



THE CONSTITUTIONAL COURT IN POLAND AT THE BEGINNING OF ITS ACTIVITY

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ABSTRACT: In the present article it will be described the Constitutional Tribunal in Poland as Constitutional Court since its establishment in 1982. It will be described i) the basic tasks of the Constitutional Court from 1986 to 1989, ii) the organization of works and the Constitutional Court's Proceedings, iii) the main cases examined by the Constitutional Court –as a contribution to the protection of human and civil rights in Poland and iv) the essential problems of the activity of the Constitutional Court from 1986 to 1989.

KEY WORDS: Constitutional Court, Poland, Parliament of Poland.

RESUMEN: El presente artículo se dedica al Tribunal Constitucional de Polonia como Corte Constitucional desde su establecimiento en el año 1982. De este modo, se describirán i) la principales competencias de la Corte Constitucional desde 1986 a 1989, ii) las actas del la Corte Constitucional polaca, iii) los principales asuntos examinados por el Tribunal Constitucional y que han contribuido a la protección de los derechos civiles y humanos en Polonia y iv) los principales problemas sufridos por dicho Tribunal Constitucional polaco de 1986 a 1989.

PALABRAS CLAVE: Tribunal Constitucional, Polonia, Parlamento de Polonia.

1. Introduction

The Constitutional Tribunal in Poland as Constitutional Court¹ was established upon the Act of 26th March 1982, amending the Constitution of Poland. After several years of discussions and legislative works, the organization of this Court, its competences and procedure was regulated in the

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¹ In June 2010 the Polish Constitutional Tribunal celebrated its 25th anniversary of the establishment of this first Polish Constitutional Court. This event is an occasion to present a short history of the first four years of its activity /1985-1989/. See: Konferencja w 25 rocznicę powstania Trybunału Konstytucyjnego. Ewolucja funkcji zadań Trybunału Konstytucyjnego – założenia a ich realizacja (referaty wprowadzające). Trybunał Konstytucyjny, Warszawa 10 czerwca 2010 r.

Constitutional Tribunal Act of 29th April 1985. The Resolution of the Sejm (Parliament of Poland) of 31st July 1985, the Detailed Mode of Proceedings Before the Constitutional Tribunal regulated additionally. According to the above Act, this Court initiated its activity on the 1st January 1986.

The Constitutional Tribunal as a Constitutional Court was discussed as an important factor of implementation of legal reforms in Poland. Most of political documents and statements from the 80th contributed to the initiative for establishing such a Court in Poland and stressed the need of raising legality and constitutionality of the State authorities' activity, especially in the area of legislation.

One of these initiatives had been stated that it was purposeful to establish such legal institutions which would ensure conformity of legal acts with the Constitution and which would define the need for establishing the Constitutional Tribunal as deal with securing constitutional position of the citizen within the State and the right of citizens to self-government and self-dependency in various fields of social life. A draft to establishment of the Constitutional Tribunal was an important component of the process of changing relationships between the State and the citizen in Poland this in fact being an essence of the restoration process in Poland as initiated in 1981. The Constitutional Tribunal served to strengthen rights and freedoms of citizens and to ensure observance of principles of equality before law and social justice. It was confirmed by the Constitutional Tribunal decisions taken during its four-years activity².

Often the decisions of this Court were more extensive as it expected the then State's authorities. Activity of this Court was the real manifestation of both: full independence of the other State's organs and full independence of the judiciary. Some decisions of the Constitutional Court were inconvenient to the organs of the than Polish Government and very difficult to approve by it. The similar situation was in the first period of activity of the first Polish Commissioner of Civil Rights (Ombudsman), which started in 1988.

Legal character of the Constitutional Tribunal in Poland was often discussed within the Polish legal doctrine. Its relative appraisal was connected not only with the nature of its decisions, but also taken into account its position in respect to other organs of the State, composition of the Court and the legal status and full independence of its judges as well as a mode of the proceedings.

The assessment of the Constitutional Tribunal as a Court of particular kind, was supported by such arguments as: adjudicating legal disputes, mainly on the grounds of the Constitution and passing its decisions after carrying out the proceedings according to principle of adversary trial system.

Other opinions considered the Court as nearing the model of judicial application of law, however constituting an institution *sui generis* with respect to legally appointed tasks and the way of their performing. This statement was based on the comparison of theoretical model of juridical application of law *vis a vis* to a model of administrative application of law.

² See e.g. a comprehensive study – an analysis of the two-years activity of this Court: « Le Tribunal Constitutionnel de la République Populaire de Pologne (Sa situation dans le regime, sa competence, sa procédure et sa pratique) » par K. Działocha et A. Patrzalek (...) "Société de Législation Comparé", Journées 1989, pp. 119–140. See also: Constitutional Tribunal. A selection of the Polish Constitutional Tribunal's Jurisprudence from 1986 to 1999, compiled by Jerzy Oniszczyk, consultation by Professor Janusz Trzeciński, Warsaw, 1999.

It is necessary to stress that the Constitutional Court not only determined the legal consequences of the facts recognized and proved but also adjudicated upon conformability of legislative acts to the Constitution and other acts to the Constitution and legislative acts. Decisions made by the Court referred both to compatibility of procedure and competence of passing an act, and also to contents of the controlled normative act, i.e. concerned relation between the compared legal rules, which not required proving in the judicial model of application of law. Legal consequences of the Constitutional Court's decisions concerned binding force of the controlled normative act, therefore caused different sanction than as a judicial model. The Constitutional Court's decisions, otherwise than in case of the common courts verdicts, served to assurance of cohesion of the system of binding law.

The third group of opinions called in question the judicial character of the Constitutional Court and called it as a quasi-judicial organ or an organ of control of judicial character. It was assumed that the dissimilarity of functions of the Constitutional Court differentiated legal validity of its decisions to legislative acts and other acts and the fact that the Court was placed in Chapter 4 of the Constitution, together with the Supreme Board of Supervision, Commissioner of Civil Rights and the Tribunal of the State, and not in Chapter 7 dealing with the courts of common law not allowed to accept the thesis that the first Polish Constitutional Court was a court or constitutional court.

However the mode of proceedings before this first Constitutional Court in Poland was more characteristic for the courts and its decisions concerning conformability of basic normative acts with the Constitution or normative acts such as heaving a binding force *erga omnes*.

2. Basic Tasks of the Constitutional Court in the years 1986-1989

The Constitutional Court's authority in accordance with the contents of Article 33a of the Constitution was to give decisions on consistency with the Constitution of laws and other normative acts issued by the supreme and central organs of the State. Decisions of the Court about discordance of laws with the Constitution was a subject to examination by the Sejm.

From the above mentioned Constitutional Court Act (Art. 1) it followed that it will also issue decisions on accordance with the Constitution or legislative acts – of normative acts issued by the both supreme and central State's administrative agencies and by other supreme and central State organs. The Court also examined contents of an act, competence of the said organs to define law making activity and to preserve the legislative mode of issuing an act. This concerns both published and unpublished acts, but exclusively law-making norms. The Constitutional Court had an influence in this way on the law making process according to the rule of law principle and on accordance with the Constitution.

In the amendment of the Polish Constitution in 1989, the competence of the Constitutional Court in Poland was completed. In conformity with Art. 30 sec. 1.4. of the former provision of Polish Constitution the former Council of the State should provide universally binding interpretation of the laws in Poland. This task was entrusted the Constitutional Court. This Court was obliged to interpret the law only. Beside that, before signing it himself – the President of Poland had a possibility – within one month– submit a motion to the Constitutional Court to

pronounce judgment on accordance with the Constitution of the law resolved by the Sejm.

