

Decision

dated 19 June 1992 (U. 6/92)

The Constitutional Tribunal sitting with the bench composed of Chairman and President of the Constitutional Tribunal, Mieczyslaw Tyczka, and judges Czeslaw Bakalarski, Tomasz Dybowski, Kazimierz Dzialocha, Henryk Groszyk, Maria Labor Soroka, Wojciech Laczkowski, Remigiusz Orzechowski, Janina Zakrzewska, and Andrzej Zoll (Reporting Judge).

(...)

held

That the Resolution of the Sejm dated 28 May 1992 obligating the Minister of Internal Affairs to provide complete information regarding government officials from the level of voivode upwards, deputies, senators, prosecutors, barristers, township councillors and members of township management boards who collaborated with the UB Security Bureau and SB Security Services over the years 1945 -1990 contravenes:

1. article 1 of the Constitution of the Republic of Poland infringing upon the rule of law, specifically by failure to guarantee legal protection of the individual and allowing the violation of human dignity, thus violating article 23 of the Civil Code and article 17 of the International Citizen's Rights Pact (Journal of Laws, 1977, Number 38; Item 167);

2. article 1, the first sentence of article 2, and article 23, section 4 of the Constitution of the Republic of Poland by infringement against the principle of a democratic State under the rule of law and the principle of a representative democracy;

3. article 3 of the Constitution of the Republic of Poland by encumbering the Minister of Internal Affairs through extra-legislative means with an obligation to encroach into the sphere of citizen's rights as well as encumbering the Minister of Internal Affairs with an obligation to act in violation of binding legislation;

4. article 12 of the Act dated 6 April 1990 on the UOP State Security Office (Journal of Laws, Number 30, Item 180) as well as article 21 of the Act dated 6 April 1990 on the Police (Journal of Laws, Number 30, Item 179) by encumbering the Minister of Internal Affairs by way of a resolution with an obligation to provide information as discussed in those regulations; and

5. article 5 of the Act dated 14 December 1982 on the Protection of State and Public Service Secrets (Journal of Laws, Number 40, Item 271 with subsequent amendments) by providing the Minister of Internal Affairs with an extra-legislative power basis relieving him of the obligation of adhering to the law.

Concurrently, pursuant to article 10, section 2 of the Constitutional Tribunal Act dated 29 April 1985 (Journal of Laws, 1991, Number 109, Item 470) the Constitutional Tribunal hereby fully suspends the application of the appropriately challenged Resolution of the Sejm dated 28 May 1992 as of 19 June 1992.

The Constitutional Tribunal further states that pursuant to article 9, section 1 and article 10, section 1 of the Constitutional Tribunal Act dated 29 April 1985 (Journal of Laws, 1991; Number 109, Item 470) the Act cited above [sic.] is subject to repeal in line with the contents of this Decision no later than within three months after this decision along with its reasoning is submitted to the Sejm. Otherwise, the Resolution shall cease to be in force following the elapse of the mentioned three month period.

Reasoning

(...)

III

(...)

1. First, it is necessary to consider whether the nature of the challenged Resolution is that of a normative act that is subject to the cognition of the Constitutional Tribunal

Pursuant to article 1, section 1, sub-section 2 of the Constitutional Tribunal Act, normative acts issued by superior State bodies are among those subject to the Tribunal's authority. It stems from article 20, section 1 of the Constitution of the Republic of Poland that the Sejm is the supreme body of state authority. Although the Constitution does not state directly that the Sejm is a „supreme body,” this may be deduced from an analysis of the entirety of the Constitution's provisions. Specifically, article 38 states that the Council of Ministers is the supreme „executive and administrative” body of state authority; while article 61, section 1 states that the Supreme Court is the supreme „judicial” body. It may therefore be assumed that the concept of „supreme body” appears in the Constitution as an all-encompassing term including supreme executive, judicial, and legislative bodies. Such a view is also supported by the fact that at the time when the Sejm was the only representative body, the provisions of the Constitution pertaining to the Sejm were contained in the chapter entitled „Supreme Bodies of State Authority.”

The Constitutional Tribunal also took into consideration the stand of the Representative of the Sejm who was of the view that the resolutions of the Sejm are not subject to the cognition of the Tribunal in light of the wording of article 1, section 1, sub-section 2 of the Constitutional Tribunal Act. That article makes mention of legislative acts – statutes ratified by the Sejm, decrees with the force of a statute approved by the Sejm (section 1, sub-section 1), and subsequently other normative acts „issued by the President, supreme and central bodies of state administration and other supreme and central state bodies” (section 1, sub-section 2).

