

THE TRIBUNAL OF STATE AND CONSTITUTIONAL ACCOUNTABILITY IN POLAND

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Abstract: The accountability (impeachment in Anglo-Saxon countries) of persons exercising powers in the name of the Nation is a matter of particular importance. For that purpose, in the governmental system of Poland, a special body has been appointed to settle the cases of violating constitutional regulations. This body is the Tribunal of State.

This important State authority was already provided by the Constitution of May 3, 1791 (sc the Sejm Court). It existed in the constitutional regulations of March 1921 and April 1935, but was neglected in the Constitution of 1952. The Tribunal of State returned to the constitutional system in 1982 on the wave of political reforms.

Keywords: tribunal of state, constitutional accountability, constitutional regulations.

The accountability (*impeachment* in Anglo-Saxon countries) of persons exercising powers in the name of the Nation is a matter of particular importance. For that purpose, in the governmental system of Poland, a special body has been appointed to settle the cases of violating constitutional regulations. This body is the Tribunal of State.

This important State authority was already provided by the Constitution of May 3, 1791 (sc *the Sejm Court*)¹. It existed in the constitutional regulations of March 1921 and April 1935, but was neglected in the Constitution of 1952. The Tribunal of State returned to the constitutional system in 1982 on the wave of political reforms².

According to Article 10 of the 1997 Constitution of the Republic of Poland, the judicial power is vested in tribunals. The system of government is based on the separation of and balance among legislative, executive and judicial powers. The general principle of the functioning of courts and tribunals is that they constitute a separate power and are independent of other branches of power (Article 173).

The judicial power is not a uniform structure. It includes courts and tribunals. These institutions pronounce judgments in the name of the Republic of Poland (Article 174). They, however, perform different functions. The Constitution entrusts the administration of justice to the Supreme Court, common courts, administrative courts and military courts (Article 175). Thus tribunals do not implement the administration of justice³. They exercise the judicial power.

1 A. Patrzalek, B. Banaszak, M. Masternak-Kubiak, A. Preisner, J. Repel, K. Wójtowicz, Poland, Kluwer Law International, The Hague/London/New York 2002, p. 161.

2 Ustawa z 26 marca 1982 r. (Dz. U. 2002 No. 101, 925).

3 J. Zalesny, Charakter prawny Trybunału Stanu. Zagadnienia wybrane. "Przegląd Sądowy" 7-8/2007, p. 50-57.

The Tribunal of State is sometimes called "the Sejm Court"⁴. It results from the powers of the Sejm to appoint its members and from the "parliamentary" stage of constitutional accountability enforcement. The latter element is related to the controlling power of the Sejm. Moreover, the Tribunal members are appointed for the duration of the Sejm term of office, yet the Tribunal is not a body of the Sejm⁵. This provides a basis for the description of a specific relation between two independent organs of the State.

The Tribunal of State consists of the president, two vice-presidents and sixteen members chosen by the Sejm from those who are not Deputies or Senators⁶. Motions concerning the election may be submitted by the Marshal of the Sejm or at least 35 Deputies. The election is adopted by an absolute majority of votes and should be scheduled for the first session of a newly elected Sejm. The election of all Tribunal members is held as joint voting unless the Sejm orders the voting for a single candidate. The resolution on the election is published in the Official Gazette of the Republic of Poland „Monitor Polski”. A Tribunal member's term of office may be repeated. The Tribunal vice-presidents and at least half of the Tribunal members should have the required qualifications to occupy the post of a judge. Under Article 199 of the Constitution the First President of the Supreme Court is also the President of the Tribunal of State. The elected members of the Tribunal should have Polish citizenship, fully enjoy the civil rights, must not have a criminal record or be an employee of the government administration authorities. The individuals elected as members of the Tribunal take the judicial oath of office in front of the Marshal of the Sejm.

Article 199 of the Constitution determines that the members of the Tribunal of State, within the exercise of their office as judges of the Tribunal, shall be independent and subject only to the Constitution and statutes⁷. One of the independence guarantees is the parliamentary immunity granted to the members of the mentioned organ. According to Article 200 of the 1997 Constitution, a member of the Tribunal of State shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Tribunal of State. A member of the Tribunal of State shall be neither detained nor arrested, except for cases when he/she has been apprehended in the commission of an offence and in which his/her detention is necessary to ensure the proper course of proceedings. The President of the Tribunal of State shall be notified forthwith of any such detention and may order an immediate release of the person detained. The parliamentary immunity is formal, transient and relative.

