

RESOLUTION
of the Constitutional Tribunal
dated 14 June 1995 W. 19/94

In the matter of specifying the universally binding interpretation of article 31, section 1 of the Constitutional Tribunal Act dated 29 April 1985 (Journal of Laws, 1991, Number 109, Item 470 with subsequent amendments).

The Constitutional Tribunal sitting with the full bench composed

of the Chairman and President of the Constitutional Tribunal Andrzej Zoll,

Judges: Zdzisław Czeszejko-Sochacki, Tomasz Dybowski (Reporting Judge), Stefan Jaworski, Krzysztof Kolasiński, Wojciech Łączkowski, Ferdynand Rymarz, Wojciech Sokolewicz and Błażej Wierzbowski.

After review on 31 May and 14 June 1995 by way of article 13, sections 1 and 2 of the Constitutional Tribunal Act dated 29 April 1985 (uniform text, Journal of Laws, 1991, Number 109, Item 470; and 1993, Journal of Laws, Number 47, Item 213; 1994, Number 172, Item 593) of the petition made by the President of the Chief Administrative Court to define the universally binding interpretation of article 31, section 1 of the Constitutional Tribunal Act dated 29 April 1985 by explaining whether the assertion that a legally-binding court decision has been issued with the application of a provision which, as the result of a decision of the Constitutional Tribunal, is deemed to contravene the Constitution or a statute, has been amended or repealed in part or in full, constitutes the independent grounds to reinstate court proceedings;

held

the partial or total amendment or repeal of a legal provision as the result of a decision by the Constitutional Tribunal on the contradictory nature of this provision with the Constitution or a statute, signifying the partial or total forfeiture of binding force by such a provision on account of its unconstitutionality or nonconformity with a statute as ascertained by the Constitutional Tribunal, shall constitute, in keeping with article 31, section 1 of the Constitutional Tribunal Act, a separate basis to reinstate court proceedings to the extent and by the deadline 'specified in this provision where the court proceedings were completed with a legally binding decision issued with the application of a provision, which was amended or repealed in part or in full as one that is contradictory to the Constitution or a statute.

The provisions governing court proceedings in the matters of a given type shall be applicable in the remaining areas pertaining to the course and the principles for proceeding which have not been regulated in article 31, section 1 of the Constitutional Tribunal Act.

Reasoning

(...)

II.

The Constitutional Tribunal took note of the following:

1. The acknowledgement by the Constitutional Tribunal of a contradiction between a given legal provision and the Constitution or a statute entails legal consequences primarily with respect to this provision as such but also with respect to the acts of applying the law which were issued on its basis.

The first type of consequence is outlined in article 33a, sections 2 and 3 of the constitutional provisions remaining in power by article 77 of the Constitutional Act dated 17 October 1992 about the Mutual Relations between the Legislative and Executive Branches of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 426 with subsequent

amendments) and in articles 7 and 10 of the Constitutional Tribunal Act. In the enumerated provisions the lawmaker instituted procedures aiming at an obvious goal which is to eliminate from the system of binding law – by making the relevant amendment or by repealing the provisions challenged by the Tribunal – legal standards with the rank of statutes which are contrary to constitutional norms, as well as lower ranking legal norms which are contrary to constitutional or statutory norms.

As a result of such an amendment or the repeal of a legal provision in part or in full, it forfeits its binding force to the extent indicated with the exception that in the event that it is amended, the new amended contents shall obtain binding force.

The amendment or repeal of a legal provision does not always signify a loss of its meaning for evaluating the legal relationships which came into being before it was amended or repealed. It may stem from interim law that in certain instances the „principle of extended action of the former statute” will be in force which means that in order to evaluate the legal consequences of an event which occurred before the provisions were amended or repealed, those provisions are relevant which have formally been amended or repealed. Nevertheless, the assumptions of rule of law, in which the constitution constitutes the grounds of a coherent legal system show that the „principle of extended action of the former statute” may not concern provisions amended or repealed on account of their unconstitutionality or contradictory nature with a statute. For this reason the Constitutional Tribunal deemed it to be appropriate to point out in the first portion of the resolution the loss of binding force by the provisions amended or repealed as the consequence of the Constitutional Tribunal holding that they are unconstitutional or contradictory to a statute.

A provision may lose its binding force only as the result of the provision being amended or repealed by a body with jurisdiction or also by another course, e.g. the one indicated in article 10, section 3 of the Constitutional Tribunal Act.