(...) Such an interpretation of article 1 of the Constitutional Tribunal Act is decidedly negated, however, by the results of an all-encompassing interpretation of the provisions of the Constitution and the Constitutional Tribunal Act defining the scope of its decision-making power.

Article 1 of the Act does not actually specify Sejm resolutions as subject to the Constitutional Tribunal review, but they are not excluded from its scope of review. This is closely linked with the method that the lawmaker applied in defining the scope of the Tribunal's power. Instead of establishing formal criteria, the lawmaker used material ones (the act of instituting regulations – legal norms) and, additionally, subjective criteria relating to the body issuing the normative act. An exception was made here only with respect to legislative acts (acts and decrees approved by the Sejm) in article 1, section 1, sub-section 1 of the Constitutional Tribunal Act. The lawmaker did this, however, not to define the Constitutional Tribunal's cognition but primarily to stress the legal force of the Tribunal's decisions with respect to legislative acts as something different from the force its decisions exert upon other normative acts.

The view of certain representatives of legal science who were of the opinion that the resolutions of the Sejm were excluded from the scope of the Constitutional Tribunal's cognition pertained to a different historical situation and was based on the doctrine of the Sejm's complete power and superiority. In principle, this was overturned on 29 December 1989 by introducing the democratic rule of law to the Constitution of the Republic of Poland, which implies the separation of powers.

In line with article 20, section 3 of the Constitution of the Republic of Poland, one of the forms of legal action open to the Sejm is the ratification of a resolution. If a resolution of the Sejm establishes a legal norm, then it is a normative act as understood by article 1, section 1, sub-section 2 of the Constitutional Tribunal Act. In accordance with the interpretation of this provision in its established jurisprudence, the Constitutional Tribunal understands a normative act to signify every act that establishes legal norms, and hence all norms of general and abstract nature. In the case of such establishment, neither the form of the act nor its legal basis nor the legality of the established act may serve as the decisive factor (compare with the Tribunal's view expressed in Decisions U.15/88, U. 2/90, and U. 4/90). This stand has also been accepted in the literature on the subject (compare with K. Działocha: *Pojęcie aktu normatywnego w ustawie o Trybunale Konstytucyjnym, Konstytucyjny model tworzenia prawa* [The Concept of the Normative Act in the Constitutional Tribunal Act, The Constitutional Model of Establishing Law], p. 37ff). In the view of science, in order to assess the merits of the legal nature of a statute, „the worded form in which the norm for proceedings with the nature of a general or abstract norm was formulated is of no importance... as long as the given wording was sufficient to establish that specified types of addressees are ordered to undertake specified types of behavior under specified circumstances” (Z. Ziembinski, *Problemy podstawowe prawoznawstwa* [Fundamental Problems in the Study of Law], p. 131). Regardless of any potential dispute as to the general nature of the resolutions of the Sejm, there is no doubt that the resolutions containing legal norms are subject to the Constitutional Tribunal's cognition.

The challenged Resolution of the Sejm establishes such norms. Specifically, it encumbers the Minister of Internal Affairs with the obligation of presenting information of a specified content and states the deadlines for the performance of this obligation. The wording of this obligation is not specified by defining a single action, but in a general and abstract way. Although this obligation was formulated in an unclear manner in terms of both content and its manner of execution, which will be discussed later, there can be no doubt that the challenged Resolution of the Sejm establishes a legal norm and also, indirectly, changes legislative regulations in force.

The provisions of the Resolution of 28 May 1992 satisfy the quality of generality of its norm: They apply the specified obligation of presenting full information on a state body, not the specific name of a specified individual. The obligation encumbers anyone who, during the period specified for the performance of the resolution, fills or will fill the seat of Minister of Internal Affairs. The performance of this obligation, and this is also of significance, actually falls on an organized team of people in the form of an office (ministry).

The provisions of the Sejm Resolution also formulate a norm of abstract nature. The wording is „provide complete information” about the entities named in the Resolution.

