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DEATH OF THE COMPLAINANT AND EXAMINATION OF THE CONSTITUTIONAL COMPLAINT IN VIEW OF THE CONSTITUTIONAL TRIBUNAL (CT)'S DECISION OF 21 JANUARY 2020 §(FILE. NO.: TS 68/18)

ABSTRACT

The analysed matter concerns the examination of a constitutional complaint of a person who died after filing it. This issue has not yet been the subject of wide interest in the Constitutional Tribunal and the science of constitutional law. However, there is no doubt that it is a significant issue, requiring in-depth analysis – particularly in view of the two contradictory opinions expressed in the jurisprudence of the Constitutional Tribunal. On the one hand, the Constitutional Tribunal recognises that the applicant's death in the course of the proceedings does not constitute a reason for suspension or discontinuance of the proceedings initiated by a constitutional complaint, as it is crucial to examine the constitutionality of the challenged

legal norm. On the other hand, in other rulings, the Constitutional Tribunal (CT) states that the basis for the effective filing of a constitutional complaint is the applicant's legal interest, which ceases upon their death. The purpose of this paper is to discuss the issue related to the examination of a constitutional complaint in the situation of the subsequent death of the person who brought the complaint from the perspective of the general legal interest related to its examination and the objectives associated with the examination of the complaint by the Constitutional Tribunal (CT).

KEYWORDS: *constitutional complaint, death of complainant, discontinuance of Constitutional Tribunal (CT) proceedings, preliminary review of constitutional complaint, legal interest.*

INTRODUCTION

The many-year perspective of the application and validity of regulations concerning the constitutional complaint leads to the conclusion that the stage of preliminary control is of great significance for the exercise of the subjective right guaranteed by Article 79 Paragraph 1 of the Constitution of the Republic of 2 April 1997 (hereinafter: the Constitution of the Republic of Poland) (Constitution of the Republic of Poland of April 2, 1997). The aforementioned ruling and the matter raised therein are part of the framework of the increasingly broad discussion among the representatives of the science of constitutional law concerning the formal and substantive side of the constitutional complaint (Czeszejko-Sochacki 1998, p. 31-54, Wiącek 2011, p. 20-34, Sułkowski, Białogłowski, 2012 p. 100-106, Króliczek 2017, p. 35-53, Derlatka 2009, p. 128-142). As such, it fills an important gap in the discussion because it concerns the examination of a constitutional complaint by a person who later died after lodging the complaint. To fully discuss the analysed matter, the dogmatic method, the comparative legal method, and – to a small extent – the historical method were used.

FACTS RELATING TO THE CASE: Ts 68/18

The decision at the heart of the case was made on the following facts. By a decision of 23 May 2016 the Social Insurance Institution (ZUS) denied the applicant the right to a pension. The applicant appealed against the decision of the authority to the Regional Court, which, in a judgment of 25 November 2016, dismissed the appeal in its entirety. The decision of the court of the first instance – following the applicant’s appeal – was subsequently upheld in full by the court of the second instance. A meriti, according to the applicant, the interpretation of the provision of Article 55 of the Act of 17 December 1998 on old-age and disability pensions from the Social Insurance Fund (Journal of Laws of 2020, item 53) (hereinafter: the FUS Act) applied in the case-law of common courts violated the provisions of Articles 31, 32, 64 and 67 of the Constitution of the Republic of Poland. The applicant pointed out that the courts applied an erroneous interpretation, inconsistent with the linguistic and quantitative interpretation principles. The complainant’s main doubts were raised by the notion of “continuation of insurance”, which – in his view – in the case law to date means not terminating the employment relationship on the date of reaching the general retirement age. This condition, introduced by the courts’ caselaw, constituted, in the complainant’s view, “harassment” of persons who on that date, for various reasons, were not or could not remain in employment, which resulted in unjustified differentiation of citizens’ entitlements in terms of their constitutional right to social security.

From the content of the constitutional complaint, it appeared that the applicant had also filed a cassation appeal against the judgment of the Court of Appeal. Bearing this circumstance in mind, the Constitutional Tribunal (CT), by its order of 10 December 2018, suspended the proceedings concerning the preliminary review of the examined constitutional complaint. The Constitutional Tribunal (CT) subsequently established ex officio that the Supreme Court dismissed the cassation appeal in its entirety by its judgment of 4 July 2019.

