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CONSEQUENCES OF THE LACK OF PROMULGATION OF THE JUDGEMENT OF THE CONSTITUTIONAL TRIBUNAL FOR THE ADMISSIBILITY OF EXAMINING A REQUEST FOR REOPENING OF CIVIL PROCEEDINGS

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Abstract. The persistent practice in Poland of failing to publish Constitutional Tribunal judgements in official journals raises controversy regarding their effects. The universally binding force of such constitutional court rulings is questionable, as by such negligence they do not formally become part of the national legal order. Failure to publish a ruling in the appropriate promulgation body declaring specific provisions inconsistent with the Constitution formally means that it does not have the effect of derogating the regulation for which the presumption of constitutionality has been rebutted. This situation limits the exercise of an individual's public subjective right arising from Article 190(4) of the Constitution of the Republic of Poland enabling the reopening of proceedings. The ability to overturn a final decision issued by a court or public administration body based on provisions deemed – by rulings of the Constitutional Tribunal – to be inconsistent with the Constitution establishes an individual's right to restitution of constitutionality. This right is also closely linked to the guarantees arising from the constitutional right to a fair trial. The omissions to publish judgments declaring provisions inconsistent with the Constitution, a reflection of the ongoing constitutional crisis, only deepen the legal chaos in this matter. The most negative and tangible consequence of this state of affairs would involve depriving individuals of the benefit of filing a request for reopening of proceedings by deeming it premature due to the failure to enter into force of the unpublished Constitutional Tribunal ruling. It is therefore necessary to recreate mechanisms enabling the use of this institution, while simultaneously persuading common courts to examine requests for reopening of proceedings on its merits, despite doubts regarding the status and legal consequences of an unpublished constitutional court judgment.

Keywords: unpublished judgment of the constitutional court; entry into force of an unpublished judgment; consequences of failure to promulgate a judgment; grounds for reopening proceedings in the absence of publication of a judgment.

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INTRODUCTION

The practice of not submitting Constitutional Tribunal (CT) rulings for publication in the Polish Journal of Laws began in 2016, beginning with the judgment of 9 March 2016 (K 47/15),[1] concerning the conformity of the statutory legal basis for the Constitutional Tribunal's operation with the Constitution of the Republic of Poland.[2] To put it simply, after issuing the ruling in question, which deemed the amendment to the Constitutional Tribunal Act[3] unconstitutional, the then Prime Minister refused to publish it, arguing that the ruling was procedurally flawed, namely, that it had been issued by an incomplete panel. Due to the suspension of publication of this and subsequent CT judgements, the development of two methods of reconstructing the legal system – dangerous for citizens – was initiated: one adopted by the judiciary and another pushed by the legislative and executive authorities [Florczak-Wątor 2016, 8].[4]

There is no doubt, especially in light of the literal wording of Article 190(2) of the Constitution, that Constitutional Tribunal rulings are subject to immediate promulgation in the official body in which the normative act was promulgated. If the act has not been promulgated, the ruling is published in the Official Journal of the Republic of Poland "Polish Monitor". Pursuant to Article 21(1)(1) of the Act of 20 July 2000 on the promulgation of normative acts,[5] the Prime Minister publishes the "Journal of Laws" (*Dziennik Ustaw*) and the "Polish Monitor" (*Monitor Polski*) with the assistance of the Government Legislation Centre, which is a state organizational unit that answers to the Prime Minister.[6]

In turn, Article 9(1)(6) of this Act requires the publication of Constitutional Tribunal rulings concerning normative acts published in the Journal of Laws. Since this provision does not determine a specific deadline for the Prime Minister's publication of a ruling, the obligation set forth in the Constitution to immediately publish the ruling is updated each time. In practice, this means the shortest possible time after the submission of documentation relating to the ruling issued by the Constitutional Tribunal. Therefore, the

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[1] OTK ZU A/2018, item 31.

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

[3] Act of 22 December 2015 on amending the Act on the Constitutional Tribunal, Journal of Laws item 2217.

[4] This study discusses in detail the legal consequences of refusing to officially promulgate a Constitutional Tribunal judgment.

[5] Journal of Laws of 2019, item 1461.

