

RIGHT TO A COURT IN A DEMOCRATIC STATE RULED BY LAW

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One of the fundamental assumptions of a democratic state ruled by law is the right to a court in order to ensure that citizens can protect their interests before an independent body adjudicating matters exclusively based on law that is in force in the state.¹ In the Polish legal tradition, the right to a court was close to the ideas of the Constitution of 3 May 1791, and the two Constitutions of the interwar period also stipulated that right.

The provision of Article 98 *in principio* of the March Constitution² laid down that: “No one may be deprived of the court to which he is subject by law. (...) No statute may deprive a citizen of access to the courts for the purpose of demanding reparation for injury or damage”. According to Article 68(1) and (4) of the April Constitution,³ “No law can bar a citizen from seeking redress in the courts of justice for his injury or damages. No one can be deprived of the court of justice to which he is subject by law (...)”.

However, the right to a court is of particular importance based on the principles of a democratic state ruled by law, the supremacy of the Constitution, and separation of powers, which are its characteristics. In accordance with Article 10 para. 1 of the Constitution of the Republic of Poland,⁴ “The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative,

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¹ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd edn, Warsaw 2012, p. 286 and the Constitutional Tribunal judgments referred to therein.

² Act of 17 March 1921: Constitution of the Republic of Poland, Journal of Laws [Dz.U.] No. 44, item 267.

³ Constitution of the Republic of Poland of 23 April 1935, Journal of Laws [Dz.U.] No. 30, item 227.

⁴ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dz.U.] No. 78, item 483, as amended.

executive and judicial powers". The legislative power is vested in the Sejm and the Senate, executive power is vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power is vested in courts and tribunals (*arg. ex Article 10 para. 2 of the Constitution of the Republic of Poland*).

The principle of separation of powers means that although they must be balanced and cooperate, they maintain their autonomy. Thus, it is rightly emphasised in the doctrine⁵ of constitutional law that "the separation of powers is aimed, inter alia, at securing human rights by precluding the abuse of power by any of the bodies that exercise it".

In relation to the judicial power, the separation of powers only means the autonomy of each of them because the essence of justice administration requires that the judicial power should be exercised exclusively by courts, and other powers should not interfere in those activities or participate in them. Such a conclusion can be drawn based on the grammatical interpretation of the provision of Article 175 para. 1 of the Constitution of the Republic of Poland, in accordance with which "The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts".

Constitutional independence of the right to a court does not change the fact that the right is genetic and organisationally connected with the concept of a democratic state ruled by law. The provision of Article 2 of the Constitution of the Republic of Poland *expressis verbis* stipulates that: "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice".

Ensuring that an individual is protected against the arbitrariness of public authorities is an important feature of a democratic state ruled by law. Thus, the right to a court constitutes a guarantee of judicial protection of human rights against their infringement by public authorities.⁶ It plays two functions strictly connected with each another. Firstly, it protects an individual's rights and obliges all public authorities, within their actions, to conform to the Constitution. Secondly, it creates a characteristic system binding the distinct status of an individual with the objective legal order.⁷ Due to that, it is treated at present as an element of a democratic state ruled by law, regardless of whether it is directly expressed in the Constitution or concluded from it.⁸

The constitutional approach to the right to a court, inspired by the opinions of the Polish doctrine and international norms, can be analysed following two interpretations: (1) as a principle of constitutional law and (2) as an individual's subjective right.

Within the first meaning, the principle constitutes a directive on law development and a directive on its interpretation. As a directive on law development, the principle bars the legislator from enacting legal norms that are in conflict with

⁵ Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej (ogólna charakterystyka)*, Państwo i Prawo No. 11–12, 1997, p. 87 and the opinions of the doctrine referred to therein.

⁶ *Ibid.*, p. 88.

⁷ *Ibid.*

⁸ *Ibid.*, p. 89.

the Constitution (a negative aspect) and, on the other hand, requires that legal norms should be enacted in compliance with the Constitution, which materialises the principle (a positive aspect). In both cases, it constitutes a benchmark used to examine whether the enacted law is in compliance with the Constitution. As far as the directive on interpretation is concerned, all public authorities must take the principle into account in the process of law application. In case of doubts, i.e. in situations in which the Constitution does not provide a clear exclusion, the constitutional presumption is for the existence of the right to a court. Within this meaning, it limits the legislator's discretion in the process of enacting law.⁹

Within the second meaning, the placement of Article 45 para. 1 of the Constitution of the Republic of Poland, regulating the right to a court, in Chapter II entitled "The freedoms, rights and obligations of persons and citizens" means that the right to a court was mainly shaped as a separate subjective right constituting a fundamental element of the constitutional status of an individual. It functions as one of personal rights, a person's right guaranteeing his dignity, liberty and the sense of security, and creating a specific sense of being protected by law safeguarded by courts.¹⁰ Indeed, everyone who seeks justice and wants to have sanctions applied for law violation may turn to a court; a person may also turn to a court when he feels the need to definitely determine his legal status and to get confirmation that he is under the protection of law.¹¹

The Constitution of the Republic of Poland, like the constitutions of other states that adopted a democratic legal order as the basis of their system, in Article 45 para. 1 stipulates a common right to a court in the substantive meaning. The provision stipulates that: "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court". The provision draws its normative basis from the content of two norms of ratified international conventions, namely from Article 6 para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹² and from Article 14 paras. 1 and 3c of the International Covenant on Civil and Political Rights¹³, which were of key importance for the Polish regulation of the right to a court. Both above-mentioned norms of the treaties constitute part of the national legal order under Article 91 of the Constitution of the Republic of Poland.

It is worth noting that the Polish Constitution determines the right to a court in a broader way than the above-mentioned human rights treaties do. Both, basic as far as the issue is concerned, international legal acts, i.e. ICCPR and ECHR, stipulate that in the determination of their civil rights and obligations or of any criminal charge against them, everyone shall be entitled to a fair and public hearing within

⁹ *Ibid.*

¹⁰ P. Sarnecki, *Komentarz do art. 45 Konstytucji RP*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, Warsaw 2003, p. 236.

