

# The General Clause: A Measure of Universalizing the Content of Law or An Expression of its Diversity? On 'Public Interest' and 'Public Moral' Clauses

Anna Kalisz and Adam Szot

**Abstract** A general clause can be described as a legislative construct that allows the application of various legally undefined criteria and values in a legal decision. These criteria and values are determined axiologically and come from outside the legal system, though they are often contained in statutory provisions. In cases involving general clauses the role of the court is to take into account such values and to apply them in an individual and concrete process of law-application. The main aim of this paper is to answer the question whether general clauses are a tool for universalizing the content of case law in the times of European integration and globalization or rather an expression of local (regional) values. The paper argues that for supra- and international courts the case is and should be the latter. The argument is illustrated by judgments and decisions of the Polish, European and international courts concerning general clauses of 'public morals' and 'public interest'.

## 1 Introduction

In the era of globalization and European integration, among many other theoretical issues there arises the question whether in a process of law application general clauses tend to be measures of introducing uniform interpretation or rather an expression of local or regional systems of values.

In every legal order, there are great many different – sometimes even conflicting – examples of such clauses but this very research focuses on public interest and public morals clauses. These are examples of clauses that are present in domestic, supranational and international legal orders. At the same time, these clauses often serve as the limitations of constitutional freedoms and human rights.

This paper is an attempt to answer the following questions. What exactly is the content that fills general clauses and at the same time co-creates legal norms? Is it possible and necessary at all to distinguish them *in abstracto*? In other words, to what extent does the content of a specific general clause depend upon the subjective decision of a court (or administrative authority) and to what extent is it determined by an objective ‘between-the-lines’ meaning, common to the European legal and axiological system (if there is any)? Finally, can we say that in today’s world a reference to general clauses is a reference to a kind of universal system of values?

In order to answer these questions it is necessary to analyze decisions taken in processes of application of law at different levels – international, supranational and national –, and their mutual influence. This paper focuses on Poland as an example of a domestic legal system within the European legal order. In comparison to the Polish legal system, judgments and jurisprudence, the paper analyses the decision of the European Court of Human Rights in Strasbourg (ECHR) and the Court of Justice of the European Union in Luxembourg (CJEU).

As for the final question, the intuitive answer would be that the general role of the international (supranational) judiciary is to determine the ‘meaning’ of general clauses by introduce a uniform interpretation. The paper will argue that this intuition is misleading.

## 2 General clauses

A ‘general clause’ (*clausula generalis*, *Generalklausel*) is a legal rule, term or concept which is not precisely formulated and in fact does not even have a clear core (see Grundmann 2005, 1–4). Thus, the issue of general clauses can be located between the axiological and the legal sphere.

As there is no official legal definition of the term (and it is not a provisional term), one is compelled to rely on doctrinal attempts of creating such a definition. In Polish legal theory, the most significant attempts are those by Józef Nowacki (1998; 1992) and Leszek Leszczyński (2000). According to these authors, general clauses are addressed to various subjects such as individuals or the entire society, but mainly and typically to judicial or administrative bodies that are going to pass legally binding decisions. Thus, while there is no *in abstracto* definition of particular general clauses, there are many attempts at defining them *in concreto* in the process of law application and decision-making, when the legal provisions contain such clauses. Applying a general clause forces decisional bodies to fill it with concrete substantive content. This makes them responsible or rather, jointly responsible for the content of binding law. At the same time, it also gives them a wide area of discretion on the matter.

According to the principle of Rule of Law, the body that has power to decide is expected to justify why it exercises that power as it does. The idea that we live under a government of law, not men, seems to be based on the assumption that there is 'one right answer' (see Dworkin 1985) in the sense of a correct legal result that exists quite independent of human knowledge. This supports the importance of certainty (see Carter and Burke 2002). Thereby, the main role of a general clause is to ensure and bring to law application processes two very important values: flexibility and fairness. The obligation to specify the content of a general clause with reference to facts of a specific case makes the individual legal decision even more 'individual'.