[6] See Article 14a of the Act of 8 August 1996 on the Council of Ministers, Journal of Laws No. 106, item 497 as amended.

actions taken in this regard, or more precisely, the omissions, undoubtedly constituted a gross and conscious violation of the law. However, they did not receive a substantive criminal legal review, as the preparatory proceedings initiated in this matter were discontinued.[7]

This defective and unlawful practice continues, with the difference that the resolution of the Council of Ministers of 18 December 2024 on counteracting the negative effects of the constitutional crisis in the area of the judiciary is currently indicated as the basis for not submitting judgments for publication.[8] It stipulates that Constitutional Tribunal judgments issued with the participation of unauthorized persons, so-called understudy judges, will not be promulgated. The government maintains that judgments issued with legal defects do not have universally binding force. In the aforementioned resolution, the Council of Ministers cites judgments of the European Court of Human Rights[9] and the case law of the Court of Justice of the European Union.[10] It is worth adding that the aforementioned resolution of the Council of Ministers is a reflection of the resolution of the Sejm of the Republic of Poland of 6 March 2024 on eliminating the effects of the constitutional crisis of 2015-2023 in the context of the activities of the Constitutional Tribunal.[11] It indicates that the Polish Sejm holds the position that taking into account CT's decisions issued in violation of the law in the activities of a public authority body may be deemed a violation of the principle of legality by these bodies. Leaving aside, due to the scope of this study, the accuracy of the adopted solution and the argumentation underlying it, it should only be pointed out that, legally speaking, the government's omissions in the scope of discretionary referral for publication of judgments issued by the Constitutional Tribunal have no basis in sources of law generally in force.

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[7] Cf., among others, the case of the notification submitted by the Helsinki Foundation for Human Rights about a suspected crime in connection with the lack of publication of the judgment of 9 March 2016, https://hfhr.pl/aktualnosci/niepublikowanie-wyrokow-tk-dokumenty-z-sledztwa [accessed: 21.03.2026].

[8] Polish Monitor item 1068.

[9] Pilot judgment of 23 November 2023 Wałęsa v. Poland (application No. 50849/21) and judgments of 22 July 2021 Reczkowicz v. Poland (43447/19); of 8 November 2021 Dolińska-Ficek and Ozimek v. Poland (49868/19 and No. 57511/19); of 3 February 2022 Advance Pharma sp. z o.o. v. Poland (1469/20); of 15 March 2022 Grzęda v. Poland (43572/18); of 7 May 2021 in the case of Xero Flor v. Poland (4907/18) and of 14 December 2023 in the case of M.L. v. Poland (40119/21).

[10] Judgment of 21 December 2023, L.G. v Krajowa Rada Sądownictwa (C-718/21) and judgment of 7 December 2024, C.W.S.A. and Others v Prezes Urzędu Ochrony Konkurencji i Konsumentów (C-326/23).

[11] Polish Monitor item 198.

1. COMMON COURTS' OMISSION OF PROVISIONS DEEMED INCONSISTENT WITH THE FUNDAMENTAL LAW

The current situation regarding the failure to submit Constitutional Tribunal judgments for publication undoubtedly deepens the existing legal chaos. While the Constitutional Tribunal's body of decisions, whose subject matter pertains to the functioning of the system of state bodies – already severely disrupted by the constitutional crisis [Mojski 2023, 13][12] – largely concerns the holders of these offices and their status, in the case of some Constitutional Tribunal judgments, this negatively impacts citizens' ability to exercise their rights arising from unpublished constitutional court judgments. In the practice of common courts, this leads to a certain jurisprudential dissonance. Some courts maintain that unpublished CT judgments have no legal effect, and therefore that provisions deemed inconsistent with the Polish Constitution remain in force and effect. However, some courts recognize that a politically motivated dispute between the Constitutional Tribunal and the Council of Ministers (and the Sejm) should not deprive citizens of the rights and benefits derived from favourable rulings declaring specific regulations inconsistent with the Polish Constitution. Thus, they refrain from applying provisions deemed by the Constitutional Tribunal to be inconsistent with the basic law, relying in this respect on a dispersed review of the constitutionality of law or recognizing that CT rulings – despite their lack of publication – are binding and produce legal effects from the moment of their announcement. An unpublished negative CT ruling that finds the provision under review to be in violation of the Constitution (although it does not yet derogate it from the system) paves the way for common and administrative courts to refuse to apply that provision in individual proceedings [Gutowski and Kardas 2016, 60]. It should be added that direct application of the constitution may work in favour of an individual, but never against them. In the act of individual application of law, the constitution always works to the benefit of the citizen and cannot be the basis for depriving the citizen of rights granted to him by law [Idem 2017, 39]. We cannot lose sight of the fact that each constitution should fulfill specific functions, which primarily include the legal function, but also axiological, organizational and social functions. Thus, not only should constitution be a formalized set of fundamental (superior) systemic norms, but it should also be adapted to the expectations of its addressees in terms of the expressed values, in terms of the adopted mechanisms of the organization of social and state life, and should also play an actual role in the systemic practice, shaping the activity of state bodies and their citizens [Mojski 2022, 127].

