

Decision
of 19 October 1993 (K. 14/92)

The Constitutional Tribunal sitting with the bench composed of the Chairman Janina Zakrzewska and Judges: Czesław Bakalarski, Tomasz Dybowski, Maria Łabor-Soroka (Reporting Judge), and Andrzej Zoll

(...)

held

1. article 7 of the Act dated 15 February 1992 Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 21, Item 84) in the wording set under article 1, sub-section 1 of the Act dated 5 June 1992 Amending the Act Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 51, Item 231) contravenes articles 1 and 7 of the Constitution of the Republic of Poland upheld under article 77 of the Constitutional Act dated 17 October 1992 (Journal of Laws, Number 84, Item 426);

2. article 7 of the Act dated 15 February 1992 Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 21, Item 84) in the wording set by the Act dated 5 June 1992 Amending the Act Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 21, Item 231) conforms with article 67, section 2 and article 70, sections 1 and 2, sub-section 1 of the Constitution of the Republic of Poland upheld by the Constitutional Act dated 17 October 1992;

3. article 7 of the Act dated 15 February 1992 Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 21, Item 84) in the wording set by the Act dated 5 June 1992 Amending the Act Amending Some Statutes on Employment and the Provision of Pensions (Journal of Laws, Number 21, Item 231) contravenes article 3 of the Constitution of the Republic of Poland upheld by the Constitutional Act dated 17 October 1992.

Reasoning

(...)

(...) Pursuant to the Act of 17 October 1991 the revaluation of disability and retirement pensions was to be carried out in the first quarter of 1992. It was not, however, carried out because on 10 March 1992 a law became effective that provided for the revaluation to be carried out no earlier than in April 1992.

Thus, the legal situation was changed with respect to past events, which at the moment of their occurrence were regulated under the said Act dated 17 October 1991. The right to increased benefits that the eligible persons held until 10 June 1992 was denied to them with retrospective effect.

The principle *lex retro non agit* is not of an absolute nature, and in accordance with the Constitutional Tribunal's hitherto jurisprudence, it may be abandoned, but solely as an exception and for justified reasons.

In the case under consideration, four months after the statute setting the rules of the revaluation of disability and retirement pensions had been passed, the rules of revaluation were further changed in violation of the principle *lex retro non agit*.

Pension problems have been an urgent issue in Poland for many years. That they must be regulated is clear for numerous substantive and financial reasons. However, as pointed out by the Constitutional Tribunal in other decisions, even the most urgent changes cannot surprise those affected and deprive them of their equitably acquired rights. In the case under consideration, it was striking that the lawmaker made changes every few months, proving that there was no stable legislative policy on the provision of pensions.

The Constitutional Tribunal considered it appropriate to reiterate the view expressed in the Decision of 2 March 1993 (K. 9/92). In that case while not contesting the lawmaker's right to use the principle of direct application of new law in specific conditions in order to achieve the state intended by the lawmaker, the Constitutional Tribunal took the view, however, that the principle cannot lead to a situation where those affected by rules of law are surprised by a new rule that unfavorably changes the existing legal situation and makes it impossible for them to prepare themselves for future developments.

Such a situation undermines confidence in the law as an element of the democratic rule of law (article 1 of the Constitution of the Republic of Poland) and, as a result, it may be inconsistent with this principle.

In the opinion of the Constitutional Tribunal, in this case rights were likewise violated by the direct application of a new law depriving the citizens of equitably acquired rights (in this case, especially protected pension rights).

The Constitutional Tribunal did not find any basis that could be used to justify the violation of the constitutional principle, as there are no justified reasons for burdening a rather weak social group (made up of retired and disabled pensioners) with errors in the construction of the system of retirement and disability pensions.

Necessary reforms to the system of retirement and disability pensions are permissible, but they must be carried out in accordance with the rule of law. For this reason, the Constitutional Tribunal took the view that the violation of the principle *lex retro non agit* is not justified in the case of the regulation challenged by the Applicant even in an exceptionally difficult (but clearly predictable) situation of the State budget. Therefore, the Constitutional Tribunal decided that the regulation in question contravenes article 1 of the Constitution.

With reference to the allegation of restricting rights, the Constitutional Tribunal allowed for its earlier decisions, in which it assumed that the protection of acquired rights is not absolute in nature and may be subject to restrictions, especially in a period of system changes to the law. The legal justification for the restrictions introduced by the challenged regulation concerning the revaluation of retirement and disability pensions was the expected lack of funds in the budget to finance the retirement/disability pension fund. However, the lack of these funds does not really justify the restriction of rights.

This view can be applied to the allegation of the violation of article 7 of the Constitution of the Republic of Poland. Undoubtedly, the broad understanding of ownership from article 7 of the Constitution covers property rights, including contractual rights (See decisions of the Constitutional Tribunal K. 3/88 and K. 12/90). Social welfare benefits are included among the assets of the person insured, constituting his or her source of support. And while such benefits do not follow from a legal relation that could be considered a relation of obligation under civil law, they do constitute the pensioner's asset of which the eligible person may dispose without restrictions.

A person eligible to retirement or disability pensions is entitled to a claim for the payment of the amounts due under insurance from the ZUS Social Security Company, in the

case under consideration the amounts due as a result of shifting the dates of revaluation from 1 March and 1 June 1992 to a later time.

It must also be said that the insured's rights to the benefits have the features of property as the so-called property under pension because, at least partially, they constitute an equivalent of the insured person's own contribution to the Social Security Fund. Therefore, irrespective of the legal relation as a result of which the right to such a benefit arises, the insured should enjoy the guarantee of full protection of personal property.