Not restricting itself to regulations pertaining to correcting the consequences of mistakes in making the law as ascertained by the Constitutional Tribunal, which appear in the system of binding legal norms (they may be called direct consequences), the lawmaker is also aiming to correct further consequences of these errors – namely, to appropriately correct the legal consequences molded on the basis of defective legal regulations (on account of their contradiction with the Constitution or statutes), which sometimes requires the legally binding acts for the application of law issued on the basis of the former provisions to be stirred. This correction of legal relationships is the subject of regulation in article 31 of the Constitutional Tribunal Act. In the reasoning of its decision dated 8 November 1994 (P. 1/94) the Constitutional Tribunal emphasized that the provision enumerated has been attributed great significance for defining the binding force of the Tribunal's decisions; it permits the „healing” of other proceedings (court, administrative, etc.). It should be added that in democratic rule of law this type of „healing” cannot occur in an automatic and spontaneous fashion, rather it must be carried out within the framework of legal norms on account of the protection afforded to other values in the legal order, the boundaries of permissibility, the scope and the course of this „healing.” The fundamental core of this regulation is currently incorporated in article 31 of the Constitutional Tribunal Act, while in some procedural questions this article refers to provisions of separate acts besides the Constitutional Tribunal Act. The article under discussion governs the stirring up of legally-binding decisions and final decisions – and thus those against which a complaint cannot be filed under the normal course of instances, but which can only be stirred by using extraordinary means of lodging a grievance. The correction of acts of applying law which are not yet legally binding (final) – on account of the repeal or amendment of the provisions constituting the basis for the issuance of a given act – in the normal course of review at a given instance has not required a special legal regulation since according to general principles the body of review at a given instance makes its decision on the basis of the legal state of affairs in force on the day when the decision is made.

Recapitulating the foregoing considerations, it must be asserted that the aforementioned constitutional provisions and provisions of the Constitutional Tribunal Act express a general system-related trend to correct the consequences of violating the Constitution and statutes in the process of instituting the law – both with respect to the direct consequences (on account of their defective contents, since they are contrary to the Constitution or the statutes of established legal standards), and indirect consequences (with reference to the legal relationships shaped on the basis of these standards). This general trend constitutes an important hint in translating the provisions governing the permissibility, scope and course for making these corrections – it demarcates the direction for decision on possible doubts on interpretation in this field.

2. Article 31, section 1 of the Constitutional Tribunal Act, constituting the subject of interpretation in this matter, is – as has been demonstrated above – a fragment of the article governing the stirring of legally binding decisions and final decisions issued on the basis of provisions whose defectiveness, ascertained by the Constitutional Tribunal, was the reason for their execution or repeal (in full or in part).

The provision under consideration refers to court proceedings which have been completed in a legally binding fashion. Although its contents speak of arbitration proceedings, it is ; nevertheless necessary to acknowledge that in conjunction with the Act dated 24 May 1989 on the Review of Business Matters by Courts (Journal of Laws, Number 33, Item 175) and the three-year deadline delineated in the provision under discussion for reinstating arbitration proceedings, this provision has become in this regards a non-issue, thus at present it only concerns court proceedings which have been completed in a legally binding fashion. *Lege non distinguente*, at stake are all proceedings before the court which lead to the issuance of a decision – regardless of the subject matter or the type of procedure applied.

The issue of interpretation depicted by the President of the Chief Administrative Court referring to article 31, section 1 of the Constitutional Tribunal Act may elicit doubts on account of one fragment in this provision which reads as follows: „may be reinstated in the course and according to the principles defined in the provisions on court proceedings.” *Prima facie*, two ways of understanding the expression cited come into play. According to the first one, the reinstatement of court proceedings in the event that the legal state of affairs is altered, mentioned in the provision under interpretation, it would be permissible when, in reference to a given case, a basis (reason) were to exist for reinstatement as specified in separate provisions on court proceedings (incorporated elsewhere besides the Constitutional Tribunal Act); according to the second way of understanding – the amendment to the legal state of affairs specified in article 31, section 1 constitutes an independent basis for reinstating the court proceedings which have been completed in a legally binding fashion (separate from the grounds of reinstatement set forth in other provisions, constituting a sufficient condition for reinstatement), while separate provisions on court proceedings are applied to specify „the course and the principles” to the extent of others besides the basis for reinstating the issues of proceedings by the court and the entities participating in a given case, and thus procedural issues.