From the contents of the Constitutional Tribunal Act it followed also a special kind of activity of the Court. Namely – a study (in the sense of subsequent control) of normative acts and, in connection with this, its decisions issued in a mode upon the above Act. The Court, was obliged to present to the Sejm and to other competent legislative organs its comments on lacunas and infringements in the laws issued – to ensure the cohesion of the system of law in Poland. This research activity – in its specific understanding – was also a starting point and in a sense a foundation for the adjudication activity. The Law on the Constitutional Tribunal had also stated that the research on law cannot be limited to individual cases. Single normative acts or specific norms were studied from the point of view of the principles of the whole system of law in Poland, and its cohesion was also considered.

The Court not only controlled the constitutionality of the normative acts in force but also presented general remarks on the state of law and information on the regulations necessary for implementation of principal constitutional norms.

Thus the main functions carried out by the Constitutional Court was as follows:

1. Decisions on cases brought to the Court by authorized subjects – that is, motions on the conformity of normative acts with the Constitution and with other legislative acts.
2. Decisions in connection with the sending in of legal questions by authorized organs on the accordance of specified legal acts.
3. Presentation to the proper State's organs proclaiming laws its comments on ascertained lacunas and infringements in law.
4. Universally binding law interpretation.
5. Presenting to the Sejm annual information on essential problems resulting from the activity and adjudication of the Court³.

Basic directions of activity of the Court – was comprised as below:

1. Adjudication activity resulting from the motions and legal questions addressed to the Court by authorized subjects and formulated by the Court's own initiative.
2. Activity of a research nature aimed to disclosing lacunas and ascertained infringements in the law, the removal of which is essential to ensure the cohesion of the legal system in Poland.
3. Analysis of decisions issued by the Court and real problems resulting from the decisions given.
4. Activity of an organizational character aimed at ensuring organizational and material conditions for the work of the Court.

The first experiences of the adjudication activity and the internal organizational work of the Constitutional Court allowed to outline in a suitable manner certain imaginatively generally sketched foundations of procedure and organization projected and accepted, in the period of initial activity of the Constitutional Court. In the light of not only intellectual but also practical experience it was possible to claim that accepted model of the foundation of the

³ As a new task of the Constitutional Court was also expected the registration of political parties in Poland – according to the procedure as established in proper draft law prepared by the Sejm.

functioning of the court as regards general principles and procedure itself was positively verified. First decisions of the public trials before the Constitutional Court were favorably received by public opinion, the general and professional press and also by the lawyers' milieus in Poland. The signals received from the press of legal profile in connection with decisions of the Constitutional Court noted among other things, that Court's activity served to strengthening of legality.

3. Organization of Works and the Constitutional Court's Proceedings⁴

3.1. Organization of works of the Constitutional Court

Works of the Court, as composed of 12 members⁵, was directed by the President with assistance of the Vice-president. Judges of the Court /10/ were organized in the three problem groups by their own choice, according to their legal specialization. They were following groups of:

1. Problems of constitutional and administrative law, problems of procedure of creating and improving law.

2. Problems of civil law, agricultural law, labour law, law on public economic activity, and financial law.

3. Problems of penal law, petty offenses and problems of the agencies of legal protection. This division of work of the judges evolved as a result of discussions by themselves of their own experiences and those of the Supreme Court. It favored to improve of specialization. The groups of judges conducted and initiated analytical works, in cooperation with experts in legal sciences. Work of the benches of judges was also supported by the Judicial Decisions Bureau of the Constitutional Court as specializing both in analyses and issuing Court's decisions by the highly qualified lawyers.

⁴ Such issue was also presented in the Polish Constitutional Court's Report by Leonard Łukaszuk, Kazimierz Działocha and Czesław Bakalarski – as co-authors of this report to the 7th Conference of the European Constitutional Courts at Lisbon, 26-30 April 1987. The theme: Constitutional Jurisdiction in the context of State Powers, Regarded under the Sorts, Contents and Effect of the Constitutionality of Juridical Rules. See also: A. Gwiżdż, « Le controle de la constitutionnalité du droit modèle Polonais en 1986 », *Annuaire international de justice constitutionnelle*, vol. II (1986), pp. 587–598; J. Morand-Deville, « Le Tribunal Constitutionnel de Pologne », *Revue du droit public et de la science politique en France et à l'étranger*, 1987, no 1, pp. 173-190 (Avec annexe : Loi du 29 avril 1985 sur le Tribunal Constitutionnel); R. Machaczek, Z. Czeszejko-Sochacki, "Die Verfassungsgerichtsbarkeit in der Volksrepublik Polen", *Europäische Grundrechte Zeitschrift*, 14 Juli 1989, 16 J. g. Heft 11/12, pp. 269-284; L. B. Łukaszuk, "Kierowanie pracami Trybunału Konstytucyjnego w pierwszym okresie jego działalności", in *Trybunał Konstytucyjny. Księga XV-lecia*, Warszawa, 2001; K. Klafkowska-Waśniowska, "Poznański wkład w tworzenie Trybunału Konstytucyjnego. Alfons Klafkowski i Mieczysław Tyczka", in *Kronika Miasta Poznania. Prawnicy*, Poznań, 2008, pp. 267–280.

⁵ First Constitutional court's composition as elected by the Diet (Sejm) in 1985 – properly to 4 /a/ and to 8 /b/ years terms was as follows: a) Alfons Klafkowski, president, professor titular of public international law; Kazimierz Buchała, judge, professor titular of penal law; Natalia Gajl, judge, professor titular of financial law; Adam Józefowicz, judge, doctor of civil law; Andrzej Kabat, judge, doctor of law; Stanisław Paweła, judge, professor of penal law; b) Leonard Łukaszuk, vice president, professor titular of international public law and philosophy of law; Czesław Bakalarski, judge, doctor of penal law; Kazimierz Działocha, judge, professor titular of public law; Henryk Groszyk, judge, professor titular of philosophy of law; Henryk de Fiumel, judge, professor titular of private international law; after his death in 1986 on the some term was elected Maria Łabor-Soroka, judge, Master of civil law; Remigiusz Orzechowski, judge, Master of law.

A particular care was taken to proper preparation of the Court's trials – regards both to a substance of cases and its methodical treatment. This was accompanied by a close study of matters which was considered also as problems even indirectly associated with it. Often scholar research approach to the whole Polish system of law was made also from the point of view of some methods of legal comparison.

A care was also taken to show key problems for the quality of law, their cohesion and accordance with the Constitution and law and also both lawful making into a law (enactment) and perform of law.

The Constitutional Court while examining cases, took a care in particular of the constitutional principles of observation of the cases of lawfulness of making laws.

The Court also took care that the authority of the good law should be strengthened, and both a quality and effectiveness of the function as it performs – maintained. The Court in its work shaped new measures adequate to the rank of its tasks and the role and of its style of activity, while investigated, interpreted and decided in difficult and complex legal and social problems, with due deliberation and equal respect for the litigant parties. The professional qualifications of the Constitutional Court judges were rather comprehensive ones, and were connected with the necessity to study many current legal problems, like those that result from signals by the organs performed laws, from citizens, as reported by the press, and also from the reports on the state of law in Poland prepared by the Council of Legislation and from another scholarly and consultative bodies.

Each of the cases examined by the judges often such in a comprehensive socio-legal study, required a considerable preparation by the judges of the Court. Elaboration of the preparatory materials and then justification of the decision included often several dozen of pages. The judges made efforts to improve their professional competences.

It was concern of judges to make a suitable definition of the subject-matter of the problems to be examined by the Constitutional Court in the light of the binding legal regulations – its priorities in relation to the real necessity to perfect the existing system of law in Poland and remove discordances of the legal rules with the Constitution and with other laws and decrees approved by the Sejm. This was thus a problem of the Constitutional Courts' own initiative, a need of right choice of problems, on the basis of investigations and their own enquiries and the signals coming in from outside – i.e. complaints from citizens, press criticism, observations signaled by Sejm deputies and by the scholars of legal sciences and derivated from the common court's jurisdiction.