By order of 3 October 2019 the Tribunal resumed the suspended proceedings and, by order of the same date, summoned the applicant to remove the formal deficiency of the constitutional complaint by documenting the date of service of the decision of the court of second instance on the applicant. In

response to the summons, on 4 November 2019, the Tribunal received a letter from the applicant's attorney, who informed that it was not possible to remove the formal deficiency because the applicant had died and had acted in person before the common courts, requesting – if necessary – that the proceedings be suspended again.

POSITION OF THE CONSTITUTIONAL TRIBUNAL (CT)

The Constitutional Tribunal (CT), however, did not see the need to further suspend the proceedings. Already at the outset of the statement of reasons, the Tribunal emphasised that the death of the complainant did not constitute an obstacle to the examination of the constitutional complaint filed by him (judgment of 24 April 2014, ref. SK 56/12, judgment of CT of 27 May 2009, ref. SK 53/08, OTK-A). Therefore, according to the Tribunal, it cannot be concluded that in the event of the death of the complainant the provisions of the Act of 17 November 1964 – the Code of Civil Proceedings (hereinafter: CCP) (judgement of 21 May 2001, ref. SK 15/00, OTK 2001, no. 4, judgement of 15 April 2003, ref. SK 4/02, OTK-A, judgement of 24 April 2014, ref. SK 56/12, OTK-A, judgement of 27 May 2009, ref. SK 53/08, OTK-A) – apply accordingly. In the opinion of the Constitutional Tribunal (CT), “the peculiarities characterising the constitutional complaint procedure in relation to court proceedings are so significant that they justify a very cautious application of the prerequisites for suspension or discontinuance of proceedings. Adopting a different position would significantly limit the possibility of fulfilling the basic function of proceedings before the Court in terms of examining the constitutionality of laws. A decision adjudicating on the merits of a constitutional complaint has undoubtedly a general value, is effective *erga omnes*, and has universally binding force (Article 190 paragraph 1 of the Constitution). When examining a constitutional complaint, the Tribunal decides on the compliance of the normative act with the Constitution. In turn, the judgement only indirectly concerns the individual case of the complainant in the sense that it decides on the admissibility of the application of a specific normative act’ (judgement of 21 January 2020,

ref. Ts 68/18, OTK-B). As a consequence, the death of the complainant – in this case – does not constitute an obstacle to the issuance of a decision on the refusal to grant or on the granting of further course to the constitutional complaint (judgement of 7 March 2006, ref. Ts 66/05, OTK-B).

The theses of this ruling can be summarised as follows. First, the death of the complainant does not constitute an obstacle to the examination of the constitutional complaint filed by him. Second, the constitutional complaint procedure is separate from the court proceedings conducted under the regime of the Civil Procedure Code regulations, as it is of a general nature. In a word, it is effective erga omnes. Third, the examination of a constitutional complaint is primarily aimed at determining the compliance of a given normative act with the Constitution, while the individual interest of the complainant is of a derivative (secondary) nature.

LEGAL AND COMPARATIVE ANALYSIS OF THE POSITION OF THE CONSTITUTIONAL TRIBUNAL

The theses advanced by the CT require in-depth reflection and evaluation with far-reaching caution. At the outset, it should be noted that another view has also been presented in the jurisprudence of the Tribunal. In its decision of 9 March 1999 (judgement ref. SK 10/98), the Constitutional Tribunal (CT) noted that Article 79 (1) of the Constitution constitutes the normative source of the right to lodge a constitutional complaint. It serves only the subject whose constitutional freedoms or rights are violated. This means that one of the prerequisites of a constitutional complaint is the personal interest of the complainant in the resolution of his/her complaint by the Constitutional Tribunal (CT) (Banaszak 1999, p. 410). The Constitutional Tribunal (CT) deduced from the above that ‘the right to lodge a complaint is a personal right and closely linked to a specific subject. Therefore, the death of the complainant means the termination of the right under Article 79 of the Constitution. In view of the fact that one of the material-legal prerequisites of the complaint has fallen away, the issuance of a decision by the Constitutional Tribunal (CT) becomes unacceptable’ (judgement of 9 March 1999, ref. SK 10/98). This view

is also presented by some representatives of the doctrine of constitutional law. As Małgorzata Masternak-Kubiak observes, ‘the subject filing a complaint must be personally interested in abolishing the violation of his/her rights’ (Masterniak-Kubiak 1998, p. 48).