¹¹ *Ibid.*, p. 237 and the opinions of the doctrine referred to therein.

¹² Journal of Laws [Dz.U.] of 1993, No. 61, items 284–289; hereinafter ECHR.

¹³ Journal of Laws [Dz.U.] of 1977, No. 38, item 167; of 1994, No. 23, item 80; hereinafter ICCPR.

a reasonable time by an independent and impartial tribunal established by law.¹⁴ On the other hand, the Constitution of the Republic of Poland does not limit this right to civil and criminal matters. The right to a court is also applicable in other matters, which are neither civil nor criminal, i.e. also administrative ones.¹⁵ A broader treatment of the right to a court in the Polish Constitution results not only from the fact that it does not limit itself to some categories of matters but also from the relationship the right has with the principle of the two-instance court proceedings laid down in Article 176 para. 1 of the Constitution of the Republic of Poland and the right to appeal against judgments at least to a court of second instance, to which not only a person facing criminal charges but all parties to a trial are entitled. It results *expressis verbis* from Article 78 of the Constitution of the Republic of Poland, which stipulates that: "Each party shall have the right to appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute".

Therefore, also persons who are aggrieved as a result of the commission of an offence have the right to appeal against judgments within the scope in which they can act as parties (Article 444 of the Criminal Procedure Code); this also concerns other entities which are granted the status of a party to a trial. It should be emphasised that the content of Article 45 para. 1 of the Constitution of the Republic of Poland clearly indicates the legislator wanted the right to a court to cover possibly the broadest scope of matters, and the principle of a democratic state ruled by law results in the directive on interpretation that bans the use of narrowing interpretation of the right to a court.¹⁶

When presenting the institution of the right to a court in a democratic state ruled by law, it is necessary to indicate that the idea of this right, in the form adopted in the Constitution of the Republic of Poland of 1997, is based on the combination of three sources of inspiration:¹⁷

- 1) former judgments of the Constitutional Tribunal,
- 2) international human rights standards laid down in Article 14 ICCPR and Article 6 para. 1 ECHR,
- 3) opinions of the doctrine.

On the other hand, there is no uniform stand on the issue concerning the elements constituting the right to a court.

In the judgment of 9 June 1998, K 28/97,¹⁸ the Constitutional Tribunal reconstructed three basic elements of the right to a court and decided that it consists in particular of:

¹⁴ W. Daszkiewicz, *Konstytucyjne prawo do sądu a nowy Kodeks postępowania karnego (zagadnienia wybrane)*, [in:] E. Skretowicz (ed.), *Nowy Kodeks postępowania karnego. Zagadnienia węzłowe*, Kraków 1998, p. 44.

¹⁵ A. Kubat, *Prawo do sądu jako gwarancja ochrony praw człowieka w sprawach administracyjnych*, [in:] L. Wiśniewski (ed.), *Podstawowe prawa jednostki i ich sądowa kontrola*, Warsaw 1997, p. 221 ff.

¹⁶ P. Tuleja, *Prawo do sądu i skarga konstytucyjna jako konstytucyjne środki ochrony praw człowieka*, [in:] E. Dynia, Cz.P. Kłak (eds), *Europejskie standardy ochrony praw człowieka a ustawodawstwo polskie*, Rzeszów 2005, p. 35.

¹⁷ P. Wiliński, *Proces karny w świetle Konstytucji*, Warsaw 2011, p. 112.

¹⁸ OTK-A 1998, No. 4, item 50.

- 1) the right to have access to a court, i.e. the right to start proceedings before a court, hence a body that has specific features (i.e. is autonomous, impartial and independent),
- 2) the right to the appropriately shaped court procedure in compliance with the requirements of justice and openness,
- 3) the right to a court judgment, i.e. the right to receive a binding adjudication of a given matter by a court.

In the above-quoted judgment, the Constitutional Tribunal *expressis verbis* emphasised the procedural nature of the right to a court and referred to it in its successive judgments.¹⁹

For years, the doctrine of constitutional law and the judgments of the Constitutional Tribunal have referred to the above-mentioned three-element structure of the right to a court making it possible to determine the criteria for “the right to have access to the system of justice administration” by the indication of features that the system should match.²⁰ The Tribunal alone did not exclude evolution in the area because it did not close the catalogue of the elements of the right to a court, which was indicated in one of its judgments by the use of a phrase “in particular”. Thus, in a judgment of 20 July 2004, SK 19/02,²¹ the Constitutional Tribunal indicated another element of the right to a court by concluding that, regardless of the procedural elements, the characteristics of the right to a court also includes systemic elements. In the judgment of 23 October 2006, SK 42/04,²² the Constitutional Tribunal draws attention to the fact that the provision of Article 45 para. 1 of the Constitution stipulates that a court is the only body entitled to hear a case and determines the cumulative criteria a court should meet, i.e. that it should be:

- 1) competent,
- 2) autonomous,
- 3) impartial,
- 4) independent.

Thus, as a result, in the judgment of 20 October 2007, SK 7/06,²³ the Constitutional Tribunal unequivocally stated that the constitutional right to a court contains a fourth element, namely the right to the appropriate shape and position of bodies that hear cases.

Based on the opinions of the constitutional law doctrine and the judgments of the Constitutional Tribunal, it should be assumed that the constitutional right to a court contains the following elements:

- 1) the right to have access to a court,
- 2) the right to an appropriate shape of the court procedure,

¹⁹ See, inter alia, judgments of 16 March 1999, SK 19/98, OTK 1999, No. 3, item 36, and of 10 May 2000, K 21/99, OTK 2000, No. 4, item 109.

²⁰ See the Constitutional Tribunal judgment of 12 May 2003, SK 38/02, OTK-A 2003, No. 5, item 38.

