

Judgment
of 27 November 1997 (U. 11/97)

The Constitutional Tribunal's sitting with the bench composed of the Chairman Janusz Trzcíński, Wojciech Sokolewicz and Andrzej Zoll (Reporting Judge).

(...)

held

1. paragraph 2 and paragraph 3 of the Regulation Amending the Regulation on the Detailed Principles for the Suspension or Reduction of Retirement and Disability Pensions issued by the Minister of Labor and Social Policy on 5 May 1997 (Journal of Laws, Number 47, Item 310) are inconsistent to the extent covered by paragraph 1, subsection 1b, with article 2 of the Constitution dated 2 April 1997 (Journal of Laws, Number 78, Item 483) by reason of a violation of the order, ensuing from the rule of law, maintaining confidence in the State and the law proclaimed by the State as expressed in the ban against the retrospective effect of law and the order to protect equitably acquired rights as well as the order to apply a relevant adjustment period in case of regulations that materially modify the scope of existing rights and responsibilities, and a violation of the order of sufficient specification of regulations limiting civil rights and freedoms.

2. paragraph 2 and paragraph 3 of the Regulation of the Minister of Labor and Social Policy referred to in Point 1 hereof do not contravene article 7 of the Constitution dated 2 April 1997 (Journal of Laws, Number 78, Item 483).

3. paragraph 1, section 1b, of the Regulation of the Minister of Labor and Social Policy referred to in Point 1 hereof does not contravene article 31, section 3 of the Constitution.

4. paragraph 1, section 1b, of the Regulation of the Minister of Labor and Social Policy referred to in Point 1 hereof does not contravene article 24 of the Act dated 17 October 1991 on the Revaluation of Retirement and Disability Pensions, the Principles for Determining Retirement and Disability Pensions and Amending Certain Acts (Journal of Laws, Number 104, Item 450; amendments in 1992, Number 21, Item 84; 1993, Number 127, Item 583, Number 129, Item 602; 1994, Number 84, Item 385; 1995, Number 4, Item 17, Number 95, Item 473 and Number 138, Item 681; 1996, Number 87, Item 395, Number I00, Item 461, Number 136, Item 636, Number 147, Item 687; 1997, Number 30, Item 164).

(...)

Reasoning

According to the Constitutional Tribunal's jurisprudence, the principle laid down in article 1 of the constitutional provisions, namely the rule of law, provides a basis for inferring constitutional protection to maintain confidence in the State and the law proclaimed by it; two other fundamental principles of the rule of law can be further inferred therefrom: the ban against the retrospective effect of law which deteriorate the situation of persons addressed by them and the prohibition on violating rights that were equitably acquired under the former law. These two prohibitions are supplemented with the obligation to set a specific adjustment period, what is referred to as a suitable adjustment period, *vacatio legis*, which is longer when the arrangement and planning of important personal affairs might entail more difficulties in tight of requirements laid down in new regulations.

The key concept of all of the above principles, namely the confidence of citizens in the State and the law proclaimed by it cannot be understood only in the abstract sense. It is true that such protection cannot extend to confidence in clearly unfair provisions that deny the rightful nature of acquired rights, however constitutional protection must cover the confidence of the citizens in not only the literal sense of the law but also and primarily the type of interpretation relied on in the course of practical application of the law by state authorities, in particular when the practice is harmonious and steady over a specific period of time and the provisions, based on which such practice developed, do not allow deeming it ungrounded. When determining the contents of the constitutional principle for maintaining confidence in the State and the law proclaimed by it, it is not possible to ignore the basic fact namely that in the social consciousness the content of the law is primarily identified by reference to its interpretation relied on in the course of practical application of the law by the state authorities.