The juxtaposition of article 31, section 1 of the Constitutional Tribunal Act under discussion with the provisions of court proceedings governing the grounds for reinstating proceedings which have been completed in a legally binding fashion leads one to the conclusion that the first way of understanding this provision cannot be embraced on the grounds of the generally accepted rules of interpretation since the reference entailed in the statement quoted to the provisions on court proceedings would be – on account of the contents of these provisions – not related to the topic at hand. And thus, in, the provisions of the Civil Proceedings Code (on which the applicant has concentrated its attention) specifying the grounds for reinstating proceedings, i.e. articles 401 and 403, the lawmaker has not envisaged even one such basis for reinstatement which would include all or even some of the situations outlined in article 31, section 1 of the Constitutional Tribunal Act; the code-related grounds for reinstatement, speaking generally, concern certain procedural defects,

elements of the actual state of affairs in a given case, the behavior of persons interested therein or the relationship of one proceeding to some other proceeding, where none of them encompasses the amendments to the legal state of affairs mentioned in article 31, section 1 of the Constitutional Tribunal Act. Therefore, with the first way of understanding this provision, it would turn out that the reference quoted above to the „course and the principles defined in the provisions on court proceedings” – in the area of the court proceedings regulated by the Civil Proceedings Code – would be an unrelated („inane”) reference and that in general there would not be a legal basis to reinstate such court proceedings in the event of an amendment to the legal state of affairs mentioned in article 31, section 1 of the Constitutional Tribunal Act. Concurrently, the provision being interpreted establishes *expressis verbis* a time limitation to reinstate, proceedings in civil cases in the situation mentioned for the amendment of the legal state of affairs (five years after the decision becomes legally binding). Under the first means of interpreting the reference in article 31, section 1 of the Constitutional Tribunal Act to the provisions on court proceedings the said time limit would be a non-issue, thus the fragment of the provision expressing this limit should be deemed to be totally dispensable. For similar reasons the said reference in article 3 I, section 1 of the Constitutional Tribunal Act to the provisions on court proceedings in the scope of criminal proceedings should be deemed to be a non-issue, and that is the case on account of formulating the causes for reinstating the proceedings in article 474 of the Criminal Proceedings Code (in conjunction with article 388 of the said code).

The conclusions which are drawn applying the foregoing way of understanding cannot be reconciled with the premise of the lawmaker's rationality, underpinning the correct interpretation of the provisions of law. A lawmaker would not be rational if it were to permit *expressis verbis* the opportunity to reinstate proceedings because of the repeal or amendment of a defective provision (instituting along the way for specific instances an explicit time limit permitting one to reinstate proceedings for this reason), but would simultaneously define them as the only such grounds to reinstate proceedings, which would not enable one to reinstate proceedings for this very reason.

Taking these arguments into account and considering the directive formulated above for the interpretation of article 31 of the Constitutional Tribunal Act deduced from the system-wide solutions, the first means of understanding article 31, section 1 of the Constitutional Tribunal Act should be rejected and that means of understanding should be deemed to be proper in whose favor the President of the Chief Administrative Court and the Prosecutor General have spoken out (the hypothesis of this resolution, the first sentence).

The view that article 31, section 1 defines an independent basis to reinstate proceedings in a situation when the rule of law has been amended as specified in this provision has previously been stated by the Constitutional Tribunal in the reasoning of the Resolution dated 4 April 1995 (W. 9/94). Concurrently, the Constitutional Tribunal took note that this provision cannot be applied using the principle of analogy to the situation of a collision between a legally binding court decision and the universally binding interpretation determined later by the Constitutional Tribunal of this provision constituting the grounds for this decision, since this application would collide with the generally accepted view that the provisions defining the permissibility of stirring legally binding decisions (including the grounds for reinstating proceedings which have been completed in a legally binding fashion) cannot be interpreted more broadly. In such circumstances – as the Constitutional Tribunal held at that time – the stirring of a legally binding court decision may come into play by way of an extraordinary review if the qualified reasons for applying this means as spelled out in the proper provisions on court proceedings are met in the specific state of actual affairs.

