

## Decision

dated 7 June 1994 (K. 17/93)

The Constitutional Tribunal sitting with the bench composed of the Chairman, Andrzej Zoll (Reporting Judge) and Judges: Tomasz Dybowski, Lech Garlicki, Stefan Jaworski, Wojciech Łączkowski, Ferdynand Rymarz, Wojciech Sokolewicz, Błażej Wierzbowski, Janina Zakrzewska (Reporting Judge)

held

**1. article 18 of the Radio and Television Act dated 29 December 1992** (Journal of Laws, 1993, Number 7, Item 34) **imposing a ban on offending the religious feelings of listeners and viewers in broadcasting conforms with the democratic rule of law as expressed in article 1, and equality as expressed in article 67 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 on Local Self government** (Journal of Laws, Number 84, Item 426).

**2. article 21, section 2, sub-section 6 of the Radio and Television Act dated 29 December 1992** (Journal of Laws, 1993, Number 7, Item 34) **imposing an order to respect in public radio and television broadcasting Christian values interchangeable with universal ethical principles conforms with the democratic rule of law as expressed in article 1 and equality as expressed article 67, 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 on Local Self government** (Journal of Laws, Number 84, Item 426).

Reasoning

(...)

III

(...) Pursuant to article 18, section 2 of the Radio and Television Act dated 29 December 1992 radio and television broadcasts ought to respect the religious feelings of the viewers/listeners and particularly to respect the Christian value system. This provision has become subject to interpretation by the Constitutional Tribunal in case W. 3/93 concluded with a resolution adopted on 2 March 1994. In its grounds the Constitutional Tribunal declared that a provision of article 18, section 2 in setting limits on the freedom of expression should be construed as a ban on offending religious feelings. The content of this ban agrees with the scope of personal rights protection established in article 23 of the Civil Code and with a ban on offending religious feelings as set forth in article 198 of the Penal Code. Furthermore, the Constitutional Tribunal stated that the „linguistic interpretation of article 18, section 2 leads to the conclusion that the expression and particularly respect the Christian value system' used in this provision is cited by way of example, and represents values deeply rooted in the culture and tradition of Polish society regardless of any individual's religious creed." Such was the intention of the legislative body, as put by the Senator Reporting Judge presenting the Senate proposals on a draft law in parliamentary session on 29 December 1992. According to the Constitutional Tribunal a radio or television broadcast inconsistent with the Christian value system is in breach of article 18 only when it offends religious feelings of listeners/viewers. The lack of respect for these feelings may also be present in a broadcast inconsistent with other value systems if it offends religious feelings of listeners/viewers irrespective of their religion.

In examination of a petition submitted by a group of deputies to the Sejm on 8 December 1993 the Constitutional Tribunal did not find grounds for diversion from the interpretation of article 18, section 2 as made in case W. 3/93. In particular, from the time the resolution was adopted no changes were made in law to justify another interpretation of article 18, section 2 of the Radio and Television Act.

The Constitutional Tribunal did not find any violation of constitutional principles in the interpretation of a ban stemming from article 18, section 2 of the Radio and Television Act.

The freedom of expressing an opinion as a manifestation of the freedom of expression is a constitutional value protected under article 83 of constitutional provisions, however, it is not absolute. The Constitutional Tribunal gave a prominent place to the freedom of expression in the above cited interpretation, particularly pointing out that it may be subject to necessary limitations permissible only upon the following conditions:

1) the limitation does not affect the essence of the freedom of expression,

2) the limitation is expressly authorized in other constitutional provisions or, when necessary for the harmonization of freedom of expression with other principles, rules and constitutional values, it is expressis verbis commanded by article 36 section 1 of the constitutional provisions,

3) the limitation may be introduced only by a law as necessary and as an exception.

The ban established in article 18, section 2, as it is understood by the Constitutional Tribunal (see interpretation in W. 3/93) meets these constitutional requirements. At its foundation lays the protection of the freedom of conscience and religion manifesting itself also in a ban on offending religious feelings, pursuant to article 82 of the constitutional provisions maintained in force. Religious feelings, due to their nature, are subject to special protection as they are directly related to the freedom of conscience and religion which represent constitutional values. It finds its confirmation in international documents (e.g. Declaration on elimination of all forms of intolerance and discrimination due to religion or convictions adopted by the UN General Assembly on 21 November 1981). Therefore actions offending religious feelings may become subject to statutory limitations also when expressed by means serving the realization of the freedom of expression.

Freedom of expression as a constitutional value may be realized in many ways. Dissemination of views and opinions through mass media is only one of the ways. However, due to the unlimited scope of viewers/listeners, contents broadcast by radio and television are able to affect deeply the rights and liberties of other people. This justifies the lawmaker's decision to introduce some limitations on the freedom of expression going farther than when a similar or even identical content were disseminated to a limited circle of people, e.g. outside of the mass media. It is supported by the analysis of article 36b, section 1 *in fine* of the constitutional provisions. The „public interest” clause used in this provision specifically commands setting forth separate (more severe) limitations on freedom of expression in reference to radio and television that in reference to other forms of expressing opinion.