Regardless of the lack of clarity as to the concept of „complete information,” it signifies the encumbering of the Minister of Internal Affairs with a whole series of general and abstract actions implemented over an extended period of time. The abstract nature of the procedural norm earmarked for the Minister of Internal Affairs also finds expression in the fact that complete information is to be related to „government officials from the level of voivode upwards, deputies, senators, judges, prosecutors, barristers, township councillors, and members of township management boards.” The specific make-up of these groups may be subject to change over the course of the performance of this Resolution. Thus, the information may encompass more and different people at the moment of conclusion of performance of the Resolution than at the moment at which work started; this is an additional argument proving the abstract nature of the norm incorporated in the Resolution.

The abstract nature of the norm established by way of the Resolution is also confirmed by its interpretation. Bearing in mind the practice of performance of the first phase of the Resolution by the Minister of Internal Affairs, known to the Constitutional Tribunal at the moment of the decision in this case and presented by the Applicant's representative during proceedings, the Tribunal has come to the conclusion that the execution of the Resolution can only take place in violation of binding legislative regulations. The performance of the Resolution was, for all practical purposes, impossible without interference into matters that are regulated by legislation. Thus, encroachment into binding legislation is another argument proving the abstract nature of the norm incorporated in this Resolution.

The Constitutional Tribunal also wishes to stress that the characteristic qualities of a normative act were not removed from the challenged Resolution by it defining the period after which it shall no longer be in force. The binding principles of law-giving activities which are applied in practice do not stipulate that specific legal regulations always have to be in force for an indeterminate period. It is, in fact, quite common in legislative practice for a normative act to have its binding period of validity defined by a closing date.

Article 33a, section 1 of the Constitution establishes the powers of the Constitutional Tribunal to decide, without exception, on the conformity of each and every normative act of supreme and central state bodies with the Constitution. A premise as to the functional interpretation of regulations defining the scope of the Constitutional Tribunal's action may be derived from article 1 of the Constitution of the Republic of Poland. Thus, if specific regulations do not limit the Constitutional Tribunal's powers as to the scope of specific normative acts, then they are subject to its cognition to their full extent regardless of their form or name: The only criterion is the establishment of a legal norm in the given act. Such an interpretation conforms with historical interpretation (compare with the statement of the deputy-reporter at the Session of the Sejm on 26 March 1992).

In a democratic State under the rule of law – a state founded on the separation of powers – legal norms cannot be established whose conformity with the Constitution is not evaluated in a manner facilitating the removal of any inconsistencies. Specifically, the absence of such review with respect to the legal norms established by the highest body of legislative authority, whose function is to establish the law, is unthinkable. The acceptance of any other interpretation would open the door to unrestricted establishment of legal regulations in the form of resolutions whose conformity with the Constitution and legislation would not be subject to evaluation.

Accepting the fact that a resolution of the Sejm may establish a legal norm, it is necessary to determine the position of such a norm in the hierarchy of sources of law. The Constitutional Tribunal is of the view that in line with the hierarchy of sources of law in force in the Republic of Poland, a resolution of the Sejm, which is a lower ranking act than a statute must conform with the regulations contained in binding statutes. The wording of article 1, section 1, sub-section 1 of the Constitutional Tribunal Act is an expression of such an interpretation. Those provisions grant the Constitutional Tribunal the power to examine the conformity of other normative acts with the Constitution or with legislative acts (acts or decrees). This signifies the priority of the Constitution and of a statute act over any other acts containing legal norms, including resolutions of the Sejm.

The Resolution of the Sejm ratified on 28 May 1992 therefore required examination from both the point of view of its agreement with the Constitution as well as with legislation in force.

The challenged Resolution of the Sejm contains a norm ordering the Minister of Internal Affairs to provide complete information regarding the entities specified in the resolution who

over the years 1945 -1990 collaborated with the UB Security Bureau or SB Security Services. The presentation of this information involves, at the very least, a listing of people found in the files at the disposal of the Minister of Internal Affairs and identified as collaborating with the UB or SB.