The financial status of the Tribunal members is specific. They do not collect permanent salary. They, however, receive *per diem* allowances that are equal to 10% of the average last year salary for each day of participation in the work of the Tribunal of State and refund of travel and accommodation costs.

The position of a judge is characterized by its relative permanence. The Act on the Tribunal of State determines specific reasons for the loss of a member's position. They include: resignation, permanent loss of capacity to execute a member's duties and a legally

4 L. Garlicki, *Polskie prawo konstytucyjne*, Warszawa 2009, p. 369.

5 M. Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, Warszawa 1992, p. 100.

6 More about Tribunal's members: J. Zaleśny, *Status prawnoustrojowy sędziego Trybunału Stanu*, [in:] *Trzecia władza. Sądy i trybunały w Polsce*, A. Szmyt (ed.), Gdańsk 2008, p. 530-553.

7 One can noticed that this is not the full independence like in case of judges of the common courts: M. Zubik, *Trybunał Stanu – stan Trybunału (Słów kilka o polskim sądzie nad notablami)*, [in:] *Trzecia władza. Sądy i trybunały w Polsce*, A. Szmyt (ed.), Gdańsk 2008, p. 50-54.

valid conviction of a court. The loss of a judge's position is pronounced by the Marshal of the Sejm.

The Tribunal of State was established to rule on constitutional accountability of persons performing the highest functions in the State. Therefore, the term "constitutional accountability" may be defined as bearing negative consequences of behaviour (acts and omissions) of the so-called state officials consisting in violation of the Constitution or a non-penal act (statute).

The subjective scope of constitutional accountability includes an act of a state official⁸. The officials are determined in the Constitution. It is the responsibility of a strictly individual character that may be held by single members of a collective body for their own acts, but not by such a body as a whole. In terms of the substantive scope, bearing responsibility is connected with acts (constitutional delicts) consisting in violation of the binding law. The violation mainly concerns the Constitution and other acts/statutes except penal acts.

Constitutional accountability may be considered from the formal perspective consisting in assumption that violation of the law itself will be sufficient in order to enforce accountability. The material perspective, however, means that accountability depends on the appearance of negative social or economic effects, or obvious and considerable damage/waste.

A constitutional delict means individual acts and omissions that take place in connection with the occupied positions (acts beyond the range of the competence committed on no legal grounds, but possible because of the occupied position) or within the frames of holding an office (acts within the competence, but violating the law)⁹. These acts are official, committed while performing a function or holding an office. There may be three forms of actions: lawmaking acts (issuing normative acts), decision-making acts (applying the law) violating the Constitution or acts (statutes) and other actions (e.g. exploitation of a position for one's own benefits). Accountability includes culpable actions and omissions, both intentional and unintentional¹⁰. The resolution of the Tribunal of State (June 10, 1998 - TS ZP-1/98) is essential in connection with the interpretation of the term "culpability". According to the resolution, constitutional accountability applies to the persons listed in the Act on the Tribunal of State who violate the Constitution or other act (statute), both intentionally and unintentionally. Having no intention to violate the Constitution or an act/statute, they commit such a violation as a result of lack of caution required in given circumstances, even though they predicted or, exercising reasonable care, could have predicted the possibility of committing the violation.

The discussed category of acts has to consist in violation of the Constitution or an act/statute. It does not apply to a penal act due to the fact that violation of such an act results in criminal accountability and not in constitutional accountability. A constitutional delict may also take on a form of violation of lawmaking acts equal in normative rank to an act/statute or taking precedence over it. Such an accountability is also permissible in

8 B. Naleziński, Trybunał Stanu, [in:] Prawo konstytucyjne, P. Tuleja (ed.), Warszawa 1997, p. 313-314.

9 B. Naleziński, Trybunał Stanu, [in:] Prawo konstytucyjne RP, P. Sarnecki (ed.), Warszawa 1999, p. 366.

10 M. Filar, Niektóre węzłowe problemy orzecznictwa Trybunału Stanu III Rzeczypospolitej, [in:] Ze sztandarem prawa przez świat, R. Tokarczyk, K. Motyka (ed.), Zakamycze 2002, p. 60-68.

connection with violation of customary international law¹¹. It is assumed that violation of the law of lower rank (e.g. regulation, resolution or order) does not result in constitutional accountability. Thus the constitutional delict is perceived formally¹². Negative consequences of the law violation are not required to enforce accountability. The violation itself is sufficient.

