

JUDGMENT

The Act of 22 December 2015 amending the Constitutional Tribunal Act

K 47/15

Ref. No. K 47/15 (/s/k-4715)

JUDGMENT IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 9 March 2016

The Constitutional Tribunal, in a bench composed of:

Andrzej Rzepliński – Presiding Judge
Stanisław Biernat – Judge Rapporteur
Mirosław Granat
Leon Kieres
Julia Przyłębska
Piotr Pszczołkowski
Małgorzata Pyziak-Szafnicka
Stanisław Rymar
Piotr Tuleja
Sławomira Wronkowska-Jaśkiewicz
Andrzej Wróbel
Marek Zubik,
Grażyna Szałygo – Recording Clerk,

having considered – at the hearing on 8 March 2016, in the presence of the applicants – the following joined applications:

1) the application submitted by the First President of the Supreme Court to determine the conformity of:

a) Article 10(1), Article 44(1)(1) and Article 44(3), Article 80(2), Article 87(2) and Article 99(1) of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. item 1064, with further amendments), as amended by Article 1, points 3, 9, 10, 12 and 14, of the Act of 22 December 2015 amending the Constitutional Tribunal Act (Journal of Laws – Dz. U. item 2217), to Article 10(2) and Article 173 in conjunction with the Preamble to the Constitution, Article 2 and Article 45(1) of the Constitution, as – by virtue of making it impossible for the public institution to carry out its activity diligently and efficiently – they infringe the principles of a state ruled by law, within the scope of constitutional review conducted by the Constitutional Tribunal, as well as the principle that the legislator is to act in a rational way;

b) Article 2 of the Act of 22 December 2015 referred to in point 1(a) to Article 10(2) and Article 173 in conjunction with the Preamble to the Constitution, Article 2 and Article 45(1) of the Constitution, as – by virtue of making it impossible for the public institution to carry out its activity diligently and efficiently – they infringe the principles of a state ruled by law, within the scope of constitutional review conducted by the Constitutional Tribunal, as well as the principle that the legislator is to act in a rational way;

c) Article 28a, Article 31a and Article 36 of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1, points 5, 7 and 8, of the Act of 22 December 2015 referred to in point 1(a), to Article 10(1), Article 173 and Article 195(1) in conjunction with Article 8(1) of the Constitution;

d) Article 8(4), Article 28a, Article 31a, Article 36(1)(4) and Article 36(2) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1, points 2, 5, 7 and 8, of the Act of 22 December 2015 referred to in point 1(a), to Article 119(1) of the Constitution;

e) Article 5 of the Act of 22 December 2015 referred to in point 1(a) to Article 2 in conjunction with Article 8 and Article 188 of the Constitution;

2) the application of 29 December 2015 submitted by a group of Sejm Deputies to determine the conformity of the Act of 22 December 2015 referred to in point 1(a) to Article 2, Article 7, Article 118, Article 119(1) and Article 186(1) of the Constitution, as well as to Article 13 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);

3) the application of 31 December 2015 submitted by a group of Sejm Deputies to determine the conformity of the Act of 22 December 2015 referred to in point 1(a) to Article 2 in conjunction with Article 118(3) and Article 119(1), Article 173 in conjunction with Article 10, as well as to Article 195(1) of the Constitution, due to a defective legislative process in the course of which the Act was enacted as well as the introduced rules for the functioning of the constitutional organ of public authority which lead to dysfunctionality and the lack of the possibility of the diligent exercise of constitutional powers; or to determine the conformity of:

a) Article 8(4) and Article 36(2) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(2) and (8) of the Act of 22 December 2015 referred to in point 1(a), to Article 2 and Article 173 in conjunction with Article 10 of the Constitution;

b) Article 10(1) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(3) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 173 in conjunction with Article 10 and Article 195(1) of the Constitution, as well as to the principle of efficiency in the work of public institutions, expressed in the Preamble to the Constitution;

c) Article 28a of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), added by Article 1(5) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 173 in conjunction with Article 10 and Article 195(1) of the Constitution,