In light of the social nature of such information stemming from the universally negative aura of collaboration with the institutions cited above, its release even to a limited circle of people (in his letter to the President, the Minister of Internal Affairs speaks of all deputies and senators), must in practice lead to infringement against the reputation of the persons encompassed by this information creating a singular punishment in the form of infamy. Regardless of the expedience or axiomatic justification of such action, the norm orders the Minister of Internal Affairs to provide information as specified in the Resolution and encumbers him/her with an action that is, in its essence, a violation of a specified personal interest. There is no doubt that the sphere of personal rights and freedoms are constitutional material. Usually, statutes may concretely specify or supplement the provisions of the Constitution as to the civil rights and liberties. It is, however, the *communis opinio* of Polish and world science that they cannot infringe on the essence of those rights. Therefore, in no case may the material of rights and liberties be independently regulated by an executive body. This is without any doubt the domain of the lawmaker *of matiere reservee a la loi* importance and even its legislative restriction must be permitted by the Constitution.

3. The right to protect one's honor and reputation has been expressed in many legal regulations. This is done most fully in Polish law in article 23 of the Civil Code. It states that a person's personal interest, including honor, are protected by civil law regardless of the protection provided by other regulations. This article was often the subject of the decisions of the Supreme Court. „Honor and reputation have been deemed (...) among the most important of personal interest held by human beings by the Supreme Court as values inherent in every person” (S. Rudnicki, *Ochrona dóbr osobistych na podstawie art. 23 i 24 kc w orzecznictwie Sądu Najwyższego w latach 1985-1991* [The Protection of Personal Interest on the Basis of Articles 23 and 24c of the Civil Code in the Supreme Court's Jurisprudence from 1985 to 1991], *Przegląd Sądowy*, 1991, Number 1). „It encompasses all fields of personal, professional, and social life” (ibid.). Supreme Court decisions have stated that personal interest may be present in various legal spheres and need not be restricted to personal interest of a strictly civil law nature. In assessing the infringement against someone's honor not only the subjective feelings of the person demanding legal protection should be taken into account but also the objective reaction of public opinion. Personal interests are inalienable because they are inseparably coupled with the essence of a human being (compare with OSN Decisions of the Supreme Court 1976, Item 251, OSN 1981, Item 170, and OSN 1984, Item 171).

The constitutional courts of democratic countries speak in a similar spirit regarding the inalienability of human rights (compare with BVerfGE 5.204, 27.6, 45.228 in Wartenbruch, *Naturrecht und, Menschenwürde*, Frankfurt 1957 inclusive of the decisions cited; Rousseau, *Droit de contentieux constitutionnel*, Paris 1992, inclusive of the decisions cited; and Zagrebelsky, *Giustizia costituzionale*, Bologna 1988 inclusive of the decisions cited).

The right to protect honor and reputation is also directly formulated by article 17 of the International Pact of Citizen's Rights. That provision states that no one may be exposed to arbitrary or illegal interference into his private life, family, house, or correspondence nor to illegal attacks on his/her honor and reputation, and that everyone has the right to legal protection against such types of interference and attacks. There is therefore no doubt that this is a personal interest subject to special protection in a democratic legal system.

In line with the already established stand of the Constitutional Tribunal (Decisions U.1/86, U. 5/86, and K. 3/89), endowing a state body with the power to encroach into the realm of personal interests may only occur by way of a legal act of statutory rank. This is an absolute requirement forming a part of the principle of a democratic State under the rule of law. This requirement must all the more so be satisfied as the legal norm obligates state bodies to act accordingly. The establishment of a norm restricting civil-rights in a sub-statutory legal act, such as by a resolution of the Sejm, constitutes a violation against article 1 of the Constitution of the Republic of Poland.

The Sejm may not freely choose between a statute or a resolution in matters in this realm because the latter is a lower ranking legal act. It is also not without importance to citizen's rights that the Senate is party to the ratification of statutes and even the President of the Republic of Poland holds certain prerogatives in the later phases of proceedings.

As was already mentioned above, the Resolution of the Sejm was formulated in a manner that is exceptionally unclear – violating the primary requirements regarding the creation of legal regulations. No one knows what the formulation „complete information” signifies; no one knows to whom this information is to be presented, what bodies are signified by „from the level of voivode upwards,” what criteria are to be applied in considering someone as having „collaborated with the UB or SB,” what are to be the legal effects of presenting this information, and what reason was there to list barristers in the Resolution. This list contains only a portion of the questions that have arisen. The term „collaborator” is not even defined. Although it is true that the Representative of the Sejm stated during the proceedings that, to the best of his knowledge, this may be defined applying internal ministerial files, but those files are not published and are not even known to that Representative of the Sejm. It is inevitable for this wording of the resolution to exert an impact on its execution. It is for this reason that the view of the Constitutional Tribunal is that the Resolution itself, regardless of the way in which it is executed, results in an infringement against the citizen's personal interests.