²¹ OTK-A 2004, No. 7, item 67.

²² OTK-A 2006, No. 9, item 125.

²³ OTK-A 2007, No. 9, item 108; also see the Constitutional Tribunal judgment of 7 December 2010, SK 11/09, OTK-A 2010, No. 10, item 108.

- 3) the right to a court judgment (i.e. a binding adjudication),
- 4) the right to appropriately shaped system and position of bodies hearing cases, i.e. the right to a competent, autonomous, impartial and independent court,
- 5) the right to public hearing of a case without undue delay.

It should be emphasised that none of the indicated elements is self-standing or sufficient. Thus, in order to assess whether a normative regulation meets the requirements determined in Article 45 para. 1 of the Constitution of the Republic of Poland, it is necessary to assess all the elements cumulatively. The infringement of any of them implies that a constitutional standard is not met as far as the right to a court is concerned.²⁴

Therefore, the first element of the right to a court consists in the right to start proceedings before a court, i.e. legal action. The term legal action should be interpreted as the possibility of seeking justice before any court of the Republic of Poland, not only a common court, in case rights and freedoms are infringed. It is the right of a person to initiate court proceedings in the course of which a matter is adjudicated.²⁵ The entitlement results not only from Article 45 para. 1 of the Constitution of the Republic of Poland, but also from Article 77 para. 2 of the Constitution, which stipulates that: "Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights". It is worth noticing that while the first of the listed provisions formulates the right to have access to a court in a positive form, the second one is its supplementation and formulates the right in a negative form, because it bans the legislator from enacting regulations that would bar legal action of claiming the infringed freedoms or rights.²⁶ "Any person's" right to a court means that "no one" can be deprived of the right to legal proceedings before a court.

Thus, a question is raised whether the provision of Article 77 para. 2 of the Constitution of the Republic of Poland takes into account only the constitutional right to a court (*sensu stricto*), or it also covers the rights granted based on other normative acts (*sensu largo*). In the doctrine²⁷ of constitutional law, it is assumed that while the provision of Article 45 para. 1 of the Constitution of the Republic of Poland encompasses broad interpretation of law, i.e. also the rights laid down in ordinary statutes, the provision of Article 77 para. 2 of the Constitution of the Republic of Poland limits itself to the constitutional rights. The legal nature of the provision of Article 77 para. 2 of the Constitution of the Republic of Poland is twofold. On the one hand, it expresses "the right to a court" constituting one of the constitutional subjective rights of an individual and within this meaning it may be perceived as the supplementation of the regulation contained in Article 45 para. 1 of the Constitution of the Republic of Poland and, on the other hand, the editorial form

²⁴ P. Wiliński, *Proces karny w świetle Konstytucji...*, p. 117 and the opinions of the doctrine referred to therein.

²⁵ *Ibid.*

²⁶ Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej...*, p. 91; J. Oniszczyk, *Konstytucja Rzeczypospolitej Polskiej w orzecznictwie Trybunału Konstytucyjnego na początku XXI wieku*, Zakamycze 2004, p. 727 and literature referred to therein.

²⁷ *Ibid.*, p. 95.

of Article 77 para. 2 of the Constitution as well as its approach to an instance of the “infringement of freedoms or rights” suggest that the provision should be perceived as a guarantee of a substantive right to a court expressed in Article 45 para. 1 of the Constitution. Both elements coexist in Article 77 para. 2 of the Constitution of the Republic of Poland, and the right to a court alone may also be treated not only as a self-standing subjective right but an institutional guarantee that other freedoms are materialised.²⁸ This is also how the legal nature of the provision of Article 77 para. 2 of the Constitution is interpreted in the judgments of the Supreme Court, where it is highlighted that “the right to a court” is guaranteed in two complementary provisions of the Constitution of the Republic of Poland, i.e. Article 45 para. 1 and Article 77 para. 2.

The above suggests a close relation between the provisions of Article 45 para. 1 and Article 77 para. 2 of the Constitution of the Republic of Poland, which consists in the fact that: firstly, both provisions constitute the constitutional guarantees of the right to a court; secondly, the provision of Article 77 para. 2 should be interpreted as detailed specification of Article 45 para. 1; and thirdly, there is a genetic link between Article 45 para. 1 and Article 77 para. 2, and Article 77 para. 2 constitutes the supplementation of the constitutional right to a court.²⁹

The second element of an individual’s right to a court consists in the right to the appropriate shape of the court procedure. There is an established uniform stand in the judgments³⁰ of the Constitutional Tribunal that the fair court procedure is one that ensures that parties have procedural rights adequate to the subject matter of conducted proceedings. Therefore, in accordance with the requirements for a fair trial, the parties to the proceedings must have a real possibility of presenting their arguments and a court must consider them.

Another element of the right to a court consists in the right to the appropriate shape of the system and position of bodies hearing cases. It constitutes the systemic element.³¹ A court, within the meaning of Article 45 para. 1 of the Constitution of the Republic of Poland and the corresponding Article 6 para. 1 ECHR, is such an adjudicating body that meets the following requirements. Firstly, it must be a state body established by statute in order to administer justice and, what has already been stated above, this function, in accordance with Article 175 of the Polish Constitution, is performed in the Republic of Poland by the Supreme Court, common courts, administrative courts and military courts. In general, common courts implement the

²⁸ L. Garlicki, K. Wojtyczek [in:], L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 2, Art. 30–86, 2nd edn, revised and supplemented, Warsaw 2006, p. 858 and opinions of the doctrine and the Constitutional Tribunal judgments referred to therein.

²⁹ *Ibid.*, p. 859.

³⁰ See the Constitutional Tribunal judgment of 23 October 2006, SK 42/04, OTK-A 2006, No. 9, item 125; the Constitutional Tribunal judgment of 16 March 1999, SK 19/98, OTK 1999, No. 3, item 36; the Constitutional Tribunal judgment of 13 May 2002, SK 32/01, OTK-A 2002, No. 3, item 31; the Constitutional Tribunal judgment of 12 May 2003, SK 38/02, OTK-A 2003, No. 5, item 38.