d) Article 31a and Article 36(1)(4) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), respectively – added by Article 1(7) and amended by Article 1(8) of the Act of 22 December 2015 referred to in point 1(a), as well as Article 1(6) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 180(1) and (2), Article 173 in conjunction with Article 10, Article 195(1), Article 197 in conjunction with 112, as well as to Article 78 of the Constitution;

e) Article 44(1) and (3) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(9) of the Act of 22 December 2015 referred to in point 1(a), to Article 2 and Article 173 in conjunction with Article 10 of the Constitution, as well as to the principle of efficiency in the work of public institutions, expressed in the Preamble to the Constitution;

f) Article 80(2) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(10) of the Act of 22 December 2015 referred to in point 1(a), to Article 2 and Article 173 in conjunction with Article 10 of the Constitution, as well as to the principle of efficiency in the work of public institutions, expressed in the Preamble to the Constitution; and insofar as it concerns applications for determining the constitutionality of the State Budget Bill or the Interim State Budget Bill referred to the Constitutional Tribunal by the President of Poland – also to Article 224(2) of the Constitution;

- g) Article 87(2) and Article 87(2a) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), respectively – as amended and added by Article 1(12) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 45 and Article 173 in conjunction with Article 10 of the Constitution, as well as to the principle of efficiency in the work of public institutions, expressed in the Preamble to the Constitution; and insofar as they concern applications for determining the constitutionality of the State Budget Bill or the Interim State Budget Bill referred to the Constitutional Tribunal by the President of Poland – also to Article 224(2) of the Constitution;
- h) Article 99(1) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(14) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 190(5), Article 173 in conjunction with Article 10 of the Constitution, as well as to the principle of efficiency in the work of public institutions, expressed in the Preamble to the Constitution;
- i) Article 1(16) of the Act of 22 December 2015 referred to in point 1(a), insofar as it repeals Articles 19 and 20 of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), to Article 197 in conjunction with Article 112 and Article 173 in conjunction with Article 10 of the Constitution;
- j) Article 1(16) of the Act of 22 December 2015 referred to in point 1(a), insofar as it repeals Article 28(2) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), to Article 195(1) and Article 173 in conjunction with Article 10 of the Constitution;
- k) Article 2 of the Act of 22 December 2015 referred to in point 1(a) to Article 2, Article 173 in conjunction with Article 10 and Article 45 of the Constitution;
- l) Article 3 of the Act of 22 December 2015 referred to in point 1(a) to Article 2 of the Constitution;
- m) Article 5 of the Act of 22 December 2015 referred to in point 1(a) to Article 2 of the Constitution and the principle of an appropriate period of *vacatio legis*, arising therefrom;
- 4) the application submitted by the Polish Ombudsman to determine the conformity of:
- a) the Act of 22 December 2015 referred to in point 1(a) to Article 7, Article 112, and Article 119(1) and (2) of the Constitution;
- b) Article 1, points 2, 7 and 8, of the Act of 22 December 2015 referred to in point 1(a) to Article 173 in conjunction with Article 10, Article 180(2) and Article 195(1) of the Constitution;
- c) Article 1(3) of the Act of 22 December 2015 referred to in point 1(a) to the principle of appropriate legislation, arising from Article 2 of the Constitution;
- d) Article 1(5) of the Act of 22 December 2015 referred to in point 1(a) to Article 173 in conjunction with Article 10 and Article 195(1) of the Constitution;
- e) Article 1(9) of the Act of 22 December 2015 referred to in point 1(a) to the principle of appropriate legislation, arising from Article 2 of the Constitution, to Article 45(1), Article 122(3), first sentence, and Article 188 of the Constitution, as well as to Article 47 of the Charter of Fundamental Rights of the European Union (OJ C 303, 14.12.2007, p. 1);
- f) Article 1(10) of the Act of 22 December 2015 referred to in point 1(a) to the principle of appropriate legislation, arising from Article 2 of the Constitution, to Article 45(1) of the Constitution, as well as to Article 47 of the Charter of Fundamental Rights of the European Union;
- g) Article 1(12) of the Act of 22 December 2015 referred to in point 1(a) to the principle of appropriate legislation, arising from Article 2 of the Constitution, to Article 45(1) of the Constitution, as well as to Article 47 of the Charter of Fundamental Rights of the European Union;
- h) Article 1(14) of the Act of 22 December 2015 referred to in point 1(a) to Article 122(3), Article 133(2), Article 189 and Article 190(5) of the Constitution;
- i) Article 1(16) of the Act of 22 December 2015 referred to in point 1(a), insofar as it repeals Articles 19 and 20 of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), to Article 173 in conjunction with Article 10 of the Constitution;