Lech Jamróz, on the other hand, takes a different stance, stressing that “[t]he Court’s practice, on the other hand, indicates that the death of the complainant in the course of complaint proceedings does not prevent the issuance of a decision on the merits and does not per se constitute grounds for discontinuing or suspending the complaint proceedings” (Jamróz 2011, p. 81).

The differing opinions outlined above show that the problem at hand is important and requires intensive reflection. At this point it is worth noting, in general terms, how the matter under analysis is regulated in the Fundamental Law of the Federal Republic of Germany (hereinafter: GG) (Fundamental Law of the Federal Republic of Germany of 23 May 1949 26.08.2020). In Germany, the individual constitutional complaint normatively located, inter alia, in Article 93 para 4a GG, has several important characteristics that distinguish it from the constitutional complaint in Poland, and thus contribute to the consolidation of the strong constitutional position of the Federal Constitutional Tribunal (hereafter: FCT). The Federal Republic of Germany has chosen to adopt a broad model of constitutional complaint, according to which anyone whose fundamental rights have been violated by a public authority may file a complaint with the FCT (Derletka... p. 288). The violation of an individual’s fundamental rights by a public authority is here interpreted broadly as any act or omission of the legislative, executive or judicial authority (Kingreen 2016, p. 311). A consequence of the application of the broad concept of complaint is not only the large number of complaints received. Much more important – from the point of view of the public’s perception of the institution – is the creation of the feeling that anyone can approach the court, and at the same time the highest constitutional authority, with their case. In Germany, the previously analysed premise of immediacy – the infringement of a right or freedom of a specific individual – must yield to the mentioned premise of the public interest. Thus, in the form of a constitutional complaint, the citizen has the opportunity, as it were, to request an abstract review of a normative act. This makes it possible for an individual to force a review of a normative act in key cases by demonstrating

the possibility of a widespread violation of the rights and freedoms contained in the GG. By the same token, it should be noted that the FCT has a pragmatic approach in this respect, related to the essence of constitutional justice, which, after all, concerns all individuals and should not be reduced only to the framework of the subject and object of a single *ad casum* case.

THE ESSENCE OF A CONSTITUTIONAL COMPLAINT IN POLAND AND THE LEGAL INTEREST OF THE COMPLAINANT

In Poland, however, the constitutional complaint is an institution which serves the subjects of law to protect their constitutional rights and freedoms before the Constitutional Tribunal in the event of their infringement by laws and other normative acts. The formal condition, in turn, is the exhaustion of the legal procedure (Trzciński 1995, p. 5, Garlicki 1996, p. 12). In this sense, the prerequisites of a constitutional complaint in the science of law include:

- A. a personal legal interest, and not an objective one – as in the construction of a popular complaint (*actiopopularis*),
- B. a present interest (and not a potential one) (Trzciński 1995, p. 14).

The provision of Article 79(1) of the Constitution of the Republic of Poland does not directly define the subjective scope of active legitimacy to lodge a constitutional complaint. It does so indirectly, through the introduction of the requirement of ‘violation of the rights and freedoms’ of the complainant (Bosek 2016, p. 75-83). As the Constitutional Tribunal (CT) rightly noted in its order of 12 October 2004, “article 79(1) of the Constitution, in defining the entity entitled to lodge a constitutional complaint, uses the phrase *everyone*. This phrase denotes the one who is the subject of constitutional freedoms and subjective rights. It follows from the essence of the regulation of the constitutional complaint that it is primarily a means of protecting freedoms and rights vested in an individual. (...) The subjective scope of a constitutional complaint is thus determined primarily by the subjective scope of individual constitutional freedoms or rights’ (judgement of 12 October 2004, ref. TS 35/04).