The prosecution before the Tribunal of State is admissible within 10 years from the date of the violation unless it is an offence with a longer period of limitation. The fact that the culprit of the offence no longer holds the office or is not in charge of the function does not prevent the institution and continuation of the proceedings.

The subjective scope of accountability before the Tribunal of State is described in the binding and comprehensive way in Article 198 of the 1997 Constitution. Therefore it must not be broadened by another act (statute). According to the mentioned article of the Constitution, for violations of the Constitution or of a statute committed by them within their office or within its scope, the following persons shall be constitutionally accountable to the Tribunal of State: the President of the Republic, the Prime Minister and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces. Deputies and Senators shall also be constitutionally accountable to the Tribunal of State to the extent specified in Article 107.

The accountability of the President of Poland is based on the principle of exclusive competence of the Tribunal of State to judge the Head of State for a constitutional delict and for every crime (complete character of accountability)¹³. The term "complete character of accountability" should be perceived broadly and related to every offence including those placed outside the criminal code. Thus the so-called "privilege of court" (*privilegium fori*) is created. The Tribunal of State is the only court that is competent to decide on criminal responsibility of the Head of State¹⁴. There is even a thesis that the Head of State is entitled to an immunity which is, however, different from a parliamentary one¹⁵. Therefore the President of the Republic of Poland may be charged for violation of the Constitution, an act (statute) and especially for committed offences (crimes) only before the Tribunal of State. Bringing an indictment against the President of the Republic shall be done by the resolution of the National Assembly passed by a majority of at least two-thirds of the statutory number of members of the National Assembly (at least 374 votes), on the motion of at least 140 members of the Assembly.

The Constitutional Tribunal commented on the President's accountability to the Tribunal of State in the judgment of 21st February 2001 (P 12/00) concluding that the accountability of the President before the Tribunal of State is complete because it includes every crime committed during his/her term of office and not only those committed in

11 Sokolewicz W., Artykuł 156. Uwaga 14, [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz, t. 1, L. Garlicki (ed.), Warszawa 2001, p. 8.

12 K. Działocha, T. Zalański, Artykuł 198, [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz, t. 5, L. Garlicki (ed.), Warszawa 2007, p. 2.

13 More about it J. Ciapała, Zagadnienie odpowiedzialności prawnej Prezydenta Rzeczypospolitej Polskiej, "Przegląd Sejmowy" 6/2005, p. 101-120.

14 More about it D. Szumiło-Kulczycka, Odpowiedzialność karna przed Trybunałem Stanu, "Przegląd Sejmowy" 4/2001, p. 91-105.

15 A. Patrzalek, B. Banaszak, M. Masternak-Kubiak, A. Preisner, J. Repel, K. Wójtowicz, Poland, Kluwer Law International, The Hague/London/New York 2002, p. 109.

connection with holding office. The accountability of the President before the Tribunal of State is also exclusive because he/she may be held accountable only before the Tribunal of State for commission of an offence. This competence of the Tribunal of State in relation to the President is the expression of a very special position of the Head of State in the Polish governmental system. The President is the supreme representative of the Republic of Poland, which means he/she is the first citizen. Therefore he/she is entitled to a total formal immunity.

On the day on which an indictment, to be heard before the Tribunal of State, is brought against the President of the Republic, he/she shall be suspended from discharging his/her duties.

According to Article 131 of the Constitution, the Marshal of the Sejm may temporarily assume the duties of the Head of State. If the Marshal of the Sejm is unable to discharge the duties of the President of the Republic, such duties shall be discharged by the Marshal of the Senate.

During the holding of the President's office, the period of prescription related to punishment for the crimes committed by the person holding the office is suspended.

The Act of 26th March 1982 on the Tribunal of State assumes adequate application of the principles of the President's accountability towards the Marshal of the Sejm and the Marshal of the Senate who temporarily fulfill responsibilities of the Head of State (deputy President). One can observe the extension of the subjective scope of constitutional accountability in relation to Article 198 of the Constitution¹⁶. It raises a serious doubt concerning constitutional correctness of this regulation¹⁷. In my opinion, the accountability of the deputy President should result from the Constitution, not from an act (statute).