[12] This study provides a broad and very interesting analysis of the issue of constitutional crises.

The Court of Appeal in Warsaw took a stance on the unpublished Constitutional Tribunal ruling.[13] In its judgement, it ignored the provisions that the unpublished CT ruling had deemed inconsistent with the Constitution, while also pointing out the legal consequences of the CT ruling and the obligation for public authorities to strictly apply it. The ruling concerned the remuneration of a court-appointed social worker, which should be determined in accordance with(1(1) and (3) of the Regulation of the Minister of Justice of 9 March 2018 on determining the amount of remuneration and reimbursement of expenses incurred by court-appointed social workers appointed for a party in a civil case.[14] The court awarded the remuneration in question at the full minimum rate applicable to attorneys in this type of case, taking into account the judgment of the Constitutional Tribunal of 23 April 2025 (SK 89/22),[15] according to which the provision of(1(1) and (3) of the above-mentioned regulation, reducing the social worker's remuneration rate to 40% of the rate payable to attorneys, was found to be inconsistent with Article 64(2) of the Constitution. The justification for the Court of Appeal's ruling indicated that the lack of publication of the judgments in the Journal of Laws, which is merely a technical step, does not affect the effectiveness of this judgment from the moment of its announcement. It was also emphasized that the fact that, as has been the case in Poland since March 2024, the Prime Minister, despite his constitutional obligation, has not published any CT judgments is legally irrelevant, although it undoubtedly hinders citizens' ability to assert their constitutional rights and freedoms and undermines the principle of legal certainty. This argument was reinforced by citing the Constitutional Tribunal's earlier position,[16] stating that the promulgation of its judgments in the Journal of Laws is merely a technical act, and judgments produce legal effects from the moment of their announcement.

Thus, the issue of the lack of promulgation of CT rulings is slowly emerging in the established line of judicial decisions of common courts, but it also requires analysis from the perspective of legal commentary. This is important because it raises the question of whether unpublished CT rulings also constitute grounds for overturning a final judgment of a common court. In the event of their issuance but simultaneous non-publication, is it permissible to examine a request for reopening of proceedings, and within what timeframe should such a request be filed? The Court of Appeal in Kraków

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[13] Judgment of the Court of Appeal in Warsaw of 7 November 2025 (I ACa 42/25), Legalis no. 3307949.

[14] Journal of Laws item 536 as amended.

[15] OTK ZU A/2025, item 47 .

[16] Cf. CT judgement of 9 March 2016 (K 47/15), OTK ZU A/2018, item 31 and of 11 August 2016 (K 39/16), OTK-A OTK ZU A/2018, item 32.

referred a legal question covering the above issues to the Supreme Court.[17] It asked: Is the issuance of a judgment by the Constitutional Tribunal declaring a legal norm of statutory status inconsistent with the Constitution of the Republic of Poland, which has not been promulgated in the manner specified in Article 190(2) of the Constitution, a sufficient basis for confirming that a complaint to reopen proceedings concluded by a final decision issued under that provision is based on the statutory basis for reopening, indicated in Article 401[1] of the Code of Civil Procedure, and that the deadline for filing it – referred to in Article 407(2) of the Code of Civil Procedure – should be deemed open? However, the Supreme Court refused to adopt a resolution in the matter.[18]

2. POSITION OF THE CONSTITUTIONAL TRIBUNAL REGARDING THE STATUS AND EFFECTS OF UNPUBLISHED JUDGMENTS

The issue of the lack of publication of a CT ruling that has direct effects on the rights and obligations of citizens has become the subject of a legal question referred to the Constitutional Tribunal by the Regional Court in Zamość.[19] It was formulated on the basis of the CT judgment of 4 June 2024 (SK 22/21),[20] not submitted for publication, in which the CT ruled that Article 42(3) of the Act of 6 June 1997 – the Penal Code,[21] in the wording given by Article 1(1) of the Act of 20 March 2015 amending the Act – the Penal Code and certain other acts,[22] to the extent that it obliges the court to impose a lifetime ban on driving all motor vehicles in the event of committing an offence specified in Article 178a(4) of the Act – the Penal Code, is inconsistent with Article 45(1) in conjunction with Article 42(3) of the Constitution of the Republic of Poland. The referring court was examining an appeal against a judgment issued by a district court, which had ruled under the law in force prior to the Constitutional Tribunal's ruling. The district court hearing the case questioned whether the lack of publication of CT ruling in SK 22/21 would require the application of Article 42(3) of the Penal Code, as worded by Article 1(1) of the Act of 20 March 2015 amending the Penal Code and certain other acts, the presumption of which was effectively rebutted by the CT's ruling. The failure to submit this Constitutional Tribunal judgment for publication in the Journal of Laws did not formally result in the effective derogation of the challenged provision. Importantly,