On the other hand, a constitutional complaint is a legal measure aimed at repealing a legal act inconsistent with the Polish Constitution from the legal system. At the same time, what is at stake here are regulations constituting the 'legal basis of the ruling' (Trzciński 1995, p. 23), defined as 'the entirety of legal regulations (norms) applied by a public authority in order to issue an act of law application. The basis understood in this way consists not only of substantive law provisions, but also of regulations concerning procedure and, at the same time, also basic constitutional provisions, which create a given public authority and provide it with relevant competences, within the framework of which a final decision concerning the applicant is issued (constitutional provisions) (judgment of the Constitutional Tribunal of 24 October 2007, ref. K 7/06)'. This duality makes it extremely difficult to determine whether the primary purpose of a constitutional complaint is to strictly protect the interest of the individual (subjective interest) or the public interest (objective interest). The problem outlined above is closely related to the principle of the complaint. In other words, already at the initial stage of the control of the constitutional complaint it is necessary to establish whether it has been addressed to the Constitutional Tribunal (CT) by the entity entitled to initiate control of norms. The view has been expressed in the doctrine of law that '[t]he principle of the accusatorial procedure means that the legitimacy on the part of the entity that initiated the constitutional proceedings should exist throughout the period in which the proceedings are pending. In particular, a negative premise of proceedings before the Constitutional Tribunal (CT) – ordering discontinuance due to the inadmissibility of the judgment – amounts to the loss of legitimacy on the part of the applicant during the period preceding the issuance of the judgment, as well as a situation in which the applicant has ceased to exist during that period' (Zubik 2009, p. 39).

In addition, it should be emphasised that a positive outcome of the preliminary control of a constitutional complaint does not prejudice a later substantive examination of the allegations covered by the complaint (judgement of 27 October 2008, ref. SK 31/07). This is because in accordance with the established line of jurisprudence, the Constitutional Tribunal (CT) at each stage of the proceedings is obliged to control whether there exists a negative procedural prerequisite excluding the admissibility of substantive evaluation

of the submitted allegations, resulting in the obligatory discontinuance of the proceedings (judgement of 27 October 2008, ref. SK 31/07).

In this sense, the wording of Article 59 of the Act of 30 November 2016 on the organisation and procedure before the Constitutional Tribunal (hereinafter: the Constitutional Tribunal Act) (The Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal Journal of Laws 2019, item 2393), in which the prerequisites for the discontinuation of proceedings before the Constitutional Tribunal (CT) are located, is of key importance. The literal interpretation of the analysed provision makes it relatively controversial to consider the position of the Constitutional Tribunal (CT), which in the voted decision considers the death of the applicant as a completely irrelevant fact. In para. 2 and 3 of Article 59(1) of the Act on the Constitutional Tribunal indicate that the grounds for discontinuing the proceedings are situations in which the issuance of a ruling has become inadmissible or unnecessary. Thus, if one accepts the idea that the basis for the initiation of proceedings as a result of a constitutional complaint is the demonstration of an individual legal interest, which is scrupulously verified by the Constitutional Tribunal (CT) already at the stage of preliminary control, it is a manifestation of inconsistency to subsequently recognise that it is the public interest that is of primary importance in the case of the death of the complainant. The entity originally bringing the constitutional complaint ceases – for obvious reasons – to be interested in abolishing the violation of its rights. As a consequence, one of the basic prerequisites for considering a constitutional complaint, in the form of the personal interest of the complainant, falls away.

In the analysis carried out, it is also impossible to disregard Article 36 of the Constitutional Tribunal Act, which refers to the provisions of the Code of Civil Proceedings in terms of determining the manner and principles of proceedings before the Constitutional Tribunal (CT), if a given issue has not been regulated in the normative act itself. At the same time, the legislator emphasises that these provisions apply ‘*mutatis mutandis*’. According to the paradigm well-established in the science of law and jurisprudence, the ‘appropriate application of legal provisions’ means, in particular, ‘the necessary adaptation (and possibly modification of certain components) of a norm to the essential

purposes and forms of a given proceeding, as well as full consideration of the nature and purpose of a given proceeding and the resulting differences from the regulations to be applied' (Nowacki 1964, p. 370) (judgement Supreme Court of 15 September 1995, ref. III CZP 110/95, judgement Supreme Court of 19 April 2012, ref. IV CZ 153/11).

