

Judgment of 23<sup>rd</sup> March 2006, [K 4/06](#)  
**MODIFICATIONS TO THE COMPOSITION AND FUNCTIONING  
OF THE NATIONAL BROADCASTING COUNCIL**

<b>Type of proceedings:</b> <b>Abstract review</b> <b>Initiators:</b> Commissioner for Citizens' Rights; two groups of Deputies	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
Legal provisions under review		Basis of review
Procedure applied when adopting the Transformations and Modifications to the Division of Tasks and Powers of State Bodies Competent for Communications and Broadcasting Act 2005	Rule of law Principle of legality General obligation to observe the law Role of the Sejm's Rules of Procedure Principle of three readings of a bill in the Sejm Admissibility scope of "urgent" legislative procedure [Constitution: Articles 2, 7, 83, 112, 119(1) and 123(1)]	
Protection of journalistic ethics as a new task for the National Broadcasting Council <i>[Ibidem: Article 6 point 1]</i>	Rule of law Principle of legality Freedom of expression Freedom to acquire and disseminate information [Constitution: Articles 2, 7 and 54(1)]	
Appointment and dismissal of the President of the National Broadcasting Council by the President of the Republic <i>[Ibidem: Article 6 point 2(b)]</i>	Principle of legality Separation of powers Issuance by the President of the Republic of Official Acts whose validity is, in principle, conditional upon the countersignature of the Prime Minister Right of the President of the Republic to appoint members of the National Broadcasting Council without countersignature Appointment of National Broadcasting Council members by the Sejm, Senate and President of the Republic [Constitution: Articles 7, 144(1), (2) and (3) point 27 and Article 214(1)]	
Abolition of the right of the National Broadcasting Council to dismiss the President of that Council <i>[Ibidem: Article 6 point 2(c)]</i>	Rule of law Principle of legality Separation of powers [Constitution: Articles 2, 7 and 10(1)]	
Privileged treatment of "social broadcasters" as regards the conditions for the renewal of licences to broadcast radio or television programmes <i>[Ibidem: Article 6 point 6]</i>	Principles of the social market economy Principle of equality and prohibition of discrimination Freedom of expression Freedom to acquire and disseminate information Admissibility of the licensing of radio and television broadcasting stations Equal protection of ownership and other property rights [Constitution: Articles 20, 32, 54(1) and (2) and Article 64(2)]	

<p>Entry into force of the aforementioned Act on the date of its publication, insofar as this concerns: the composition of the National Broadcasting Council, the appointment of the members and President thereof, the duration of its term of office, and shortening of terms of office of those who have hitherto been members of the Council with no application of the rule that their functions be exercised until such time as successors are appointed</p> <p>[<i>Ibidem</i>: Article 24, insofar as it concerns Article 6 point 2 and Article 21]</p>	<p style="text-align: right;">Rule of law [Constitution: Article 2]</p>
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The parliamentary and presidential elections held in Poland in the autumn of 2005 resulted in a change in the constellation of political forces. A consequence thereof was an effort to change the composition and mode of functioning of the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*; cf. Articles 213–215 of the Constitution), which had been criticised prior to the elections by the then opposition and by elements of public opinion, in regard to both its operating style and certain of its decisions. Pursuant to Article 213 of the Constitution and to the Broadcasting Act 1992, the National Broadcasting Council is vested with substantial regulatory powers in relation to all electronic media, as well as influences the composition of the governing bodies of public radio and public television.

The aforementioned pursuit of radical changes found its expression in the Transformations and Modifications to the Division of Tasks and Powers of State Bodies Competent for Communications and Broadcasting Act of 29<sup>th</sup> December 2005 (hereinafter referred to as the “2005 Act”), adopted by both chambers of Parliament, signed by the President and published in the Journal of Laws at a very fast pace. The discussed Act introduced, inter alia, amendments to 14 other statutes, including the Broadcasting Act 1992. The legislative procedure was based upon a draft submitted by a group of Sejm Deputies (the Sejm being the first chamber of the Polish Parliament).