### 3 The decisional process

General clauses appear in various branches of law. They are also applied in different types and paradigms of decisional processes, most importantly by courts and by administrative authorities. The judicial and the administrative paradigms differ in their way of applying values contained in general clauses. This paper focuses solely on the judicial paradigm of decisional process. This choice was made for an easier comparison of legal processes at national, supranational and international levels. In this way, we avoid difficulties with translating and explaining not only legal terms but also the structure and powers of administrative authorities that vary from state to state much more than for the judiciary.

The most important characteristic of the judicial paradigm of law application is its *independence* from other branches of state power, a feature that hierarchically linked and politically dependent administrative bodies are deprived of (see Russell and O'Brien 2001).

Here arises the theoretical question as to which phases of the judicial paradigm of law application are affected by the fact that the court is applying a general clause. The phase of fact finding has to answer the question whether the situation needs a general clause being involved. Then comes a phase of evaluative reasoning, since the normative basis of the decision lays both inside and outside of the legal system. More precisely, as the idea of the hermeneutic circle suggests, in the first place the court has to interpret the meaning of a general clause. Then the process goes back to the fact-finding and evaluation phases.

In a civil law culture legal reasoning and decision making are based mainly on legal provisions (texts). That is why it is called a 'statutory law culture'. Since a general clause is the result of legislation, it is also part of the statutory text, i.e., it is not solely an axiological or social criterion anymore. Thus, a court that passes a decision bases it on a legal criterion.

The starting point for the interpretation is, of course, the literal meaning of a provision containing a general clause. But taking into consideration that these

phrases are often unclear, interpretation has to involve the use of extra-linguistic arguments. These additional arguments are mainly axiological in nature.

Usually, at least for lower level national courts the established case law of the domestic Supreme Court (SC) and Constitutional Tribunal (CT), as well as the decisions of the ECHR and CJEU are important 'interpretative aids'. Their judgments are very significant especially in situations where the legal or doctrinal 'definitions' of specific general clauses are lacking.

Therefore, the decisions of these courts can be considered as the creation of complementary legal sources of a quasi-precedential nature, even if it can be perceived as a 'side-effect' of the judicial decision-making process. This is a relatively recent effect of convergence in the civil law culture.

Nowadays, legal regulation can be located either at domestic (national), supra-national or international (either global or regional) level. For instance, Member States of the Council of Europe or the European Union voluntarily conferred some of their power to supra- and international bodies (see, e.g., art. 90.1. of the Polish Constitution). 'Divided sovereignty' (cf. McCormick 1999, 126) can be noticed not only in legislative or executive but also in judicial activity. One of the most characteristic features of the European legal order is its multicentrism (see *ibid.*; Ossowski 1967, 116; Łętowska 2005, 3; Mayer 2003; Pernice 1999).

#### **4 'Public morals' and 'public interest' clauses in Polish, European and international law**

In contemporary democratic society and a state governed by the rule of law, individual rights and freedoms (termed also as 'liberties', 'constitutional freedoms', 'human and citizen rights' or 'fundamental rights', depending on the legal system) are provided and guaranteed by law but also limited by law at the same time. This limitation must be, however, based on strong legal and axiological justification. A limitation of such rights may be imposed by statute only and solely when it is necessary in a democratic state. One of such axiological necessities is the protection of 'public morality'.

At the domestic (Polish) level, these limitations are regulated by art. 31. 3 of the Constitution, as well as in several statutory enactments. Art. 31.3 of the Polish Constitution reads as follows:

Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

As for international and European law, ‘public morals’ clauses are phrased differently, as morality, public morality, or public morals.) Such a clause is included in art. 8 (right to respect for private and family life), 9 (freedom of thought), 10 (freedom of expression), and 11 (freedom of assembly and association) of The European Convention for Protection of Human Rights and Fundamental Freedoms (the European Convention) which use the phrase ‘protection of [health and] morals’. Art. 36 of the Treaty on the Functioning of the European Union (TFEU) provides that ‘The provisions of Articles 34 and 35 [free movement of goods – A.K., A.S.] shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality’. The Polish declaration no. 62 concerning the Protocol 30 (‘opt-out’) to the Lisbon Treaty (TL) refers to it as follows: ‘The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality’. In sum, the ‘public morals’ clause is a general clause that at the supra- and international levels often serves as a limitation to the aforementioned constitutional freedoms, human rights and European Union freedom of movement of goods.