3. The assertion that the reference in article 31, section 1 of the Constitutional Tribunal Act to the „course and the principles specified in the provisions on court proceedings” does not include a reference to the grounds to reinstate proceedings spelled out in those provisions is strictly linked to the hypothesis justified in the previous section. Speaking more generally, one should assert that this reference does not concern those elements of regulating the course and the principles for reinstating

proceedings which are directly regulated in article 31, section 1 of the Constitutional Tribunal Act, that is the grounds for reinstating all court proceedings, but moreover the time limit of application to reinstate proceedings in civil cases on this basis (in this respect the provision being interpreted constitutes a *lex specialis* in relationship to article 408 of the Civil Proceedings Code, for it entails a restriction which is more rigorous than the Code). All other issues pertaining to the demand to reinstate proceedings, jurisdiction and the actions of the court are subject in turn to the regulation set forth in the provisions on court proceedings which are applicable to a given case (the hypothesis of this resolution, second sentence).

4. In connection with the final portion of the reasoning of the Prosecutor General's stance in this case (presented above) a more general hypothesis should be formulated than the suggestion of the party presenting this stance – namely, that in light of article 31, section 1 of the Constitutional Tribunal Act there is a basis to reinstate court proceedings completed in a legally binding fashion not only if a provision has been repealed or amended and which is the subject of a decision made by the Constitutional Tribunal, by the body with jurisdiction over issuing this provision (under the course embodied in article 7, section 3 or article 9 of the Constitutional Tribunal Act), but also if this provision loses its binding force as reflected by article 10, section 1 of the Constitutional Tribunal Act, where this loss of binding force is announced by the President of the Constitutional Tribunal pursuant to article 10, section 3 of this Act. This type of loss of binding force may concern both the provisions of normative acts issued by the Head of State, the supreme and central bodies of national government and other supreme and central state bodies (mentioned in article 1, section 1, sub-section 1 of the Constitutional Tribunal Act), and the provisions of statutes (with respect to the provisions of statutes – see sub-section 3 of the reasoning of the Resolution adopted by the Constitutional Tribunal dated 20 October 1993 (W. 6/93) in the matter of the universally binding interpretation of article 7, section 2 of the Constitutional Tribunal Act – Journal of Laws, 1993, Number 105, Item 481).

One should add that the variegation of situations would have no justification on the grounds of article 31 of the Constitutional Tribunal Act on one hand in which situations the provision deemed to be defective by the Constitutional Tribunal loses its force because it is repealed by the body with jurisdiction to issue it, and on the other hand the situations in which the said provision, on account of the non-activity of the body with jurisdiction, loses its force under the course outlined in article 10, section 3 of the Constitutional Tribunal Act. For in both instances the cause of the forfeiture of binding force by the provision is identical; the form for asserting this cause is also the same (a decision of the Constitutional Tribunal) – as a consequence, the legal effects of this forfeiture must be identical with reference to the acts of applying the law issued on the grounds of the defective provision. (...)

Third, these arguments must retain some relationship to the other constitutional values, principles or norms, justifying the different treatment of similar entities (e.g. decision dated 23 October 1995, file number K. 4/95, Collection of the Constitutional Tribunal's decisions, 1995, Part II, p. 93). One of these constitutional principles is social justice (formerly article 1 of the constitutional provisions, currently article 2 of the Constitution of the Republic of Poland). On many occasions the Constitutional Tribunal has drawn attention to the relationship between equality and social justice. Both principles overlap one another to a great degree. In particular, justice commands the equal treatment of those entities of law which are characterized by a given essential trait. The differentiation of entities of law is permissible on the grounds of equality if it conforms with social justice (e.g. decision dated 3 September 1996, file number 10/96, Collection of the Constitutional Tribunal's decisions, Number 4/1996, pp. 280-281; judgment in the matter of K. 37/97, Collection of the Constitutional Tribunal's decisions, ZU, Number 3(18)/98, p. 200). In light of the arguments presented above, permitting the execution of the receivables due from the Agency by virtue of the obligation it assumed only from the property and the benefits obtained therefrom, transferred to the Agency after the wound up enterprise which drew down the obligation

differentiates entities of law but conforms to the principle of social justice, as has been shown above in point 3.

Moreover, in reference to the applicant's process letter dated 22 June 1998, expanding the subject of the grievance to include article 14, section 3b) of the statute cited above, the Constitutional Tribunal resolved to discontinue the proceedings in this area. The grounds thereof was the fact that the courts making their decisions in this case founded their judgments on article 14, section 3a) and not section 3b) of the said provision. In these conditions the issuance of a decision about a legal provision which did not constitute the grounds of a final decision would be impermissible and for this reason the Constitutional Tribunal resolved to discontinue the proceedings in this area according to the principle embodied in article 39, section 1, sub-section 1 of the Constitutional Tribunal Act.

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