The 2005 Act’s entry into force resulted in the early expiry of the terms of office of all existing members of the National Broadcasting Council, which would from then on function as a 5-person (rather than as previously a 9-person) body comprising 2 members appointed by the Sejm, 1 member appointed by the Senate (i.e. the second chamber of the Polish Parliament) and 1 member appointed by the President of the Republic. A further modification under the 2005 Act concerned the modes of appointment and dismissal of the President of the Council from amongst its members, inasmuch as powers in this respect were granted to the President of the Republic. The principle that the President of the National Broadcasting Council be appointed and dismissed by the Council itself was thereby repealed.

The 2005 Act entered into force upon the expiry of a 14-day period following the date of its publication in the Journal of Laws (i.e. on 30<sup>th</sup> December 2005), save in regard to a few provisions which already entered into force on the day of publication (Article 24). The latter exceptions related to Article 6 point 2 (amending the Broadcasting Act 1992 as regards the composition of the National Broadcasting

Council, the manner of appointment of its members and President and the duration of its term of office), as well as to Article 21 of the 2005 Act (providing for the expiry of terms of office of those who had hitherto been members of the Council and, simultaneously, for the non-application as regards these persons of the rule contained in the amended statute, according to which the Council members shall exercise their functions until such times as their successors are appointed).

In consequence, the National Broadcasting Council, as composed hitherto, ceased to operate from the date of entry into force of the 2005 Act, i.e. in advance of the appointment of the members and President thereof in accordance with the new principles.

The table above lists all legal provisions challenged by the applicants in the summarised case (i.e. the Commissioner for Citizens' Rights and two groups of Deputies), together with the bases of review invoked by them, as examined by the Constitutional Tribunal.

The most far-reaching challenge concerned the procedure applied in adopting the 2005 Act. The Commissioner for Citizens' Rights noted that, while the Act – proposed by Sejm Deputies – was adopted through the “urgent” legislative procedure provided for in Article 123 of the Constitution, that provision states that only the Council of Ministers is authorised to qualify a draft put before the Sejm as “urgent”. Moreover, in the Commissioner’s opinion, the fact that the 2005 Act concerns modifications of “the structure and jurisdiction of public authorities” further ensured its non-conformity with Article 123(1) of the Constitution also for the reason that, in accordance with the aforementioned provision, modifications of this kind may not be made by way of “urgent” proceedings.

## RULING

### **1. The challenged 2005 Act:**

- a) **conforms to Article 119(1) of the Constitution;**
- b) **conforms to Article 112, read in conjunction with Articles 2 and 7, of the Constitution;**
- c) **is not inconsistent with Article 83 of the Constitution;**
- d) **is not inconsistent with Article 123(1) of the Constitution.**

**2. Article 6 point 1 of the 2005 Act does not conform to Article 7, read in conjunction with Articles 2 and 54(1), of the Constitution.**

**3. Article 6 point 2(b) of the 2005 Act does not conform to Article 144(1) and (2) of the Constitution and Article 214(1), read in conjunction with Articles 7 and 10(1), of the Constitution and is not inconsistent with Article 144(3) point 27 of the Constitution.**

**4. Article 6 point 2(c) of the 2005 Act conforms to Articles 2, 7 and 10(1) of the Constitution.**

**5. Article 6 point 6 of the 2005 Act, insofar as it contains the word “social”, within Article 35a(1) and (2) inserted in the Broadcasting Act 1992, does not conform to Article 32, read in conjunction with Articles 20, 54(1), the second sentence of Article 54(2) and Article 64(2), of the Constitution.**

**6. Article 21(1) of the 2005 Act does not conform to Articles 2 and 7, read in conjunction with Article 213(1), of the Constitution.**

**7. Article 24 of the 2005 Act, in the part concerning the determination of the date of entry into force of Article 6 point 2 and Article 21 of that Act, does not conform to Article 2 of the Constitution.**