[17] Order of the Court of Appeal in Kraków of 30 June 2025 (I AGa 290/24).
[18] Order of the SC of 17 February 2026 (III CZP 32/25), Legalis no. 3931923.
[19] Order of the Regional Court in Zamość of 28 January 2025 (II Ka 402/24).
[20] OTK ZU A/2024, item 61.
[21] Journal of Laws of 2024, item 17.
[22] Journal of Laws item 541.

and as the referring court pointed out, it is inadmissible, especially in the area of criminal law, for a court to adjudicate criminal liability by applying a norm that is inconsistent with the Constitution of the Republic of Poland. Its application leads to an unacceptable interference with civil liberties, leading to the defendant being found guilty and sentenced. The referring court also stressed that on the basis of the regulation deemed unconstitutional, approximately 6-7 thousand people are convicted each year, which may have a significant impact on the efficiency of ongoing court proceedings, including reopening of legally concluded criminal proceedings.

As a result of examining the referred question, the Constitutional Tribunal issued a judgment of 23 September 2025 (P 3/25),[23] in which it ruled that Article 21(1)(1) in conjunction with Article 9(1)(6) of the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts, understood as meaning that the occurrence of the effects of a Constitutional Tribunal judgment and the obligation to apply it by all public authorities becomes effective only upon completion of the technical action consisting in promulgating that judgment in the Journal of Laws, is inconsistent with Article 2 in conjunction with Article 10, in conjunction with Article 173, in conjunction with Article 45(1) of the Constitution of the Republic of Poland. The conclusions contained in the reasoning for this ruling indicate that the promulgation of a Constitutional Tribunal ruling in the appropriate official journal is a technical act, and its absence does not render the ruling's effects obsolete or prevent its application by state authorities, particularly courts. However, the role of the Prime Minister, as publisher of both the Journal of Laws and the Polish Monitor, is limited to implementing the order of the President of the Constitutional Tribunal through technical promulgation, i.e., placing the ruling received from the Constitutional Tribunal in the official journal. The Prime Minister does not have the authority to assess, with legal effect, whether a ruling may be promulgated. He also cannot evaluate the ruling, either in terms of its formality (issues of admissibility of issuing the ruling) or in terms of the substantive analysis of the correctness of the legal view expressed by the Constitutional Tribunal.

Promulgation of a judgment in the appropriate official body is not a *sine qua non* condition for the application of CT rulings by courts and other public authorities. As demonstrated above, the moment the Constitutional Tribunal publicly announces a judgment in a courtroom, after conducting the appropriate proceedings, negating judgments of the Constitutional Tribunal rebut the presumption of constitutionality (or conventionality and legality) of legal norms. Consequently, law-applying bodies – especially courts – are obligated to refrain from applying unconstitutional norms (more

[23] OTK ZU A/2025, item 97.

broadly, those inconsistent with higher-order norms), which should clearly translate into the content of issued legal acts.

However, the Tribunal's ruling in this case was not published. Therefore, it did not open the way for the institution of a request to have proceedings reopened in all cases in which it was previously dismissed on formal grounds (usually as premature), due to the lack of publication of the CT's judgment constituting the basis for such reopening.

3. JUDGMENTS OF THE CONSTITUTIONAL TRIBUNAL WITH SIGNIFICANT CONSEQUENCES IN THE SPHERE OF CITIZENS' RIGHTS

When analyzing the continuing lack of promulgation of Constitutional Tribunal judgments in the Journal of Laws in the context of the admissibility of reopening of proceedings following a judgment in civil proceedings, two cases are worth mentioning. The Constitutional Tribunal judgments issued in these cases, due to the nature and scope of the provisions whose presumption of constitutionality was rebutted, significantly interfere with the sphere of citizens' constitutional rights. The repeal of the presumption of constitutionality is primarily important for courts. If, pursuant to Articles 8 and 176(1) of the Constitution, they are to be subject to the Constitution, they cannot simultaneously treat *per non est* the effective questioning of the constitutionality of an act, even if it has not yet been formally removed from circulation [Gonera and Łętowska 2003, 14]. Due to the common nature of situations regulated by these provisions, recourse to the institution of a complaint to reopen proceedings will occur on a mass scale in these cases. However, not every entity will be interested in reopening proceedings after the Constitutional Tribunal's judgment [Czeszejko-Sochacki 2000, 26].

