

Judgment of 5th October 2004, [U 2/04](#)
COMPULSORY INSURANCE OF ALPINISTS

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Obligation for persons organising or practising alpine disciplines to obtain accident insurance [The Council of Ministers' Regulation 2001 concerning the practising of alpinism: § 19(2)]	Conditions for authorising the issuing of a regulation [Constitution: Article 92(1)] Authorisation of the Council of Ministers to issue a regulation governing some aspects of practising certain sports disciplines, including alpinism [Physical Culture Act 1996: Article 53(2)] Possibility to impose an insurance obligation by statute or ratified international agreement [Compulsory Insurance, the Insurance Guarantee Fund and the Transport Insurers' Polish Office Act 2003: Article 4 point 4]

The Physical Culture Act 1996 contains special provisions governing the practise of alpinism, motor-sports, kick-boxing, as well as shooting and self-defence sports. In relation to the aforementioned disciplines, the legislator requires the possession of “appropriate qualifications” and the observance of “special safety principles” (Article 53(1)). Pursuant to Article 53(2) of the 1996 Act, the Council of Ministers should, by way of a regulation, define certain issues concerning detailed requirements, entitlements and safety principles related to the practise of the aforementioned sports disciplines (excluding aviation sports). On the basis of the aforementioned statutory authorisation, the Council of Ministers issued a Regulation of 27th November 2001 concerning the practising of alpinism.

In the present case, the Commissioner for Citizens' Rights challenged one provision of that Regulation before the Constitutional Tribunal – § 19(2), which imposes an obligation on persons organising or practising alpinism to obtain accident insurance. The applicant alleged that this obligation was introduced without statutory authorisation, since Article 53(2) of the Physical Culture Act, referred to in the Regulation, does not contain any authorisation to introduce such an obligation. Accordingly, to this degree, the Regulation was issued in violation of the requirements defined in Article 92(1) of the Constitution. In the Commissioner's opinion, the challenged provision also failed to conform to Article 4 point 4 of the Compulsory Insurance, the Insurance Guarantee Fund and the Transport Insurers' Polish Office Act 2003, which stipulates that compulsory insurance may only be introduced by statute or as a result of provisions contained in ratified international agreements.

The Commissioner's application also alleged an infringement of Article 87(1) of the Constitution (the catalogue of sources of universally binding law of the Republic of Poland). During the hearing the Commissioner's representative, however, withdrew the application insofar as it related to this allegation.

RULING

1. The challenged provision does not conform to Article 53(2) of the Physical Culture Act 1996 and Article 92(1) of the Constitution.

2. This provision also fails to conform to Article 4 point 4 of the Compulsory Insurance, the Insurance Guarantee Fund and the Transport Insurers' Polish Office 2003 Act.

The Tribunal discontinued the proceedings in the scope of examining the conformity of the challenged provision with Article 87(1) of the Constitution, given the withdrawal of the application – pursuant to Article 39(1) point 2, read in conjunction with Article 39(2), of the Constitutional Tribunal Act 1997.

PRINCIPAL REASONS FOR THE RULING

1. Pursuant to Article 92(1) of the Constitution, a regulation is an executive act issued on the basis of a statute and for the purpose of implementation thereof. In order to be found to conform to the Constitution, a regulation must be enacted on the basis of detailed statutory authorisation. It is not permissible to presume that matters other than those listed in the authorising provision fall within the scope of the authorisation. Such a provision may not be subject to an expansive or teleological interpretation. Furthermore, the regulation may not be inconsistent with constitutional norms or statutory acts which indirectly or directly relate to the subject-matter of the regulation.
2. The Council of Ministers, by imposing – in § 19(2) of the Regulation concerning the practising of alpinism – the obligation to obtain accident insurance, exceeded the framework of statutory authorisation contained in Article 53(2) of the Physical Culture Act 1996.
3. Article 4 point 4 of the 2003 Act (indicated in point 2 of the ruling) unambiguously states that the categories of compulsory insurance are limited to those listed in points 1-3 of that Article, together with other categories of insurance defined in separate statutory provisions or international agreements ratified by Poland. Consequently, in the reviewed provision of the Regulation, the Council of Ministers regulated matters reserved for statute, which also leads to the conclusion that this provision fails to conform to Article 4 point 4 of the 2003 Act.

Provisions of the Constitution and the Constitutional Tribunal Act

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. 92. 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

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.