

The Constitutional Tribunal Act of 22 July 2016 (case ref. no. K 39/16)

This case has been joined with cases ref. nos. [K 40/16](#) and [K 41/16](#) (and all the three cases will be considered jointly under the reference no. [K 39/16](#)).

The gist of the applications to be considered jointly:

I. (the application by a group of Sejm Deputies)

1) the Constitutional Tribunal Act of 22 July 2016 (hereinafter: ‘the 2016 Act’), as a whole, is inconsistent with Art. 2 in conjunction with Art. 118(1) and (3), Art. 119(1) and (2), Art. 173 in conjunction with Art. 10, Art. 195(1), as well as with the Preamble to the Constitution of the Republic of Poland (hereinafter: ‘the Constitution’) – not only due to the defective process of the enactment of the 2016 Act, but also due to the introduced rules for the functioning of the constitutional organ of public authority (i.e. the Constitutional Tribunal) which will lead to its dysfunctionality and the lack of a possibility of the diligent performance of tasks specified in the Constitution, as well as due to the re-introduction of norms ruled by the Constitutional Tribunal to be inconsistent with the Constitution.

Also, as an alternative to the allegation formulated in point 1, the Applicants request the Constitutional Tribunal to determine that:

- 2) Art. 6(7) of the 2016 Act is inconsistent with Art. 194(1) of the Constitution;
- 3) Art. 26(1)(1)(g) of the 2016 Act is inconsistent with Arts. 2 and 195(1) of the Constitution;
- 4) Art. 33(5) of the 2016 Act – insofar as it requires the National Council of the Judiciary of Poland to prove, on the basis of Art. 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 – is inconsistent with Art. 191(1)(2) and Art. 191(2) in conjunction with Art. 186(2) of the Constitution;
- 5) Art. 38(3)-(6) of the 2016 Act are inconsistent with Art. 2 and Art. 173 in conjunction with the Preamble to the Constitution, as well as with Arts. 10 and 45(1) of the Constitution;
- 6) Art. 61(1)-(3) of the 2016 Act are inconsistent with Art. 2, Art. 32(1), Art. 173 in conjunction with the Preamble to the Constitution, as well as with Arts. 10 and 45(1) of the Constitution;
- 7) Art. 68(5)-(7) of the 2016 Act are inconsistent with Art. 2, Art. 173 in conjunction with Art. 10, Art. 190(5), Art. 195(1) in conjunction with Art. 45(1) as well as the Preamble to the Constitution;
- 8) Art. 72(1)(6) of the 2016 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 – is inconsistent with Arts. 2 and 195(1) of the Constitution;
- 9) Art. 80(4) of the 2016 Act – insofar as it provides grounds for an application referred to in Art. 80(4) of the 2016 Act, lodged by the President of the Tribunal, to be considered by the Prime Minister in a time-frame other than forthwith – is inconsistent with Art. 190(2) of the Constitution;
- 10) Arts. 83(1), 85, 86 and 87 of the 2016 Act are inconsistent with Art. 2, Art. 45(1), Art. 173 in conjunction with Art. 10, as well as the Preamble to the Constitution;
- 11) Art. 83(2) of the 2016 Act is inconsistent with the principle of efficiency in the work of public institutions, which arises from the Preamble to the Constitution, and Art. 2 as well as Art. 173 in conjunction with Art. 10 of the Constitution;
- 12) Art. 84 of the 2016 Act is inconsistent with the principle of diligence and efficiency in the work of public institutions, which arises from the Preamble to the Constitution, and Art. 2, Art. 173 in conjunction with Art. 10, and also with Art. 191(1)(1)- Art. 191(1)(5) as well as Art. 195(1) and Art. 45(1) of the Constitution;
- 13) Art. 89 of the 2016 Act is inconsistent with Arts. 2, 7, 10, 173 as well as 190(1) and (2) of the Constitution;
- 14) Art. 90 of the 2016 Act is inconsistent with Arts. 2, 7, 10, 173 as well as 194(1) of the Constitution;
- 15) Art. 92 of the 2016 Act is inconsistent with Art. 2 of the Constitution.

Furthermore:

- 1) the Applicants request the Tribunal to issue a judgment at a sitting in camera, in accordance with

the procedure provided for in Article 93(1) of the Constitutional Tribunal Act of 25 June 2015 (hereinafter: 'the 2015 Act'; Journal of Laws – Dz. U. item 1064, item 1928, item 2129; the Tribunal's judgment ref. no. [K 34/15](#), item 2147; the Tribunal's judgment ref. no. [K 35/15](#), item 2217; *OTK Zbiór Urzędowy* 2/16 (Collection of the Tribunal's Jurisprudence) – the Tribunal's judgment ref. no. [K 47/15](#)) during the period of *vacatio legis* of the 2016 Act. In the view of the Applicants, the arguments presented in this application constitute a sufficient basis for issuing a ruling, and the case itself pertains to legal matters that have already been thoroughly examined by the Constitutional Tribunal in its previous rulings (in particular in the rulings issued in the cases ref. nos. [K 34/15](#), [K 35/15](#) and [K 47/15](#)). The negative consequences of the entry into force of the 2016 Act – in particular for the rights and freedoms of the individual as well as for diligence and efficiency in the work of public institutions – and also, in the Applicants' opinion, the obvious unconstitutionality of the challenged provisions of the 2016 Act justify the issuance of a ruling at a sitting in camera during the period of *vacatio legis* set for the 2016 Act;