The first concerns social security and due retirement benefits. In its judgment of 4 June 2024 (SK 140/20),[24] the Constitutional Tribunal ruled that Article 25(1b) of the Act of 17 December 1998 on old-age pensions and disability pensions from the Social Insurance Fund, insofar as it applies to persons who, before 6 June 2012, submitted an application for one of the pensions listed in Article 25(1b) and have not reached retirement age, is inconsistent with Article 67(1) in conjunction with Article 2 of the Constitution of the Republic of Poland. The provision challenged in the proceedings in question introduced a rule that for insured persons who, pursuant to the provisions listed in that article, received an old-age pension before reaching the general retirement age and then submitted an application for a general old-age pension, the basis for calculating the pension is reduced by an amount equal

[24] OTK ZU A/2024, item 67.

to the sum of the amounts of pension payments received before deducting the advance payment for personal income tax and health insurance contributions. As a consequence of the ruling in question, and based on it, attempts were made to reopen proceedings, and the course of the reopening proceedings was inconsistent and varied. As an example, the judgment of the Regional Court in Świdnica[25] found that accepting that courts could ignore the lack of publication of a Constitutional Tribunal judgment and apply its content without its formal entry into force would undermine the constitutional order, as the courts themselves would violate the rule of law.

Referring to judgments that are not formally binding in the legal system and to arbitrariness in judicial decisiona, which means that common courts, acting in a manner inconsistent with the Polish Constitution, could interpret the status of Constitutional Tribunal judgments differently, which would lead to a lack of uniformity in judicial decisions, the Court stated that applying a dispersed interpretation of constitutional review in the absence of publication of a CT judgment is not advisable, as it violates the principles of a centralized system of constitutional review and may lead to legal chaos and inequality in the application of the law. It deemed such action to be contrary to the principle of legality and the division of powers between state bodies, and the unpublished judgment formally has no legal effect, meaning that its application by other bodies could be considered as acting outside the bounds of the law. The Regional Court in Włocławek took a similar position, stating that the lack of publication of the Constitutional Tribunal's judgment does not constitute grounds for reopening the proceedings referred to in Article 401^1 of the Code of Civil Procedure.[26] The Regional Court in Szczecin took a different view, in the context of the Constitutional Tribunal judgment cited above,[27] finding that the executive branch's unauthorized omission to publish the judgment in question cannot render it inapplicable. Consequently, the court, relying on the aforementioned judgment, made a constitutional interpretation (it did not review the constitutionality of the provision) of Article 25(1b) of the Act of 17 December 1998, on old-age and disability pensions from the Social Insurance Fund, assuming that it cannot apply to the insured person's factual situation. In this case, the court reversed the

[25] Judgement of the Regional Court in Świdnica of 10 December 2024 (VII U 922/24), https://orzeczenia.swidnica.so.gov.pl/details/$N/155020000001521_VII_U_000922_2024_Uz_2024-12-10_001 [accessed: 21.03.2026]; similar in Judgement of the Regional Court in w Krajków of 12 May 2025 (VII U 767/25), https://orzeczenia.ms.gov.pl/content/$N/152010000003518_VII_U_000767_2025_Uz_2025-05-12_002 [accessed: 21.03.2026].

[26] Order of the Regional Court in Włocławek of 15 December 2025 (IV U 295/25), information about the order available at: https://www.adwokat-cholub.pl/warto-wiedziec/prawo-pracy-zus-krus/252-wznowienie-postepowania-a-brak-publikacji-wyroku-tk-z-4-czerwca-2024-r.html [accessed: 21.03.2026].

[27] Judgement of the Regional Court in Szczecin of 3 July 2024 (VI U 528/24),

decision and ordered the Social Insurance Institution (ZUS) to recalculate the pension amount for the insured person at the statutory retirement age, disregarding the provisions of Article 25(1b) of the Act. This assessment was subsequently confirmed by the Court of Appeal in Szczecin,[28] which dismissed the appeal filed by the pension authority. The second proceedings pending before the Constitutional Tribunal, in which the issued ruling leads to reaching out for a request to reopen the proceedings concerns property rights. By its judgment of 2 December 2025 (P 10/16),[29] the Constitutional Tribunal found that Article 292 in conjunction with Article 285(1) and (2) of the Act of 23 April 1964 - Civil Code,[30] understood as enabling a transmission company or the State Treasury, before the entry into force of Articles 305^1-305^4 of the Civil Code, to acquire by adverse possession an easement appurtenant corresponding in content to a transmission easement, are inconsistent with Article 21(1), Article 64(2) and (3) in conjunction with Article 31(3) and Article 2 of the Constitution of the Republic of Poland.