Another general clause conflicting with individual rights and freedoms is the ‘public interest’ clause. Unlike ‘public morals’, it is rather an issue at the national level due to its connection to the state as such. In Polish domestic law the ‘public interest’ clause appears a few times in the Constitution (e.g. in art. 17, 22, 213) and in over 540 other legal acts (see Wilczyńska 2009). As distinguished from interests of special nature like ‘financial interest’, ‘common economic interest’ or ‘strategic interest’ that display other values, EU law refers to public interests with the term ‘Union interests’, e.g. in art. 3.5 (‘In its relation with the wider World the Union shall uphold and promote its values and interests’), art. 20.2; 21.2; 24.3; 32; 34; 42.5 (‘protection of its [Union – A.K, A.S.] interest’) of the Treaty on European Union (TEU) and in art. 106.2 and 309 TFEU, with the clause ‘common interest’ (art. 881 TEU; art. 107.3, 206 TFEU) or as the ‘general interest of the Union’ (art. 17.1 TEU and art. 285, art. 300 TFEU).

The European Convention in its substantive part includes ‘interests of morals, public order or national security in a democratic society’ (art. 6.1); ‘interests of national security, public safety or the economic well-being of the country’ (art. 8.2 and 9.2) and ‘interests of national security, territorial integrity or public safety’ (art. 10.2. and 11.2).

All these are usually balanced with the interest of citizens and member states, see e.g. art. 13 TEU. In this balancing context ‘public interest’ is also mentioned in art. 15.3 TFEU and in several acts of secondary Union law (e.g. Council Regulation (EC) No 40/94 on the Community trademark).

The common ground for both of these general clauses is made clear by the keyword ‘public’. The term public relates to something that concerns or affects a na-

tion, a state, or a community and implies that they serve a value that may be called 'common well-being' or 'general welfare'. Considering the lack of a legal definition, as well as the lack of a well-defined social value system and a common doctrinal approach, their content can only be determined by national, European and international courts.

It is worth emphasizing that in the case law of CJEU or ECHR these terms are not as strictly separated as in Polish case law. Public interest and public morals happen to be interpreted as expressions of a 'general interest' that requires protection (CJEU judgment C-65/05) or the two are even treated equally ('Protection of morals is undoubtedly of public interest and the conditions set out [by statutory and case-law – A.K., A.S.]') (ECJR 5493/72).

## 5 Case studies

As mentioned, the meaning given to general clauses depends on a decisional body which takes part of the 'responsibility' for the final shape of a legal norm or, to go ever further, for the legal system and law itself.

The cases presented below illustrate how 'public morals' and 'public interest' are examined in the judgments of Polish, European and international courts.

In Polish law, 'public interest' is not defined in legal provisions and has been the subject of judicial interpretation since Poland regained its independence in 1918. However, the first and last serious attempt to define it was in the 1930s when the term 'interest' was described as 'an existing or future good, possibly of both material or personal nature, that is related to the organisation of social life and its proper functioning'. The adjective 'public' was interpreted as a collective interest of a social group, state or self-government, or social life generally (judgment of Polish Supreme Court, II K 285/33). The 'public morals' clause has never been defined *expressis verbis*, not even for *in concreto* purposes. Going further, Polish national courts in numerous judgments refer to both clauses in general without making any attempt to define them (see, e.g., Polish Supreme Court I CKN 134/98; Polish Supreme Court V CSK 377/06; Polish Constitutional Court K 46/07; Polish Constitutional Court K 11/94).

As mentioned, 'public interest' and 'public morals' are usually in conflict with individual rights and interests (Polish Supreme Court I CKN 134/98; ECHR 33583/96; ECHR 34049/96). Some judicial decisions explicitly point out this conflict in a democratic state ruled by law (Polish Constitutional Tribunal W8/93). Even if the two general clauses hardly have been defined, there is a visible tendency in Polish judiciary to unify their meaning. The judgments refer to each other and suggest that there is such a thing as the 'objective' public interest or morals. It is also worth emphasising that all limitations of liberty due to 'public morals' or 'public interest'

are to be interpreted strictly (*interpretatio restrictiva*) (Polish Supreme Court I PK 27/08). Also, as mentioned, both the ECHR and CJEU notice that such limitations shall be prescribed by law and they can be introduced only if they are necessary in a democratic society.