The 1997 Constitution also includes special regulations in relation to the members of the government. Article 156 of the Constitution is applied in place of the general rule of the constitutional Article 198. According to this regulation, the members of the Council of Ministers are accountable to the Tribunal of State for an infringement of the Constitution or statutes, as well as for the commission of an offence connected with the duties of their office. Article 147 of the Constitution decides who is a member of the government. It is important for the range of accountability before the Tribunal. Only members of the Council of Ministers may be constitutionally accountable and criminally responsible before the organ. The function fulfilled by a member of the government (including the Prime Minister, deputy prime minister, branch minister, minister without portfolio, presidents of committees specified in statutes appointed to membership in the Council of Ministers) does not matter. Each of them is accountable in the same way. In case of other entities, criminal responsibility is enforced before common courts. The issue concerns especially the so-called "manager of a ministry" (a person to whom the Prime Minister has granted powers of management over a ministry). In present legal status it is, however, a potential issue because the Act of 8th August 1996 on the Council of Ministers (Dz.U. 2012/392) does not include this type of function. The accountability principles concerning the members of the government must not be applied to other persons occupying management positions in the governmental administration, but not included in the Council of Ministers. The judgment

16 A. Bień-Kacała, Kilka uwag w kwestii odpowiedzialności Prezydenta RP przed Trybunałem Stanu, [in:] *Podmioty administracji publicznej i prawne formy ich działania*, Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego, p. 43-48.

17 M. Zubik, Trybunał Stanu – stan Trybunału (Słów kilka o polskim sędziu nad notablami), [in:] *Trzecia władza. Sądy i trybunały w Polsce*, A. Szmyt (ed.), Gdańsk 2008, p. 45; Pach M., *Odpowiedzialność marszałka Sejmu (Senatu) wykonującego obowiązki Prezydenta RP*, "Przegląd Sejmowy" 2012, Nr. 2.

of the Constitutional Tribunal of 8th December 1999 (SK 19/99) elaborates on accountability of central offices' managers.

Constitutional accountability is individual by nature whereas the Council of Ministers is a collective body¹⁸. In practice then, in case of the accountability concerning the whole organ, it may be difficult to determine the scope of accountability for acts committed by individual members of the government. Moreover, the Supreme Court expressed its opinion in the judgment of 6th January 1999 (III RN 108/98). According to the judgment, the substantive scope of the constitutional accountability should also include an act of a collective state body consisting in failure to fulfill constitutional or statute obligations. In this case, omission involves executing constitutional competences of the Council of Ministers to issue a regulation.

The preliminary motion to bring a person to constitutional accountability may apply to one, a few or all government members. There is no need to table a separate motion for each person being the subject of the procedure. Charges must, however, be individual.

On the motion of the President of the Republic (it is a prerogative of the Head of State) or at least 115 Deputies, a resolution to bring a member of the Council of Ministers to account before the Tribunal of State shall be passed by the Sejm by a majority of three-fifths of the statutory number of Deputies.

It should be remembered that such a person may be brought to criminal responsibility before the Tribunal of State only for the commission of an offence connected with the duties of his/her office (partial character of criminal responsibility concerning a member of the government before the Tribunal of State). The Tribunal may rule on criminal responsibility if in the resolution of the Sejm the joint bringing to constitutional accountability and criminal responsibility was found necessary (competing character of criminal responsibility concerning a member of the government before the Tribunal of State)¹⁹. Otherwise criminal responsibility will be exercised before a common court. Adoption of the above mentioned solution results from the judgment of the Constitutional Tribunal of 21st February 2001 (P 12/00). The Tribunal determined the subsidiary character of the responsibility and pronounced that a member of the government may be charged before a common court for the commission of an offence connected with the duties of his/her office when the Sejm does not adopt a resolution to bring him/her to account before the Tribunal of State.

The President of the National Bank of Poland, the President of the Supreme Chamber of Control, members of the National Council of Radio Broadcasting and Television, persons to whom the Prime Minister has granted powers of management over a ministry, and the Commander-in-Chief of the Armed Forces are constitutionally accountable to the Tribunal of State. The criminal responsibility of these persons is exercised in every case before common courts.