3.1.1. General provisions of the proceedings

The above-mentioned provisions of the Constitutional Tribunal Act were binding since 1st January 1986. The procedure before the Court was additionally regulated by the Resolution of the Polish Parliament (Sejm) of 31st July 1985, on the Detail Mode of Proceedings before the Constitutional Court (Journal of Law No 39, item 184).

The Constitutional Court was appointed exclusively to exert control over conformability of normative (legislative) acts of State organs with the Constitution in the range determined both by the Constitution and the Constitutional Court Act.

Initiation of proceedings before the Court took place on the grounds of a motion (abstract control), legal questions (quasi substantial control) or the Court's own initiative (abstract control).

Motions for adjudicating the conformability of a legislative acts with the Constitution or other normative acts with the Constitution or a legislative acts was sent to the Constitutional Court, by:

1. The Sejm's Presidium, the Sejm's committees or 50 deputies, the President of Poland, the Tribunal of State, the President of the Supreme Board of Supervision, the Council of Ministers or the Prime Minister, First President of the Supreme Court, President of the Chief Administrative Court, Commissioner of Civil Rights, Prosecutor General.

2. The regional people's councils or their presidia, the General Commission of Cooperation of the Socialist Youth Unions, competent statutory organs of national trade unions organization, inter-union organizations, socio-vocational organizations of private farmers and other trade unions organizations.

3. Churches and another religious unions – according to the Art. 11 Sec. 3 of the, freedom of Conscience and Religion Guarantees Act of 17th May 1989 (Journal of Law No. 29, item 155).

The subjects specified in the second and in the third group were entitled to submit motions only in case when the questioned legislative act or another normative act pertained to matters falling within their terms of reference defined in legal regulations. Moreover such motions was submitted as to a particular preliminary control (preliminary consideration by the Constitutional Court at a hearing closed to the public, by a single judge so appointed by the President of the Court). The Court quashed the proceedings when the motion failed to meet the requirements set by provisions of the above Act or when it is obviously unfounded or misaddressed. However, an appeal against such decision submitted to the Court was considered as an appeal at a hearing closed to the public, conducted by three judges.

In the case of normative acts concerning National Defense and the Armed Forces of Poland as well as and the State security, motions for adjudging their conformability to the Constitution or legislative acts was sent only by: the Presidium of the Sejm, the President of Poland, the Council of Ministers and the National Defense Committee.

The Constitutional Court Act provided that the above specified motions of submitters were sent do the Court on their own initiative or after analysis of the citizens' complaints and motions. Therefore, though the citizens were not entitled to submit motions directly to the Constitutional Court, they however had an indirect influence upon the attitude and the activity of the Constitutional Court and of the organs and social organizations specified in the above Act as those being entitled to put forward the motions to the Constitutional Court for adjudging conformability of normative acts with the Constitution or legislative acts. A single letter or complaint was sufficient to initiate the proceedings, if it was well founded.

Legal questions were submitted to the Constitutional Court in connection with ongoing proceedings falling under the jurisdiction of the States' organs, if judgment in such proceedings was contingent upon the answer to such a question.

Legal questions was submitted to the Constitutional Court by the First President of the Supreme Court, President of the Chief Administrative Court, as

well as by supreme and central organs of the State administration. The specified organs submitted legal questions in connection with ongoing proceedings before the organs supervised by them, though such limitation was not clearly provided by the Act. Therefore in reality the First President of the Supreme Court put forward legal questions in connection with ongoing judicial proceedings and the President of Chief Administrative Court, as well as specified supreme and central organs of the State administration – in connection with ongoing administrative proceedings, in the cases of minor offences and in cases of proceedings before the financial adjudicating organs in cases of fiscal offences and infringements.

While answering the legal question the Constitutional Court adjudicated either non-conformability of a legislative act with the Constitution or other normative act with the Constitution or legislative act, to which the question referred, or it adjudicated its conformability. In case of adjudicating non-conformability of a legislative act with the Constitution or of other normative act with the Constitution or a legislative act the suspended proceedings was restarted after bringing about conformability of the act with the Constitution or a legislative act by the organ which had passed the act or after loss of binding force by the said act.

As instituting legal proceedings out of the Constitutional Court's own initiative it was taken on the ground of a decision made at a closed sitting in a bench as proper for adjudication upon a specific type of normative act (three or five judges). Motions concerning such a case the President of the Constitutional Court put forward on the grounds of analysis of complaints and motions of the citizens, information obtained from other organs and also as result of presentation of suitable opinions by the benches in other cases.

The Constitutional Court adjudicated upon conformability of statutory law and other normative acts of supreme and central State organs to the Constitution. Thus all the statutes passed by the Sejm and decrees with binding force of statutes, approved by the Parliament (legislative acts) as well as all "other normative acts", passed by the supreme and central State organs, mainly by the Government and organs of State administration fell under the competence of the Constitutional Court. Provisions of the Constitution and of the Constitutional Tribunal Act not specified the names of the "other normative acts" ("acts introducing legal norms"). It means that not only the acts specified in the Constitution, but also acts of imprecise normative character mainly instructions, directives, general documents etc., independently of their form, if *de facto* they made law, were under competences of the Constitutional Court.

The following acts were beyond the Court's competence:

1) Normative acts of local State organs (people's councils and local organs of State administration). It had assumed that a supervision over these organs activities by superior organs was a sufficient assurance of legality of these acts.

2) Resolutions of the Sejm (including the regulations of the Sejm), having a specific character, as not normative in principle.

3) International agreements. Exclusion of international agreements out of the Constitutional Court's competence resulted from the fact that there was a *lacuna* in the Constitution concerning the relation of international law to national law. Therefore control of the Constitutional Court over international agreements was not appointed until this *lacuna* was not filled. This problem was settled within the new Constitution in 1997.

It was a characteristic feature of the Polish Constitutional Tribunal Act, that:

(a) The Constitutional Court adjudicated upon constitutionality of normative acts in force on the day as a decision was passed. The loss of binding force of a normative act prior to decision passed entails discontinuation of proceedings with respect to such an act. Therefore the Polish Constitutional Tribunal Act not allowed – similarly to the majority of such solutions in other countries – the initial (preventive) control⁶ over drafts of the acts. However it allowed for the institution of proceedings before the Constitutional Court before the already promulgated normative act entered into force, or before a decree with the binding force of a statute, approved by the Parliament of before the acts only passed entered into force, if the provisions of law do not require their obligatory promulgation, therefore in the period of *vacatio legis*. The only exception concerned the decrees with the binding force of statutes, which was sued after they have been approved by the Sejm.

(b) Provisions of the Constitutional Court Act in principle, applied in respect to those legislative and normative acts, which were promulgated, approved (e.g. decrees with the binding force of a statute) or enacted (if promulgation is not compulsory) after the date the Act entered into binding force, i.e., 1st January 1986. However proceedings before the Constitutional Court was instituted in respect to these legislative acts as well as other normative acts, which were enacted before the date on which the Constitutional Court Act entered into force, but were promulgated, approved by the Sejm (when decrees with the binding force of statutes were concerned) or entered into binding force after the amendments to the Constitution of Poland of 26th March 1982 (art. 35 sec. 1 and 2) entered into force. Otherwise the Constitutional Court was not authorized to make decisions or to institute proceedings in respect to the questioned act. However in such cases the Constitutional Court was authorised to undertake other steps within the signaling function vested in it, in order to remove irregularities from within the system of law.