- j) Article 2 of the Act of 22 December 2015 referred to in point 1(a) to the principle of appropriate legislation, arising from Article 2 of the Constitution, to Article 45(1) of the Constitution, as well as to Article 47 of the Charter of Fundamental Rights of the European Union;
- k) Article 5 of the Act of 22 December 2015 referred to in point 1(a) to the principle of certainty of law, arising from Article 2 of the Constitution, as well as to Article 88(1) and Article 188 of the Constitution;
- 5) the application submitted by the National Council of the Judiciary to determine the conformity of:
- a) the Act of 22 December 2015 referred to in point 1(a) to Article 2, Article 7, Article 10, Article 45(1), Article 118, Article 119(1) and Article 123(1) of the Constitution;
- b) Article 1(15) of the Act of 22 December 2015 referred to in point 1(a) to Article 2, Article 7, Article 8, Article 131(1), and Article 197 of the Constitution;
- c) Article 5 of the Act of 22 December 2015 referred to in point 1(a) to Article 2, Article 7, Article 8, and Article 188 of the Constitution, as well as to Article 45(1) of the Constitution in conjunction with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- d) Article 8(4) in conjunction with Article 36(1)(4), Article 36(2) and Article 31a of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1, points 2, 7 and 8 of the Act of 22 December 2015 referred to in point 1(a) – insofar as they take away the competence of the General Assembly of the Judges of the Tribunal to determine the expiry of the mandate of a judge of the Tribunal and entrust the Sejm (an organ of the legislature) with the power to recall a judge of the Tribunal from office, which results in the expiry of the mandate of the judges, whereas they entrust the President of Poland and the Minister of Justice with the power to lodge an application for the recall of a judge of the Tribunal from office – to Article 2, Article 7, Article 8, Article 10, Article 173, Article 194(1) and Article 195(1) and (2) of the Constitution;
- e) Article 28a of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(5) of the Act of 22 December 2015 referred to in point 1(a) – insofar as it provides for instituting disciplinary proceedings with regard to a judge of the Constitutional Tribunal upon application by the President of Poland and the Minister of Justice – to Article 2, Article 7, Article 8, Article 10, Article 173, and Article 195(1) and (2) of the Constitution;
- f) Article 44(3) in conjunction with Article 99(1) of the Constitutional Tribunal Act of 25 June 2015 referred to in point 1(a), as amended by Article 1(9) and (14) of the Act of 22 December 2015 referred to in point 1(a), to Article 2, Article 7, Article 8, and Article 190(5) and Article 197 of the Constitution, as well as to Article 45(1) of the Constitution in conjunction with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

adjudicates as follows:

I

1. The Act of 22 December 2015 amending the Constitutional Tribunal Act:

a) is inconsistent with Article 7, Article 112 and Article 119(1) of the Constitution of the Republic of Poland, as well as with the principle of appropriate legislation, arising from Article 2 of the Constitution;

b) is consistent with Article 186(1) of the Constitution;

c) is not inconsistent with Article 123(1) of the Constitution.

[defects in the legislative process]

2. Article 1(6) of the Act of 22 December 2015 referred to in point 1, repealing Article 31(3) of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. of 2016 item 293), is inconsistent with Article 173 in conjunction with Article 10(1) of the Constitution.

[crossing out 'the recall of a judge of the Tribunal from office' from the catalogue of disciplinary penalties]

3. Article 1(15) of the Act of 22 December 2015 referred to in point 1, repealing Chapter 10 of the Act of 25 June 2015 referred to in point 2, is inconsistent with Article 118(1) as well as Article 119(2) of the Constitution, as well as with Article 197 of the Constitution.