2) Should it prove not possible to grant the request formulated in point 1, the Applicants request that the Constitutional Tribunal – acting on the basis of Article 188(1) in conjunction with Article 8(2) and Article 195(1) of the Constitution – consider this application in the light of the provisions of the Constitution that apply directly, with the exclusion of the challenged provisions of the 2016 Act. The reason for the Applicants' request is the fact that the provisions of the 2016 Act which are indicated in the *petitum* of this application are the subject of the constitutional review, and thus taking them into account during examination and adjudication, and subsequently declaring them to be unconstitutional, would result in the issuance of a ruling by the Tribunal on the basis of unconstitutional provisions. This application is also justified by the necessity to protect fundamental systemic principles and values which are characteristic of a democratic state ruled by law, to safeguard the principle that the legislator is to act in a rational way, and also – which is required by the Preamble to the Constitution – to ensure guarantees for the rights and freedoms of citizens as well as diligence and efficiency in the work of public institutions. In addition, it needs to be pointed out that the principle that law enjoys the presumption of constitutionality – which arises from the principle that the legislator is to act in a rational way – does not bind the Constitutional Tribunal in the context of provisions that constitute the subject of a constitutional review. It should be added that an analogous request of the Applicants in the case ref. no. [K 47/15](#) was taken into account by the Constitutional Tribunal, which rightly focused on the necessity to safeguard the public interest and the standards of a state ruled by law.

II. (the application by another group of Sejm Deputies)

The Applicants raise the following allegations:

1. Art. 6(5) in conjunction with Art. 6(7) of the Constitutional Tribunal Act of 22 July 2016 is inconsistent with Art. 45(1), Art. 194(1) of the Constitution of the Republic of Poland as well as with Art. 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950 (hereinafter: 'the Convention');
2. Art. 6(7) of the 2016 Act as well as Art. 90 of the 2016 Act are inconsistent with Arts. 2, 10 as well as 173 of the Constitution;
3. Art. 16(1) of the 2016 Act is inconsistent with Art. 2 as well as Art. 10 of the Constitution;
4. Art. 26(1)(e) of the 2016 Act is inconsistent with Art. 2 of the Constitution;
5. Art. 26(2) of the 2016 Act is inconsistent with Art. 2 of the Constitution;
6. Art. 26(3), in conjunction with Art. 38(3), of the 2016 Act is inconsistent with Art. 2 of the Constitution;
7. Art. 30(5), in conjunction with Art. 61(1), of the 2016 Act is inconsistent with Art. 2, Art. 10 as well as Art. 173 of the Constitution;
8. Art. 61(1) of the 2016 Act is inconsistent with Art. 2 and Art. 45(1) of the Constitution;
9. Art. 68(5), (6) and (7) of the 2016 Act are inconsistent with Arts. 2 and 45(1) of the Constitution as well as with Art. 6(1) of the Convention;
10. Arts. 83, 84 and 85 of the 2016 Act are inconsistent with Art. 2, Art. 45(1) as well as Art. 191(1)(1)-Art. 191(1)(5) of the Constitution;
11. Art. 89 of the 2016 Act is inconsistent with Art. 190(2) of the Constitution.

Should the Tribunal consider this application after the lapse of the period of *vacatio legis* set for the 2016 Act, the Applicants request that their application be considered in the light of the norms of the Constitution. Under Article 195(1) of the Constitution, the judges of the Constitutional Tribunal, in the exercise of their office, are independent and subject only to the Constitution. The Tribunal has exclusive competence to adjudicate on cases concerning the conformity of statutes to the Constitution, and thus it may examine any statute passed by the Sejm. The Sejm may not by means of a statute restrict the scope of the Tribunal's jurisdiction.

III. (the application by the Polish Ombudsman)

The Applicant requests the Tribunal to determine the non-conformity of:

1. the Constitutional Tribunal Act of 22 July 2016 to Arts. 2, 7, 112 as well as 119(1) of the Constitution of the Republic of Poland;
2. Art. 16(1) of the 2016 Act, in the part which includes the word "three", to Arts. 2, 10, 173, 194(2) as well as Art. 195(1) of the Constitution;
3. Art. 38(3), (4) and (5) of the 2016 Act to Arts. 2 and 10 as well as to Art. 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;
4. Art. 61(6) of the 2016 Act, in the part which includes the wording "unless the Act provides for the obligation of participation in the hearing", to Arts. 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;
5. Art. 68(5)-(7) of the 2016 Act to Arts. 2, 45(1), 173 and 190(5) of the Constitution in conjunction with the principle of efficiency in the work of public institutions;
6. Art. 80(4), first sentence, of the 2016 Act to Arts. 10 and 190(2) in conjunction with Art. 190(1) of the Constitution in conjunction with the principle of efficiency in the work of public institutions;
7. Art. 83(1) of the 2016 Act to Arts. 2 and 45(1) of the Constitution in conjunction with the principle of efficiency in the work of public institutions;
8. Art. 83(2) of the 2016 Act to Art. 2 as well as Art. 173 of the Constitution in conjunction with Arts. 10 and 45(1) of the Constitution;
9. Art. 84 of the 2016 Act to Arts. 2, 10, 45(1) and 173 of the Constitution in conjunction with the principle of efficiency in the work of public institutions;
10. Art. 89 of the 2016 Act to Art. 7, Art. 173 in conjunction with Art. 10 as well as Art. 190(2), first sentence, in conjunction with Art. 190(1) of the Constitution;
11. Art. 90 of the 2016 Act to Arts. 2, 173 as well as 194(1) of the Constitution;
12. Art. 92 of the 2016 Act to the principle of appropriate legislation, which arises from Art. 2 of the Constitution.