The matter related to the death of a party to the proceedings is regulated in Article 174 of the Code of Civil Proceedings. § 1 para. 1 of the Code of Civil Proceedings, according to which '[t]he court shall suspend proceedings *ex officio* in the event of the death of a party or his/her legal representative, the loss of his/her capacity to litigate, the loss of a party's capacity to be a judge or the loss of the character of such representative'. In turn, Article 180 § 1(1)(1) of the Code of Civil Proceedings provides that "the court shall decide to resume the proceedings *ex officio* when the reason for suspension ceases to exist, in particular: in the case of the death of a party – when the legal successors of the deceased come forward or are indicated, or when a guardian of the estate is appointed in the proper way". In the jurisprudence of the Supreme Court, a far-reaching reflection on the problem under analysis is noticeable. As early as 1961, the Supreme Court unequivocally determined that the death of a party results in the suspension of proceedings if it occurs after the commencement of the proceedings, i.e. during the proceedings (Decision of the Supreme Court of 27 April 1961, ref. II CZ 49/61).

This authority notes, however, that with regard to the need to suspend the proceedings and whether they can continue, it is necessary to distinguish between two situations. First, when the subject of the proceedings are rights and obligations which pass to the successors in title, then the court is obliged to suspend the proceedings until the heirs or the guardian of the estate have entered (Judgment of the Supreme Court of 15 July 1998, ref. II CKU 19/98). This is because the premise of the suspension of proceedings is to create conditions for curing the subsequent lack of an absolute prerequisite for litigation (legal capacity) by undertaking proceedings with the participation of the legal successors of the deceased party (Gołąb 2009, p. 76). This is a consequence of the wording of Article 922 of the Civil Code (The Act of 23 April 1964. – Civil Code (Journal of Laws 0020, item 1740), according to which only rights and obligations of a property nature belong to the deceased's estate. Generally

speaking, it is an economic (business) interest. A contrario, the inheritance estate does not include rights and obligations strictly related to the deceased person (Głąb 2009, p. 80). The lack of succession of these rights and obligations is a direct consequence of their nature and structure. Consequently, personal subjective rights expire upon the death of the testator. Thus, no successor in fact or in law has an interest in claiming these rights. Hence, the heirs will never acquire a standing to assert these rights.

In a ruling of 1 February 1960, the Supreme Court took the view that “the death of the complainant in a case concerning his personal right not passing to his heirs does not trigger a stay of the proceedings. In this type of case, if the death of a party occurs, the merits of the case become irrelevant and the proceedings are discontinued (Decision of the Supreme Court of 1 February 1960, ref. 4 CR 565/59)”. In other words, the death of a party in a proceeding concerning his or her personal rights triggers the discontinuance of the proceeding *ex officio*, as the issuance of a decision will be pointless (Decisions of the Supreme Court: of 12 November 1980, ref. IV CZ 158/80, judgement of 18 March 2013, ref. II CSK 513/12, judgement of 28 November 2018, ref. II UZ 24/18, OSNP 2019, judgment of 26 March 2018, ref. III AUa 208/18). The “heredity” of a given right or obligation should be determined *ad casum*. It depends on the nature of the subjective right in question. Hence, this matter is subject to instance and cassation control. However, a broader analysis of this problem goes beyond the scope of this study.