The competence to bring these persons to constitutional accountability is reserved for the Sejm only. Motion on charging them may be submitted by the President of the Republic (the Prime Minister's countersigning is required), at least 115 Deputies or the

18 More about it: W. Odrowąż-Sypniewski, Odpowiedzialność konstytucyjna członków organów kolegialnych, "Przegląd Sejmowy" 6/2006, p. 92-118.

19 D. Wajda, Uwagi o potrzebie reformy Trybunału Stanu, "Przegląd Sejmowy" 2/2008, p. 118. Different opinion B. Janusz-Pohl, O spornym problemie właściwości Trybunału Stanu w zakresie pociągania do odpowiedzialności karnej członków Rady Ministrów, „Ruch prawniczy, ekonomiczny i socjologiczny” 3/2007, p. 83-95.

Sejm investigative commission. The Sejm adopts the resolution by an absolute majority of votes in the presence of at least half of the statutory number of Deputies.

Within the scope determined by Article 34 of the Act of 9th May 1996 on exercising a mandate of a Deputy and a Senator (Dz.U. 2011, No 7, 29), a Deputy is not permitted to perform any business activity involving any benefit derived from the property of the State Treasury or local government or to acquire such property²⁰. It is the expression of material meaning of the incompatibility principle (*incompatibilitas*)²¹. The act described in this way should be treated as a special kind of a constitutional delict having the hallmarks included in Article 107 of the Constitution²². A Deputy may be brought to account before the Tribunal of State for violation of the above mentioned bans. The resolution concerning this issue is adopted by the Sejm on the motion of the Marshal of the Sejm²³. An absolute majority of votes in the presence of at least half of the statutory number of Deputies is required to adopt such a resolution. The Tribunal rules only on the matter of depriving of a mandate. The same principles are applied to the responsibility of Senators taking into account that the Senate and its organs are respectively entitled to the competences of the Sejm and its organs.

The proceedings in terms of constitutional accountability consist of the following phases: parliamentary (steps: submission of preliminary motion, proceedings before the Constitutional Accountability Commission, indictment), proceedings before the Tribunal of State (I and II instance) and execution of the judgment.

The parliamentary phase of the constitutional accountability proceedings begins with submission of the preliminary motion. It is submitted to the Marshal of the Sejm and in case of a Deputy or a Senator it may be submitted directly to the Constitutional Accountability Commission by the Marshal of the Sejm and respectively to the Rules, Ethics and Senatorial Affairs Committee by the Marshal of the Senate. The preliminary motion should meet the requirements determined by the provisions of the code of criminal proceedings in terms of indictment.

After preliminary proceedings, the Marshal of the Sejm submits the motion to the Constitutional Accountability Commission. The Commission institutes the proceedings. It respectively includes criminal procedure unless the Tribunal act determines a different solution. The Constitutional Accountability Commission is a special commission of the Sejm. It conducts its proceedings irrespective of whom the motion concerns: the President of the Republic, a member of the government, a member of the National Council of Radio Broadcasting and Television or a Deputy. After the latest change in 2010 (the Act of 18th March 2010 on the amendment of the Act on the Tribunal of State - Dz.U. 2010 No 75,

20 More about it: D. Lis-Staranowicz, Zakres przedmiotowy zakazu prowadzenia działalności gospodarczej przez posłów i senatorów (w świetle art. 107 Konstytucji Rzeczypospolitej Polskiej), "Przegląd Sejmowy" 6/2002, p. 29-45.

21 M. Zubik, Trybunał Stanu – stan Trybunału (Słów kilka o polskim sędzię nad notablami), [in:] Trzecia władza. Sądy i trybunały w Polsce, A. Szmyt (ed.), Gdańsk 2008, p. 45. Different opinion M. Granat, Normatywny model odpowiedzialności konstytucyjnej w praktyce, [in:] Sądy i trybunały konstytucji i praktyce, W. Skrzydło (ed.), Warszawa 2005, p. 134.

22 Or only legal accountability, more about it: R. Mojak, Odpowiedzialność prawna posłów i senatorów przez Trybunałem Stanu w świetle Konstytucji RP z 2 kwietnia 1997 r. , [in:] Państwo i prawo wobec współczesnych wyzwań. Zagadnienia prawa konstytucyjnego, R. Czarny, K. Spryszak (ed.), Toruń 2012, p. 200-234.