(c) There was a significant limitation of procedural character in respect to all the normative acts submitted to the Constitutional Court's control: the Act not allowed a consideration of those motions for institution of the proceedings before the Constitutional Court, which were submitted after five years following publication of an act or approval of a decree with the binding force of a statute or enactment (Art. 21) and, where acts enacted before the date on which the Constitutional Tribunal Act entered into binding force were concerned – after five years since the date the Act entered into force. Submitting a motion after the above periods had passed results in a refusal of consideration of the motion, and the Constitutional Court was obliged only to direct a motion to the organ which issued an act covered by the motion, and when such a motion concerned a decree – to the Sejm.

The above time limitations of the Constitutional Court competences introduced by the Constitutional Tribunal Act was understood as a protection of stability of law, and as the activity of the Constitutional Court was mainly directed towards the future. The limitations were also explained by the fact that Poland had so far both no traditions and experience in extra parliamentary control over the constitutionality of law.

⁶ Similar were the President's motions according to the Art. 1 sec. 1 point 1 and art. 3 point 1 of this Act – only.

Conformability of normative acts with the Constitution (in large sense), was explained as conformability directly with the Constitution (in strict sense) or as conformability with the statute (legislative act) made the criterion of the Constitutional Tribunal control over normative acts.

It resulted from the provision of the Constitution: "Constitutional Court adjudicated upon conformability..." (Art. 33a sec. 1) and from the procedural provisions of the Resolution of the Parliament of 31st July 1985 that the justified doubt as to conformability (claim of non-conformability) was the material as premised of submitting the normative act to the Constitutional Court control; therefore was not possible to submit an act to control in order to dismiss *a priori* a possible, future charge of non-conformability, thus obtaining the state of *res iudicata*. There was the principle of presumption of conformability of the acts controlled by the constitutional Court with the acts holding the hierarchically higher status.

However the criterion of constitutionality and legality referred to normative acts other than legislative acts. It is assumed that the control of legality included also conformability of the acts of lower rank than a statute to ratified international agreements; in Poland such agreements were granted the binding force of a statute. Adjudicating upon conformability of a legislative act with the Constitution or of other normative act with the Constitution or a legislative act, the Constitutional Court examined both the contents of such act (substantial conformability) and the competence and fulfillment of the required statutory mode of passing the act (formal conformability); the Court's decision referred to the whole act or to its separate provisions (Art. 2 of the Act). The Constitution not allowed to control the normative acts from the point of view of other criteria, e.g. purposefulness, pertinence etc.

3.1.2. *Contents and effectiveness of the Constitutional Court decisions*

Decisions of the Constitutional Court were of substantial character because they adjudications containing statements as to conformability of the considered normative act with the Constitution (constitutionality) or a legislative act (legality) or as to non-conformability of a normative act with the Constitution (non-conformability) or of a legislative act (illegality). Therefore in the Polish law was only dichotomous division of Constitutional Court decision in respect to their contents.

The most important in the Polish law was a division of the Constitutional Court decisions with respect to the type of normative acts to which such decisions relate both to decisions concerning legislative acts and decisions concerning other normative acts. They differed significantly in respect of legal effectiveness.

Besides the competence consisting in adjudging as to constitutionality and legality of a normative act, the Constitutional Court also had so called the signaling competence. According to Art. 5 of the Constitutional Tribunal Act presented to the Sejm and to other competent legislative organs its comments on ascertained infringements and lacunas in law when elimination of which is indispensable for assuring coherence of the system of law in Poland. The above mentioned duty of the Constitutional Court to direct the motions for instituting proceedings, submitted after the 5 year period from the appointed moment has passed, to the organ which passed an act covered by the motion (art. 21) as well as information about both activities and decisions of the Constitutional

Court submitted to the Sejm, according to Art. 31 of the Act, was a statutory but not the only form of performance of that function by the Constitutional Court. In order to enable the Constitutional Court to fulfill its duties imposed by the quoted Art. 5 the Constitutional Tribunal Act imposed upon the State organs (specified in Art. 22 sec. 1) a duty of informing the Constitutional Court about all the discordances of legislative acts with the Constitution and other normative acts with the Constitution or legislative acts (Art. 33 sec. 2), signaled by the adjudicating organs. The scholarly opinions and comments on the Constitutional Tribunal Act seen as an important legal instrument also assisted the juridical function of the Constitutional Court and as softening its statutory limitations in its signaling competence.

From the point of view of legal effectiveness of the constitutional Courts decisions one should distinguish as follows:

1) Decisions of absolute legal effectiveness, that was decisions adjudicating non-conformability of the normative acts of lower rank both with the Constitution or with a legislative act. Their legal effectiveness was implemented by the measures specified in Art. 9 of the Constitutional Tribunal Act, in particular: the organ which had passed the normative act amended such an act with no delay or abrogated such act in its entirety or a part not later than within three months since the receipt of the Constitutional Court decision in such a case. In case of non-conformability between an act and the Constitution or a legislative act, such an act was not eliminated within the above time limit. The said act lost its binding force with the elapse of that time limit within the scope specified in the decision of the Constitutional Court.

2) Decisions of relative legal effectiveness, that was decisions adjudicating conformability of the questioned normative act with the Constitution or legislative act (affirmative decisions). They were of a declaratory character, because they not changed the existing law. However, they had the importance of legal interpretation, as universally binding. They were not only formally effective but also substantially effective (uninfringeable). They made as conform with Constitution interpretation of legal impediments for the Constitutional Court, which adjudicated in each case in a proper bench – three or five judges or in full bench, independently, to change the earlier adopted opinion. The Constitutional Court decision in a definite case was uninfringeable, but it not created any principles of adjudicating which would be binding for the Court.

3) Decisions having a character of legal remonstrance and directed at amendment or abrogation of the legislative act by the Sejm. They were decisions stating that the legislative act under consideration (a statute or a decree with the binding force of a statutes) was non-conformable to the Constitution. Differently to other decisions of Constitutional Court, adjudicating non-conformability of other normative acts with the Constitution or legislative acts, the decisions adjudicating non-conformability of statutes with the Constitution was always considered by the Sejm. If the Sejm considered the decision justified, it introduced the required amendments into the act covered by decision as abrogated it in its entirety or in part. If, however, the Sejm considered the act covered by the decision conformable with the Constitution it dismissed the decision of the Constitutional Court by a resolution taken by qualified majority of 2/3 votes in the presence of at least half of the total number of deputies, i.e. in the mode adopted for amendments to the Constitution. The

case covered by the decision dismissed by the Sejm was not again subjected to the proceedings before the Constitutional Court (*ne bis in idem* principle).

All decisions of the Constitutional Court were final upon the Art. 27 sec. 1 of the Constitutional Tribunal Act. It means that they gained binding force since the moment of pronouncement and in result the legislative organ (the original addressee of the decision) conformed an act to such a decision; failure in conforming to the decision led to the loss of binding force by the normative act in question on the grounds of the decision itself. Only in respect to statutes and decrees with the binding force of a statute the Constitutional Court decisions, were binding in that sense that they created an obligation for the Sejm to consider them.

The Polish Constitutional Tribunal Act allowed for reconsideration of the case (Art. 27 sec. 2 and 3 of the Act). This however had a limited range and concerned only to decision was submitted to the Constitutional Court only by strictly specified organs, namely: the Prime Minister, the Council of Ministers and the President of Poland – as respect to definite group of normative acts – those as enacted by supreme and central organs of State administration or of the President of Poland as well as by other supreme and central organs which were not organs of State administration. Submission of the legally effective motion for reconsideration of a case quashes the negative principle of the proceedings, i.e. judgment possessing validity in law (*res judicata*), resulted in suspension of carrying out the decision in a case, to which the motion concerned. The motion was considered by the Constitutional Court in its full bench. Reconsideration of a case had not a character of instance control of the decision nor restarting of the proceedings, but consisted in renewed consideration of the motion by the Constitutional Court in its full bench.