Viewing the above considerations within the framework of the Constitution of the Republic of Poland and the institution of a constitutional complaint, it should be emphasised that certain rights and freedoms, which find their normative source in Chapter II of the Fundamental Law, are also of a strictly personal nature. This is because they are closely related to the personality of a human being, and their observance by the organs of public authority and by society as a whole results from the obligation to protect human dignity (Chmaj 2008, p. 109). The catalogue of constitutional rights and freedoms of a personal nature includes, *inter alia*: the right to respect for human dignity (art. 30 of the Constitution of the Republic of Poland) (Resolution of the Supreme Court of 18 October 2011, ref. III CZP 25/11), the right to life (art. 38 of the Constitution of the Republic of Poland)

(Judgment of the CT of 28 May 1997, ref. K 26/96, OTK 1997), the prohibition of subjecting a person to forced scientific experiments (art. 39 of the Constitution of the Republic of Poland), the prohibition of torture (art. 40 of the Constitution of the Republic of Poland), the right to respect for inviolability and personal freedom (art. 41 of the Constitution of the Republic of Poland) (Wiliński 2016, p. 73-79), the right to protection of private life (art. 47 of the Constitution of the Republic of Poland) (judgments of the TK of: 19 May 1998, ref. U 5/97, judgement of ; 5 March 2013, ref. U 2/11), the right to protection of information about oneself (art. 51 of the Constitution of the Republic of Poland) (Judgments of the TK of: 19 May 1998, ref. U 5/97, judgement of November 2002, ref. K 41/02), freedom of conscience and religion (art. 53 of the Constitution of the Republic of Poland), freedom of speech (art. 54 of the Constitution of the Republic of Poland) (Judgment of the TK of 20 July 2011, ref. K 9/11). The catalogue presented is exemplary and open. However, it shows how many constitutional rights and freedoms are of a personal nature. Adopting an interpretation analogous to the one presented on the grounds of the Code of Civil Proceedings would lead to the examination that the Constitutional Tribunal is obliged to discontinue all proceedings initiated by a constitutional complaint, in which a constitutional right or freedom of a personal nature has been adopted as the control model.

It should be emphasised that even the establishment of the “hereditary character” of certain rights and freedoms regulated in Chapter II of the Fundamental Law is irrelevant from the perspective of further proceedings of the lodged constitutional complaint. The Constitutional Tribunal seems to exclude the possibility of the legal successors of the appellant or the guardian of the estate joining the proceedings. In the order of 26 May 2008, the Constitutional Tribunal (CT) took the view that ‘a possible legal succession, whether resulting from the death of an individual (liquidation of an organisational unit) who is the appellant, or resulting from a legal action concerning an object that is in some (loose) way related to the submitted constitutional complaint (...), is of no significance for the proceedings before the Constitutional Tribunal in view of the aim pursued in these proceedings. This succession does not constitute an obstacle to the removal from the legal order of a provision that is inconsistent with the Constitution and for this reason, (...) a subjective

change on the part of the complainant is not admissible in proceedings before the Court. The same considerations speak in favour of excluding the possibility for both the entity that brought the constitutional complaint and its legal successor to appear on the side of the complainant at the same time” (Orders of the TK of 26 May 2008, ref. SK 12/06).

The rejection by the Constitutional Tribunal of the possibility for the legal successors of the complainant to join the proceedings leads to the conclusion that already after the constitutional complaint has been filed, the Constitutional Tribunal (CT) implicitly considers the complainant's legal interest as a secondary matter. However, it is difficult to fully share the view that the differences characterising the constitutional complaint procedure in relation to court proceedings are so significant that they compel an a priori rejection of the possibility to discontinue the proceedings in a situation where the complainant has asserted the protection of a constitutional right or freedom of a personal nature.

Arguably, with the Constitutional Tribunal (CT) that one of the main goals of the proceedings initiated by a constitutional complaint is to decide on the compliance of the challenged normative act with the Constitution. However, the view that the decision of the Constitutional Tribunal only indirectly concerns the individual case of the complainant cannot be fully endorsed. This is a view contrary to the basic formal and substantive prerequisites of a constitutional complaint, as failure to demonstrate the personal legal interest of the complainant results in refusal to give the complaint further course.