The judgment in question was announced publicly at the hearing on 2 December 2025, the recording of the announcement of the judgment is publicly available, and the detailed text of the ruling can be found on the Constitutional Tribunal's website.[31] A transcript of the hearing of 2 December 2025, during which the judgment was issued and announced, is also available on the Constitutional Tribunal's website.[32]

The cited judgment has a key impact on the change in the structure and effectiveness of claims in disputes between property owners and transmission companies regarding adverse possession of transmission easements. The previously accepted interpretation of the regulations, which permitted the acquisition by adverse possession of an easement appurtenant corresponding to the content of a transmission easement, including the period before the entry into force of the provisions on transmission easements, was deemed inconsistent with the Polish Constitution. In practice, this means that the limitation period for adverse possession of a transmission easement could have started on 3 August 2008 at the earliest, which in turn leads to the conclusion that the first adverse possession (in good faith) can only occur in 2028. It should be emphasized that this judgment is an interpretative

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[28] Judgement of the Court of Appeal in Szczecin of 12 March 2025 (III AUa 347/24), https://orzeczenia.ms.gov.pl/content/$N/155500000001521_III_AUa_000347_2024_Uz_2025-04-03_001 [accessed: 21.03.2026].

[29] OTK ZU A/2026, item 1.

[30] Journal of Laws of 2025, item 1071 as amended.

[31] See https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/zasady-nabycia-w-drodze-zasiedzenia-sluzebnosci-gruntowej-odpowiadajacej-trescia-sluzebnosci-przesylu-przez-przedsiebiorce-przesylowego-lub-skarb-panstwa-4 [accessed: 21.03.2026].

[32] See https://ipo.trybunal.gov.pl/ipo/Sprawa?&pokaz=dokumenty&sygnatura=P%2010/16 [accessed: 21.03.2026].

ruling (partially scope-related), because it cannot be used as ground for the removal of the provisions on adverse possession from the Civil Code, but rather their specific understanding, used by the courts for decades, has been questioned. Although the ruling is interpretative and scope-related, overturning the long-standing interpretation of provisions that constitute the basis for establishing adverse possession of transmission easements, it provides a basis for reopening the proceedings where adverse possession was established for the benefit of transmission companies. The ruling did not eliminate the provision from legal circulation, but its permissible application was significantly narrowed. By applying an interpretation consistent with the Constitution, the possibility of adjudicating on companies' adverse possession of transmission easements before this institution was introduced into the Civil Code was expressly excluded. If the court's decision is based on one of the interpretative results challenged by the Constitutional Tribunal, it will be possible to request a reopening of the proceedings [Osajda 2013, 299].

4. ADMISSIBILITY OF REOPENING OF PROCEEDINGS AFTER AN UNPUBLISHED JUDGMENT OF THE CONSTITUTIONAL TRIBUNAL

The current situation, which manifests itself in the failure to submit judgments from the Constitutional Tribunal for publication, undoubtedly makes it difficult for citizens to exercise their constitutional right to challenge a final decision issued by a court or a public administration body on the basis of provisions deemed unconstitutional by virtue of these judgments (the right of restitution of constitutionality). The continuing practice of not publishing Constitutional Tribunal judgments reinforces the uncertainty surrounding the formal derogation of provisions whose presumption of constitutionality has been overturned, and consequently, their definitive removal from the legal system. This is particularly true given the country's completely unpredictable political discourse, making it difficult to assess whether, and if so, when, Constitutional Tribunal judgments not yet submitted for publication will be properly promulgated. The situation is further complicated by the fact that the prevailing view in the literature and the established line of judicial decision is that the announcement of a CT judgment to the participants of the proceedings and the public present in the courtroom cannot be considered sufficient to rebut the presumption of constitutionality if this would result in an obligation to modify the manner of implementing or applying the challenged legal provisions by state bodies and individuals [Gonera and Łętowska 2008, 6]. Moreover, it is unclear how to treat the situation of withholding the publication of issued CT rulings, especially in the context of assigning binding force to the regulations they concern, which have lost the presumption of constitutionality. They certainly

should not be viewed in the same way as regulations that the Constitutional Tribunal has ruled inconsistent with the Constitution, while simultaneously using the institution of postponing the cessation of their binding force. Only a Constitutional Tribunal judgment with a so-called postponement has exclusively prospective effect [Ziółkowski 2012, 17]. This means that from the date of entry into force of the judgment until the date specified in the operative part of the judgment when the unconstitutional norm ceases to be binding, it remains in force [Radziewicz 2008, 77].

