

**Judgment of 31st May 2004, K 15/04
PARTICIPATION OF FOREIGNERS
IN EUROPEAN PARLIAMENTARY ELECTIONS**

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| Type of proceedings: Abstract review Initiator: Group of Deputies | Composition of Tribunal: 5-judge panel | Dissenting opinions: 0 |
| Legal provisions under review | | Basis of review |
| Right for EU citizens not holding Polish nationality to vote and to stand as a candidate in European Parliamentary elections held in Poland [Electoral Law to the European Parliament Act 2004: Articles 8 and 9] | | Principle of sovereignty of the Polish People [Constitution: Article 4(1)] |
| Extensive legal definition of the notion of “Member States of the EU”, in force until 30 th April 2004 [<i>Ibidem</i> : Article 174] | | |

On 1st May 2004 Poland became a Member State of the European Union (EU). According to framework principles defined in Community legislation and Council decisions, elections to the European Parliament for the term of office 2004-2009 were held in all Member States during June 2004 (in Poland on 13th June). It is the duty of the Member States’ legislatures to enact domestic regulations ensuring implementation of the European Community electoral law principles and to hold European Parliamentary elections (hereinafter referred to as EP elections) in the defined term.

In Poland, the aforementioned regulations are contained in the Electoral Law to the European Parliament Act of 23rd January 2004. Its adoption, and entry into force on 1st March 2004, prior to Poland’s formal accession to the EU, was necessary in order to enable completion of all the preliminary procedures required for the proper holding of elections.

Articles 8 and 9 of the Act define the conditions under which foreigners holding the nationality of other EU Member States may acquire the right to vote and to stand as a candidate in EP elections held in Poland.

Article 174 contains an interim terminological regulation: during the period until 30th April 2004 the terms “Member States of the EU” and “EU citizens not being Polish nationals” were to be interpreted as including not only existing EU Member States and their nationals but also those States that were to accede (and acceded) to the Union together with Poland on 1st May and the nationals of those States. This was intended to enable such persons to take part in procedures necessary for the exercise of their right to vote and to stand as a candidate in EP elections (e.g. registration of voters and candidates) prior to 1st May.

The aforementioned provisions of the Electoral Law to the European Parliament Act 2004 were challenged before the Constitutional Tribunal by a group of Deputies of the Sejm (i.e. the lower house of the Polish Parliament). In the same application, a challenge was brought against a Decision of the President of the Republic of Poland calling the EP elections; this part of the application, however, was declared in-

admissible by the Tribunal before delivery of the judgment summarised here (cf. the procedural decision of 18th May 2004, summarised separately).

The Tribunal's ruling (summarised below) originally comprises two parts: the first part concerns foreigners' right to vote and to stand as a candidate in EP elections (Articles 8 and 9 of the Act); the second part concerns the aforementioned interim regulation (Article 174). The basis of constitutional review indicated by the applicants was, in both respects, the principle of the sovereignty of the Polish People (Article 4(1) of the Constitution).

RULING

The challenged provisions are not inconsistent with Article 4(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The Constitution of the Republic of Poland is the supreme act establishing the legal basis for the existence of the Polish State, regulating the principles of exercising public authority on its territory and the modes of establishing constitutional State organs, together with the functioning and competences thereof. Its provisions may not be directly applied to structures other than the Polish State, through which the Republic realises its interests.
2. Article 4 of the Constitution expresses the principle of the sovereignty of the Polish People, the substance of which is the assertion of the Nation's will as the sole source of power and sole means of legitimising authority. It follows from this principle that an individual, a social group or an organisation may not constitute the source of power in Poland.
3. The Constitution uses the notion of the Nation in a political, rather than an ethnic, sense. When referring in the Preamble to the Constitution to – “we, the Polish Nation, all citizens of the Republic” – the concept of the Nation denotes a community comprised of the citizens of the Republic.
4. The European Union is not a State and therefore all analogies with a State system of government are unfounded.
5. The Nation's decision to accede to the European Union (i.e. to delegate certain aspects of State authorities' competences to an international organisation) is justified in the light of Article 90(1) of the Constitution. The Nation's will, expressed in accordance with Article 90(3) of the Constitution, combined with the signing and ratification of the Accession Treaty by Poland's constitutional organs, was conclusive in Poland's acceptance of not merely the substantive norms contained in the Treaty, forming the basis of the integration process, but also the Union's decision-making procedures and institutional structure.
6. The means of legitimising the European Union's organs is not a matter for the Polish Constitution, but rather for EU law and Polish legal provisions enacted in order to implement the Union's principles within the jurisdiction of the Polish State. In particu-

lar, this concerns elections to the European Parliament, which is not an organ exercising authority in the Republic of Poland but, rather, an organ performing specified functions within the EU's institutional structure. For this reason it is unfounded to use Article 4(1) of the Constitution as the basis of review of the principles and procedure of EP elections.

