

Procedural decision of 26th October 2004, [U 5/02](#)
**“LEGAL PROVISION” AS THE SUBJECT OF CONSTITUTIONAL
TRIBUNAL REVIEW. *NE BIS IN IDEM* PRINCIPLE WITHIN
PROCEEDINGS BEFORE THE TRIBUNAL**

Type of proceedings: Abstract review Initiator: District Council of Świebodzin	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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The District Council of Świebodzin challenged part of an appendix to the Regulation of the Minister of Transport and Marine Economy, of 14th December 1998, which had as its objective the adaptation of regional public roads management, and local units subordinated thereto, to changes resulting from local administrative reforms introduced on 1st January 1999 (including a reduction in the number of regions and concomitant expansion of their territories and introduction of self-government districts). The challenged part of the appendix to the 1998 Regulation indicated which public roads were to fall within the competence of the newly appointed Road Management in Świebodzin.

The applicant alleged that this part of the appendix failed to conform to the constitutional norm governing the issuance of regulations (Article 92(1) of the Constitution) and to the provision of the Act introducing the reform, pursuant to which local self-government units obtained, by virtue of law, certain components of property hitherto owned by the State Treasury (Article 60 of the Introductory Provisions to Acts on Public Administration Reform Act 1998). In the applicant’s opinion, the challenged part of the 1998 Regulation prejudged – in a manner disadvantageous to the newly appointed District of Świebodzin as a local self-government unit – the form of holding property which, prior to 1st January 1999, was owned by the State Treasury and, as of that date, became – by virtue of the aforementioned Act – property of that district.

RULING

The Tribunal discontinued proceedings, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act, given that it would be inadmissible to pronounce judgment.

PRINCIPAL REASONS FOR THE RULING

1. Pursuant to Article 188(3) of the Constitution, the scope of the Constitutional Tribunal’s competence consists in reviewing “legal provisions issued by central State organs” as regards their conformity with the Constitution, statutes or ratified international agreements. The notion “legal provisions” covers normative acts having the form of the Constitution, statutes, ratified international agreements and regulations (cf. Article 87(1), Article 88(2), Article 190(2) and (3) and Article 191(2)). A condition for classifying part of a statute or regulation as a legal provision is that such a part has

normative contents, meaning that it is possible to derive a legal norm therefrom which is both general (i.e. addressed to a certain class of addressees by reason of their possession of a common characteristic) and abstract (i.e. establishing a certain standard of behaviour) in character.

2. The challenged part of the appendix to the Regulation of the Minister of Transport and Marine Economy does not contain any normative contents but, rather, constitutes a regulation of an individual-concrete character; it concerns the organisation of a particular administrative structure and is “consumed” by a single application. Accordingly, the challenged part is not a legal provision within the meaning of Article 188(3) and, above all, within the meaning of Article 191(2) of the Constitution, which has direct application in this case. Accordingly, it would be inadmissible for the Constitutional Tribunal to pronounce judgment on the merits of this case, within the meaning of Article 39(1) point 1 of the CT Act.
3. A further reason for the inadmissibility of pronouncing judgment is related to the fact that the challenged Regulation has already been, as a whole, the subject of review by the Constitutional Tribunal. In its judgment of 5th June 2001 (reference number [K 18/00](#)), the Tribunal ruled that this Regulation conforms to the statutory authorisation on which basis it was issued. Within the reasoning of that judgment, the Tribunal stated that the examined Regulation does not modify statutory norms governing the acquisition of property by districts and does not constitute the legal basis for conducting any division of real estate; the appendix to the Regulation merely creates new organisational units of government administration, bearing in mind an easier transfer, in the nearest future, of components of State Treasury property to local self-government units. The challenged Regulation was then also challenged from the perspective of Article 60(1) of the Introductory Provisions to Acts on Public Administration Reform Act 1998, as regards which the Constitutional Tribunal concluded that the Regulation was not inconsistent with that basis of review. Inasmuch as the entire Regulation (i.e. including the aforementioned appendix) was not then considered to be unconstitutional, an identical conclusion is even more justified in this case where reference is made only to part of the same appendix. Accordingly, a situation arises whereby the *ne bis in idem* principle applies, leading to the conclusion that it is inadmissible to pronounce judgment, within the meaning of Article 39(1) point 1 of the Constitution.

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. 88. [...] 2. The principles of and procedures for promulgation of normative acts shall be specified by statute.

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.

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

[...]

3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;

[...]

Art. 190. [...] 2. Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be required to be

immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.

3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

Art. 191. 1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,
- 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
- 3) the constitutive organs of units of local self-government;
- 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
- 5) churches and religious organizations;
- 6) the subjects referred to in Article 79 to the extent specified therein.

2. The subjects referred to in para. 1 subparas. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

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 useless 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.