*Furthermore, on the basis of Article 39(1) point 1 and Article 39(2) of the Constitutional Tribunal Act 1997, the Tribunal discontinued proceedings within the remaining scope, given the superfluity of adjudication.*

#### PRINCIPAL REASONS FOR THE RULING

1. Rapidity in the case of legislative procedure is not *per se* unconstitutional. However, it may be considered from the perspective of respect for the pluralistic nature of Parliament, i.e. by verifying whether or not the course of the parliamentary proceedings deprived any particular group of Deputies or Senators of the possibility to present their positions in the successive phases thereof. It may also be assessed in terms of the relationship between the pace of legislative work and the quality of the statute it gives rise to.
2. Having analysed the course of the legislative process in the present case, the Constitutional Tribunal has failed to find – during the proceedings in either the Sejm or the Senate – any reference to the constitutional provision governing the “urgent” legislative procedure (Article 123(1)). The fact that the legislative procedure with respect to the draft of the challenged Act was conducted rapidly does not of itself signify that the Act was adopted by way of the “urgent” procedure within the meaning of the Constitution (cf. point 1(d) of the Tribunal’s ruling).
3. Provisions of the Constitution do not regulate legislative procedure comprehensively. In accordance with the principle of the Sejm’s autonomy, these issues have been left to be determined by the Sejm’s Rules of Procedure, the Constitution merely formulating certain general principles and regulating solutions for issues regarded as particularly essential. The principles in question include the principle of three readings, as set out in Article 119(1) of the Constitution.
4. Not every infringement of provisions envisaged within the Rules of Procedure of the Sejm in the course of legislative proceedings may be regarded as an infringement of the Constitution. Rather, this may be recognised only where breach of the Rules of Procedure leads to the violation of constitutional elements of the legislative process or is so severe as to prevent Deputies from fully expressing, in the course of deliberations in parliamentary committees or at plenary sessions, their positions concerning particular provisions of a statute, or a statute as a whole.
5. Irregularities appeared in the course of the legislative work leading to the adoption of the challenged 2005 Act, inter alia in regard to the convening of sittings of Sejm committees. This exerted a negative influence upon the quality of the legislative process and the drafting of legal provisions. Nonetheless, in the present case, the breach of good customs and failure to reflect political and legal culture in the course of the legislative procedure did not amount to an infringement of the Constitution. That said, the fact that the Constitutional Tribunal did not find unconstitutionality in that respect (cf. point 1 of the ruling) should not be taken to signify the Tribunal’s approval of such conduct.

6. Article 83 of the Constitution, by requiring everyone to observe the law, concerns the legal situation of an individual in relation to the State. As such, this provision is an inadequate basis upon which to challenge the legislative procedure applied in a particular case.
7. Insufficient precision in the defining of terms made use of in legal provisions may justify an allegation that requirements stemming from Article 2 of the Constitution (the principle of a democratic State governed by the rule of law) are being infringed. It follows from the aforementioned principle that the formulation of unclear and imprecise legal provisions is prohibited. The principle of specificity, as stemming from the rule of law clause, does not prevent the legislator from applying ambiguous phrases, provided that the determination of their content remains possible. However, as the meaning of ambiguous phrases in a specific situation may not be determined arbitrarily, the use of imprecise notions necessitates special procedural guarantees to ensure transparency and scrutiny over the practice by which the notions in question are assigned specific content by organs applying the law. The review of the constitutionality of the legislator's use of ambiguous notions must be particularly rigorous where legal provisions have application to the actions of public authorities intervening within the sphere of individuals' constitutional rights and freedoms.
8. The constitutional guarantee of freedom of expression (Article 54(1), read in conjunction with Article 14) is one of the foundations of a democratic society, a condition for the development thereof and for individuals' self-fulfilment. That freedom may not be limited to information and views that are received favourably or perceived as harmless or neutral. The role of journalists is to disseminate information and ideas as regards matters of public interest and significance.
9. In the light of Article 31(3) of the Constitution, the freedom of expression may be subject to limitations. However, the most fundamental condition applying to any restraint of this freedom is that such may only be introduced by statute. Insight into the fundamental role of freedom of expression in a democratic State governed by the rule of law requires particularly strict scrutiny of the precision of statutory provisions introducing limitations upon enjoyment of the said freedom.
10. The Polish legal system features no generally-binding and uniform catalogue of principles of journalistic ethics (professional ethics of journalists), which would serve as the source of legal norms addressed to journalists. Therefore, the notion of journalistic ethics, applied in Article 6 point 1 of the challenged 2005 Act, refers to non-legal criteria by which to assess events as regards freedom of expression (cf. points 7–9 above and point 2 of the ruling). Concomitantly, the vesting of the task of "initiating and undertaking measures concerning the protection of the principles of journalistic ethics" in the National Broadcasting Council extends beyond the scope corresponding to the role and position of that organ within the system of government.
11. Countersignature by the President of the Council of Ministers (i.e. Prime Minister) – in principle a condition if official acts issued by the President of the Republic are to be valid (see Article 144(2) of the Constitution) – is not a ceremonial gesture but an action indicative of the Prime Minister's assumption of responsibility before the Sejm for an act of the President who is not accountable to Parliament.