The legal norm contained in the challenged Resolution, which orders the Minister of Internal Affairs to undertake an action violating the honor and reputation of the persons it specifies, neither specifies the scope of information to be presented; nor the addressees of this information, nor even the manner in which the information is to be presented: It also fails to define the manner of testing the credibility of information so presented. Thus, it obligates a state body to action that is a far-reaching violation of basic personal interests without precisely defining that action or its manner of execution.

It follows from the principle of a democratic State that every legal regulation, even of a statutory nature, which gives a state body the authority to encroach into the sphere of civil rights and liberties must satisfy the criterion of sufficient specification. This should be understood to denote the precise definition of the permissible scope of interference as well as the manner in which the entity whose rights and liberties are being limited and restricted may protect itself against unjustifiable violation of its personal interests. In a democratic State under the rule of law every form of infringement by a state body on personal interest must be linked to potential review of the expedience of the actions taken by the state body.

Article 17 of the International Pact on Citizens Rights simply envisages legal protection against such infringement with respect to actions violating honor and reputation.

The Constitutional Tribunal would also like to recall that in line with article 24, paragraph 1 of the Civil Code, the burden of proof that entry into the sphere of personal interest is not illegal lies with the transgressor, not with the person claiming that his interests have been violated. In any case, whenever the lawmaker provides powers to enter into the

realm of the citizen's personal interests, the act should clearly define both the allowable scope of interference and the manner of proceeding. The act should also state that it is not the citizen who is obligated to prove the illegality of the infringement against his/her interest, but the transgressor is obligated to prove the conformity of his/her actions with the law.

The challenged Resolution does not fulfill the requirements presented above regarding the definition of the scope of interference by a state body into the personal interests of a human being, nor does it contain any procedures for reviewing the justification of the violation of those interests. This creates a danger of violation of a person's reputation without guarantying the protection of the individual's rights. Since these are the requirements which constitute the essence of a democratic State under the rule of law, it must be stated that article 1 of the Constitution of the Republic of Poland was violated as a result of the ratification of the Resolution dated 28 May 1992.

4. With respect to the allegation by a group of deputies that the challenged Resolution was ratified in violation of the interim bylaws of the Sejm, the Constitutional Tribunal has come to the conclusion that the challenged Resolution contravenes article 1, the first sentence of section 2 of article 2, and article 23, section 4 of the Constitution of the Republic of Poland in light of the manner in which it was ratified. An essential feature of representation, as laid down in article 2 of the Constitution, is that in a democratic State there is a specified manner for undertaking legal acts (statutes and resolutions) that is satisfied by debate, for example. This is the essence of a representative and democratic system for the making of laws (Constitutional Tribunal Decision U. 1/86). An expression of the importance that the lawmaker places on the parliamentary procedures set down in the bylaws is the incorporation of the appropriate provisions in the Constitution. Article 23, section 4 states that the order of business in the Sejm is defined by the bylaws it adopts. This statement in the Constitution signifies that the order and course of parliamentary work must be subject to the rules established in the bylaws, which are to reflect the principles of democratic representation in parliamentary procedures. Expressions of these principles include such institutions as two readings, especially of resolutions of social import. The interim bylaws of the Sejm also state that the reading of a draft resolution encompasses the reasoning for the draft by the applicant, questions from members of the parliament, answers by the applicant and holding a debate (article 36, section 1 of the Interim Bylaws).

The Constitutional Tribunal, which also evaluates the procedures by which a legal act comes into effect, has examined the course of the passage of the Resolution brought before it by a group of deputies. This was also necessary because, in the petition to this Tribunal, they state that the questions they present could not be submitted during the session of the Sejm because the Resolution was „ratified in violation of the interim bylaws of the Sejm.”

The Shorthand Report of the 16th Session of the Sejm (fam. 102 ff) demonstrates that the draft resolution was presented without any reasoning, no debate was held, and the applicant did not answer the questions posed by deputies. What is more (this was stated by one of the deputies), the draft resolution as read was a different version from the one delivered to the deputies in writing (fam.109). Additionally, it cannot be deduced from the report that the draft resolution was presented to the Head of State (the President) and the President of the Council of Ministers-required by the interim bylaws. Also of importance in assessing the circumstances under which the Resolution under review was ratified is the fact that at the time of its passage, the Deputy Speaker approached the Speaker of the Sejm requesting that he not sign the Resolution in light of the faulty manner'(in violation of the law) in which it was ratified. The challenged Resolution was ratified in a manner that does not satisfy the constitutional requirements of democratically establishing the law.

