

Judgment of 25<sup>th</sup> April 2005, [SK 51/03](#)  
**GRATUITOUS TEACHING ACTIVITIES  
 OF DOCTORAL STUDENTS**

<b>Type of proceedings:</b> <b>Constitutional complaint</b> <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
Obligation for doctoral students to conduct teaching activities  [Minister of Education's Regulation Concerning Doctoral Studies and Academic Scholarships 1991 (repealed in 2003): § 5(1)]	Legal reservation (exclusivity of statutes) in imposing the obligation to work  Duty to statutorily regulate employees' rights to days free from work and paid holidays  [Constitution: Articles 65(2) and 66(2)]

The constitutional complaint lodged by Dorota D. concerned the absence of remuneration for the obligatory teaching of students, as part of her doctoral studies. As a doctoral student, the complainant individually conducted 120 hours of such teaching activities annually. During this time, she received a doctoral studies scholarship but was not remunerated for conducting the teaching activities.

The aforementioned obligation stemmed from a provision of the 1991 Minister of Education's Regulation, challenged in the present case and issued on the basis of an authorisation contained in Article 36(2) of the Academic Title and Degrees Act 1990. The provision of the 1991 Regulation permitted Faculty Councils to determine the programme and regulations of doctoral studies, specifying the number of obligatory study hours, the number of obligatory exams and courses to be passed and also the "obligatory amount of teaching activities in which doctoral students shall participate and which such students shall conduct individually".

Following Dorota D.'s successful conclusion of her doctoral studies, a trade union initiated a legal action on her behalf against the higher education institution, seeking a declaratory judgment that an employment relation existed between the parties and claiming remuneration for the work performed. The action was dismissed and the labour courts ruled that the obligation to conduct teaching activities stemmed from the aforementioned 1990 Act and 1991 Regulation, which gave no right to remuneration.

In the constitutional complaint challenging the aforementioned provisions of the 1990 Act and 1991 Regulation, it was alleged that the legislator, having deliberately excluded persons performing, in essence, work as doctoral students from the sphere of employment relations, deprived them of the protection envisaged in Article 24 of the Constitution and, additionally, infringed Articles 65(2) (legal reservation in imposing the obligation to work) and 66(2) (duty to statutorily regulate employees' rights mentioned in this provision) of the Constitution. The complainant stressed that there is no essential difference between when teaching activities are conducted individually by doctoral students and when they are conducted by a teaching assistant linked to the higher education institution by an employment relation. The complainant

also alleged that an infringement of the Constitution occurred by virtue of the legislator having conferred upon an organ of the higher education institution the competence to determine the scope of doctoral students' work obligations, leaving that organ with unlimited discretion and leading to arbitrariness.

## RULING

**The challenged provision is not inconsistent with Articles 65(2) and 66(2) of the Constitution.**

*The Tribunal discontinued proceedings in the remaining scope (concerning the statutory authorisation to issue the Regulation), pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act, given that it would be inadmissible to pronounce judgment on this issue.*

## PRINCIPAL REASONS FOR THE RULING

1. Articles 65(2) and 66(2) of the Constitution are inapplicable to the obligation to conduct teaching activities by persons who, in consequence of their own free will and initiative, pursue doctoral studies organised by higher education institutions in conformity with statute. The aim of such studies is for doctoral students to obtain an academic degree and to prepare them to conduct individual research and teaching activities. The reviewed provision of the 1991 Minister of Education's Regulation serves to realise this objective, envisaging the individual pursuit of teaching activities as one of the elements of education, remaining connected to the statutory tasks of higher education institutions.
2. Given such nature of doctoral studies, the legal relation connecting a higher education institution and a doctoral student has particular features and is not identical to an employment relation. It is an administrative-legal relation regulated by provisions concerning higher education institutions and academic degrees and not by provisions of the Labour Code. The activities pursued by a doctoral student as part of their programme of studies do not constitute work for the purpose of applying the constitutional guarantees referred to by the complainant and labour law provisions concerning remuneration for work, even where these activities do not differ from those performed, by other persons, within a labour relations and in exchange for remuneration. The same is true of work experience for students.
3. Although the challenged provisions lost their binding force on 1<sup>st</sup> May 2003, they influence the complainant's legal situation, which signifies that reasons exist to apply Article 39(3) of the Constitutional Tribunal Act.
4. The challenged Article 36(2) of the Academic Title and Degrees Act 1990 constitutes the statutory authorisation for the Minister of Education to regulate a certain range of issues concerning doctoral studies. This provision is, by nature, a competence norm and its normative content is limited to indicating the entity obliged to issue an executive act and specifying the *ratione materiae* of the regulation. Accordingly, it is beyond doubt that such a provision could not constitute the basis for a final decision regarding the complainant's rights and freedoms; therefore, the basic prerequisite for a constitutional complaint, mentioned in Article 79(1) of the Constitution, has not been

fulfilled. This conclusion remains valid despite reference to the challenged provision in the reasoning of court judgments issued in the complainant's case. Accordingly, the proceedings shall be discontinued insofar as this statutory provision constitutes the subject of the challenge (Article 39(1) point 1 of the Constitutional Tribunal Act).

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

##### **Constitution**

**Art. 24.** Work shall be protected by the Republic of Poland. The State shall exercise supervision over the conditions of work.

**Art. 65.** [...] 2. An obligation to work may be imposed only by statute.

**Art. 66.** [...] 2. An employee shall have the right to statutorily specified days free from work as well as annual paid holidays; the maximum permissible hours of work 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.

##### **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.

2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.

3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment is necessary for protecting constitutional freedom and rights.