³¹ L. Garlicki, *Pojęcie i cechy “sądu” w świetle orzecznictwa Europejskiej Konwencji Praw Człowieka*, [in:] A. Szmyt (ed.), *Trzecia władza. Sądy i trybunały w Polsce. Materiały Jubileuszowego L Ogólnopolskiego Zjazdu Katedr i Zakładów Prawa Konstytucyjnego*. Gdynia, 24–25 kwietnia 2008 r., Gdańsk 2008, p. 146.

administration of justice concerning all matters save for those statutorily reserved to other courts (Article 177 of the Constitution of the Republic of Poland).

Secondly, it must be a “competent court”. As far as competence is concerned, “establishment by statute” requires that a court’s competence to hear a particular matter should have adequate legal grounds. This means that, on the one hand, there must be provisions determining a court’s competence and, on the other hand, those provisions must be applied in a rational way free from arbitrariness. Reference to a court’s competence is also laid down in Article 176 para. 2 of the Constitution of the Republic of Poland, where the legislator is obliged to specify the organisational structure and jurisdiction as well as procedure of the courts. The implementation of the right to a competent court is also in the public interest, which constitutes one of the elements of the value that, in the doctrine,³² is referred to as “the interest of the administration of justice”. The treatment of “the right to a hearing of a matter by a competent court” as one of a person’s constitutional rights means that the competence of a court must be determined in a complete way with no loopholes whatsoever because one can turn to a court in any matter. Therefore, statute should contain a general competence clause indicating a specific type of court as a body that is always competent in case the competence of a particular court cannot be established without doubts.³³

Thirdly, a court must be autonomous, independent and impartial. Within the meaning of Article 45 para. 1 of the Constitution of the Republic of Poland, it is a body separated from other state bodies. Article 173 of the Polish Constitution refers directly to independence as a feature of courts and stipulates that: “The courts and tribunals shall constitute a separate power and shall be independent of other branches of state power”. The starting point for the assessment of “a court’s independence” is the establishment whether an adjudicating body maintains independence from the legislative and the executive powers. A parliament and its bodies cannot act as a court in criminal matters, i.e. adjudicate on guilt and punishment, and members of parliament cannot hold any judicial posts.³⁴ In this context, the Constitutional Tribunal, interpreting the concept of “an autonomous court” decided that “courts’ autonomy” first of all means that the judiciary is organisationally and functionally separated from other powers so that it is possible to ensure that courts have full discretion over planning, undertaking and implementing tasks, and there is no functional or organisational subordination that might directly or indirectly influence the implementation of a court’s tasks or undermine the citizens’ trust in it.³⁵

A court’s independence as the next element determining the position of a court is complex in nature. In the doctrine,³⁶ it is assumed that the concept of judicial independence includes: (1) a judge’s impartiality towards the parties to

³² P. Wiliński, *Proces karny w świetle Konstytucji...*, p. 121 and the opinions of the doctrine and the Constitutional Tribunal judgments referred to therein.

³³ P. Sarnecki, *Komentarz do art. 45 Konstytucji RP...*, p. 240.

³⁴ L. Garlicki, *Pojęcie i cechy “sądu” w świetle orzecznictwa...*, p. 150.

³⁵ See the Constitutional Tribunal judgment of 14 April 1999, K 8/99, OTK-A 1999, No. 3, item 111.

³⁶ P. Wiliński, *Proces karny w świetle Konstytucji...*, p. 124.

the proceedings; (2) a court's independence from non-judicial bodies; (3) a judge's discretion to adjudicate and his independence from authorities and other judicial bodies; (4) a judge's independence from social factors; and (5) a judge's personal independence. Judicial independence is also described as a judge's total freedom from the influence of whatsoever external factors on the adjudicated matter.³⁷ Independence is referred to within this meaning in Article 178 para. 1 of the Constitution of the Republic of Poland, which lays down its normative basis in accordance with which "Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes", as well as links a court's independence with a judge's independence. Such interpretation of judicial independence as a feature constituting a guarantee of implementation of the right to a court is adopted in the Constitutional Tribunal judgments providing a uniform stand that "judicial independence consists in the fact that a judge adjudicates exclusively based on all evidence presented, assesses it freely while listening to the voice of conscience and personal conviction, taking into account knowledge and life experience as well as the provisions of law". Most often, however, judicial independence is understood as a directive ordering a judge to adjudicate based on the Constitution, statutes and his personal conviction, which means that nobody, except the legislator, can influence a judge in the area of his administration of justice.³⁸ Independent courts are composed of people whom the law has given the feature of independence and it does not only verbally declare its existence but also develops the system of conditions of judges' work in the way that really and efficiently ensures that this independence exists. Thus, judicial independence is an indispensable element of the independent court system and guarantees citizens' rights and freedoms. Therefore, it is rightly assumed in the judgments of the Constitutional Tribunal³⁹ that an independent court cannot be composed of people who are not independent.

Judicial independence remains in strict relation with a judge's impartiality. The former is the assumption of the latter. The term "an impartial judge" mainly refers to a judge's subjective attitude to the matter heard.⁴⁰ The Constitutional Tribunal also draws attention to this relation and concludes that: "the concept of judicial independence has an unequivocal and established content being a basic guarantee of impartial adjudication. Independence must mean a judge's independence from the parties to the proceedings as well as from the state bodies. A judge is under the obligation to be impartial, in accordance with the oath he takes, which is a correlate of the principle of independence (...). The obligation to be impartial sometimes goes beyond the scope of protection resulting from the principle of independence. While

³⁷ A. Murzynowski, A. Zieliński, *Ustrój wymiaru sprawiedliwości w przyszłej Konstytucji*, Państwo i Prawo No. 9, 2000, p. 5; D. Dudek, *Konstytucyjna wolność człowieka a tymczasowe aresztowanie*, Lublin 1999, p. 195.