Such solution, mostly unknown in other countries, was motivated by not quite clear conception of the system of the sources of law on the grounds of the former Polish Constitution, which mainly concerned normative acts of lower rank than statutes; it was also motivated by a fact that the Constitutional Court generally adjudicated in bench of 3 judges (as far as acts of lower rank are concerned), or 5 judges (when the case concerned legislative act) and exceptionally, in particularly complicated cases in a full bench of the Constitutional Court.

The Polish Constitutional Tribunal Act not adopted the generally applied in other countries principle of abrogation of unconstitutional act since the moment of making decision; the adopted solution was characterized by a certain graduation of influence upon the organ which issued the act towards its elimination from the system of binding law.

The decision adjudging no conformability of a legislative act with the Constitution not abrogated the questioned act nor it obliged to its abrogation in a definite time limit. It was considered by the Sejm no later than within a six month from the day of the delivery of the Court's decision. The date of possible loss of binding force by the Sejm.

In respect to decisions adjudging of the acts of lower rank than a statute as not conform with the Constitution, a principle of their effectiveness *pro futuro* was adopted. The organ which issued the act covered by the decision introduced immediately the required amendments or abrogated it in entirety or in part, however not later than within three months since the Constitutional Court's decision was delivered. If the organ failed to do so in the appointed time limit, the act loosed its binding force with the elapse of the term. In particularly

justified cases the Constitutional Court suspended application of the act in its entirety or in part with the day of pronouncing the decision till an organ which issued the act, which was adjudged by the Court as nonconstitutional, carried out the decision.

3.1.3. Proceedings in the cases of the universally binding law interpretation

According to the Article 11a of the amendment to the Polish Constitutional Tribunal Act from 29th May, 1989 (Journal of Law No 34, item 178) this Court was obligated to binding interpretation on the law in Poland, on the motions submitted by the President of Poland, the Prime Minister, the First President of the Supreme Court, the President of the Chief Administrative Court, the Commissioner of Civil Rights and the Prosecutor General⁷.

The Constitutional Court ascertained the universally binding law interpretation considered by its full bench to pass a resolution, which was published in the Polish Journal of Law.

The detailed provisions of the mode of proceeding in such cases concern was adopted by the full bench of judges of the Constitutional Court.

4. The Main Cases Examined by the Constitutional Court – As a Contribution to the Protection of Human and Civil Rights in Poland

The examination by the Constitutional Court of the first cases were as the result of social initiative i.e., one from the motion of the Voivodship People's Council (Wrocław), and the second one – from the motion of the Executive Committee of the National Council of PRON (The Patriotic Movement of National Rebirth), and the third – from the motion of the Trade Union of the Employees of Tourism. Essential in these cases and the following ones that were examined, was the fact that their being brought before the Constitutional Court was very important. These cases were an expression of the concern of various social lay participants namely, agencies of local self-government, and the new trade union movement "Solidarność" (Solidarity) for the quality of law, for law – compliance in proclaiming the norms of law and also concern for the proper understanding of the principles of social justice.

These initiatives – which can be seen also in the newly sent in motions to the Court – were an expression of an indication of development of democracy and also of the shaping of new forms of development in Poland. This confirmed public conviction of the fact that the Constitutional Court was necessary, that was an organ that really worked.

What problems resulted from the first decisions of the Constitutional Court?

The cases examined so far in the field of legal statutory regulations, as of lower acts, being in conformability with the statutes and with the provisions of the Constitution, had resulted as public opinion, for they concerned important social problems, e.g. as decisions on the costs of exploitation and repairs to be paid by owners of flats in large blocks of flats or education for sobriety and the measures as taken to prevent alcoholism.

These cases had aroused public interest in problems of the law making by the State organs in accordance with the Constitution and observance of the

⁷ In the year 1989 – 5 motions have been submitted to the Constitutional Court by the President of Poland and by the Commissioner for Civil Rights. (Ombudsman).

principles of law-abidance by the supreme and central State administrative agencies while it created laws.

The cases examined so far showed very clearly the urgent necessity to put in order in a complex way the principles and procedures, organization and methods of making laws, for instance, the removal of options in the field of sub-delegations (delegated legislation).

And so, hearings before the Constitutional Court reminded of the need to observe and consistently apply the basic principles of legal making of a good law. Already in its first case, the Court's decision formulated a motion on the need for an active shaping of intellectual development both in the law-making activity of the State organs and in the process of enacting these laws.

Some important problems as concerning the perfecting of law and observance of the principles of law-abidance by the State organs, were signaled by letters sent by citizens to the Constitutional Court.

Public opinion was particularly interested in the first case examined by the Court, concerning exploring payments for flats purchased from the State. Thus, almost one-quarter of the letters sent among others by pensioners, were an expression of support for the decision of the Court and also of concern that laws should be made in accordance with the Constitution and also for their stability, so that citizens could feel secure in the sense of the reliability of a legally established order.

Although the Constitutional Tribunal was a novelty in the Polish system of the State agencies which had operated since the 1th January 1986, it had already won authority and esteem in Poland and considerable interest abroad. The Court's achievements and first experiences were covered in detail both by the press and by other publications in Poland and abroad, Western Europe included.

What was less known however, both in Poland and abroad, was the Court's significant role and scope of practical activity that concerns protection of civil and human rights. At the same time, this permeated practically all of the Court's decisions and suggestions⁸.

⁸ This issue was presented by Professor L. Łukaszuk as the pronouncement at the international colloquium organized on May 25–26, 1989 in Paris by the French Conseil Constitutionnel on: "The Declaration of Human and Civic Rights and the jurisprudence" – on the theme: The human and civic rights in the decisions of the Constitutional Tribunal of Polish People's Republic with particular consideration to the principle of equality, pp. 5–18; See also: Conseil Constitutionnel. La Déclaration des droits de l'homme et du citoyen et la jurisprudence. Colloque des 25 et 26 mai 1989 au Conseil Constitutionnel, Presses Universitaires de France, Paris, 1989, pp. 241–246; Interventions de Personnalités étrangères (...) Leonard Łukaszuk, Vice-president de Tribunal constitutionnel Pologne, Henryk Groszyk, Membre du Tribunal constitutionnel de Pologne; Prof. zw. dr hab. Leonard Łukaszuk, Uniwersytet Warszawski, Les droits de l'homme et du citoyen dans la jurisprudence du Tribunal Constitutionnel de la République Pologne, en consideration particulière du principe d'égalité, in: *Administracja publiczna u progu XXI wieku. Prace dedykowane prof. zw. dr hab. Janowi Szreniawskiemu z okazji Jubileuszu 45-lecia pracy naukowej*. Komitet Redakcyjny: prof. dr hab. Zygmunt Niewiadomski – Przewodniczący (...), Wydawnictwo Wyższej Szkoły Administracji i Zarządzania, Przemyśl 2000, pp. 373–386. See also: «The Concept of Protection of Human and Civic Rights According to the Principles and Rules of the both the International and Constitutional Law. The example of Poland» by Leonard Łukaszuk (...) presented at the 14th World Congress of the International Association for Philosophy of Law and Social Philosophy on Enlightenment. Rights and Revolution in Legal and Social Thought, Edinburgh, Scotland, August 1989, pp. 16–28; K. Działocha, "Die Gleichheit vor dem Recht in der Rechtsprechung des Verfassungsgerichtshofes in Polen", *Ost-Europa Recht*, 35 Jhg. (Marz 1989), 1/89, pp. 12-20; L. Łukaszuk, "Powszechna Deklaracja Praw Człowieka

As a result of activities of the Constitutional Court in close co-operation with the Commissioner for Civil Rights, the Chief Administrative Court and the Prosecutor General the rights of some groups of citizens had been extended. This was done either through abrogation or inducing of abrogation of a number of executive legal acts, most of them concerning enactments: against the legislator's (that is, the Sejm) intentions, those acts limited such rights to a varying extent, were defective, faultily prepared as regards the legal solutions adopted, inconsistent with the principles of law-making as that were in force in Poland, and sometimes also with the Constitution.