The Constitutional Tribunal, in determining the above facts of infringement against the interim bylaws of the Sejm, does not give them decisive importance in determining that the Resolution is in violation of the law due to the „failure to abide by the legislative procedures required in the issuance of a statute” as laid down by article 2 of the Constitutional Tribunal Act. In light of the fact, however, that the provisions of the bylaws violated in the course of ratifying the challenged Resolution are an expression of the principles of representative democracy and the related constitutional obligation for the Sejm to conduct business in line with the defined bylaws, it is the view of the Constitutional Tribunal that the infringement against basic procedural rules should be deemed equivalent to a violation of article 2, section 2, sentence one and article 23, section 4 of the Constitution.

5. The Constitutional Tribunal, in considering the conformity of the challenged Resolution with the Constitution of the Republic of Poland, stated that encumbering the Minister of Internal Affairs with an obligation to undertake actions in violation of higher level regulations of a constitutional and legislative nature, the Sejm infringed against the absolute injunction to observe the laws of the Republic of Poland found in article 3 of the Constitution of the Republic of Poland and addressed to all state bodies. The Sejm cannot encumber any state body with an obligation to break the law either by way of a resolution or by statute.

The Sejm defines the powers of the Minister of Internal Affairs, obviously in conformance with the principles of the Constitution. It can only do this, however, in the form of a statute. For the powers of ministers constitute a statutory matter in an obvious manner. The Sejm, however, in encroaching into the realm of individual rights in a manner in violation of the law also obligated the Minister of Internal Affairs to act in such a manner and, further, obligated him to act in a form that contravenes the Constitution.

6. The Constitutional Tribunal also considered the conformity of the challenged Resolution with binding statutes – the Act dated 6 April 1990 on the UOP State Security Office (Journal of Laws, Number 30, Item 180), the Act dated 6 April 1990 on the Police (Journal of Laws, Number 30, Item 179) and the Act dated 14 December 1982 on the Protection of State and Public Service Secrets (Journal of Laws, Number 40, Item 271 with subsequent amendments).

Actions relating to the transfer of information regarding whether or not a person, according to materials found at the disposal of the Ministry of Internal Affairs, collaborated with the UB Security Bureau or the SB Security Services is subject to the regulations defined in article 12 of the Act dated 6 April 1990 on the UOP State Security Office (Journal of Laws, Number 30, Item 180). This regulation forbids the provision of information about a citizen during execution of operational-reconnaissance activities to entities other, than the courts or prosecutors. Article 12, section 2 states that the injunction defined in section 1 is not applicable if a statute applies the obligation of providing such information to defined bodies or if the maintenance of secrecy would endanger the life or health of other persons: Article 7, section 2 of the Act dated 6 April 1990 on the Minister of Internal Affairs (Journal of Laws, Number 30, Item 181) also refers to the Act on the UOP State Security Office laying down a ban on granting license to provide information that is a state or public service secret if the contents of such information are defined by article 12, section 1 of the Act on the UOP State Security Office.

Information regarding agreement to collaborate with the UB Security Bureau or the SB Security Services is, without any doubt, information pertaining to a time during which operational- reconnaissance activities were performed. Thus, the ban defined in article 12 of the Act cited is fully applicable. Its transfer to any body other than a court or prosecutor may only occur by way of a statute establishing an obligation to provide such information.

The imposition of this obligation by the Sejm by way of a resolution, not by statute, fails to satisfy the conditions defined in article 12, section 2 of the Act on the UOP State Security Office and is therefore in violation of the ban laid down in section 1 of the cited regulation.

It is for these very same reasons that it can be assumed that the regulation contained in the challenged Resolution of the Sejm is in violation of article 21 of the Act dated 6 April 1990 on the Police (Journal of Laws, Number 30, Item 179). These provisions provide similar regulations to those contained in article 12 of the Act on the UOP State Security Office. Thus, if information regarding collaboration with the UB Security Bureau or the SB Security Services was procured during the course of operational-reconnaissance activities conducted within the framework of the police department, then they are encompassed by the regulations defined in article 21 of the Act on the Police. Therefore, the decisions made by the Constitutional Tribunal in connection with the violation of article 12 of the Act on the UOP State Security Office are fully applicable with respect to article 21 of the Act on the Police.