[the repeal of provisions on determining the existence of an impediment to the exercise of the office by the President of the Republic – defects in the legislative process as well as substantive defects]

4. Article 1(16) of the Act of 22 December 2015 referred to in point 1, insofar as it repeals Article 19(1) of the Act of 25 June 2015 referred to in point 2:

a) is inconsistent with Article 112 and Article 173 in conjunction with Article 10 of the Constitution;

b) is not inconsistent with Article 197 of the Constitution.

[the repeal of provisions on submitting proposals of candidates for a judgeship at the Tribunal]

5. Article 1(16) of the Act of 22 December 2015 referred to in point 1, insofar as it repeals Article 28(2) of the Act of 25 June 2015 referred to in point 2, is inconsistent with Article 173 in conjunction with Article 10(1) as well as Article 195(1) of the Constitution.

[the crossing out of a separate regulation concerning the disciplinary responsibility of judges of the Constitutional Tribunal for their conduct before taking office]

6. Article 1(2) of the Act of 22 December 2015 referred to in point 1 and amended Article 8(4) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 118(1) and Article 119(2) of the Constitution, as well as with Article 173 in conjunction with Article 10(1) as well as with Article 195(1) of the Constitution.

[depriving the General Assembly of the Judges of the Tribunal of its competence to determine the expiry of the mandate of a judge of the Tribunal]

7. Article 1(3) of the Act of 22 December 2015 referred to in point 1 and amended Article 10(1) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 2 and Article 173 in conjunction with the Preamble to the Constitution and Article 10 of the Constitution, as – by virtue of making it impossible for a constitutional organ of the state, i.e. the Constitutional Tribunal, to carry out its activity diligently and efficiently, as well as by undermining its independence and separateness from the other branches of government – they infringe the principles of a state ruled by law.

[the introduction of the requirement that the General Assembly is to adopt resolutions by a two-thirds majority vote, in the presence of at least 13 judges of the Tribunal]

8. Article 1(5) of the Act of 22 December 2015 referred to in point 1 and added Article 28a of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 118(1) and Article 119(2) of the Constitution, as well as with Article 173 in conjunction with Article 10(1) as well as with Article 195(1) of the Constitution.

[entrusting the President of Poland and the Minister of Justice with the power to lodge an application for the recall of a judge of the Tribunal from office]

9. Article 1(7) of the Act of 22 December 2015 referred to in point 1 and added Article 31a of the Act of 25 June 2015 referred to in point 2:

a) are inconsistent with Article 118(1) and Article 119(2) of the Constitution, as well as with the principle of specificity of law – arising from Article 2 of the Constitution, with Article 78, Article 173 in conjunction with Article 10(1) and Article 195(1) of the Constitution;

b) are not inconsistent with Article 180(1) and (2) of the Constitution.

[a new procedure for the recall of a judge of the Tribunal from office by the Sejm]

10. Article 1(8) of the Act of 22 December 2015 referred to in point 1, insofar as it amends Article 36(1)(4) of the Act of 25 June 2015 referred to in point 2, and amended Article 36(1)(4) of the Act of 25 June 2015 referred to in point 2:

a) are inconsistent with Article 118(1) and Article 119(2) of the Constitution, as well as with the principle of specificity of law, arising from Article 2 of the Constitution, with Article 78, Article 173 in conjunction with Article 10(1) and Article 195(1) of the Constitution;

b) are not inconsistent with Article 180(1) and (2) of the Constitution.

[entrusting the Sejm with the power to recall a judge of the Tribunal from office, upon application by the General Assembly of the Judges of the Tribunal]

11. Article 1(8) of the Act of 22 December 2015 referred to in point 1, insofar as it amends Article 36(2) of the Act of 25 June 2015 referred to in point 2, and amended Article 36(2) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 118(1) and Article 119(2) of the Constitution, as well as with Article 173 in conjunction with Article 10(1) as well as with Article 195(1) of the Constitution.