The possibility arising from Article 190(3) of the Constitution to postpone the moment at which a provision deemed unconstitutional ceases to apply, in order to prevent legal chaos that could arise from the immediate elimination of the provision, must absolutely result directly from the operative part of the CT judgment. Nevertheless, it is impossible not to notice a certain analogy here, because during the postponement period, i.e., between the announcement of the judgment and the date it expires, the provision is deemed unconstitutional, but formally remains in force. Its application in new cases depends on the court's discretion, even though the Constitutional Tribunal has found it inconsistent with the Constitution. This, however, simultaneously precludes the possibility of reopening proceedings concluded under this provision before its final expiry date. Such conclusions often result from the reasoning to CT judgments in which the constitutional court exercised this possibility.[33]

In this context, the deadline for challenging a judgment in an individual case through a request to reopen proceedings concluded with a judgment based on regulations subsequently found by the Constitutional Tribunal to be inconsistent with the Constitution also becomes problematic. In the model solution, which should operate based on regulations in force, this deadline runs from the entry into force of the Constitutional Tribunal's judgment, which occurs upon its promulgation in the Journal of Laws. The promulgation, in a sense, seals the process initiated by the Constitutional Tribunal of eliminating provisions inconsistent with the Constitution from the legal system, as its promulgation leads to the removal of regulations inconsistent with the basic law from the legal act pursuant to which they had previously entered into force.

It should be emphasized that the regulation provided for in Article 190(4) of the Polish Constitution does not apply only to judgments concerning the freedoms and rights of a specific complainant, but rather serves the universal protection of violated freedoms and rights. This is evidenced by the placement of this provision among the regulations on the effects of CT judgments, and not in Chapter II of the Constitution of the Republic of Poland.

[33] See e.g. CT judgement of 2 July 2003 (K 25/01), OTK-A 2003, No. 6, item 60.

The regulation in question applies to all entities and all legal situations established under the rule of a provision deemed inconsistent with the Constitution. Neither the constitutional legislator nor the law-maker has included a closed catalogue of types of judgments concerning the constitutionality of law [Florczak-Wątor 2006, 49]. As the CT pointed out, Article 190(4) of the Constitution of the Republic of Poland does not allow for differentiation of the admissibility of reopening of proceedings depending on the significance of the judgment for the proceedings (closing the proceedings in the case, incidental) or its substantive content.[34] Importantly, this provision applies when the Constitutional Tribunal finds hierarchical inconsistency of norms, regardless of the editorial form of the operative part (simple, comprehensive, interpretative judgment), and regardless of the reason for the unconstitutionality. It only does not apply – which follows directly from its linguistic interpretation – in the event of an affirmative judgment finding the conformity of norms, including an affirmative interpretative judgment [Jabłoński and Jarosz-Żukowska 2013, 271-72; Idem 2022, 146]. Affirmative judgments do not constitute statements of the Constitutional Tribunal of a constitutive nature [Białogłowski 2013, 202].

It should be noted that in practice, common courts do not fully share the position resulting from the literal wording of the constitutional regulation of Article 190(4), supported by the aforementioned line of decisions of the Constitutional Tribunal. The difference in position comes down to the recognition that a so-called interpretative ruling – even though it originates from the Constitutional Tribunal – should be treated like any other form of non-binding interpretation.[35]

This view was reflected in the Supreme Court's resolution,[36] which stated that an interpretative ruling of the Constitutional Tribunal, which in its operative part finds a specific interpretation of a normative act inconsistent with the Constitution of the Republic of Poland, but which does not result in the loss of binding force of the provision, does not constitute grounds for reopening the proceedings under Article 401[1] of the Code of Civil Procedure.[37] This position is supported by the argument that the Constitutional Tribunal has no systemic or purposive basis for issuing interpretative rulings and, in fact, uses them to pursue law-making activities. In the Supreme Court's view, in the case of interpretative judgments, the Constitutional Tribunal exceeds its constitutionally granted powers, as the Constitution does not grant it the authority to adopt a universally binding interpretation of statutes that would result in the creation of new normative content for

[34] See CT judgement of 7 September 2006 (SK 60/05), OTK ZU 8A/2006, item 101.
[35] Cf. e.g. SC judgement of 6 May 2003 (I CO 7/03), OSNC 2004, No. 1, item 14.
[36] See SC Resolution of 17 December 2009 (III PZP 2/09), OSNP 2010, No. 9/10, item 106.
[37] Journal of Laws of 2024, item 1568.

existing legal provisions. This does not result in the loss of binding force of the provision, merely excluding a specific interpretation (or imposing a specific interpretation as the only constitutionally acceptable one). The SC's position on this matter is not uniform, however, as it also presents an opposing view. According to this view, a request for reopening proceedings may be made based on a Constitutional Tribunal judgment declaring a specific interpretation of a provision inconsistent with the Polish Constitution, provided that the final judgment was issued contrary to the legal norm reconstructed by the Constitutional Tribunal from that provision, and therefore in a manner leading to an unconstitutional result.[38]