7. The Constitutional Tribunal, in considering the conformity between the challenged Resolution and the Act dated 14 December 1982 on the Protection of State and Public Service Secrets (Journal of Laws, Number 40, Item 271 with subsequent amendments) concluded that the information mentioned by the Resolution is also subject to the protection of that Act. Thus, the Minister of Internal Affairs is also encumbered by the ban expressed in article 5 of the Act on the Protection of State and Public Service Secrets. The Resolution of the Sejm granting the Minister of Internal Affairs the general power to „transfer information” that is a public service secret is in violation of the regulations contained in article 5 of the Act on the Protection of State and Public Service Secrets. By not defining the entities that may be provided with the information it cites, the Resolution grants the Minister of Internal Affairs a general power base releasing him/her from the duty of maintaining the secrecy of such information.

It is the view of the Constitutional Tribunal that it is impossible to agree with the stand according to which the challenged Resolution is similar in scope with the statutory regulation found in article 19 of the Act on the Duties and Rights of Deputies and Senators (uniform text in Journal of Laws, 1991, Number 18, Item 79). Article 19, section 1 define the general right of every deputy and senator to procure any and all materials and information as well as review the activities of state administrative bodies. Thus creating an obligation on the part of those bodies to grant access to information. Article 19, section 2 grants deputies and senators the right of access to information that is a State or public service secret without the need to receive special authorization. This right must also signify an equivalent obligation on the part of the bodies in possession of information that is secret to grant it upon demand by a deputy or senator.

The provisions of the Act on the Duties and Rights of Deputies and Senators do not, however, avoid the allegation of nonconformity between the challenged Resolution and article 5 of the Act on the Protection of State and Public Service Secrets. The Resolution fails to precisely define the addressees to whom the Minister of Internal Affairs is obligated to provide the information it identifies. The Resolution is therefore much broader than the regulation in article 19, section 2 of the Act on the Duties and Rights of Deputies and Senators.

It is the view of the Constitutional Tribunal that even if the addressees of this information were to be only deputies and senators, the allegation would still be valid that the challenged Resolution is inconsistent with the ban expressed in article 12, section 1 of the Act on the UOP State Security Office and with article 21 of the Act on the Police. Those bans

encompass: a ban on transferring the information they define regardless of whether or not they are state or public service secrets. Release from this ban is only possible if a statute – not some other act – applies – an obligation to disclose such information, where such an obligation cannot be expressed in a general manner, but must be precise in pointing to information about a citizen procured during the performance of operational-reconnaissance activities. This rigorous interpretation stems from the fact that every provision of such information may lead to infringement against the individual's personal interests. Thus, the rights to procure such information, as an exception to the general ban, must be subject to narrow interpretation.

The right to any and all information and materials from state administration bodies established in article 19, section 1 of the Act on the Duties and Rights of Deputies and Senators does not relieve the Minister of Internal Affairs from the ban against divulging information of a specified nature as expressed in article 12, section 1 of the Act on the UOP State Security Office and in article 21 of the Act on the Police. Exemption from this obligation may occur if, by way of a statute, a specific obligation to disclose such information is applied. The Act on the Duties and Rights of Deputies and Senators does not create such a specific obligation.

8. The Constitutional Tribunal has suspended the application of the Resolution of the Sejm in its entirety as of 19 June 1990. The Constitutional Tribunal has decided that the performance of the obligation applied by the Sejm on the Minister of Internal Affairs to provide complete information regarding government officials from the level of voivode upwards, deputies, senators, judges, prosecutors, barristers, township councillors, and members of township management boards who collaborated with the UB Security Bureau and SB Security Services over the years 1945-1990 could lead to an irreversible violation of personal interests, especially the honor and reputation of many persons, which cannot be allowed without the existence of protective procedures. It is the view of the Constitutional Tribunal that this is a specifically defined case, as discussed in article 10, section 2 of the Constitutional Tribunal Act dated 29 April 1985 (uniform text in Journal of Laws, 1991, Number 109, Item 470). (...)