The Constitutional Tribunal points to the position taken in this matter by the Convention on the Protection of Human Rights and Basic Freedoms. Pursuant to article 10, section 2 the freedom to convey information and ideas may be subject to limitations „as provided by the law and necessary for a democratic society... with the view of the protection... of the rights of others.” But the International Pact of Civil and Political Rights states in article 19, section 1, sub-section a that realization of the right to express opinions and disseminate information and ideas may be subject to limitations „expressly provided by law necessary to respect the rights... of others.”

Article 18, section 2 of the Radio and Television Act, despite the statements made by the petition's applicants, does not make the scope of protection dependent upon the value system of a given faith. As the Constitutional Tribunal has already pointed out, mention is made of Christian values only as an example. It does not breach in any way the constitutional principle of equality as it refers to religious feelings regardless of denominational differences.

The Constitutional Tribunal shares the reservations expressed by the petition's applicants as to the legislative defects of the provision in question. Such reservations may apply to the remaining regulations of article 18 to an even larger degree, particularly to the ban on propagating in radio and television broadcasts actions contrary to morality and general interest (article 18, section 1), even if these provisions were not included in the petition. The use by a legislative body of general clauses to establish bans or commands addressed to citizens may serve as the basis for questioning certain regulations due to their failure to meet constitutional requirements that the statutes concerning civil rights and liberties be specific. The Constitutional Tribunal expressed its view on the matter on 19 June 1992: „As a consequence of the democratic rule of law each legal regulation, even on a statutory level, which gives a state authority the right to encroach on the sphere of civil rights and freedoms has to meet the requirement of being specific. This means a precise limitation of the permissible degree of interference. (...) (judgment of 19 June 1992 U. 6/92).

Such an objection cannot be raised when it comes to article 18, section 2. An interpretation in conformity with a constitutional principle allows one to determine a provision's precise normative content. According to the Constitutional Tribunal, ascertaining nonconformity with the Constitution of a lower-ranking act may take place only when it constitutes the only outcome of the proper interpretation of law. If, on the grounds of linguistic interpretation, it is possible to understand the content of a norm in a different way, then the interpretation which assures the greatest conformity with the Constitution should be chosen. In particular, of the many possible outcomes of linguistic interpretation, those should be rejected which do not satisfy the requirement of sufficient specification, as they collide with article 1 of the constitutional provisions maintained in force.

In analyzing the normative content of article 21, section 2, sub-section 6 the Constitutional Tribunal has decided to refer solely to the interpretation of this provision it had made on the grounds of its own resolution. Then the Tribunal reached the conclusion that the above regulation covers the substance of programs of public radio and television and decided that they should „respect the Christian value system taking as a basis the universal principles of ethics.” (W. 3/93).

The rule to „respect” should not be construed, though, as a command to propagate the Christian value system. A directive contained in article 21, section 2, sub-section 6 sets forth a set of values which should not be negated in public radio and television. It was the lawmaker's intention, expressed in parliamentary debate, to stress the values of Christian culture, which, together, constitute fundamental and universal principles of ethics. The agreement between these two formulae was underlined by the petition's applicant, where a formal objection has been raised concerning a logical error in this provision, that is, of explaining *ibidem per ibidem*.

Any other interpretation of article 21, section 2, sub-section 6 of the law would lead to results contrary to the principle of equality and the state's neutrality in matters of conscience. Most of all, according to the Constitutional Tribunal, one cannot identify the notion of „Christian values” referred to in this provision with religion. It expresses, however, the universal ethical principles of Mediterranean culture.

Article 21 of the Radio and Television Act narrows the tasks of public radio and television and their program principles outlined in article 1 and article 13, section 1. The Constitutional Tribunal confirms its view that the rule in article 21, section 2, sub-section 6 should not be construed in detachment from other provisions as it is only one of the two equal rules governing the activities of public radio and television. A public radio and television broadcast should also „be conducive to the free development of ideas by citizens and the formulation of opinions” (subsection 3), and „to enable citizen and their organizations to participate in public life by presenting a variety of views and ideas and to exercise the right of review by society and of criticism” (article 24). Article 25, section 4 of the Law on Guarantees of Freedom of Conscience and Religion, as amended by the Radio and Television Act, states that „the Church and other religious organizations have the right to broadcast radio and television programs of a religious, moral, social and cultural nature in a way determined in agreement between the authorities of a given church or some other religious organization and public radio and television entities.” It is obvious that this provision covers not only Christian religious communities.