23 More about the procedure: D. Lis-Staranowicz, Postępowanie w sprawie odpowiedzialności posłów i senatorów przed Trybunałem Stanu (uwagi na marginesie art. 107 Konstytucji RP), "Przegląd Sejmowy" 6/2004, p. 27-41.

472) the Commission obtained a significant number of investigative powers. The special status of the Constitutional Accountability Commission results from the fact that it is entitled to appoint experts or translators, call witnesses, demand written explanations or documents. It is also assumed that the Commission is entitled to call the President to give evidence, especially when he/she is the initiator of the proceedings in terms of constitutional accountability²⁴.

After the Commission concludes the proceedings, it passes a report on submission a motion to the National Assembly. The motion concerns bringing an indictment against the President of the Republic or discontinuing the proceedings. In relation to other persons, the Commission passes a report on submission a motion to the Sejm. The motion involves bringing them to account before the Tribunal of State or discontinuing the proceedings.

Adopting a resolution on bringing an indictment against the President, the National Assembly elects two prosecutors from its members. Considering the accountability of other persons, the Sejm elects only one prosecutor from its members. Each of the prosecutors should satisfy the criteria required for the post of a judge.

There is no doubt that one can observe an element of political decision-making in terms of legal responsibility during the parliamentary phase of the proceedings. It first and foremost involves vote on bringing to account and election of the prosecutors as well.

The Tribunal of State is a court of both first and second instance. It respectively includes criminal procedure unless the Tribunal act determines a different solution²⁵. At first instance the composition of the Tribunal of State includes: the chairperson and four members, whereas at second instance it includes the chairperson and six members excluding the judges who participated in ruling at first instance. Participation of a defender (attorney or solicitor/barrister) in the proceedings is necessary. The appeal period equals thirty days and runs from the date of the verdict receipt. No one is entitled to the cassation at second instance. The presidential power of pardon may not be extended to individuals convicted by the Tribunal of State.

In terms of constitutional accountability the Tribunal of State can impose joint or separate penalties²⁶. The penalties include: 1) loss of electoral franchise and eligibility for election to the office of the President, Sejm Deputy, Senator, European Parliament Deputy and a member of the self-government; 2) a prohibition on holding posts of authority or performing duties connected with special responsibility within state organs or social organizations, and 3) loss of all or specified medals, decorations or titles of honour. The period of the penalties connected with loss of rights and with bans may last from two through ten years. In relation to the accountability of Deputies and Senators according to Article 107 of the Constitution, the Tribunal of State adjudicates upon forfeiture of the mandate.

In the event of regarding even unintentional commission of an offence, the Tribunal of State rules on the dismissal of the President of the Republic from office and on loss of the occupied position in terms of other persons. The Tribunal may also, due to special circumstances of a case, limit itself to finding the accused guilty. For criminal offences the Tribunal may impose sentences specified in the penal acts (statutes).

24 Odrowąż-Sypniewski W., *Opinia w sprawie możliwości przesłuchania przez komisję śledczą obecnego Prezydenta*, „Przegląd Sejmowy” 2008, nr 1, p.145-154.

25 A. Patrzalek, B. Banaszak, M. Masternak-Kubiak, A. Preisner, J. Repel, K. Wójtowicz, Poland, Kluwer Law International, The Hague/London/New York 2002, p. 162.

26 B. Banaszak, *Trybunał Stanu – stagnacja czy zmiany*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 1/2008, p. 13-14.

It should also be remembered that an act consisting in issuing an unconstitutional or illegal regulation results in accountability before the Tribunal of State. A judgment of the Tribunal of State does not, however, result in the end of the binding force of such a regulation. This sort of consequences may be caused only by a judgment of the Constitutional Tribunal which does not have to take the judgment of the Tribunal of State into account. In practice the opinions of these two organs may vary.

The judgment activity of the Tribunal of State is not significant²⁷. It results from the fact that the organ is perceived as a potential guarantee of a constitution. Its role is to prevent violation of constitutional norms by the state officials. Threat of sanction itself is considered sufficient to secure the proper functioning of the state organs. However, the number of opponents of such a guarantee is constantly increasing. In their opinion the Tribunal of State should be a real, applied legal instrument.

27 Cases described in: M. Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, Warszawa 1992, p. 64-87 and 138-177; J. Zaleśny, *Odpowiedzialność konstytucyjna w prawie polskim okresu transformacji ustrojowej*, Toruń 2004.