7. The right of EU citizens to participate in EP elections, regardless of the Member State in which they reside, is one of their fundamental rights. According to Article 17 (ex Article 8b) of the Treaty establishing the European Community, in the wording as introduced by the Treaty of Maastricht, every person holding the nationality of a Member State shall be a citizen of the Union. The legal basis for EP elections is comprised primarily of: the provisions of the EC Treaty (in particular Articles 19 and 190); the Act of 20th September 1976 concerning the election of members of the European Parliament by direct universal suffrage, enacted by a Decision of the Council of 20th September 1976 (76/787/ECSC, EEC, Euratom) and amended by Decisions of the Council of 25th June and 23rd September 2002 (2002/772/EC, Euratom); and electoral law regulations of the individual Member States. Council Directive 93/109/EC of 6th December 1993 provides detailed arrangements for the exercise of the right to vote and to stand as a candidate in EP elections by Union citizens residing in a Member State of which they are not nationals. The Electoral Law to the European Parliament Act of 23rd January 2004 implements this Directive, which is clearly stated in the footnote to the Act's title.
8. The phrase "members of the European Parliament are representatives of the Nations of the States of the European Union" contained in Article 4 of the reviewed Act should be understood in the sense that the constituency of the European Parliament is not a homogenous society, but rather a collective body comprising the various Nations of the Union's Member States. This, however, does not imply that the electoral rights in EP elections may only be exercised exclusively within the national community with which the person is bound by national citizenship.
9. It is the function of law in a society to resolve conflicts and not to exacerbate them. Therefore, it is unfounded to claim that the entry into force of the reviewed Act was "premature" (i.e. prior to Poland's formal accession to the EU). If the challenged provision had entered into force only on the date of Poland's formal accession to the EU (i.e. on 1st May 2004), it would have proved impossible to adhere to the election calendar. It is irrelevant to argue that, upon the entry into force of the Electoral Law to the EP Act, it was not entirely certain whether Poland's accession (i.e. the entry into force of the Accession Treaty) might be delayed since, if such a situation had occurred, the European Parliamentary elections would simply not have taken place. The challenged provision is further supported in this respect by Articles 68 and 69 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded in Brussels on 16th December 1991, from which stems Poland's obligation to undertake all measures necessary to ensure the compatibility of its future legislation with Community legislation.
10. Whilst interpreting legislation in force, account should be taken of the constitutional principle of sympathetic predisposition towards the process of European integration and the cooperation between States.

Provisions of the Polish Constitution, the Treaty establishing the European Community and the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part

Constitution

[Preamble] Having regard for the existence and future of our Homeland, [...] We, the Polish Nation - all citizens of the Republic, [...] Aware of the need for cooperation with all countries for the good of the Human Family [...]

Art. 4. 1. Supreme power in the Republic of Poland shall be vested in the Nation.

Art. 8. 1. The Constitution shall be the supreme law of the Republic of Poland.

Art. 90. 1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

[...]

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.

EC Treaty

Art. 17. 1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

Art. 19. 1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Art. 190. 1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.

2. The number of representatives elected in each Member State shall be as follows: Belgium 25; Denmark 16; Germany 99; Greece 25; Spain 64; France 87; Ireland 15; Italy 87; Luxembourg 6; Netherlands 31; Austria 21; Portugal 25; Finland 16; Sweden 22; United Kingdom 87.

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3. Representatives shall be elected for a term of five years.

4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

5. The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Europe Agreement

Art. 68. The Contracting Parties recognize that the major precondition for Poland's economic integration into the Community is the approximation of that country's existing and future legislation to that of the Community. Poland shall use its best endeavours to ensure that future legislation is compatible with Community legislation.

Art. 69. The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, transport and the environment.