The regulation in article 28, section 7 of the Radio and Television Act is also characteristic. Public radio and television units have program councils representing parliamentary fractions as well as societal interest and expectations tied with their program activities.

The analysis of the challenged article 21, section 6 in the context of the entire legal system leads one to the conclusion that the realization of the norm it contains conforms with other equally positioned norms. Assuming the lawmaker’s rationality, namely that it would not, in the same legal act, establish mutually exclusive norms, the directive contained in article 21, section 6 should be treated as a principle whose execution is carried out in compliance with other rules and principles.

The Constitutional Tribunal considered this normative construction to be the most appropriate for interpreting provisions on the tasks of a given organizational unit. These tasks are often impossible to meet. Accepting article 21, section 2, sub-section 6 as a principle consistent with other principles in concrete actions of public radio and television weakens the imperviousness of its own norm.

Just as in article 18, section 2 the Constitutional Tribunal has not found any normative grounds to alter its interpretation of article 21, section 2, sub-section 6 adopted on 2 March 1994 (W. 3/93).

The Tribunal has not found article 21, section 2, sub-section 6 to be in breach of the constitutional principle of freedom of expression. This provision is addressed solely to public radio and television units thereby defining one of the program directives. Broadcasts and programs not based on universal ethical principles would be permissible for non-public broadcasters, unless they violate other provisions of law. One of the tasks of public radio and television is to present different points of view and axiomatic opinions. The Constitutional Tribunal has reached the same conclusion in adopting the universally binding interpretation of article 21, section 2, sub-section 6.

The Constitutional Tribunal rejected the interpretation of article 21, section 2, sub-section 6 as presented by the petition’s applicant whereby „the system of „Christian” values should be a criterion for approving programs to be broadcast.”

Also, the Constitutional Tribunal has not found article 1, section 2, sub-section 6 to be in contravention of the constitutional principle of equality. This provision, despite the allegations posed by the petition’s applicant has not established a priority of one specific

system of values. On the contrary, it is only one of the directives to define the program of public radio and television, invoking the values of the Christian culture which, under the law, conform with the universally accepted principles of ethics. The Constitutional Tribunal points out that determination alone of the set of values which ought to be respected in the activities of a public (state) organizational unit does not per se infringe upon equality (for example because many social groups represent different value systems). Each act of making law refers to certain axiological foundations, also when the provisions of law determine the tasks of public organizations.

The Constitutional Tribunal has been critical about the wording of article 21, section 2, subsection 6. Its content is vague, needs interpretation and may raise doubts as to its conformity with constitutional norms, as proves the petition and an earlier resolution of the Constitutional Tribunal adopted in connection with objections raised by the First President of the Supreme Court.

In cognizance of the above critique of the statute the Constitutional Tribunal could not, however, agree with the applicant's allegation that article 1 of the constitutional provisions maintained in force has been breached. This principle does not exclude the usage of general legal clauses in a legal system referring to the views and convictions functioning in the society. For example, even in such a restrictive area as criminal law, criminal liability depends on determining the degree to which an act has been harmful to society. General clauses are also known to the lawmaker in the sphere of public law, e.g. in the Association Act (Journal of Laws, 1990, Number 51, Item 297).

The directive contained in article 21, section 2, sub-section 6 does not directly cover civil freedoms and liberties but describes a program containing goals for public radio and television. Programmatic directives very often use value notions determining the directions on actions and certain basic principles, expressed, as is their nature, generally. But their imprecise, vague and often incorrect wording cannot be assessed from the point of view of the principle demanding sufficient specification from statutes governing civil rights and freedoms. These norms are different because they are not directly related to maintaining confidence in the State. A vague statement may at best lead to situations where certain organizations shall not fulfill their goals on which the regulation setting forth their tasks has been founded. Such regulation, if it does not concern civil rights and freedoms may be criticized from a pragmatic and functional point of view, however, it does not constitute a breach of the constitutionally determined rule of law.

For this reason one cannot agree with the objection raised by the Prosecutor General that article 21, section 2, sub-section 6 is in breach of article 3 of the constitutional provisions maintained in force. The Prosecutor General has not given detailed reasons why this constitutional provision has contradicted the law in question. At the same time the Constitutional Tribunal has not found a contradiction between article 21, section 2, sub-section 6 and article 18, section 2. Such reservation could lead only to a statement of discrepancy between the two statutory regulations and constitute a premise for signaling an irregularity. However, the Constitutional Tribunal has not found such an irregularity. Article 18, section 2 has established a ban on offending religious feelings and is addressed to all broadcasters of radio and television programs – both public and non-public. Article 18, section 2, sub-section 6 is addressed only to public radio and television units and determines one of the program directives. Article 18, section 2 neither collides nor excludes the directive in article 21, section 2, sub-section 6. Therefore the Tribunal could not agree with the Prosecutor General's objection on the „distinctive desynchronization” of these provisions.

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