For the above reasons, in contrast to its decision dated 11 February 1992 in connection with case K. 14/91, the Constitutional Tribunal decided that the regulation challenged by the Applicant contravenes article 7 of the Constitution of the Republic of Poland.

With reference to the next allegation included in the appeal filed by the OPZZ Polish Nationwide Trade Union Alliance that the challenged regulation violated article 67, section 2 of the Constitution of the Republic of Poland, the Constitutional Tribunal held that:

The essential feature of the challenged legal regulation is the possession of the right to retirement and disability pensions, as well as their revaluation. The amendments introduced to the extent challenged by the Applicant apply in principle to all recipients of retirement and disability pensions as construed by the Employee Pension Act, except for the weakest group. The equality of citizens means that citizens in the same situation are treated equally. The Constitutional Tribunal has offered an interpretation of this principle a number of times. Social protection of the weakest individuals may be realized in various ways. In article 7 of the Act dated 15 February 1992 in the wording set for this regulation under the Act dated 15 June 1992, the lawmaker provided for the protection of the weakest individuals, who are most in need, and the Constitutional Tribunal considered this special treatment as rational. Such treatment does indeed conform with article 1 of the Constitution of the Republic of Poland in the part which provides that the Republic of Poland is a State of social justice in no way violating the principle of equality.

For these reasons; the Constitutional Tribunal decided that the challenged regulation conforms with article 67, section 2 of the Constitution of the Republic of Poland.

With reference to the allegation made by the Applicant that the challenged regulation of the Act dated 15 February 1992 and article 70, sections 1 and 2, sub-section 1 of the Constitution of the Republic of Poland, one concludes that based on a comparison of the content of the said Act with the said provision of the Constitution in this case there is no conflict of rules or violation of the Constitution. Moreover, the Applicant did not provide any evidence that the invoked Act of 15 February 1992 resulted in setting the amounts of retirement and disability pensions below the subsistence level (and in order to establish functional nonconformity one should have first determined the minimum level of subsistence and then check whether the minimum had been violated).

Since the Applicant did not prove that the challenged Act dated 15 February 1992 led to the violation of the minimum level of subsistence of retirement and disability pension recipients, there are no grounds for concluding that the regulations in question contravene article 70, sections 1 and 2, sub-section 1 of the Constitution of the Republic of Poland.

In connection with this case, the Constitutional Tribunal considered it appropriate to recall the view it took in case K. 7/90.

Article 70, sections 1 and 2, sub-section 1 of the Constitution imposes on the lawmaker the obligation to ensure to the citizens the right to social security, which essentially constitutes

a system of obligatory, claim-based benefits connected with employment designed to satisfy the needs caused by misfortunes, and specifically sickness, old age, and the inability to work.

In principle, the Constitution gives the lawmaker freedom with respect to the establishment of benefits under social security, the conditions of their acquisition, the determination of their amount, the manner of granting them, etc. The only restriction imposed on the lawmaker is the obligation to „develop” social security. However, the obligation of future development depends on the country’s economic development. According to such an interpretation, article 70, sections 1 and 2, sub-section 1 of the Constitution entails the permissibility (with respect to the codification of the right to social security not only for the fixture subject to socio-economic conditions, but also for the same reasons) of changes in acquired rights under earlier statutes provided, however, that the essence of the constitutional right to social security is preserved. Therefore, the Constitutional Tribunal took the view that the challenged provision of article 7 contravenes article 70, sections 1 and 2, sub-section 1 of the Constitution of the Republic of Poland.

The constitutional principle of the rule of law, article 1 of the Constitution, and the principle of legalism (following from article 3 of the Constitution) give rise to the rule barring state bodies from establishing normative acts inconsistent with higher-ranking normative acts and the rule obligating each body to act solely within the limits of its legally defined powers. Every violation of the law by a state body, including a violation that occurs in the legislative process, at the same time constitutes a failure to observe the law.

In considering the Applicant’s allegation of failure to observe the statutory procedure required to be followed in issuing an act of law by way of the government overlooking the opinion of the trade unions (article 19 of the Trade Unions Act dated 23 May 1991), the Constitutional Tribunal did not conclude that, as a result, article 3 of the Constitution of the Republic of Poland had been violated.

In drafting the Act dated 5 June 1992 Amending the Act Amending Some Statutes on Employment and the Provision of Pensions, the government did not indeed seek an opinion of the trade unions in a timely manner, but it follows from the materials concerning the case that the Sejm (failing to return to the Applicant the draft statutes lacking an opinion of the trade unions, / pursuant to article 31, section 5 of the Bylaws of the Sejm) rectified the unfavorable situation of the trade unions resulting from the government reprehensibly overlooking consultations with the trade unions on the issue under consideration by allowing trade union representatives to participate in the proceedings of parliamentary commissions.

In view of the fact that trade union representatives presented their views on the challenged Act in parliamentary commissions, a fact established in the hearing, the Constitutional Tribunal did not find any grounds for assuming that the statutory procedure for consultations required to pass an act of law had not been observed.

Given the above, the Constitutional Tribunal decided that article 3 of the Constitution of the Republic of Poland had not been violated.

Likewise, in the opinion of the Constitutional Tribunal, article 1 of the Constitution of the Republic of Poland was not violated by the violation of the suitable adjustment period (*vacatio legis*) because, pursuant to article 2 of the challenged Act dated 5 June 1992, it became effective 14 days after 1 July 1992, that is From its date of publication in the Journal of Laws.