust in the State and its laws, insofar as concerns the possibility to prosecute for commission of a prohibited act and, therefore, conforms to Articles 2 and 42(1) of the Constitution.
5. Within the meaning of Article 44 of the Constitution, the limitation period may be suspended only prior to the expiry of the aforementioned period.

### 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. 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 liable. 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. 43.** There shall be no statute of limitation regarding war crimes and crimes against humanity.

**Art. 44.** The statute of limitation regarding actions connected with offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed.

#### **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.

**Art. 50.** 1. The Tribunal may issue a preliminary decision to suspend or stop the enforcement of the judgment in the case to which the complaint refers if the enforcement of the said judgment, decision or another ruling might result in irreversible consequences linked with great detriment to the person making the complaint or where a vital public interest or another vital interest of the person making the complaint speaks in favour thereof.

2. The preliminary decision shall be forthwith delivered to the person making the complaint and to the appropriate court organ or enforcement organ.

3. The Tribunal shall reverse the preliminary decision if the reasons for which it was given are no longer in effect.