Pursuant to article 175, section I of the Constitution of 2 April 1997, the administration of justice in the Republic in Poland is effected by the Supreme Court, common courts and special courts. Under article 178, judges in office shall be independent and subject only to the Constitution and statutes. This position of the judiciary in the constitutional system of the Republic of Poland and the simultaneous recognition of the constitutional right of each and every citizen to have access to the courts unequivocally indicate that the courts are the ultimate arbiter in disputes arising between a citizen and state bodies from varying interpretation of legal rules in force. In this context, the hypothesis contemplating the admissibility of varying interpretations accepted by different state organs and the court, must be deemed wrong. Refusal to comply with the decisions of common courts by the state organs and a failure to respect judgments issued in specific cases shall be a drastic violation of the fundamental principles of legality applicable in the rule of law. The greater importance of the judicial interpretation of applicable laws is emphasized by a number of legal institutions - as regards the scope of power held by the Minister of Labor and Social Policy, the relevant institution is laid down in article 13, sub-section 3 in connection with article 16, sections 1 and 2 of the Supreme Court Act dated 20 September 1984 (Journal of Laws, Number 13, Item 48, as amended), providing for the possibility to apply for a resolution to be adopted by the extended Supreme Court in order to clarify a notion used in legal rules. A similar function has been fulfilled and continues to be fulfilled on the basis of the Constitution in force by the interpretation of the Constitution and other statutes prepared by the Constitutional Tribunal.

The administration of justice by the courts consists in the application of general and abstract norms to specific, individual cases that can be laid down exclusively by legislative bodies and, with their delegation, also by executive bodies. It is the duty of every lawmaker to develop the contents of a law that would unequivocally express specific legal norms in attainment of assumed social purposes. However, when an enactment is ambiguous, the lawmaker incurs the risk that an interpretation of such provisions, with due respect of the accepted rules of interpretation, may deviate from the intended meaning thereof. However, that risk cannot burden the addressees of the norms contained in such provisions, in particular when they refer to civil rights and freedoms. Such persons must then rely on the meaning vested in the applicable regulations by these state organs which sufficiently decide on the contents of specific rights and obligations of citizens. In a State in which power has been distributed among three branches, that power has been vested in the courts.

Therefore, when the interpretation of specific regulations given in judicial decisions differ from their normative meaning assumed by the lawmaker, the latter may provide for a relevant modification of such regulations in order to clarify and more precisely define their

meaning, however with due respect to the existing reliance by the citizens on the contents of the law in force, hence it must take into account the ban against the retrospective effect of law stemming from the protection of that reliance, setting a sufficient suitable adjustment period (*vacatio legis*) and a prohibition against violating equitably acquired rights.

In the case referred to the Constitutional Tribunal by the Commissioner for Citizens' Rights, the prevailing approach adopted in the decisions of common courts, at least since early 1996, has been as follows: the notion of actual income, the receipt of which by a person eligible for retirement or disability pensions can cause the suspension or reduction of such pensions, should be exclusively understood as the net income excluding deductible expenses. This interpretation, in light of the diversity of meanings of the provisions regulating that issue, is not clearly unfair or unjustified. People eligible for specific benefits used to arrange their persons affairs on the basis of that interpretation; they frequently entered into complex legal relations connected with a job, performance of service contracts or conducting economic activity. A number of them became engaged in the above activities in reliance upon court judgments issued in specific cases. However, in spite of constantly varying interpretation accepted by the entities of the Social Security Company. such persons had the right to expect that, under the rule of law, the judgments of common courts would also be respected by state organs. Similar expectations deserve protection and are, in their entirety, covered by the constitutional principle of protecting the confidence of citizens in the State and the law proclaimed by it.

The amendment introduced by the Minister of Labor and Social Policy with the intention to include deductible expenses in the actual income referred to in (1, section 1 of the Minister s Regulation of 22 July 1997, was to apply to the income and salaries received from 1 January 1996 to date, i.e., several months before the effective date of the challenged regulation. As indicated, the Constitutional Tribunal has determined that the decisions of common courts were uniform already at that time, and hence it could have provided a basis for the corresponding arrangement of personal affairs by citizens. The new regulation grossly violated the principle of protecting the confidence of citizens in the State and the law proclaimed by it, because it attached an effective binding date to pre-existing facts thus creating negative consequences that were unforeseeable when acting in reliance on uniform court decisions in that respect.