³⁸ K. Marszał, *Proces karny. Zagadnienia ogólne*, Katowice 2013, p. 72.

³⁹ P. Wiliński, *Proces karny w świetle Konstytucji...*, p. 126 and the Constitutional Tribunal judgments referred to therein.

⁴⁰ Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej...*, p. 99 and opinions of the doctrine referred to therein.

the principle refers to the influence of external entities on a judge, the obligation to be impartial obliges a judge to oppose assessment resulting from experience, stereotypes and prejudice".⁴¹ A judge's impartiality is the opposite of partiality or bias, which in case of a judge may consist in adjusting the content of judgments to suggestions or orders addressed to a judge from outside with a view to advantages resulting therefrom.⁴² The infringement of the obligation to be impartial constitutes a particularly drastic form of betraying the principle of judicial independence and, as a result, it leads to the occurrence of the phenomenon of "a cooperative judge", which excludes the possibility of objective application of law and administration of justice.⁴³

Normative standards of a court's acting in the area of hearing a case include three conditions: (1) fair hearing; (2) open hearing; and (3) hearing "without undue delay". Hearing a case means comprehensive examination of all aspects of the case, those concerning an act that is to be assessed or e.g. claims (in a civil lawsuit) as well as those concerning legal norms that may be applicable to the adjudicated matter. Therefore, the hearing must be fair, which correlates with the general role of courts, i.e. administration of justice.

Thus, fair hearing of a matter should be referred to the "procedural justice", which is most generally defined as fair and diligent proceedings, i.e. in line with fair play. Thus, procedural justice requires that persons who pursue their rights and obligations before a court should obtain a real possibility of presenting their arguments. A court hearing a particular matter is obliged to enable every person to present their stand, and this way it implements the guarantees included in the principle of fair proceedings.⁴⁴ Both terms also require that a court hearing a particular matter and issuing a judgment based on the provisions of law should act following the sense of social justice while applying them and take into account the educational aspect of a court's function, but should not automatically accept public opinion.⁴⁵

Public hearing of a case, within the meaning of Article 45 paras. 1 and 2 of the Constitution of the Republic of Poland, is strictly connected with the principle of openness of proceedings, which in a democratic state ruled by law means that information about the activities of all the public authority bodies are available to the public and are subject to social control. The Constitution not only guarantees public hearing of a case to everyone but also exhaustively determines public hearing exclusion for reasons of morality, state security and public order, and due to the protection of private life of a party, or other important private interest (Article 45 para. 2 of the Constitution of the Republic of Poland). Openness of court proceedings is most often interpreted as "openness to the public", which is called "external

⁴¹ *Ibid.* and the Constitutional Tribunal judgments referred to therein.

⁴² See the Constitutional Tribunal judgment of 24 June 1998, K 3/98, OTK 1998, No. 4, item 552.

⁴³ *Ibid.*

⁴⁴ Z. Czeszejko-Sochacki, *Prawo do sądu w świetle Konstytucji Rzeczypospolitej Polskiej...*, p. 102.

⁴⁵ P. Sarnecki, *Komentarz do art. 45 Konstytucji RP...*, p. 239.

openness". It plays an important role in establishing the rule of law and order. It makes social control over courts' actions possible, is conducive to issuing judgments in compliance with law and the sense of social justice. It constitutes a guarantee of a court's independence and impartiality because its actions are performed under social control. Openness of proceedings also strengthens the sense of public and legal order, has educational influence on the parties to proceedings and other persons, contributes to respecting law and prevents the parties to proceedings and other persons from infringing the established legal order.

Hearing of a case before a court without undue delay, i.e. in a relatively fast way, is an essential element of the constitutional right to a court. Such an approach to hearing a matter has its normative basis in Article 45 para. 1 of the Constitution of the Republic of Poland. It serves the implementation of substantive law because an efficiently issued judgment is connected with greater and preventive influence of substantive law and the fulfilment of the aims of proceedings, and at the same time it ensures that the rights of the parties concerned are protected.

Hearing of a case without undue delay also means there is no threat to the efficiency of proceedings resulting from their lengthiness. The legislator gave the parties the right to complain about the lengthiness of court proceedings⁴⁶ and authorised a court adjudicating on this matter to order the court hearing the case to undertake certain steps until a specified time. The right to a court loses its significance if proceedings are lengthy and do not meet any expectations but only result in the input of energy and financial resources.

Summing up the above-presented considerations, it is necessary to conclude that, firstly, the right to a court, which constitutes one of the most important means of the protection of human rights and freedoms, *de lege lata* laid down in Article 45 para. 1, Article 77 para. 2 and Article 78 of the Constitution of the Republic of Poland, meets the requirements of a democratic state ruled by law and international standards laid down in Article 6 para. 1 ECHR and Article 14 paras. 1 and 3c ICCPR. Secondly, the right to a court should be perceived as a principle based on an assumption that what is a correlate of every person's right are specific obligations of public authorities to: (1) safeguard this right in normative legal acts that should ban closing a judicial way of claiming the infringed rights and freedoms; shape court procedures in the way that would optimally ensure that every person has the right to have their case heard in accordance with the rules laid down in Article 45 para. 1 of the Constitution of the Republic of Poland; (2) oblige all public authority bodies applying law to comply with the right to have access to a court and, in the course of court proceedings, to create conditions for adjudicating the matter and active participation of the parties. Thirdly, the subjective right to a court, which constitutes the basis for requesting that a court should hear a case, is universal in nature, which results from the use of the word "everyone", i.e. anyone with no exception. Everyone within the meaning of the Constitution refers to a natural person as well as a legal person as defined

⁴⁶ See Act of 17 June 2004 on the complaint about the infringement of the right to hearing of a case before a court without undue delay, Journal of Laws [Dz.U.] No. 179, item 1843.

in private law.⁴⁷ Fourthly, the right to a court within the topical sense referring to freedoms and rights may be limited only by the Constitution and in other terms by statute.

