

Précis of the judgement of the Constitutional Tribunal of 18 February 2009, Kp 3/08.

Headnotes:

The right to trial is composed of the right to access to court, the right to an adequate court procedure, the right to a court decision and the right to an adequate régime and standing of organs issuing court decisions.

The prolixity of legal proceedings occurs only if the inactivity of a legal organ is unjustified. In addition to the length of the proceedings, several other factors should be taken into account, such as the complexity of the case, its importance for the claimant, or his or her behaviour.

Removing eventual doubts relating to the interpretation or the scope of binding force of EU law at an early stage of the proceedings could additionally strengthen the legal standing of the accused or of the victim.

Summary:

#### 1. The facts.

The abstract review, initiated by the President of the Republic, challenged the conformity of Article 1 of the Act of 10<sup>th</sup> July 2008 – the Act on authorisation of the President of the Republic of Poland to accept the jurisdiction of the Court of Justice of the European Communities under Article 35.2 of the Treaty on the European Union, Journal of Laws 2009, no. 33, item 253 (hereinafter: the Act), with Article 45.1 of the Constitution.

The President did not question the constitutionality of himself having the right to declare the acceptance of the jurisdiction of the Court, but rather the unconstitutionality of every common court having the possibility to address a prejudicial question to the Court. In his opinion, this might lead to an infringement of Article 45.1 of the Constitution, i.a. because of a “widespread practice” of addressing prejudicial questions under Article 234 of the Treaty Establishing the European Community; because of the strict formal requirements of lodging a prejudicial question, and because of a long average time of processing a prejudicial question by the Court.

A member state acquires the competence to accept the jurisdiction of the Court, ratifying the Treaty. Until the day the judgement has been issued, 17 member states of the European Union have accepted the facultative jurisdiction of the Court under Article 35.2 of the Treaty.

In the Polish legal system, there is a possibility for the common courts to address prejudicial questions to the Supreme Court, to the Supreme Administrative Court, and to the Constitutional Tribunal.

On 1<sup>st</sup> March 2008 the Court has adopted the urgent prejudicial procedure. Its aim was to significantly reduce the amount of time needed to issue a prejudicial judgement in certain fields of law.

#### 2. Arguments and conclusion of the Court.

The court has quoted several judgements of the European Court of Human Rights, with respect to the right to trial within reasonable time in the context of prejudicial proceedings before the Court of Justice of the European Communities. On the one hand, prolixity of legal proceedings may occur only, if the inactivity of a judicial organ is unjustified. Several factors should be taken into account in addition to the duration of proceedings, such as the complexity of the case, the

importance of the case for the claimant, as well as his or her behaviour. On the other hand, the extra time due to the prejudicial proceedings before the Court may not be qualified as prolixity of the proceedings, and that time may not result in a state facing charges for having infringed the right to trial within reasonable time. Legal organs should above all try to strike a balance between proceeding at a reasonable pace and the general rule of administration of justice.

The analogous prejudicial proceedings under Polish law have never been subject to constitutional review.

Giving the common courts the possibility to address a prejudicial question to the Court under Article 35.2 of the Treaty could remove eventual doubts relating to the interpretation or the scope of binding force of EU law at an early stage of the proceedings. It could additionally strengthen the legal standing of the accused or of the victim.

It is not true that the practice of addressing prejudicial questions by administrative courts under the Article 234 of the Treaty Establishing the European Community is widespread. Every common court issuing a judgement in criminal matters decides on its own on the legal and factual basis of its ruling.

From the moment the Treaty of Amsterdam has entered into force to the moment this decision has been issued, there were only sixteen judgements of the Court under Article 35 of the Treaty. Concerning the Article 234 of the Treaty Establishing the European Community, from the moment of Poland's accession to the EU to the moment this judgement has been issued, one motion has been lodged by the Supreme Court, eleven by administrative courts and only four by common courts.

There are no particular formal requirements of a prejudicial question addressed to the Court. It is enough if the respective motion is formulated in a simple, clear and precise way, and if it includes the legal and factual tenor of the proceedings in the member state.

The urgent prejudicial procedure, adopted on 1<sup>st</sup> March 2008 has significantly reduced the average length of prejudicial proceedings before the Court (from an average of 20 months before the adoption of the urgent procedure to about 1-3 months under the urgent procedure).

The Tribunal has decided that the provision of article 1 of the Act is in accordance with the chosen standard of constitutional control. The judgement was issued by the Tribunal sitting in a plenary session (i.e. 15 judges) with no dissenting opinions raised.