12. The catalogue of thirty so-called prerogatives of the President (powers of the President to issue official acts concerning specific matters), as enshrined in Article 144(3) of the Constitution, is of an exhaustive nature. The competences of State organs may not be derived by analogy but must always be based upon expressly-formulated legal provisions. This principle applies, in particular, to competences of an exceptional nature when compared to an organ's typical functioning (in this case: the requirement of countersignature). Therefore, the list of presidential prerogatives may not be statutorily broadened, neither according to the principle of the "continuation" of an act released from the countersignature requirement, nor according to the principle of analogical competences.
13. While the appointment of members of the National Broadcasting Council is a presidential prerogative enumerated in the aforesaid Article 144(3) of the Constitution (see point 27 thereof), there is no entitlement to appoint or dismiss the Council's President.
14. Any exercising by the President of a competence to appoint and dismiss the President of the National Broadcasting Council, each time with the consent of the Prime Minister expressed by way of countersignature, would infringe the constitutional order (cf. point 3 of the ruling), since the Council is a constitutional body placed beyond the scheme of the separation of powers (Article 10 of the Constitution). The provisions concerning the National Broadcasting Council (Articles 213–215) have been placed in Chapter IX of the Constitution, devoted to the organs of State control and for the defence of rights – a state of affairs justified by the purpose of that Council's activity and its lack of formal subordination to any other State organs, the Council of Ministers included.
15. The unconstitutionality of the provision conferring upon the President of the Republic the power to appoint and dismiss the President of the National Broadcasting Council deprives the act providing for appointment to that position of a legal basis, from the date of publication of the present judgment. As of that moment, the current President of the National Broadcasting Council, appointed by the President, may not exercise their function. However, the entry into force of the present judgment does not of itself invalidate the act appointing the President of the National Broadcasting Council. Adjudication upon the validity of individual acts issued by the latter prior to this date is a matter within the purview of the courts, rather than the Constitutional Tribunal.
16. The Constitutional Tribunal's recognising as unconstitutional of Article 6 point 2(c) of the challenged 2005 Act, which deprived the National Broadcasting Council of its capacity to dismiss its own President, would signify that the Tribunal considers only the latter procedure for dismissal of the President admissible. That said, the entry into force of the present judgment will leave the legislator to resolve this issue in line with the discretion granted to it, albeit with account taken of the findings summarised above in points 12–14.
17. The law does not link the terms of office of the members of the National Broadcasting Council with the terms of office of organs appointing that Council's members, namely the Sejm, Senate and President of the Republic. The autonomy of the National Broadcasting Council with respect to the aforementioned bodies is thereby emphasised.
18. The principle of the continuity of constitutional organs' functioning is one of the fun-

damental rules whereupon each constitutional system is based. Any discontinuity of their operation must be expressly grounded in constitutional provisions. The principle of continuity applies in full to the functioning of the National Broadcasting Council.