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⁴⁷ See the Constitutional Tribunal judgment of 9 June 1998, K 28/97, OTK 1998, No. 4, item 50.

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RIGHT TO A COURT IN A DEMOCRATIC STATE RULED BY LAW

Summary

The article discusses the issue of the right to a court in a democratic state ruled by law, which constitutes a guarantee of judicial protection of a person's rights against their infringement by public authorities. It plays two functions: firstly, it protects a person's subjective right and binds all public authorities to act in compliance with the Constitution; secondly, it creates a characteristic system of relations between a person's individual status and an objective legal order, and thus it is at present treated as a component of a democratic state ruled by law.

The constitutional approach to the right to a court may be analysed within two meanings: (1) as a principle of constitutional law; (2) as a person's subjective right. Within the former, the principle constitutes a directive on enacting law and an interpretational directive, and within the latter, it means that the right to a court is shaped as an individual subjective right constituting an elementary component of the constitutional status of a person. It functions as one of personal rights, as a human right guaranteeing a person's dignity and free status, the sense of security and the typical feeling of being protected by law, which is safeguarded by courts.

The right to a court, within the substantive meaning, is regulated in Article 45 para. 1 of the Constitution of the Republic of Poland, in accordance with which "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court". The quoted provision is supplemented by the content of Article 77 para. 2 of the Constitution, which is a guarantee stipulating that: "Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights".

The right to a court constituting one of the most important means of safeguarding human rights and freedoms, laid down *de lege lata* in Article 77 para. 2 and Article 78 of the Constitution of the Republic of Poland, meets the requirements for a democratic state ruled by law and international standards laid down in Article 6 para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 14 paras. 1 and 3(c) of the International Covenant on Civil and Political Rights.

Keywords: Constitution, democratic state ruled by law, administration of justice, courts, autonomous, independent and impartial court

PRAWO DO SĄDU W DEMOKRATYCZNYM PAŃSTWIE PRAWNYM

Streszczenie

W artykule omówiono prawo do sądu w demokratycznym państwie prawnym, które stanowi gwarancję sądowej ochrony praw człowieka przed ich naruszeniem przez organy władzy publicznej. Spełnia ono dwie funkcje: po pierwsze, chroni podmiotowe prawo jednostki i wiąże wszystkie władze publiczne w zakresie ich działania w podporządkowaniu Konstytucji; po drugie, tworzy charakterystyczny system powiązania indywidualnego statusu jednostki i obiektywnego porządku prawnego, wobec tego jest współcześnie traktowane jako składnik demokratycznego państwa prawnego.

Konstytucyjne ujęcie prawa do sądu może być rozpatrywane w dwóch znaczeniach: 1) jako zasada prawa konstytucyjnego; 2) jako prawo podmiotowe jednostki. W pierwszym znaczeniu zasada ta stanowi dyrektywę tworzenia prawa i dyrektywę interpretacyjną, zaś w drugim znaczeniu oznacza, iż prawo do sądu zostało ukształtowane jako indywidualne prawo podmiotowe, stanowiące elementarny składnik konstytucyjnego statusu jednostki. Występuje jako jedno z praw osobistych, jako prawo człowieka, gwarantujące jego godność, wolnościowy status, poczucie bezpieczeństwa i stwarzające swoiste odczucie przebywania pod opieką prawa, na straży którego stoją sądy.

Prawo do sądu, w znaczeniu materialnym, jest uregulowane w art. 45 ust. 1 Konstytucji RP, według którego „Každy ma prawo do sprawiedliwego i jawnego rozpatrzenia sprawy bez nieuzasadnionej zwłoki przez właściwy, niezależny, bezstronny i niezawisły sąd”. Dopełnienie regulacji ujętej w cytowanym przepisie zawiera przepis art. 77 ust. 2 Konstytucji RP, mający charakter gwarancyjny, który stanowi, że: „Ustawa nie może nikomu zamykać drogi sądowej dochodzenia naruszonych wolności lub praw”.

Prawo do sądu stanowiące jedno z najważniejszych środków ochrony praw i wolności człowieka, ujęte *de lege lata* w art. 45 ust. 1, art. 77 ust. 2 i art. 78 Konstytucji RP odpowiada wymogom demokratycznego państwa prawnego i standardom międzynarodowym, przewidzianym w art. 6 ust. 1 Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności oraz w art. 14 ust. 1 i 3c Międzynarodowego Paktu Praw Obywatelskich i Politycznych.

Słowa kluczowe: Konstytucja, demokratyczne państwo prawne, wymiar sprawiedliwości, sądy, niezawisły, niezależny i bezstronny sąd

DERECHO A LA JUSTICIA EN EL ESTADO DEMOCRÁTICO DE DERECHO

Resumen

El artículo analiza el derecho a la justicia en el estado democrático de derecho que constituye una garantía de tutela judicial de derechos humanos ante su infracción por los órganos del poder público. Cumple con dos funciones: primero, protege derecho individual subjetivo y obliga a todas autoridades públicas en el ámbito de su actuación a someterse a la Constitución; segundo, crea un sistema de vinculación entre estado particular de un individuo

y orden jurídico objetivo, por lo tanto en actualidad es considerado como elemento de estado democrático de derecho.

El aspecto constitucional del derecho a la justicia puede analizarse desde dos perspectivas: 1) como principio de derecho constitucional, 2) como derecho subjetivo de un individuo. En la primera, este principio es una directiva de creación de derecho y una directiva de interpretación; en la segunda el derecho a la justicia viene configurado como derecho individual subjetivo que forma parte de estado fundamental constitucional de un individuo. Aparece como uno de los derechos personales, como derecho humano que garantiza su dignidad, libertad, seguridad y sentimiento de tutela jurídica, ejercida por los tribunales.