[entrusting the Sejm with the power to determine the expiry of the mandate of a judge of the Tribunal]

12. Article 1(9) the Act of 22 December 2015 referred to in point 1, insofar as it amends Article 44(1) and (3) of the Act of 25 June 2015 referred to in point 2, and amended Article 44(1) and (3) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 2 and Article 173 in conjunction with the Preamble to the Constitution as well as Article 10 and Article 45(1) of the Constitution, as – by virtue of making it impossible for a constitutional organ of the state, i.e. the Constitutional Tribunal, to carry out its activity diligently and efficiently, as well as by undermining its independence and separateness from the other branches of government – they infringe the principles of a state ruled by law.

[the composition of adjudicating benches (in terms of the number of judges), and the requirement that adjudication by a full bench must involve the participation of at least 13 judges of the Tribunal]

13. Article 1(1) of the Act of 22 December 2015 referred to in point 1, and added Article 80(2) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 2 and Article 173 in conjunction with the Preamble to the Constitution as well as Article 10 and Article 45(1) of the Constitution, as – by virtue of making it impossible for a constitutional organ of the state, i.e. the Constitutional Tribunal, to carry out its activity diligently and efficiently, as well as by undermining its independence and separateness from the other branches of government – they infringe the principles of a state ruled by law.

[the dates of hearings or the dates of sittings in camera, at which applications are considered, are to be set in the order in which cases are received by the Tribunal]

14. Article 1(12)(a) of the Act of 22 December 2015 referred to in point 1 and amended Article 87(2) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 2 and Article 173 in conjunction with the Preamble to the Constitution as well as Article 10 and Article 45(1) of the Constitution, as – by virtue of making it impossible for a constitutional organ of the state, i.e. the Constitutional Tribunal, to carry out its activity diligently and efficiently, as well as by undermining its independence and separateness from the other branches of government – they infringe the principles of a state ruled by law.

[the earliest admissible dates for conducting hearings]

15. Article 1(14) of the Act of 22 December 2015 referred to in point 1 and amended Article 99(1) of the Act of 25 June 2015 referred to in point 2 are inconsistent with Article 190(5) of the Constitution.

[the introduction of the requirement that rulings issued by a full bench are to be determined by a two-thirds majority vote]

16. Article 2 of the Act of 22 December 2015 referred to in point 1

a) is inconsistent with Article 2 and Article 173 in conjunction with the Preamble to the Constitution as well as Article 10 and Article 45(1) of the Constitution, as – by virtue of making it impossible for a constitutional organ of the state, i.e. the Constitutional Tribunal, to carry out its activity diligently and efficiently, as well as by undermining its independence and separateness from the other branches of government – they infringe the principles of a state ruled by law;

b) is inconsistent with Article 2, by virtue of providing for the application of the Act of 22 December 2015 to cases that were already pending before the Tribunal on the date of the entry into force of the Act.

[transitional provisions on the consideration of cases pending before the Tribunal – dates of hearings, composition of adjudicating benches]

17. Article 3 of the Act of 22 December 2015 referred to in point 1 is consistent with the principle of the protection of justly acquired rights and the principle of the protection of interests that are pending, which arise from Article 2 of the Constitution.

[transitional provisions, inter alia, on the revocation of the right of assistants to judges of the Tribunal to apply for an examination to be admitted to the profession of judge]

18. Article 5 of the Act of 22 December 2015 referred to in point 1:

a) is inconsistent with Article 2 and Article 188(1) of the Constitution;

b) is not inconsistent with Article 8(1) of the Constitution.

[the entry into force of the Act on the day of its publication – the lack of a period of vacatio legis]

II

Article 44(1) of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. of 2016 item 293), as amended by Article 1(9) of the Act of 22 December 2015 amending the Constitutional Tribunal Act (Journal of Laws – Dz. U., item 2217), will cease to have effect after 9 (nine) months from the date of the publication of the judgment in the present case.

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

Mirosław Granat

Leon Kieres

Julia Przyłębska (dissenting opinion)

Piotr Pszczółkowski (dissenting opinion)

Małgorzata Pyziak-Szafnicka

Stanisław Rymar

Piotr Tuleja

Sławomira Wronkowska-Jaśkiewicz

Andrzej Wróbel

Marek Zubik

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&pokaz=dokumenty&sygnatura=K%2047/15\)](http://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=K%2047/15)