## Cross-references:

### Decisions of the Constitutional Tribunal:

- Judgement SK 19/98 of 16.03.1999, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 1999, no. 3, item 36; [POL-1999-1-007];
- Judgement SK 12/99 of 10.07.2000, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2000, no. 5, item 143; [POL-2000-C-001];
- Judgement K 33/99 of 3.10.2000, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2000, no. 6, item 188; [POL-2000-3-020];
- Judgement SK 10/99 of 4.12.2000, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2000, no. 8, item 300; [POL-2000-C-002];
- Judgement SK 10/00 of 2.04.2001, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2001, no. 3, item 52;
- Judgement SK 32/01 of 13.05.2002, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2002, no. 3A, item 31;
- Judgement SK 5/02 of 11.06.2002, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2002, no. 4A, item 41; [POL-2002-2-018];
- Judgement P 13/02 of 3.12.2002, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2002, no. 7A, 90; [POL-2003-1-008];
- Judgement P 4/04 of 7.09.2004, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2004, no. 8A, item 81;
- Judgement P 1/05 of 27.04.2005, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2005, no. 4A, item 42; [POL-2005-1-005];
- Judgement K 18/04 of 11.05.2005, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2005, no. 5A, item 49; [POL-2005-1-006];
- Judgement K 53/05 of 14.06.2006, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2006, no. 6A, item 66;
- Judgement SK 7/06 of 24.10.2007, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2007, no. 9A, item 108; [POL-2008-1-004];
- Judgement K 39/07 of 28.11.2007, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2007, no. 10A, item 129; [POL-2008-1-005];
- Judgement P 49/06 of 19.02.2008, *Orzecznictwo Trybunału Konstytucyjnego* (Official Digest), 2008, no. 1A, item 5;

### Decisions of the European Court of Human Rights:

- Judgement no. 2614/65 of 16.07.1971 (Ringelsen v. Austria);
- Judgement no. 6232/73 of 28.06.1978 (König v. Germany); [ECH-1978-S-003];
- Judgement no. 12919/87 of 12.10.1992 (Boddaert v. Belgium);
- Judgement no. 12728/87 of 25.11.1992 (Abdoella v. the Netherlands);
- Judgement no. 13089/87 of 25.02.1993 (Dobbertin v. France);
- Judgement no. 15530/89 of 25.03.1996 (Mitap and Müftüoğlu v. Turkey); [ECH-1996-X-002];
- Judgement no. 20323/92 of 26.02.1998 (Pafitis v. Greece);
- Judgement no. 26614/95 of 15.10.1999 (Humen v. Poland);
- Judgement no. 38670/97 of 4.04.2000 (Dewicka v. Poland);

- Judgement no. 40892/98 of 30.09.2003 (Koua Poirezz v. France).

#### Decisions of the Court of Justice of the European Communities:

- Judgement 6/64 Flaminio Costa of 15.07.1964;
- Judgement C-99/00 Lyckeskog of 4.06.2002;
- Judgement in the joint cases C-187/01 Hüseyin Gözütok and C-385/01 Klaus Brügge of 11.02.2003;
- Judgement C-555/03 Warbecq of 10.06.2004;
- Judgement C-469/03 Filomeno Miraglia of 10.03.2005;
- Judgement C-105/03 Pupino of 16.06.2005; [ECJ-2008-2-016];
- Judgement C-150/05 Jean van Straaten of 29.09.2006;
- Judgement C-467/05 Dell'Orto of 28.06.2007;
- Judgement C-195/08 PPU Rinau of 11.07.2008;
- Judgement C-66/08 Kozłowski of 17.07.2008;
- Judgement C-296/08 PPU Sansebastian Goicoechea of 12.08.2008;
- Judgement C-388/08 PPU Leymann and Pustovarov of 1.12.2008;
- Judgement C-210/06 Cartesio of 12.12.2008.

#### Decisions of the Supreme Court:

- Judgement I KZP 21/06 of 20.07.2006, *Orzecznictwo Sądu Najwyższego, izba karna i wojskowa* (Official Digest), 2006, no. 9, item 77;
- Judgement I KZP 30/05 of 27.10.2005, *Orzecznictwo Sądu Najwyższego, izba karna i wojskowa* (Official Digest), 2005, no. 11, item 107;
- Judgement IV KKN 617/99 of 5.02.2003, *Orzecznictwo Sądu Najwyższego, izba karna i wojskowa* (Official Digest), 2003, item 284.

#### Languages:

Polish.