FINAL REMARKS

In conclusion, despite the numerous doubts raised, the conclusion adopted by the Constitutional Tribunal (CT) in its decision of 21 January 2020 should be approvingly referred to. This is because it seems that even the death of the applicant should not constitute an obstacle to examining whether the challenged legal regulation is consistent with the provisions of the Fundamental Law. The conducted control of the constitutionality of a given normative act – despite the fact that it becomes irrelevant for the applicant – is important

from the perspective of the protection of other subjects of law. This is because it makes it possible to overrule legal provisions that may in the future constitute the normative basis for judgments, despite their possible unconstitutionality. Thus, greater reflection of the Constitutional Tribunal (CT) on the problem analysed is necessary. This is because the Constitutional Tribunal refers to this matter in a general manner, without noticing the problems presented in this gloss. It is necessary to adopt a direction, according to which the Constitutional Tribunal will issue a substantive decision in the given case, despite the death of the applicant before the substantive examination of the constitutional complaint. This is because the partisan interest of a given entity in such a situation is subordinated to the general interest, which is ensuring compliance of the enacted law with the Fundamental Law.

REFERENCES

- Banaszak, B. (1999). *Prawo konstytucyjne*. Warsaw 1999.
- Banaszak, B. (1995). *Skarga konstytucyjna*. „Państwo i Prawo”, z. 12.
- Borysiak, W. (2013). *Dziedziczenie. Konstrukcja prawna i ochrona*. Warsaw.
- Bosek, L., Wild, M. (2016). *Uwagi do art. 79 Konstytucji RP [w:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. L. Bosek, M. Safjan. Warsaw. Legalip.
- Chma, M. (2008). *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej*. Warsaw.
- Czeszejko-Sochacki, Z. (1998). *Skarga konstytucyjna w prawie polskim*. „Przegląd Sejmowy”, no. 1.
- Derlatka, M. (2009). *Skarga konstytucyjna w Niemczech*. Warsaw.
- Garlicki L. (1996). *Trybunał Konstytucyjny w projekcie Komisji Konstytucyjnej Zgromadzenia Narodowego*. „PiP”, z. 2.
- Gołąb, A. (2020). *Umorzenie postępowania w procesie cywilnym*. WKP. LEX.
- Kingreen, T., Poscher, R. (2016). *Grundrechte, Staatsrecht II*. Monachium.
- Króliczek, P. (2017). *Zakres podmiotowy polskiej skargi konstytucyjnej*. „Przegląd Prawa Konstytucyjnego”, no. 1. DOI 10.15804/ppk.2017.01.02
- Laskowska, A. (2009). *Zawieszenie sądowego postępowania rozpoznawczego w sprawach cywilnych*. Warsaw.
- Laskowska, M. (2020). *Skarga konstytucyjna w dobie ustawy z 30 listopada 2016 r. o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym*. „Przegląd Konstytucyjny”, no. 4.
- Ławrynowicz-Mikłaszewicz, M. (2014). *Koncepcje istoty wolności i praw jednostki oraz aspekt formalny ich ograniczenia*. „Przegląd Prawa Konstytucyjnego”, no. 4, DOI 10.15804/ppk.2014.04.04
- Masternak-Kubiak, M. (1998). *Ustawa o Trybunale Konstytucyjnym*. Warsaw.
- Nowacki, J. (1964). *Odpowiednie stosowanie przepisów prawa*. „Państwo i Prawo”, z. 3.
- Sułkowski, J., Białogłowski, W. (2012). *W sprawie formalnych przesłanek skargi konstytucyjnej*. „Państwo i Prawo”, z. 3.
- Trzciniński, J., Wiącek, M. (2016). *Uwagi do art. 79 Konstytucji RP [w:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. L. Garlicki, M. Zubik. Warsaw. LEX.
- Wiącek, M. (2011). *Formalne przesłanki skargi konstytucyjnej (w świetle orzecznictwa TK)*. „Państwo i Prawo”, z. 9.
- Wiliński, P., Karlik, P. (2016). *Uwagi do art. 41 Konstytucji RP [w:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. M. Safjan, L. Bosek. Warsaw. Legalip.
- Zubik, M., Wiącek, M. (2009). *Kompetencje sądu konstytucyjnego a granice swobody orzekania przez sędziów Trybunału Konstytucyjnego*. „Przegląd Sejmowy”, no. 4.

SOURCES OF LAW

The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No.78, item 483, as amended).

The Act of 17 November 1964. – Code of Civil Proceedings (Journal of Laws of 2019, item 1460)

The Act of 23 April 1964. – Civil Code (Journal of Laws of 2020, item 1740)

Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal (Journal of Laws 2019, item 2393).

