

Justification to the judgment of the Constitutional Tribunal on banking enforcement titles

The Constitutional Tribunal published the justification to its 14 April 2015 judgment, which ruled that the laws on banking enforcement titles – Art. 96 sec. 1 and Art. 97 sec. 1 of the Act – Banking Law of 29 August 1997 are unconstitutional (case file no. P 45/12).

The justification explains the effects of the judgment that are associated with leaving the laws on banking enforcement titles in effect until 1 August 2016. The Constitutional Tribunal confirmed that during the deferment period, courts and other entities should continue to apply the laws declared unconstitutional, unless they are repealed or changed earlier by the legislator. The Constitutional Tribunal also signalled a potential problem regarding the possibility of resuming proceedings related to banking enforcement titles, if the legislator does not change or repeal the laws before the date on which they cease to be in force.

Deferment of the implementation of the decision

The communiqué issued by the Constitutional Tribunal after the judgment was announced indicates that the decision to leave the laws in force until next year was intended to "facilitate the conclusion of pending cases and the issuance by the legislator of relevant interim laws."

Moreover, in the verbal justification of the judgment, the Tribunal stated that the courts, when applying the laws, should pay attention to constitutional values, and, furthermore, that after the deferment period ends it will not be possible to resume proceedings.

In the written justification of the judgment, in the context of the deferment the Constitutional Tribunal stated, among other things, that:

- Rendering the banking enforcement title laws ineffective immediately could have many negative consequences.
- During the deferment period, courts should continue to apply the laws declared unconstitutional, even though (i) they have been deemed unconstitutional and (ii) any

resumption of proceedings will take place after the end of the deferment period.

- The courts (both during the deferment period as well as during the examination of possible cases regarding the resumption of proceedings after the end of the deferment period) should bear in mind that as a result of the Constitutional Tribunal's judgment, banks have lost a material right, which served to protect their interests and the interests of depositors – to some extent suggesting that the courts should exercise restraint in approaching possible attempts to challenge judgments based on the laws of banking enforcement titles.
- It is necessary for the legislator to introduce laws that enable banks to easily enforce their receivables, and that are not unfair to their customers.
- It is necessary to issue interim laws that will regulate how cases adjudicated on the basis of the banking enforcement title laws are to end while the laws remain in effect.

Problem of resumption of proceedings

From the written justification, it follows that in the Tribunal's opinion, the legislator's activity is also significant in the context of the possible admissibility of a resumption of proceedings. For if the legislator amends or repeals the challenged laws by 1 August 2016, borrowers will be unable to demand, on the basis of Art. 190 sec. 4 of the Constitution, the resumption of proceedings in which judgments handed down were based on the laws, as the source of the amended laws will not be intervention by the Constitutional Tribunal, but intervention by the legislator itself. If, however, the legislator does not amend or repeal the challenged laws by 1 August 2016 and they become ineffective as a result of the Constitutional Tribunal's judgment, then the way will be open for the resumption of proceedings in which judgments were based on the laws declared unconstitutional. The possibility for a resumption of proceedings stands in contrast to the verbal justification.

Dissenting opinion: cases of refusals to apply the laws on banking enforcement titles

It is worth noting the dissenting opinion of Professor Piotr Tuleja, one of the judges, who in addressing the deferment stated that a refusal by the courts to apply the laws during the deferment period could lead to a violation of the constitutional rights both of the banks and of the customers who entrusted their deposits to the banks. Professor Tuleja also criticised the first judgments rendered after the judgment of the Constitutional Tribunal was delivered, in which the courts refused to apply the laws on banking enforcement titles, claiming they were unconstitutional.

According to Professor Tuleja, refusal to apply unconstitutional laws during the deferment period (e.g. where a banking enforcement title was issued by a bank only after the death of a debtor, against his/her heirs) cannot be ruled out entirely. Such a refusal should occur only when the court is dealing with another normative context of the laws on banking enforcement titles reviewed by the Constitutional Tribunal, or if in a given case there are different facts that the Tribunal did not take into consideration in the judgment.

The 14 April 2015 judgment together with the justification is available in Polish at:

http://otk.trybunal.gov.pl/orzeczenia/ezd/sprawa_lista_plikow.asp?syg=P%2045/12

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