Regarding the judgments of ECHR and CJEU, the first thought coming to the reader's mind is the unifying role of these courts: their activity creates common standards that can or should be followed by national legislation and legal practice. Since the provisions of supra- and international legal acts (namely, the European Convention and the EU treaties) are often phrased not quite precisely, these courts pass decisions that not only specify the legal consequences but also determine the scope and the contents of substantive provisions of the convention and treaties.

Another issue of great importance that makes the idea of the clauses' unifying role even stronger is that in both cases the interpretative phase is actually 'removed' from the decisional process of national courts. According to art. 267 TFEU, national courts may or must request the CJEU for preliminary judgment, which means that the interpretative power is generally given to CJEU (except for cases that bear no relation to the subject matter of the main action, as well as *acte clair* or *acte éclairé* situations). As for ECHR, despite the fact that there is no similarly hard legal provision for a preliminary reference to the ECHR, over six decades of its activity made the court's case law a complementary substantive legal source for the European Convention (see Garlicki 2008, 4).

Even though these considerations appear to justify the thought of a unifying role of CJUE and ECHR, a more detailed analysis of their decisions shows different results. The CJUE has not created any kind of 'judicial general definition' of 'public interest' or 'public morals'. On the contrary, the court has emphasised flexibility as a value that accent should be put on ('Each of the grounds [...] calls for separate examination. [...] The public interest taken into account in the examination of each of those grounds [...] may, or even must, reflect different considerations, depending upon which ground [...] is at issue') (CJEU C-456/01). As a result, it tends to point out that public interest is a factor spreading out of the national law of the member states (CJEU C-51/94; CJEU C-222/02) that conflicts with individual interest and shall be treated as a legal issue of 'delicate nature' (CJEU C-266/05 P). In consequence, it should be rather the national court that 'determines whether those conditions are fulfilled in the case pending before it, taking account of the factors [set out in provisions, also the general clause of public interest – A.K., A.S.]' (CJEU C-234/03; ECHR 43278/98).

In all cases of limitation of fundamental rights, the court must be aware of and follow the proportionality principle, which means that:

[The final decision] must strike a 'fair balance' between the demands of the general interest and the requirements of the protection of the individual's fun-

damental rights. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognizes that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. (ECHR 28272/95, 22774/93, 25088/94.)

In case of general clauses, the ‘balancing of principles’ (cf. Dworkin 1963; 1973) is a ‘two-dimensional’ phenomenon. First, the use of general clauses leads to balancing between ‘public’ and ‘individual’ interests and values that shall lead to a ‘fair balance’. Second, at a meta-level the nature of supra- and international law creates a need for balancing between the principles of unity and subsidiarity. In spite of the ‘divided sovereignty’, the axiological diversity cannot be – and is not – ignored.

A not very recent but enormously important (a ‘milestone’) ‘public morals’ case could provide a good illustration. In *Handyside* (ECJR 5493/72) the court argued as follows:

[I]t is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the principle content of these requirements as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them. [...] the qualification of what is moral in a democratic society remained within the framework of the State’s margin of appreciation.

And in a Strasbourg case, the court argued that it is not possible and necessary to define such a term *in abstracto*: the state’s margin of appreciation takes into consideration not only the cultural and moral context in which particular rights operate within the society but also the regional ‘moral climate’ (ECHR 13470/87, 7525/76).

In other words, both ECHR’s and CJEU’s case law leave a certain ‘margin of appreciation’ to national legislators and courts.<sup>1</sup> They refrain from extending their jurisdiction on such ‘delicate matters’. Rather, in order to control the framework and the proportions they focus on the principle of proportionality and the question whether exceptions, bans or limitations as ‘prescribed by law [...] are necessary in a democratic society’ (Yourow 1996, 112–113).

<sup>1</sup> To note, the term ‘margin of appreciation’ comes from administrative law and its construct of administrative appreciation (discretion).

## 6 Conclusions

The initial view of the unifying role of CJEU's and ECHR's case law in the interpretation of 'public interest' and 'public morals' turned out to be misleading. Actually, even though one of the general roles of the judiciary is to introduce uniformity into the content of law, in case of general clauses, especially those that limit, rather than increase, individual liberty, there is a noticeable discrepancy between domestic and supra- or international practice.

