

Decision

dated 10 January 1995 (K. 12/93)

The Constitutional Tribunal sitting with the bench composed of the Chairman Andrzej Zoll, and Judges: Tomasz Dybowski, Wojciech Łączkowski (Reporting Judge), Ferdynand Rymarz, Janina Zakrzewska.

(...)

held

article 36, section 1, sub-sections 1 and 2 and article 37, section 1, sub-section 1 of the 1993 Budgetary Act dated 12 February 1993 (Journal of Laws, Number 14, Item 64 as amended) contravene articles 1 and 3, section 2 of the constitutional provisions upheld by article 77 of the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and Local Self government (Journal of Laws, Number 84, Item 426) because they violate the constitutional procedure of adopting budget law (article 21, section 1 of the Constitutional Act) by including them in a draft law and in the final act, and because they are in breach of maintaining confidence in the law which is the foundation of an insurance relationship.

(...)

Reasoning

III

(...)

The case at hand is essentially different from similar, earlier cases. In particular, the provisions questioned by the Commissioner for Citizens' Rights amending the revaluation method for retirement and disability pensions were placed in the budget (passed as a law) for 1993 despite the fact that at that time the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 426) hereinafter referred to as the Small Constitution was already in force.

Having recognized this circumstance to be of great importance the Constitutional Tribunal commenced its considerations by examining whether the fact of placing the provisions amending retirement and disability pensions statutes by the Budgetary Act for 1993 was consistent with the Small Constitution. Only then the examination of other objections raised in a petition by the Commissioner for Citizens' Rights could be attended to.

The problem of „loading” the budget with non-budget provisions has been disputed in the theory of law for a long time. It also found its manifestation in cases before the Constitutional Tribunal. The Tribunal gave it much attention particularly in case P. 1/94. Although the Constitutional Tribunal is not bound by its own earlier decisions, its judgment in the case above, given in a plenary session, was taken into account in the present case.

The Tribunal, examining the above case (P. 1/94), analyzed in great detail the provision of the Constitution of the Republic of Poland binding before the Small Constitution took effect. It has acquainted itself with theoretical views, called an expert, examined judicial decisions and legal solutions adopted in other countries.

As a result of this analysis, and despite certain doubts and reservations, the Constitutional Tribunal decided that over the period when the Constitution of the Republic of

Poland was binding the legislative practice of loading the budget could not be found unconstitutional.

The Constitutional Tribunal has stated specifically that under articles 24 and 27 of the Constitution of the Republic of Poland there were no grounds to single out the subject matter of a budget. This, in turn, led to the lack of a possibility to evaluate the constitutionality of then existing practices of putting non-budget provisions into a budget law. These practices could not be deemed to be unconstitutional by attempts to prove their nonconformity with the law on adopting the budget as the Constitution of the Republic of Poland does not say that the budget has to conform with the Budgetary Act. As all statutes in the Polish legal system have the same legal rank, there are no grounds to attribute a special position to any class of statutes.

This situation radically changed after the Small Constitution came into force. The Constitutional Tribunal unequivocally stated on the grounds of decision P. I /94 that the analysis of articles 20-22 of the Small Constitution provides the grounds for drawing different conclusions from the ones derived above from articles 24 and 27 of the Constitution of the Republic of Poland. When examining P. 1/94 the Tribunal reiterated and drew attention to the unconstitutionality of the possible practices of „loading” a budget should they take place under the regime of the Small Constitution. Therefore the Constitutional Tribunal even expressed its conviction that the lawmaker in its legislative activity shall take into account the provisions of the Small Constitution within the scope of examination and shall respect the scope of budget pursuant to articles 20 – 22 of the Small Constitution.

Article 20 of the Small Constitution has clearly determined the subject matter scope of budget law providing, among others, that „state revenues and expenditures for a calendar year shall be determined by budget law.”

Moreover, article 21, section 2 and article 4 of the Small Constitution refer to the Budgetary Act twice: the draft budget (section 1) and the draft budget law (section 4) submitted by the Council of Ministers to the parliament. In this way the provisions of the Small Constitution give the Budgetary Act particular rank as a point of reference for the draft budget. Consequently, the draft must conform to the Budgetary Act.

In connection with the above it has to be said that if the Council of Ministers submitted to the parliament a draft budget inconsistent with the Budgetary Act, and the parliament passed it based on such a defective draft – it would constitute a breach of the constitutional procedure of entry into force by a budget law.

Taking the above into account the Constitutional Tribunal considered the problem of the conformity of the provisions questioned by the Commissioner for Citizens' Rights with the Small Constitution.

The issue of whether the 1993 draft budget law, as submitted to the parliament by the Council of Ministers, within the scope of the petition filed by the Commissioner for Citizens' Rights satisfied the constitutional requirement of conformity with the Budgetary Act is the most noteworthy.

The Act dated 5 January 1991- the Budgetary Act, in article 2, section 2 provides that „The state budget is adopted by the parliament for a period of a calendar year in the form of a statute hereinafter called the Budgetary Act.” Therefore this provision identifies the notion of a budget with the notion of budget law. It allows one to understand better the content of article 21, section 1 of the Small Constitution where the notions of draft budget law and draft budget are used interchangeably. It follows from the context of this provision that these notions appear interchangeably in the Small Constitution.

Taking the above into account, it was first necessary to determine whether any of the provisions challenged by the Commissioner for Citizens' Rights appeared in the 1993 draft budget law, and second, whether their place in the draft conforms to the Budgetary Act.

