The Constitutional Tribunal Act of 22 July 2016

K 39/16

Ref. No. K 39/16

JUDGMENT
IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 11 August 2016

The Constitutional Tribunal, in a bench composed of:

Andrzej Rzepliński – Presiding Judge
Stanisław Biernat
Zbigniew Jędrzejewski
Leon Kieres
Julia Przyłębska
Piotr Pszczółkowski
Małgorzata Pyziak-Szafnicka
Stanisław Rymar
Piotr Tuleja – 2nd Judge Rapporteur
Sławomira Wronkowska-Jaśkiewicz
Andrzej Wróbel – 1st Judge Rapporteur
Marek Zubik,

having considered in accordance with the procedure referred to in Article 93(1)(2) of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. of 2016, item 293), at the sitting in camera held on 11 August 2016, in the case concerning the following joined applications:

1) the application of 2 August 2016 (ref. no. K 39/16) submitted by a group of Sejm Deputies to determine the conformity of the Constitutional Tribunal Act of 22 July 2016 (Journal of Laws – Dz. U. of 2016, item 1157) to Article 2 in conjunction with Article 118(1) and (3), Article 119(1)

and (2), Article 173 in conjunction with Article 10, and Article 195(1) of the Constitution of the Republic of Poland as well as to the Preamble to the Constitution,

or to determine the conformity of:

a) Article 6(7) of the Act referred to in point 1 (hereinafter: 'the 2016 Constitutional Tribunal Act') to Article 194(1) of the Constitution;

b) Article 26(1)(1)(g) of the 2016 Constitutional Tribunal Act to Articles 2 and 195(1) of the Constitution;

c) Article 33(5) of the 2016 Constitutional Tribunal Act – insofar as it requires the National Council of the Judiciary of Poland to prove, on the basis of Article 191(2) of the Constitution, that a challenged statute or another normative act pertains to matters that fall within the scope of the said Council's activity – to Article 191(1)(2) and Article 191(2) in conjunction with Article 186(2) of the Constitution;

d) Article 38(3)-(6) of the 2016 Constitutional Tribunal Act to Article 2 and Article 173 in conjunction with the Preamble to the Constitution, as well as to Articles 10 and 45(1) of the Constitution;

e) Article 61(1)-(3) of the 2016 Constitutional Tribunal Act to Article 2, Article 32(1), and Article 173 in conjunction with the Preamble to the Constitution, as well as to Articles 10 and 45(1) of the Constitution;

f) Article 68(5)-(7) of the 2016 Constitutional Tribunal Act to Article 2, Article 173 in conjunction with Article 10, Article 190(5), and Article 195(1) in conjunction with Article 45(1) of the Constitution, as well as to the Preamble to the Constitution;

g) Article 72(1)(6) of the 2016 Constitutional Tribunal Act – insofar as it requires that a judgment should provide information about the outcome of a vote by judges of the Tribunal, i.e. the vote of the judges of an adjudicating bench held during the judges' deliberation before the issuance of a judgment – to Articles 2 and 195(1) of the Constitution;

h) Article 80(4) of the 2016 Constitutional Tribunal Act – insofar as it provides grounds for an application referred to in Article 80(4) of the 2016 Constitutional Tribunal Act, lodged by the President of the Tribunal, to be considered by the Prime Minister in a time-frame other than forthwith – to Article 190(2) of the Constitution;

i) Articles 83(1), 85, 86 and 87 of the 2016 Constitutional Tribunal Act to Article 2, Article 45(1), Article 173 in conjunction with Article 10 of the Constitution, as well as to the Preamble to the Constitution;

j) Article 83(2) of the 2016 Constitutional Tribunal Act in the light of the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution, and to Article 2 as well as Article 173 in conjunction with Article 10 of the Constitution;

k) Article 84 of the 2016 Constitutional Tribunal Act in the light of the principle of diligence and efficiency in the work of public institutions, which arises from the Preamble to the Constitution, and to Article 2, Article 173 in conjunction with Article 10, and also to Article 191(1)(1)-Article 191(1)(5) as well as Article 195(1) and Article 45(1) of the Constitution;

l) Article 89 of the 2016 Constitutional Tribunal Act to Articles 2, 7, 10, 173 as well as 190(1) and (2) of the Constitution;

ł) Article 90 of the 2016 Constitutional Tribunal Act to Articles 2, 7, 10, 173 as well as 194(1) of the Constitution;

m) Article 92 of the 2016 Constitutional Tribunal Act to Article 2 of the Constitution.

2) the application of 2 August 2016 (ref. no. K 40/16) submitted by another group of Sejm Deputies to determine the conformity of:

a) Article 6(5) in conjunction with Article 6(7) of the Constitutional Tribunal Act of 22 July 2016 to Article 45(1), Article 194(1) of the Constitution of the Republic of Poland as well as to Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950 (Journal of Laws – Dz. U. of 1993 No. 61, item 284, as amended);

b) Article 6(7) as well as Article 90 of the 2016 Constitutional Tribunal Act to Articles 2, 10 as well as 173 of the Constitution;

c) Article 16(1) of the 2016 Constitutional Tribunal Act to Article 2 as well as Article 10 of the Constitution;

d) Article 26(1)(e) of the 2016 Constitutional Tribunal Act to Article 2 of the Constitution;

e) Article 26(2) of the 2016 Constitutional Tribunal Act to Article 2 of the Constitution;

f) Article 26(3), in conjunction with Article 38(3), of the 2016 Constitutional Tribunal Act to Article 2 of the Constitution;

g) Article 30(5), in conjunction with Article 61(1), of the 2016 Constitutional Tribunal Act to Article 2, Article 10 as well as Article 173 of the Constitution;

h) Article 61(1) of the 2016 Constitutional Tribunal Act to Article 2 and Article 45(1) of the Constitution;

i) Article 68(5)-(7) of the 2016 Constitutional Tribunal Act to Articles 2 and 45(1) of the Constitution as well as with Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

j) Articles 83, 84 and 85 of the 2016 Constitutional Tribunal Act to Article 2, Article 45(1) as well as Article 191(1)(1)-Article 191(1)(5) of the Constitution;

k) Article 89 of the 2016 Constitutional Tribunal Act to Article 190(2) of the Constitution;