While stressing that general clauses enable passing a legitimate but also flexible, appropriate and right decision in individual situations, in numerous decisions the Polish Supreme Court seems to make an attempt to stabilize interpretations (Polish Supreme Court II CZ 178/99, V CSK 5/05; III CZ 78/06; II UK 246/07).

Such a policy of uniformity, however, would be undesirable at the supra- and international levels. There are three reasons for this. First, the dynamic nature of EU law and the European Convention systems imply that supranational organizations and their legal norms arise from the sovereignty of the Member States and not reciprocally. The European legal order is still a system *in statu nascendi*.

Second, the subsidiarity and proportionality principles that are common to both systems mean that decisions must be taken at a level as close as possible to the citizens. Supranational institutions take actions only when it is more effective than actions taken at the national, regional or local level and such actions are limited to what is necessary to achieve the supranational objectives.

Third, many legal provisions in European Union law and in the European Convention only provide a framework. The open-textured character of supra-national legal provisions allow for divergent national interpretations.

This multicentrism – as emphasised *inter alia* in numerous decision of the Polish Constitutional Tribunal – is based on the respect for local traditions and values,<sup>2</sup> so that both CJEU and ECHR put efforts to avoid answering the key questions and leave a wide area of discretion to domestic courts on such matters – 'the acceptable margin of appreciation'. Axiological convergence is an issue of delicate nature. Courts like CJEU and ECHR are aware of this and try not to affect it artificially.

To sum up, the main purpose of general clauses is to ensure flexibility in processes of law application and give a decisional body the possibility to revise *stricti iuris* criteria. This also seems to be the way how CJUE and ECHR understand the role of general clauses. Thus, they leave a wide margin of discretion for national decisional bodies to interpret them.

<sup>2</sup> Cf art. 6. 3. of TFUE that refers to 'constitutional traditions', even if to those that are common to all of the Member States.

## References

- Carter, Lief, and Burke, Thomas. 2010. *Reason in Law*. 8th edition. New York: Longman.
- Dworkin, Ronald. 1963. Judicial Discretion. *The Journal of Philosophy* 60: 624–638.
- Dworkin, Ronald. 1973. The Original Position. *University of Chicago Law Review* 40: 500–533.
- Dworkin, Ronald. 1985. *A Matter of Principle*. Cambridge (MA): Harvard University Press.
- Garlicki, Leszek. 2008. Wartości lokalne a orzecznictwo ponadnarodowe – „kulturowy margines oceny” w orzecznictwie strasburskim? [Local values and supranational adjudication. Is there a ‘cultural margin of appreciation’ in the Strasbourg case law?] *Europejski Przegląd Sądowy [European Judiciary Review]* 4: 4–13.
- Grundmann, Stefan. 2005. General Standards and Principles, Clauses Generales, and Generalklauseln in European Contract Law – A Survey. In *General Clauses and Standards in European Contract Law: Comparative Law, EC Law and Contract Law Codification*, edited by Stefan Grundmann and Denis Mazeaud, 1–19. The Hague: Kluwer Law.
- Leszczyński, Leszek. 2000. *Tworzenie generalnych klauzul odsyłających [Creating General Clauses]*. Lublin: Wydawnictwo UMCS.
- Łętowska, Ewa. 2005. Multicentryczność współczesnego systemu prawa i jej konsekwencje [Multicentrism of the Modern Legal System and its Consequences]. *Państwo i Prawo [Law and Politics]* 4: 3–10.
- Mayer, Franz. 2003. The European Constitution and the Courts. Adjudicating European Constitutional Law in a Multilevel System. *Jean Monnet Working Paper 9/03* [<http://centers.law.nyu.edu/jeanmonnet/papers/03/030901-03.pdf>].
- McCormick, Neil. 1999. *Questioning Sovereignty*. Oxford: Oxford University Press.
- Nowacki, Józef. 1988. O przepisach zawierających klauzule generalne [On Provisions Containing General Clauses]. In *Prawo i polityka. Księga pamiątkowa ofiarowana Profesorowi Kazimierzowi Opalkowi z okazji siedemdziesiątej rocznicy urodzin [Law and Politics. Festschrift for Professor Kazimierz Opalek on his Seventieth Birthday]*, edited by Artur Bodnar, Jerzy Wiatr, and Jerzy Wróblewski, 78–101. Warszawa: PWN.
- Nowacki, Józef. 1992. Problem blankietowości przepisów zawierających klauzule generalne [The Problem of Provisions Containing Blanket General Clauses]. In *Prawo w zmieniającym się społeczeństwie. Księga jubileuszowa Profesor*