For the same reasons, we must consider that the *vacatio legis* of 14 days set in paragraph 3 of the Minister's Regulation of 5 May 1997 contravenes the constitutional standards of proclaiming law deteriorating the exiting legal status of the addressees of that law acting in reliance on the previously binding norms and the established decisions. The adjustment period set therein does not take into account the nature and degree of stability of legal relations whereby additional income was generated by persons eligible for retirement and disability benefits. The period set there excludes the possibility of reasonable adjustment to the new legal requirements.

Irrespective of the alleged violation of the principle of protecting the confidence of citizens in the State and the law proclaimed by it, we must confirm that the amendment to paragraph 1, section 1 introduced by the Minister of Labor and Social Policy to its Regulation of 22 July 1992 constitutes a gross violation of the principle of sufficient specification of regulations interfering with the rights and freedoms of citizens. The amendment introduced by the amending regulation consists in a tighter definition of the notion of „income” thereupon the grounds for suspension or reduction, if any, of retirement or disability pension are determined. That tighter definition provides that the income in question is to be taken „in the amounts taken in accordance with article 7 of the Act dated 17 October 1991 (on the

Revaluation of Retirement and Disability Pensions, the Principles for Determining Retirement and Disability Pensions and Amending Certain Laws) as the basis for evaluating retirement and disability pensions.”

Analysis of article 7 leads to the conclusion that it does not use the term „an amount taken as the basis for assessment.” The provisions in question refers to the „revaluated amount of salary or income” being the basis of assessment of premiums (section 1) or the „basis for assessment of retirement or disability pension” (section 2), and the regulations contained in article 7, in particular, in section 1 of that article, indicate at least several possible amounts set out in that provision. The conclusion that, by reference to article 7 of the Act, an attempt was made to define the notion of income in more detail for the purposes of the Minister’s Regulation of 22 July 1992, rather ensues from the use of common sense in the interpretation of legal rules than the rules of correct interpretation.

In the opinion of the Constitutional Tribunal, all provisions aimed at the curtailment of civil rights and freedoms must have the quality of sufficient specification. This requirement is particularly important in the field of laws regulating social security issues. That branch of law is often addressed at elderly people with limited life choices, for whom retirement and disability benefits are the sole basis of sustenance. The unclear definition of the rights of such people with the use of repeated and imprecise references that preclude the unequivocal understanding of legal rules in that respect and hence preventing, to a considerable extent, review over the activities of social security institutions, constitutes a gross violation of the principle of sufficient specification of legal rules providing for the rights and freedoms of citizens. The Constitutional Tribunal held that such features are present in the amendment to § 1, section 1 introduced through paragraph 1, sub-section 1b, of the Regulation of the Minister of Labor and Social Policy dated 5 May 1996.

On the other hand, in the Constitutional Tribunal’s opinion, paragraph 1, sub-section 1b challenged by the Commissioner for Citizens’ Rights does not violate as such article 24 of the Act dated 17 October 1991 on the Revaluation of Retirement and Disability Pensions, the Principles for Determining Retirement and Disability Pensions and Amending Certain Laws. The notion of income used in article 24 has not been closely defined therein. Sufficient constitutional grounds are missing for an interpretation that would clear up any and all doubts in that respect. The acceptance by the Constitutional Tribunal that the notion of income used in that provision means income less deductible expenses would, in fact, constitute a binding interpretation of that provision, causing the abrogation of any acts of lesser force than a statute and based on a divergent interpretation of article 24. Nonetheless, the Constitutional Tribunal is not authorized to provide this kind of interpretation.