19. The provisions referred to in points 6 and 7 of the ruling (as above) did cause an interruption in the functioning of the National Broadcasting Council as a constitutional organ of the State, as they made it impossible for that Council to perform the tasks assigned thereto under Article 213(1) of the Constitution. Concomitantly, it is not possible to perceive any sufficient reasons meeting constitutional requirements and justifying an alteration of the model by which the National Broadcasting Council operates that would require the immediate shortening of the terms of office of members of that Council serving up to that time, without even any period of *vacatio legis* being applied. The allegation that the adopted changes were of an arbitrary nature is thus upheld, in consequence signifying the non-conformity of Article 21(1) of the challenged 2005 Act with Articles 2 and 7, read in conjunction with Article 213, of the Constitution.
20. The finding that Article 21(1) of the challenged Act does not conform to the Constitution may not constitute grounds upon which to challenge the expiry of mandates of those who were previously members of the National Broadcasting Council.
21. The principle of protecting acquired rights, as derived from the rule of law clause (Article 2 of the Constitution), does not apply to membership of the National Broadcasting Council, and may not therefore serve as a basis upon which to assess the shortening of terms of office of that Council's members. The right to hold an office, position or seat in an organ of public authority does not constitute any "acquired right", within the meaning of the aforementioned principle. Notwithstanding that, the adjudication upon potential claims of previous members of the National Broadcasting Council as regards loss of remuneration for work falls outside the purview of the Constitutional Tribunal.
22. The challenged Article 24 of the 2005 Act, insofar as it fails to envisage any period of *vacatio legis* (cf. point 7 of the ruling), is subject to assessment from the perspective of the principles of correct legislation, as stemming from the rule of law clause. The minimum standard in this regard is determined by the Act on Promulgation of Normative Acts and Certain Other Legal Acts 2000, which provides for a fourteen-day period as the basic duration of *vacatio legis*. The 2000 Act allows for departures from this basic rule "in justified cases", which is to say that the lack of any *vacatio legis* is only permissible where important interests of the State require the immediate entry into force of a given normative act and, concomitantly, that this does not infringe the principle of a democratic State governed by the rule of law.
23. Differential treatment by a legal norm of addressees having a specific common feature does not automatically denote an infringement of Article 32 of the Constitution (the principle of equality and prohibition of discrimination), provided there is a basis in a justified criterion of differentiation. The answer to a question as to whether or not a given criterion may constitute a basis for differential treatment requires resolution of issues regarding: firstly, whether the differentiation relates rationally to the aim and contents of a given legal solution; secondly, whether the weight of the interest which is to be protected by the differentiation remains in appropriate proportion

to the weight of interests which will be infringed thereby; and thirdly, whether the criterion underpinning differentiation remains in conjunction with other constitutional values, principles or norms.

24. The provision introduced into the Broadcasting Act 1992 by virtue of the amendment indicated in point 5 of the ruling (as above), in accordance with which a social broadcaster may apply, no later than 12 months prior to the expiry of a possessed licence, for the licence for a successive period (the so-called renewed license) and whereby such licence renewal may only be denied in circumstances set out precisely in the Act – ensures that the legal situation of social broadcasters is different from that of all other broadcasters. The differentiation criterion adopted by the legislator – i.e. the fact that a social broadcaster does not engage in economic activity, and, in particular, does not display any advertisements or sponsored communications – may not be recognised as relevant when conditions for license renewal are determined. The statutory tasks of radio and television broadcasting as such (and not merely of social broadcasters) include the supply of information, the provisioning of access to culture and the arts, facilitation of the use of education and of the achievements of science, propagation of civic education, the provision of entertainment and support for domestic audiovisual creativity. All broadcasters perform these tasks through the dissemination of radio and television programmes, the right to such dissemination (apart from the cases of public radio and television units) being granted to persons who have obtained a licence. The launching of and engagement in broadcasting activity is connected with substantial financial and organisational outlays. A lack of certainty as to the ability to continue with broadcasting activities constitutes a real economic threat for all broadcasters. Under such circumstances, less-favourable treatment (as regards conditions under which the renewed license may be obtained) of those broadcasters who do not meet the social broadcaster criterion within the meaning of the Act, infringes Article 32, read in conjunction with Article 20, of the Constitution. Such discrimination against a certain group of broadcasters in economic life as may negatively affect their economic condition also serves to sustain the allegation regarding infringement of the principle of equal protection of ownership and property rights (Article 64(2) of the Constitution). Unequal treatment of broadcasters in respect of the conditions under which a renewed licence may be obtained also implies unequal treatment with regard to enjoyment of the freedom of expression and the freedom to obtain and disseminate information (Article 54(1) of the Constitution).
25. By implication, every infringement by a State organ of prohibitions and duties contained in the detailed constitutional provisions binding thereupon, in particular as regards the issuance of a decision extending beyond a remit specified in the Constitution and statutes, always constitutes an infringement of general constitutional principles, such as the principle of a democratic State governed by the rule of law (Article 2) and the principle of the legality of the functioning of public authority organs (Article 7).