3) the application of 2 August 2016 (ref. no. K 41/16) submitted by the Polish Ombudsman to determine the conformity of:

a) the Constitutional Tribunal Act of 22 July 2016 to Articles 2, 7, 112 as well as 119(1) of the Constitution of the Republic of Poland;

b) Article 16(1) of the 2016 Constitutional Tribunal Act, in the part which includes the word "three", to Articles 2, 10, 173, 194(2) as well as Article 195(1) of the Constitution;

c) Article 38(3), (4) and (5) of the 2016 Constitutional Tribunal Act to Articles 2 and 10 as well as to Article 173 of the Constitution in conjunction with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

d) Article 61(6) of the 2016 Constitutional Tribunal Act, in the part which includes the wording "unless the Act provides for the obligation of participation in the hearing", to Articles 10, 45(1) and 173 of the Constitution in conjunction with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

e) Article 68(5)-(7) of the 2016 Constitutional Tribunal Act to Articles 2, 45(1), 173 and 190(5) of the Constitution in conjunction with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

f) Article 80(4), first sentence, of the 2016 Constitutional Tribunal Act to Articles 10 and 190(2) in conjunction with Article 190(1) of the Constitution in conjunction with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

g) Article 83(1) of the 2016 Constitutional Tribunal Act to Articles 2 and 45(1) of the Constitution to the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

h) Article 83(2) of the 2016 Constitutional Tribunal Act to Article 2 as well as Article 173 of the Constitution in conjunction with Articles 10 and 45(1) of the Constitution;

i) Article 84 of the 2016 Constitutional Tribunal Act to Articles 2, 10, 45(1) and 173 of the Constitution in conjunction with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution;

j) Article 89 of the 2016 Constitutional Tribunal Act to Article 7, Article 173 in conjunction with Article 10 as well as Article 190(2), first sentence, in conjunction with Article 190(1) of the Constitution;

k) Article 90 of the 2016 Constitutional Tribunal Act to Articles 2, 173 as well as 194(1) of the Constitution;

1) Article 92 of the 2016 Constitutional Tribunal Act to the principle of appropriate legislation, which arises from Article 2 of the Constitution.

adjudicates as follows:

1. Article 26(1)(1)(g) of the Constitutional Tribunal Act of 22 July 2016 (Journal of Laws – Dz. U. of 2016, item 1157) **is inconsistent with Article 197, and Article 195(1) of the Constitution.**

2. Article 38(3)-(6) of the 2016 Constitutional Tribunal Act are inconsistent with Article 10, Article 173, Article 188, Article 191(1)(1)-Article 191(1)(5) of the Constitution, as well as with the Preamble to the Constitution.

3. Article 61(3) of the 2016 Constitutional Tribunal Act – in the part which includes the wording "With regard to questions of law, constitutional complaints and disputes over powers between central constitutional state authorities" – is inconsistent with Article 191(1)(1)-Article 191(1)(5) of the Constitution as well as with the Preamble to the Constitution.

4. Article 61(6) of the 2016 Constitutional Tribunal Act is inconsistent with Article 10, Article 173, and Article 188 of the Constitution, as well as with the Preamble to the Constitution.

5. Article 68(5)-(7) of the 2016 Constitutional Tribunal Act are inconsistent with Article 188, and Article 195(1) of the Constitution, as well as with the Preamble to the Constitution.

6. Article 80(4) of the 2016 Constitutional Tribunal Act is inconsistent with Article 190(2) of the Constitution.

7. Article 83(1) of the 2016 Constitutional Tribunal Act, construed in the way that the said provision does not undermine the effectiveness of any procedural steps taken prior to the entry into force of the said Act, is consistent with Article 2 of the Constitution.

8. Article 83(2) as well as Articles 84-87 of the 2016 Constitutional Tribunal Act are inconsistent with Article 2, Article 10, and Article 173 of the Constitution, as well as with the Preamble to the Constitution.

9. Article 89 of the 2016 Constitutional Tribunal Act is inconsistent with Article 10, Article 173, and Article 190(2) of the Constitution.

10. Article 90 of the 2016 Constitutional Tribunal Act is inconsistent with Article 194(1) of the Constitution.

Moreover, the Tribunal decides:

pursuant to Article 104(1)(2) and Article 104(1)(3) of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. of 2016, item 293)**, to discontinue the proceedings as to the remainder.**

Andrzej Rzepliński
Stanisław Biernat
Zbigniew Jędrzejewski (dissenting opinion)
Leon Kieres
Julia Przyłębska (dissenting opinion)
Piotr Pszczółkowski (dissenting opinion)
Małgorzata Pyziak-Szafnicka
Stanisław Rymar
Piotr Tuleja
Sławomira Wronkowska-Jaśkiewicz
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