As a result of the Court's activities in the years 1966–1988 – 257 provisions of 54 normative acts (i.e.: 4 acts of the Sejm, 25 enactments⁹ of the Council of Ministers and of ministers, 6 resolutions of the Council of Ministers, 6 executive regulations (Arreté)¹⁰ of the minister and one statute of the social organization of nationwide importance) were directly examined during proceedings before the Court, and 127 among those provisions were quashed or radically changed. They concerned also 46 cases of the rights of many groups of citizens, and the proceedings resulted in a considerable extension of those rights.

Examining those cases, the Court reverted to the relevant international legal regulations, including the Universal Declaration of Human Rights, the Covenants of Human Rights, the International Labour Organization convention on trade unions, the convention on non-discrimination of women, and to the bilateral agreements signed by Poland. This was the Court's regular procedure.

The cases hitherto examined by the Court concerned matters of great importance for the society and protection of civil rights. The reason for their being brought before the Court by the competent subjects (that is, by the definite State agencies, and by the social and socio-vocational organizations (trade unions) as representing the citizens was the imputed inconsistency of the normative acts with the Constitution and legislative acts. The charges were also supported by the Prosecutor General who took part in the proceedings before the Constitutional Court.

A certain regularity can be noticed in the Constitutional Court's activities so far, which consisted in a clear predominance of motions submitted by social organizations. Of the 54 motions submitted to the Court from without in the years 1986–1988, half of them came from that source, and the remaining part of motions and questions on points of law – from the Chief Administrative Court and from the Commissioner of Civil Rights, the Prosecutor General and as Constitutional Courts' own initiative. It should be explained here that in the Polish legal system the citizens in the years 1986–1989 had not possibility to institute actions before the Constitutional court directly through the motions as they submit. On the other hand, they had a direct access to the Court through the complaints and motions which they can submitted both to that body and to other State agencies. Such complaints and motions from the citizens, their

Narodów Zjednoczonych a zagadnienie ochrony praw obywateli w działalności Trybunału Konstytucyjnego w Polsce”, *Nowe Prawo*, No 7/8 (1988), pp. 3–18 (The Universal Declaration of Human Rights and the protection of individual rights in the practice of the Polish Constitutional Court). See also: Leonard Łukaszuk, “Practical reason in legislation and models of constitutional jurisdiction in Europe”, *The Journal of East and West Studies*, Yonsey University, Seoul, Republic of Korea, Vol. 21, No. 2 (October, 1992), pp. 69–83.

⁹ Legally binding ordinances (reglement).

¹⁰ Orders.

justification examined by the Court, lead to proceedings instituted by the Court on its own initiative which happened in the years 1986–1989 in 11 cases.

Another way of gaining access to the Court involved a situation when the competent authorities of socio-vocational organizations or local self-governments (provincial people's councils) was inspired by the citizens to submit motions to the Court. According to the system it was in force in Poland notifications of faulty legal provisions, including those that encroached on the rights of citizens, were submitted upon the appropriate procedure by common courts through the Supreme Court, and by the Chief Administrative Court. Such motions in the citizens' interest was also submitted to the Constitutional Court by the Commissioner for Civil Rights, as a novelty in Poland from 1988. As was shot by the practice this was an appropriate system which had won approval both in Poland and abroad. In the countries where constitutional courts operated, it was estimated as more effective.

Moreover, large number of complaints and motions that were submitted by citizens to the Court Constitutional and concerned the activity of the State administrative agencies expressed a great interest of society. In 1986, there were 576 such a motions, in 1987 – 750 and in 1988 – 591. All motions was examined or conveyed to competent agencies for further examination; they also served as a basis for the proceedings of the Court's on its own initiative and for notification of the problems. This way, the citizen had access to the Court, and can influenced on the shaping of its decisions including those directed at a better protection of rights of citizens and individuals.

The above mentioned first case examined by the Constitutional Court which met with a broad social response was moved for the Voivodship People's Council in Wrocław. The motion called in question the constitutionality of provisions of the Act of April 29th, 1986, on land control and expropriation of real estate, and of the related ordinance of the Council of Ministers. Two basic questions were raised. The ordinance of the Council of Ministers prohibited any changes of contents of notarial contracts negotiated prior to the introduction of the Act concerning rates for use and management of private-owned flats bought by citizens from the State. The ordinance greatly raised the rates established in such contracts. Thus a civil act, a contract of sale in this case, was changed *ex parte* by administrative decisions, the parties concerned were not consulted in any way. The contention concerned about 107 thousand of citizens. The Constitutional Court examined the case in all its hearings twice (first in a bench of three, and then in its full bench as a composition of twelve judges), and heard experts in different branches of law, to find that the contested provisions, in their part concerning the flat rate of payment due from owners of flats, went beyond the statutory authorization. Moreover, equalizing tenants and owners as regards liabilities, the dependence between their respective duties and performances left out of account, the examined provisions were inconsistent with the constitutional principle of the citizens' equality before the law.

Other cases examined by the Court concerned the following issues: the constitutional principle of equality before the law of all citizens irrespective of sex in the sphere of access to higher education, infringed by the order of the Minister of Health and Social Welfare (Official Journal of the Ministry of Health and Social Welfare 1985, No. 2, item 6) which provided for proportional limits of men and women to be admitted to medical colleges; the limitation by acts of a lower rank, inconsistently with provisions of the appropriate statutes, of the right

to practice a profession in the sphere of licensing individuals to run public transport firms; and the limitations in the sphere of entering persons on the list of counselor's trainees despite of list of counselor's trainees despite of their meeting the requirements as regards the length of employment.

The faulty provisions were abrogated and the citizens' infringed rights thus were reestablished.

The Constitutional Court's notifications concerning faulty provisions and lacunas in the law were based on facts established while examining cases, on the Court's own analyses of the law in force, and on the citizens' and their organizations' complaints and motions as to the activity of administrative agencies, submitted to the Constitutional Court. For example, the Court notified to the Minister of Science and Higher Education of the fact that the provisions he passed infringed the principle of equality before the law, established preferences for persons who graduated from secondary schools abroad on admission to the first year of intramural studies.

Acting on its own initiative and on a subsequent motion of the Commissioner of Civil Rights, the Constitutional Court instituted proceedings that concerned the consistence of ordinance of the Minister of Labour, Wages and Social Affairs of February 22th, 1984 on the principles of paying out old-age and disability pensions in the case of their concurrence with pensions from foreign institutions (Journal of Law No 13, item 57) with the provision of Art. 73 of the Act of 14th December 1982 on old-age pensions for employees and their families (Journal of Law, No 40; item 267 with subsequent changes) and with Art. 67 Sec. 2 and Art. 5 point 5 of the former Constitution of Poland, as to the principles of equality and justice.

The discussed ordinance, lacking legal grounds (going beyond the limits of statutory authorization) and passed inconsistently with the Constitution, reduced the amount of domestic old-age and disability pensions in the case of their concurrence with similar foreign performances. As the Minister of Labour, Wages and Social Affairs quashed the contested ordinance, the Constitutional Court discontinued proceedings in that case (decision Ref. No. Uw. 3/87).

On motion of the President of the Chief Administrative Court, the Constitutional Court examined the consistence of Art. 4 sec. 1 point 3 b of the Prime Minister's ordinance of 31st October, 1983, on performance of hotel, camping, and tourist services by units of non-socialized economy (Journal of Law, No. 62, item 285) which provided for different requirements as to the practice in the case of persons with higher education as compared with those who finished other types of schools, with Art. 67 sec. 2 of the Constitution which established the principle of the citizens' equality before the law. Since 15th October 1988, the Prime Minister changed the contents of the resolution removing the doubts as to constitutionality of the discussed provision, the Court discontinued the proceedings (decision Ref. No. U. 12/88).