DECISIONS

Decision of the TC of 28 May 1997, ref. K 26/96, OTK 1997, No.2, item 19.

Judgment of the Supreme Court of 15 July 1998, ref. II CKU 19/98, Legalis.

Judgment of the Constitutional Tribunal (CT) of 15 April 2003, ref. SK 4/02, OTK-A 2003, No.4, item 31.

Judgment of the CT of 19 May 1998, ref. U 5/97, OTK 1998, No.4, item 46.

Judgment of the CT of 20 July 2011, ref. K 9/11, OTK-A 2011, No.6, item 61.

Judgment of the CT of 20 November 2002, ref. K 41/02, OTK-A 2002, No.6, item 83.

Judgment of the CT of 21 May 2001, ref. SK 15/00, OTK 2001, No.4, item 85.

Judgment of the CT of 24 October 2007, ref. K 7/06, OTK-A 2007, No.9, item 108.

Judgment of the CT of 5 March 2013, ref. U 2/11, OTK-A 2013, No.3, item 24.

Judgment of the CT of 24 April 2014, ref. SK 56/12, OTK-A 2014, No.4, item 42.

Judgment of the CT of 26 May 2008, ref. SK 12/06, OTK-A 2008, No.4, item 71.

Judgment of the CT of 27 May 2009, ref. SK 53/08, OTK-A 2009, No.5, item 81.

Judgment of the CT of 12 October 2004, ref. TS 35/04, OTK-B 2005, No.1, item 25.

Judgment of the CT of 14 December 1999, ref. SK 15/99, OTK ZU No.7/1999, item 169.

Judgment of the CT of 20 December 2007, ref. SK 67/05, OTK ZU No.11/A/2007, item 168.

Judgment of the CT of 21 March 2006, ref. SK 58/05, OTK ZU No.3/A/2006, item 35.

Judgment of the CT of 21 October 2003, ref. SK 41/02, OTK ZU No.8/A/2003, item 89.

Judgment of the CT of 21 January 2020, ref. Ts 68/18, OTK-B 2020, item 109.

Judgment of the CT of 24 October 2006, ref. SK 65/05, OTK ZU No.9/A/2006, item 145.

Judgment of the CT of 27 October 2008, ref. SK 31/07, OTK-A 2008, No.8, item 15.

Judgment of the CT of 30 May 2007, ref. SK 67/06, OTK ZU No.6/A/2007, item 64.

Judgment of the CT of 5 December 2001, ref. K. 31/00, OTK ZU No.8/2001, item 269.

Judgment of the CT of 6 July 2004, ref. SK 47/03, OTK ZU No.7/A/2004

- Judgment of the CT of 7 March 2006, ref. Ts 66/05, OTK-B 2006, No.2, item 97.
- Judgment of the CT of 9 March 1999, ref. SK 10/98, OTK 1999, No.2, item 27.
- Judgment of the SA in Szczecin of 26 March 2018, ref III AUa 208/18, LEX No.2668068.
- Decision of the Supreme Court of 1 February 1960, ref. 4 CR 565/59, Legalis.
- Decision of the Supreme Court of 27 April 1961, ref. II CZ 49/61, LEX No.1632948.
- Decision of the Supreme Court of 12 November 1980, ref. IV CZ 158/80, Legalis
- Decision of the Supreme Court of 15 June 2011, ref. V CSK 363/10, Legalis.
- Decision of the Supreme Court of 18 March 2013, ref. II CSK 513/12, Legalis.
- Decision of the Supreme Court of 19 April 2012, ref. IV CZ 153/11, LEX No.1250770.
- Decision of the Supreme Court of 28 November 2018, ref. II UZ 24/18, OSNP 2019, No.7, item 91.
- Resolution of the Supreme Court (7) of 18 October 2011, ref. III CZP 25/11, OSNC 2012, No.2, item 15. Uchwała SN z dnia 15 września 1995 r., sygn. III CZP 110/95, z. 12, poz. 177.
- Resolution of the Supreme Court of 23 April 1985, ref. III CZP 16/85, OSNCP 1985, No.12, item 195.