El derecho a la justicia en el sentido sustancial queda regulado en el art. 45 ap. 1 de la Constitución de la República de Polonia, según el cual "Cada uno tiene derecho a la justicia equitativa y pública, sin retraso infundado, dictada por el tribunal competente, independiente, imparcial e inamovible". Esta regulación viene complementada con el art. 77 ap. 2 de la Constitución de la República de Polonia que posee carácter garantista y prescribe que "La ley no puede privar a nadie de la vía judicial de reclamar sus derechos o libertades infringidos".

El derecho a la justicia constituye una de las medidas más importantes de protección de derechos y libertades de ser humano, incluida, *de lege lata*, en el art. 45 ap. 1, art. 77 ap. 2 y art. 78 de la Constitución de la República de Polonia, que corresponde a los requisitos del estado democrático de derecho y a los estándares internacionales previstas en el art. 6 ap. 1 del Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales y en el art. 14 ap. 1 y 3 c del Pacto Internacional de Derechos Civiles y Políticos.

Palabras claves: Constitución, estado democrático de derecho, justicia, tribunales, el tribunal independiente, inamovible e imparcial

ПРАВО НА СУД В ДЕМОКРАТИЧЕСКОМ ПРАВОВОМ ГОСУДАРСТВЕ

Резюме

В статье рассматривается вопрос о праве на суд в демократическом правовом государстве, которое предполагает гарантию защиты человеческих прав в суде от их нарушения органами государственной власти. Упомянутое право выполняет две функции: во-первых, защищает субъектное право личности и обязывает все органы государственные власти в рамках своей деятельности подчиняться Конституции; во-вторых, образует специфическую систему взаимосвязи индивидуального статуса личности и объективного правового порядка, следовательно, в современном аспекте рассматривается как составляющая демократического правового государства.

Конституционная интерпретация права на суд может рассматриваться двояко: 1) в качестве принципа конституционного права, 2) в качестве субъектного права личности. В первом значении данный принцип носит характер законодательной и интерпретационной директивы, а во втором значении он сводится к тому, что право на суд было сформировано как индивидуальное субъектное право, представляющее собой элементарную составляющую конституционного статуса личности. Оно действует как одно из прав личности, как право человека, гарантирующее защиту его достоинства, статуса свободы, чувство безопасности, и создающее ощущение того, что человек охраняется законом, на страже которого находятся суды.

Право на суд в материальном смысле регулируется ст. 45 п. 1 Конституции Республики Польша, согласно которой «Каждый имеет право на справедливое и открытое разбирательство дела без необоснованного промедления в компетентном, независимом, беспристрастном суде». Дополнение

к регулированию, включённому в цитируемое положение, содержится в ст. 77 п. 2 Конституции Республики Польша и имеет гарантированный характер, суть которого изложена в следующем: «Закон не может никому препятствовать в восстановлении в судебном порядке нарушенных свобод или прав». Право на суд, представляющее собой одно из важнейших средств защиты прав и свобод человека, предусмотренное в рамках действующего законодательства *de lege lata* в ст. 45 п. 1, ст. 77 п. 2 и ст. 78 Конституции Республики Польша, отвечает критериям демократического правового государства и международным стандартам, предусмотренным в ст. 6 п. 1 Европейской конвенции о защите прав человека и основных свобод, а также в ст. 14 п. 1 и 3с Международного пакта о гражданских и политических правах.

Ключевые слова: Конституция, демократическое правовое государство, правосудие, суды, независимый и беспристрастный суд

DAS RECHT ZUR GERICHTSBARKEIT IM DEMOKRATISCHEN RECHTSSTAAT

Zusammenfassung

In diesem Artikel wurde das Recht zur Gerichtsbarkeit im demokratischen Rechtsstaat erörtert, welches die menschliche Garantie des Menschenrechtsschutzes vor dessen Verletzung seitens Organe der öffentlichen Gewalt darstellt. Es erfüllt zwei Funktionen: erstens schützt es das subjektbezogene Entitätsrecht und bindet alle öffentlichen Gewaltsteile hinsichtlich deren Tätigkeitsunterordnung dem Grundgesetz; zweitens bildet es ein besonderes Bezüglichkeitssystem des individuellen Entitätsstatus und der objektiven Rechtsordnung, demnach wird es gegenwartsnahe als ein Bestandteil des demokratischen

Rechtsstaates anerkannt. Die grundgesetzliche Fassung zur Gerichtsbarkeit kann in zweierlei Bedeutungen erörtert werden: 1) als grundgesetzliche Rechtsregel, 2) als subjektbezogenes Entitätsrecht. In der ersten Bedeutung setzt diese Regel die Richtlinie der Rechtsschaffung und die Auslegungsrichtlinie, dennoch beinhaltet es unter der zweiten Bedeutung, dass die Gerichtsbarkeit als individuelles subjektbezogenes Recht geschaffen wurde, indem es einen elementaren Bestandteil des grundgesetzlichen Entitätsstatus bildet. Es tritt als eines der persönlichen Rechte, als Menschenrecht auf, welches seine Würde, seinen freiheitlichen Status, sein Geborgenheitsgefühl vor Gerichten bewacht, indem es ein gewisses Empfinden einer Rechtsbeschränkung schafft. Gerichtsbarkeit in materieller Bedeutung ist nach Art. 45 Abschn. 1 des Grundgesetzes der Republik Polen geregelt, wonach jedermann „Das Recht zur gerechten und offenen Rechtsfallbearbeitung ohne unbegründete Zeitverzögerung seitens eines zuständigen, unabhängigen, unbefangenen und souveränen Gerichtes hat“. Diesbezügliche Ergänzung der Regelung unter zitierter Vorschrift beinhaltet Art. 77 Abschn. 2 des Grundgesetzes der Republik Polen, als Garantieeigenschaft bestimmt diese Vorschrift, dass „das Gesetz Niemandem den Zugang zum Rechtswege auf Vermittlung verletzter Freiheit oder Rechte schließen darf“.