Decisions hitherto taken by the Constitutional Court in the examined cases fully confirmed the adopted procedure of appraising the consistence of legal acts with the Constitution and of acts of a lower rank with statutes also from the point of view of protection of the citizens' rights. Particular important here was the procedure called as the quasi-concrete (and not abstract) supervision of legal norms which was connected with cases pending before the Chief Administrative Court that concern faulty decisions of the State administrative agencies appealed against by the citizens. The fact that the Court's bench

examined the dossier of a case in connection with which a question on a point of law has been submitted to that Court, and that the parties to the proceedings had the possibility to give the appropriate explanations, created an important legal measure. Owing to that measure, citizens who were the parties to proceedings can present their standpoint directly or defend themselves against administrative agencies that apply towards them legal provisions which were inconsistent with the Constitution or statutes. This was therefore directly related to protection of civil rights. It opened for the citizen an indirect access to the Court before which he can question a legal provision that aroused his doubts; the same way, also of the Court's opinion as to the consistence of the contested legal acts was presented to the citizen.

The Constitutional Court was created in order to strengthen the constitutionally defined legal order and the observance of the principles of equality before the law and of the citizen's rights and liberties. This direction, consistently followed by the Court, became in practice an important guarantor of the citizens' individual rights. This was evidenced both by the statutory range of the Court's powers in the field of investigation of constitutionality and consistence with statutes, and by the broad variety both of the State and social subjects authorized to initiate proceedings before the Court provided by the Action of the Constitutional Court.

The judicial review applied by the Court concerned the consistence of law with all provisions of the Constitution that defined the basic rights, liberties, and duties of citizens, including those provided by the Universal Declaration and Covenants on Human Rights, personal rights and liberties (individual and collective) and socio-economic rights. In the Polish system of law the only statute limited the citizen's rights, basing on the defined powers included in the act. The chief State administrative agencies passed normative acts in order to execute such statutes. Those acts were examined by the Court in particular: from the point of view of the observance in those acts of the citizens' constitutional and statutory rights and duties and the principles of law-making based on the rule of law, including the principles of consultation of draft regulations, among others with social bodies, that were provided by law.

Although the Polish model of proceedings before the Constitutional Court provided for either the institution of the so-called constitutional action against administrative decisions or decisions of courts, nor the so-called popular action (*actio popularis*), an appropriate protection of a Polish citizen's rights, whether constitutional or statutory, was guaranteed by the provisions on proceedings before the Constitutional Court. Many subjects, both the generally authorized State agencies and the competent statutory agencies of many social organizations whose authorization concerned matters that fall under their competence and the resulting infringements of rights and interests, submitted motions to the Court on their own initiative or as a result of analysis of complaints and motions they were received from the citizens. Thus the citizens were provided an influence on the above-mentioned initiatives and their directions. Also the above-mentioned institution of questions on points of law concerning its constitutionality and legality and submitted to the Constitutional Court in connection with proceedings before the Chief Administrative Court as initiated by means of citizens' complaints against the decisions of administrative agencies, served the protection of the citizens' rights, liberties and vital interests.

The presented legal forms and methods of operation of the Constitutional Court in Poland proved that it had among chief aims and directions of activity the task to secure on the grounds of the Polish legal system and on the Covenants on Human Rights – the rights and liberties of citizens.

5. Essential Problems of the Activity of Constitutional Court in the years 1986–1989

In the years 1986–1989, 75 cases were submitted to the Constitutional Court and 6 of which were as motions for the examination of legislative acts for their conformity with the Constitution; 48 – were motions for the examination of the accordance with the Constitution and statutes of normative acts issued by supreme State organs, and 3 was as legal questions concerning the executive accordance of normative acts issued by the supreme State administrative organs with the statutes.

Carrying out its basic tasks, the Court gave due consideration to the fact that its decisions and explanations was helpful in the practical application of law-making by the supreme State organs in the real model as given in the former Constitution, in which the Sejm was the highest organ of authority and a legislative organ, and the superior authority of laws in the whole legislative system. It was one of the basic principles of the legal system in Poland.

Hence it was essential to strengthen the principles of adherence to the Constitution and legality in the process of making normative acts, also of a lower order. Jurisdiction of the Court therefore as continued evaluation of the processes of legislation according to these principles, giving consideration to the fact that the law should be made according with the competence in this field of the Sejm and in accordance with the binding mode of public consultations. The perfection of law and order, which continued the Court, led to protection of the constitutional rights of citizens.

The motions as sent in to the Court by authorized subjects usually concerned not only materials directly questioning the legal regulations, but also both wider problems connected with the process of law-making and the functioning of State administrative agencies.

The cases in which decisions were given called for detailed and profound studies of a lot of legal materials, usually on the borderline of various fields of law – seen against the background of wider social problems and the practical activity of various State organs. The benches of judges examined the cases and passed judgments as investigated the factual and legal aspects and tackled legal problems that so far had not been dealt with by the common courts in Poland.

All motions charged discordance of the enactment regulations with the legislative acts, and even with the Constitution were complied with. This indicated that in this field of the sources of the binding internal Polish law certain imperfections were partly eliminated by the Constitutional Court.

A certain specific character of decisions issued by the Court means that this Court, as formulated its position on the constitutional conformity of certain legal norms, indirectly settled legality of norms in matters that were a subject of regulation, which in turn means that every decision had simultaneously its general and problem character. So the first period of activity of the Court cannot be evaluated only from the point of view of the number of cases as examine, but

above all, the social and economic importance of the problems should be taken into consideration.

And so, in spite of the fact that the activity of the Court – as to express it numerically – was not rich, for it embraces only a four-year's activity, one can already registered several motions of a key character, important for legislative activity of the State.

Thus to such settlements concerning principles of a key character, that was self-evidently affecting the model of the legal system in Poland one can include:

- the principle of the precedence of laws (acts) as a basic source of the rights, duties and responsibilities of citizens and subjects to legal relations who were not natural bodies corporate;
- the duty of precise and concrete formulation of authorization to issue executive norm-setting acts;
- the principle of the exact observation by supreme organs of administration the statutory scale of granting authorization to issue such acts;
- the inadmissibility of granting to other than the organs specified in the statute the right to issue executive norm-setting acts;
- the inadmissibility of regulations introducing retroaction of the law in the field of new duties or increasing the scale of duties concerning citizens and subjects to legal relations who were not natural bodies corporate.

One of the key problems in the law-making process in Poland was social consultation with trade unions and other social organizations determined by the statutes. Binding in this respect were the statutory regulations that ensure participation in these consultations of trade unions of socio-occupational organizations of farmers, youth unions and other organizations. The principle of social consultations was a constitutional principle of the legislative procedure.

In the cases examined by the Court, the failure to comply with this duty brought the decision as unlawful, and so, qualified for abrogation.

Among the cases examined by the Court was the problem of the admissibility of retroaction of the law. The principle of non-retroaction of the law was treated by the Court as an essential value, ensuring the safeguarding of the conduct of legal transactions and protection of the acquired rights by citizens. The Court expressed the opinion that departure from this principle must always be the result of the law (act), and not of an executive act.

These generalizations made on the basis of the verdicts of the Constitutional Court had importance in the process of shaping law and putting it in order. Decisions of the Court served practical purposes, and so decided of concrete cases and also –in a broader view of the problem– improvement of law. Every regulation that was examined by the Court was directed at social realities, and in connection with this, the only decisions that can be accepted were those which have strong support both in law regulations and in social realities. It was not the task of the Court to examine the problems only from the point of view of legal doctrines, although when giving its decisions it made advantage of the quite considerable scholar achievements also both of the theory and philosophy of law.