#### Provisions of the Constitution and the Constitutional Tribunal Act

##### Constitution

**Art. 2.** The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.



**Art. 7.** The organs of public authority shall function on the basis of, and within the limits of, the law.

**Art. 10.** 1. The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.

2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

**Art. 14.** The Republic of Poland shall ensure freedom of the press and other means of social communication.

**Art. 20.** A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

**Art. 31.** [...] 3. 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.

**Art. 32.** 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**Art. 54.** 1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.

2. Preventive censorship of the means of social communication and the licensing of the press shall be forbidden. Statutes may require the receipt of a permit for the operation of a radio or television station.

**Art. 64.** [...] 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

**Art. 83.** Everyone shall observe the law of the Republic of Poland.

**Art. 112.** The internal organization and conduct of work of the Sejm and the procedure for appointment and operation of its organs as well as the manner of performance of obligations, both constitutional and statutory, by State organs in relation to the Sejm, shall be specified in the rules of procedure adopted by the Sejm.

**Art. 119.** 1. The Sejm shall consider bills in the course of three readings.

2. The right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to its sponsor, Deputies and the Council of Ministers.

3. The Marshal of the Sejm may refuse to put to a vote any amendment which has not previously been submitted to a committee.

4. The sponsor may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of its second reading.

**Art. 123.** 1. The Council of Ministers may classify a bill adopted by itself as urgent, with the exception of tax bills, bills governing elections to the Presidency of the Republic of Poland, to the Sejm, to the Senate and to organs of local self-government, bills governing the structure and jurisdiction of public authorities, and also drafts of law codes.

2. The rules of procedure of the Sejm and the rules of procedure of the Senate shall define the modifications in the legislative procedure when a bill has been classified as urgent.

3. In the legislative procedure in relation to a bill classified as urgent, the time period for its consideration by the Senate shall be 14 days and the period for its signature by the President of the Republic shall be 7 days.

**Art. 144.** 1. The President of the Republic, exercising his constitutional and statutory authority, shall issue Official Acts.

2. Official Acts of the President shall require, for their validity, the signature of the Prime Minister who, by such signature, accepts accountability therefor to the Sejm.

3. The provisions of para. 2 above shall not relate to:

[...]

27) appointing members of the National Broadcasting Council;

[...]

**Art. 213.** 1. The National Broadcasting Council shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio and television broadcasting.

2. The National Broadcasting Council shall issue regulations and, in individual cases, adopt resolutions.

**Art. 214.** 1. The members of the National Broadcasting Council shall be appointed by the Sejm, the Senate and the President of the Republic.

2. A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.

**Art. 215.** The principles for and mode of work of the National Broadcasting Council, its organization and detailed principles for appointing its members, shall be specified by statute.

#### **CT Act**

**Art. 39.** 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

- 1) if the pronouncement of a judicial decision is superfluous or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;
- 3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.

2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.