*Marii Boruckiej-Arctowej* [Law in the Changing Society. Festschrift for Professor Maria Borucka-Arctowa], edited by Grażyna Skąpska et al., 127–142. Kraków: Wydawnictwo Adam Marszałek.

Ossowski, Stanisław. 1967. *Dzieła IV* [Works IV]. Warszawa: PWN.

Pernice, Indolf. 1999. Multilevel Constitutionalism and the Treaty of Amsterdam. European Constitution-Making Revisited? *Common Market Law Review* 36: 703–750.

Russell, Peter, and O'Brien, David (eds.) 2001. *Judicial Independence in the Age of Democracy. Critical Perspective from Around the Word*. Charlottesville: University Press of Virginia.

Wilczyńska, Aleksandra. 2009. 'Interes publiczny w prawie stanowionym i orzecznictwie Trybunału Konstytucyjnego' [Public Interest in Statutory Law and Case Law of the Constitutional Tribunal] *Przegląd Prawa Handlowego* [Commercial Law Review] 6.6: 48–55.

Yourow, Howard Charles. 1996. *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence*. Dordrecht: Martinus Nijhoff, Kluwer Academic.

## Cases

### Court of Justice of the European Union in Luxembourg

C-65/05 – judgment of 26.10.2006, *Commission v. Greece*, ECR 2006, p.I-10341.

C-456/01 P – judgment of 29.04.2004, *Henkel v. OHIM*, ECR 2004, p.I-5089.

C-51/94 – judgment of 26.10.1995, *Commission v. Germany*, ECR 1995, p.I-3599.

C-222/02 – judgment of 12.10.2004, *Paul and others*, ECR 2004, p.I-9425.

C-266/05 P – judgment of 01.02.2007, *Sison v. Council*, ECR 2007, p.I-1233.

C-234/03 – judgment of 27.10.2005, *Contse and others*, ECR 2005, p.I-9315.

### European Court of Human Rights in Strasbourg

5493/72 – judgment of 07.12.1976, *Handyside v. UK*.

33583/96 – decision of 14.09.2002.

34049/96 – judgment 19.06.2001, *Zwierzyński v. Poland*.

43278/98 – judgment of 15.03.2007, *Velikovi and Others v. Bulgaria*.

28272/95 – judgment of 21.02.2002, *Ghidotti v. Italy*.

22774/93 – judgment of 28.07.1999, *Immobiliare Saffi v. Italy*.

25088/94 – judgment of 29.04.1999, *Chassagnou and Others v. France*.  
13470/87 – judgment of 20.09.1994, *Otto Preminger Institute v. Austria*.  
7525/76 – judgment of 22.10.1981, *Dudgeon v. UK*.

### **Polish Supreme Court**

II K 285/33 – judgment of 31.05.1933, OSN(K) 1933/8/157.  
I CKN 134/98 – decision of 29.09.1999, LEX nr 142535.  
V CSK 377/06 – judgment of 4.01.2007, OSP 2008/1/8.  
I PK 27/08 – judgment of 12.09.2008, OSNP 2010/5-6/69.  
II CZ 178/99 – decision of 04.02.2000, OSNC 2000/7-8/147.  
III CZ 78/06 – decision of 21.11.2006, OSNC 2007/5/78.  
V CSK 5/05 – decision of 29.06.2005, LEX nr 180935.  
II UK 246/07 – decision of 31.01.2008, LEX nr 449007.  
I CKN 134/98 – decision of 29.09.1999, LEX nr 142535.

### **Polish Constitutional Court**

K 46/07 – judgment of 8.07.2008, Dz.U. 2008.123.803.  
K 11/94 – judgment of 26.04.1995, OTK 1995/1/12.  
W8/93 – resolution of 16.3.1994, Dz.U. 94.39.148.