The Constitutional Tribunal addressed the issue of the admissibility of reopening civil proceedings as a result of a scope-related judgment – in contrast to the position presented in the Supreme Court resolution – in its judgment of 3 December 2025 (SK 17/18).[39] It found that Article 401[1] of the Code of Civil Procedure, to the extent that it does not constitute a basis for reopening proceedings in the event of the Constitutional Tribunal issuing a judgment ruling that a specific meaning of a normative act is inconsistent with the Constitution, is inconsistent with Article 190(4) of the Constitution. The reasoning for the judgment indicated that since Article 401[1] CCP, as intended by the legislature, is intended to serve the realization of constitutional freedoms and rights – as a tool created for this purpose to challenge court rulings – this provision, as a provision of ordinary law, cannot limit a constitutional provision. The Constitutional Tribunal found that this effect, inconsistent with the Constitution of the Republic of Poland, in the form of a restriction of constitutional freedoms and rights, was achieved by assigning Article 401[1] CCP, by a resolution of a seven-judge panel of the Supreme Court, a specific meaning in established judicial practice. Consequently, the Constitutional Tribunal found that limiting the possibility of exercising the right to reopen proceedings, repeal a decision or other resolution by the Supreme Court's interpretation of Article 401[1] CCP, is an unjustified limitation of the subjective right designated by Article 190(4) of the Constitution of the Republic of Poland. The public subjective right arising from Article 190(4) of the Constitution is simultaneously closely linked to the guarantees arising from the constitutional right to justice (Article 45(1) and Article 77(2) of the Constitution of the Republic of Poland). The earlier line of CT's decisions has already established the view that the possibility of effective (efficient) reopening of proceedings is possible due to the "tribunal's derogation" of the component of the right to justice, especially in the aspect of the possibility of initiating a remedial procedure

[38] See S.C. resolution of 9 June 2009 (II PZP 6/09), Legalis no. 140366; Order of the SC of 11 March 2009 (II UZ 2/09), Legalis no. 247016.

[39] CT judgement of 3 December 2025 (SK 17/18), OTK ZU A/2026, item 14.

and its fair development.[40] The admissibility of exercising the option to file a request to reopen proceedings in the absence of publication of a Constitutional Tribunal judgment is undoubtedly supported by the need to take into account the constitutional standard of the principle of citizens' trust in the state and its laws. This has been emphasized by both the Constitutional Tribunal[41] and the Supreme Court.[42] In the reality of the Constitutional Tribunal's judgment, regulations governing the reopening of proceedings constitute, in a sense, an "implementation" of Article 190(4) of the Constitution of the Republic of Poland [Nita-Światłowska 2013, 170].

CONCLUSIONS

The legal situation outlined in the cited judgments leads to the conclusion that, even in the case of Constitutional Tribunal judgments not submitted for publication, they constitute a basis for filing a request for reopening of civil proceedings. Regardless of the motives of the decision-makers who failed to publish CT judgments, their announcement during a hearing constitutes sufficient grounds for recognizing the admissibility of a reopening request based on Article 401^1 CCP. In such a situation, it is appropriate to assume that the deadline for filing a request for reopening of proceedings runs from the date of the announcement of the ruling at the hearing. From that moment on, the presumption of constitutionality of the provision challenged in the Constitutional Tribunal proceedings is rebutted, which is equivalent to the existence of grounds for reopening court proceedings in the case decided on the basis of the unconstitutional provision. The institution of a complaint to reopen proceedings serves to implement the subjective right derived from Article 190(4) of the Constitution of the Republic of Poland, regardless of the derogatory effect of the judgment, which causes the challenged provision to lose its binding force. The promulgation of the Constitutional Tribunal's judgment in the Journal of Laws is necessary solely for the latter effect to be realized. The lack of promulgation of the Constitutional Tribunal's ruling does not constitute a formal obstacle to the admissibility of a civil court examining a request for reopening of proceedings. In such a situation, the request should not be dismissed on formal grounds as premature.

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40 See CT judgement of 20 October 2009 (SK 6/09), OTK ZU No. 9/A/2009, item 137.

41 See CT judgement of 6 March 2019 (P 20/16), OTK ZU A/2019, item 11.

42 See SC judgement of 6 May 2021 (III USKP 52/21), Legalis no. 2629861; SC judgement of 18 January 2022 (III USKP 98/21), Legalis no. 2702315; SC judgement of 14 August 2024 (III USKP 113/23), Legalis no. 3111318; SC judgement of 8 January 2025 (III USKP 121/23), Legalis no. 3166559.

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