The answer to the first question is positive. The Council of Ministers has placed the provisions in question in the draft law for 1993 submitted to the parliament.

It took the form of a Council of Ministers' amendment to the 1993 Budgetary Act adopted at the 3 February 1993 session and submitted to the parliament on 4 February 1993 (Sejm Form Number 598-D). In this amendment the wording of article 36, section 1, sub-section 1 and the wording of article 37, section 1 were identical to the provisions in the 1993 Budgetary Act. This amendment also contains an important provision in article 26, section 1, sub-section 2. But it did not include the final phrase: "...which constitutes a base amount for calculating benefits." Adding this phrase during further legislative works did not change the essence of the norm in this provision.

The answer to the second question calls for analysis of the scope of a budget as determined by the Budgetary Act. Article 34 of the Budgetary Act determines exhaustively, and not by example, the subject matter of a budget. Nothing in this provision or in the Budgetary Act justifies the amendment of other statutes in a budget. This follows from the budget's legal nature which, though adopted in the form of a statute called the Budgetary Act (article 2, section 2), is essentially only a annual financial plan encompassing the State's revenues and expenditures (article 2, section 1). If a budget adopted in the form of a statute is essentially the State's financial plan, then it should not contain legal norms affecting the rights of third persons. Article 13, section 1 of the budgetary act stipulates that including revenues from certain sources or expenditures for certain goals in the State's budget does not form a basis to claim that third parties have obligations to or against the State. Furthermore, the Constitutional Tribunal took the position that the special procedure for adopting the budget, set forth in the Small Constitution, may not be applied to pass or amend other statutes, including statutes on the amount of retirement and disability pensions because the procedures to adopt a budget differ from the ones to adopt other statutes. Taking this into account the Constitutional Tribunal declared that the 1993 draft budget contravenes article 21, section 1 of the Small Constitution as the challenged provisions amended the legal principles to set retirement and disability pensions.

In this situation, the adoption of the 1993 budget by the parliament, is based to a degree on a government draft which does not conform to the Small Constitution, constitutes a breach of the constitutional procedure of passing a budget (article 21, section 1 of the Small Constitution). It refers to article 36, section 1 and 2 and article 37, section 1, sub-section 1 of the 1993 budget.

The democratic rule of law stemming from article 1 of the constitutional provisions, and particularly imposing, by article 3, section 2 of these provisions, an obligation to act legally on all state bodies – has not allowed to place disputed provisions in the 1993 draft budget and subsequently to pass the budget.

This reasoning depicts the primary motives for making this judgment.

III. 2 Irrespective of these considerations, the Constitutional Tribunal has stated that there are also additional premises raising reasonable doubts as to the constitutionality of the disputed provisions, namely, the limitation of the rights equitably acquired by retirement and disability pensions beneficiaries.

According to the principles set forth in the Act dated 17 October 1991 on the Revaluation of Retirement and Disability Pensions and on the Principles of Calculating

Retirement and Disability Pensions and on Amending Some Acts (Journal of Laws, Number 104, Item 450 as amended), and in the Act dated 29 May 1974 on the Provision for War Victims, the Military and Their Families (Journal of Laws, 1983, Number 13, Item 68 as amended), a base amount for the calculation of retirement and disability pensions was supposed to be the amount equal to 100% of a properly calculated average salary.

Meanwhile, the disputed provisions of the 1993 budget introduced new, less favorable for the interested parties, principles for calculating retirement and disability pensions. Under these provisions in 1993 the calculation of retirement and disability pensions was to be made by determination of 91% of an average salary, according to a meticulously formulated method. The point of this case is that the economic difficulties became a repetitious and independent reason justifying further limitations of retirement and disability pensions for the poorest, most helpless and deprived them of the chance to better their existence. Continuing budget difficulties do not alleviate the State of its obligation to look for solutions. The Constitutional Tribunal has made this remark because it has encountered this same reasoning founded on the budget deficit in many of the retirement and disability pension cases brought before it. Despite the passage of years we are still waiting for a radical reform which would not only find a solution in conformance with article 1 of the constitutional provisions, above, but also with article 70 section 2, sub-section 1 of these provisions. This article contains an imperative to act for the development and not a limitation of social security.

Such an obligation also stems from Poland's ratification of the International Pact of Civil, Social and Cultural Rights of 16 December 1966. Article 11 states that the contracting states, having recognized each individual's right to an adequate standard of life shall undertake the necessary steps in order to assure the realization of this right.

The information gathered in the course of this case raises reasonable doubt as to whether the Republic of Poland in the regulations considered in this case fulfilled its constitutional and international obligations. The point here is to maintain balance between an average pension or disability benefit and the minimum level of sustenance.

The lack of a suitable adjustment period (*vacatio legis*) for the provisions regulating the amount of retirement and disability pensions. Even if the challenged provisions of the 1993 budget are not in breach of the principle forbidding retrospective effect, as they entered into force the day they were published, they are lacking any transition period. A suitable adjustment period is desirable for all provisions of law but it is particularly needed when amending retirement and disability pensions because these amendments concern persons whose ability to adapt is naturally constrained to the greatest degree. A disregard for these matters may give rise to reservations on maintaining confidence in the State, stemming from article 1 of the constitutional provisions.

However, since the challenged provisions were found to be non-conferment with the procedure set forth in the Small Constitution one may discontinue the search for other grounds of unconstitutionality.

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