Die Gerichtsbarkeit als eines der wichtigsten Mittel des Menschenrechts-, und Freiheitsschutzes, bestimmt *de lege lata* unter Art. 45 Abschn. 1, Art. 77 Abschn. 2 und Art. 78 des Grundgesetzes der Republik Polen, den demokratischen Aufforderungen eines Rechtsstaates und dem internationalen Standard entspricht, vorgesehen in Art. 6 Abschn. 1 der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten, sowie im Art. 14 Abschn. 1 und 3c des Internationalen Paktes für bürgerliche und politische Rechte.

Schlüsselwörter: Grundgesetz, demokratischer Rechtsstaat, Gerichtsbarkeit, Gerichte, unabhängiges, souveränes und neutrales Gericht

DROIT À UN PROCÈS ÉQUITABLE DANS UN ÉTAT DE DROIT DÉMOCRATIQUE

Résumé

L'article traite du droit à un procès équitable dans un État de droit démocratique, qui constitue une garantie de la protection judiciaire des droits de l'homme contre leur violation par les autorités publiques. Il remplit deux fonctions: premièrement, il protège le droit subjectif de l'individu et oblige toutes les autorités publiques à agir en subordination à la Constitution; deuxièmement, il crée un système caractéristique de lien entre l'autonomie de l'individu et l'ordre juridique objectif, par conséquent, il est actuellement considéré comme un élément d'un État de droit démocratique.

L'approche constitutionnelle du droit à un procès équitable peut être envisagée de deux manières: 1) comme principe de droit constitutionnel, 2) comme droit subjectif de l'individu. Au premier sens, ce principe est une directive législative et une directive interprétative, et dans le second sens, cela signifie que le droit à un procès équitable a été conçu comme un droit subjectif individuel, constituant une composante élémentaire du statut constitutionnel de l'individu. Il fait partie de ses droits personnels en tant que droit de l'homme, garantissant sa dignité, son statut de liberté, son sentiment de sécurité et créant un sentiment spécifique d'être sous la protection de la loi, qui est sauvegardée par les tribunaux.

Le droit à un procès équitable, au sens matériel du terme, est régi par l'article 45 paragraphe 1 de la Constitution de la République de Pologne, aux termes duquel «Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et sans retard excessif, par un tribunal compétent, impartial et indépendant, établi par la loi». La réglementation contenue dans la disposition citée est complétée par la disposition de l'article 77 paragraphe 2 de la Constitution de la République de Pologne, ayant un caractère de garantie, qui stipule que : «La loi ne peut clore à personne les moyens de poursuivre en justice des libertés ou des droits violés». Le droit à un procès équitable, qui constitue l'une des mesures les plus importantes de protection des droits de l'homme et des libertés fondamentales, inclus *de lege lata* à l'article 45 paragraphe 1, l'article 77 paragraphe 2 et l'article 78 de la Constitution de la République de Pologne, répond aux exigences d'un État de droit démocratique et aux normes internationales prévues à l'article 6 paragraphe 1 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et à l'article 14 paragraphes 1 et 3c du Pacte international relatif aux droits civils et politiques.

Mots-clés: la Constitution, État de droit démocratique, système de justice, tribunaux, tribunal indépendant et impartial

DIRITTO AL TRIBUNALE IN UNO STATO DEMOCRATICO DI DIRITTO

Sintesi

L'articolo discute il diritto al tribunale in uno stato democratico di diritto che costituisce una garanzia di tutela giudiziaria dei diritti umani contro la loro violazione da parte delle autorità pubbliche. Esso svolge due funzioni: in primo luogo, tutela il diritto soggettivo dell'individuo e vincola tutte le autorità pubbliche nell'ambito della loro azione nella subordinazione della Costituzione, in secondo luogo, crea un sistema caratteristico di collegamento tra lo status

personale dell'individuo e l'ordine giuridico oggettivo, quindi attualmente viene trattato come una componente di uno stato democratico di diritto.

L'inquadratura costituzionale del diritto al tribunale può essere considerata in due accezioni: 1) come principio di diritto costituzionale, 2) come diritto soggettivo dell'individuo. Nella prima, tale principio costituisce una direttiva per la creazione del diritto e una direttiva interpretativa, mentre nella seconda significa che il diritto al tribunale è stato formato come diritto soggettivo individuale che costituisce una componente elementare dello status costituzionale dell'individuo. Esiste come uno dei diritti della persona, come diritto umano che garantisce la dignità, lo status di libertà, il senso di sicurezza e crea una specifica sensazione di essere sotto la tutela della legge che è custodita dai tribunali.

Il diritto al tribunale, in senso materiale, è disciplinato dall'art. 45. paragrafo 1 della Costituzione della Repubblica di Polonia, secondo la quale "Ogni persona ha diritto che la sua causa sia esaminata equamente e pubblicamente senza indebiti ritardi da un tribunale competente, indipendente, imparziale e costituito per legge". Il completamento della regolazione inclusa nella disposizione citata è contenuto nella disposizione dell'art. 77. paragrafo 2 della Costituzione della Repubblica di Polonia che ha carattere di garanzia e afferma quanto segue: "La legge non può vietare a chiunque il procedimento giudiziario per la violazione delle libertà o dei diritti".

Il diritto al tribunale, che è uno dei mezzi più importanti per la protezione dei diritti umani e delle libertà, incluso *de lege lata* nell'articolo 45. paragrafo 1, nell'articolo 77. paragrafo 2 e nell'articolo 78 della Costituzione della Repubblica di Polonia, corrisponde ai requisiti di uno stato democratico di diritto e alle norme internazionali di cui all'articolo 6. paragrafo 1 della Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, nonché all'art. 14. paragrafi 1 e 3c del Patto internazionale sui diritti civili e politici.

Parole chiave: Costituzione, stato democratico di diritto, sistema giudiziario, tribunali, tribunale competente, indipendente, imparziale e costituito per legge

Cytuj jako:

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