The transgressions shown by the decisions of the Court in creation of normative departmental regulations were as result mainly of insufficient knowledge of and non-application of the principles and the so-called technique of creation of law – i.e. in a legislation process. The majority of them could had

been avoided if the lawyers and other officials in ministries and other offices elaborating the draft of regulations had done their tasks properly.

The calling into being of the Constitutional Court aroused lively interest among legal and also scholar circles. The task of the Court was not an issue of settling questions of a doctrinal character, but concrete cases, however, were reckon with the influence of the decisions of the Court in shaped interpretation and the doctrine of the law.

All the court's decisions were promulgated in the *Diariusz Sejmowy* (Sejm Diary) as an official publishing organ. Information and discussions on each judgment was published in the professional press and also in other press organs. The official collections of the Court's decisions were published by Constitutional Tribunal in 1987, 1988 and in 1989. Dissemination of the contents of these decisions of the Court was one of the forms of the education for the administrative legislators. The Constitutional Court offered a broad access to its decisions, considering that it was purposeful for the popularization of the new solutions both in the legal and governmental system of the State, which were an important factor in the creation of laws. Some publications worthy of attention were prepared among others, by judges of the Constitutional Court and also by the experts of the Bureau of the Court.

The calling into being and activity of the Constitutional Court in Poland also aroused wide interest abroad. In particular, representatives of other countries (i.a. Russia and Hungary) became acquainted with the tasks of the Court and its first experiences, paying special attention to its role in improving law and order and assurance of protection of the rights of citizens and the human rights at large. Delegation of judges of the Polish Constitutional Tribunal headed by its vice president, was invited to visit both the proper parliamentary commissions in Hungary and in Jugoslavia, as well as both the Constitutional Courts of Jugoslavia and Serbia, and also the Faculty of Law at University in Belgrade.

The Court also participated in some works of organizations associating constitutional courts and similar institutions in Europe. A delegation of the Court participated as a first time in the 7th European Conference of the Constitutional Courts in Lisbon in 1987, headed by the vice-president of the Court.

The four-years's work of the Court had shown that it realized properly the tasks determined by the Constitution and by the law of 29th April, 1985 on the Constitutional Tribunal: as the tasks in the field of adjudication, interpretations and evaluation of the state of the law and also presenting to the proper organs its comments on the lacunas and ascertained infringements when it had found in the examined laws, the removal of which was essential to ensure the cohesion of the legal system in the Poland. These tasks, realized to an ever wider extent, contributed to improve of law and order.

The Polish Constitutional Court took into account the hierarchy of constitutional norms and its function in the protection of fundamental rights. Sometimes arised the conflict between fundamental rights and other norms of constitutional value. The Court applied objective methods both in the hierarchize of norms by the jurisdiction, and in conciliation of conflicting (antinomic) fundamental rights with other norms of constitutional value¹¹.

¹¹ The more comprehensive analysis of this problem was presented in the Polish Constitutional Court's Report to the 8th Conference of the European Constitutional Courts to Ankara 1990, May 7-10. Theme: Hierarchy of Constitutional Norms and its Function in the Protection of Fundamental Rights. As the representatives of the Polish Constitutional Tribunal were attended

The Polish Constitutional Court had the opportunity to expound its interpretation of the constitutional principles of the contents of law the principle of equal rights, the principle of social justice, the principle of protection of acquired rights, the principle of the coherence and reliability of the system of law, the principle of non retroactivity of law and the principle of the statutory regulation of rights and duties of the citizens.

The Court's four years activity had shaped main principles of basic rights of the citizens: the principle of protection of acquired rights, and non retroactivity of law and to a smaller extent – that of interdependence of civil rights and duties.

The Constitutional Court avoided the statement of contradiction between the constitutional norms and the need to restrict one of them *in favour* of the other one.

When interpreting the so-called inner hierarchy of the Constitutional, its principles and norms - in the Court's praxis, it was believed that principles should be given priority over the other constitutional norms, because the principles expressed the system's fundamental legal contents than the other constitutional norms.

6. General Conclusions

The Constitutional Court in Poland in the years 1985–1989 was a non-parliamentary organ as reviewed constitutionality and legality of the laws in force. As the results of its activity were:

a) to make acts in force conform with the Constitution. In this field the Court reviewed such legality, and also on stated lack of such, through statement of facts. Amendment of the legislative act was a sole competence of the Sejm (Polish Parliament) as a highest authority of State power, including the legislation. In case of decisions of the Court stating inconsistency of a legislative act with the Constitution was a possibility to dismiss it by a qualified majority of 2/3 votes in the Sejm.

b) to preserve the constitutional hierarchy of normative acts, and particularly to observe the principle that the rights, duties and responsibility of the citizens and self-dependent legal subjects not being physical persons may be regulated solely by acts of the Sejm, with the executive provisions to such acts kept within strictly defined limits. This was a issue of significant importance in the relations between the Sejm and the Government.

c) to observe a proper democratic procedure in the preparation of normative legislation. In particular, the rights of the citizens, setting in the Constitution, rights of the citizens and their organizations should include also public consultations. In practice, in the understanding of law, the Court treated obligatory consultations of normative legislation bills as one of the elements of legality of law.

Essentially, the competences of the Court emphasized the principle that legality cannot be limited only to observance of the law but it should also encompass observance of the constitutional and legislative requirements

in this Conference: Professor titular Mieczysław Tyczka – president of this Tribunal, Professor titular Leonard Łukaszuk – vice president and Professor titular Kazimierz Działocha – judge, who presented the above Report.

forming the foundation for its development. This was not only a juridical, but also a social issue.

Full implementation of the Court's decisions and recommendations served to improve the legal system in Poland. Considering that legal regulations affect a variety of public and economic issues, including rights of individuals, improvement of the legal system will result in better formulation of such rights.

The Constitutional Court was a specific body, and its legal classification is not easy. In particular, irrespective of fulfilling judicial functions, it signaled and investigated, and presented to the legislative authorities its conclusions on the deficiencies and discrepancies in law, the removal of which was necessary to ensure coherence of the legal system in Poland. Therefore, the Constitutional Court was not strictly a judicial body, although some regulations concerning courts were applicable to it.

Due to the specific tasks fulfilled by the Court, the procedure was of an autonomous character, this meaning that the common court's procedure had limited application to it, mainly in the technical and organizational sphere this being limited to the normative provisions given in the Act and partly by the evidence procedure like in the civil proceedings.

The very definition of the subjects authorized to initiate proceedings before the Court was of importance. A variety of concepts were discussed. Additionally, the Court initiated proceedings on its own initiative, i.e., in result of motions submitted by the citizens.

Therefore, the circle of authorities and bodies having access to the Court has been set quite widely. However, this was not an *actio popularis*. This issue was of crucial importance. The Court dealing with legislation, exclusively, in effect served both to co-create law and protect fundamental rights of the individual.

In the research on conformability of sources of law with the Constitution and in the jurisdiction of the Polish Constitutional Court, the Constitution was regarded as a certain integral unity. It referred especially to determining the relationship of the constitutional rules regarding civil rights and liberties, with other regulations of the Constitution, which were to ensure adequate conditions for the fulfillment of these rights, among other things, through certain forms of the proper organization of the State and developing proper legislation.

Some remarks and postulates emerged from experiences of more than four-year-long activity of the Constitutional Court in Poland. They were helpful in formulating assumptions and legal solutions of a new Constitution in 1997, especially as far as civil rights and strengthening of law and order, were concerned.

In 1989, in the annual information of the Constitutional Tribunal for the Polish Sejm on major problems which emerged as a result of the Tribunal's activities, an opinion was presented, stating that the rules of the law-making process should be regulated in the Polish Constitution on a broad basis. Thus, basic assumptions and leading institutions in the law-making process, should be specified, together with the rules regarding force of the laws in question.

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