

Procedural decision of 18<sup>th</sup> May 2004, [K 15/04](#)  
**INADMISSIBILITY OF CHALLENGE TO DECISION CALLING EUROPEAN  
PARLIAMENTARY ELECTIONS**

Type of proceedings: <a href="#">Abstract review</a> Initiator: Group of Deputies	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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On 23<sup>rd</sup> January 2004, in view of Poland's almost inevitable accession to the European Union (which came about on 1<sup>st</sup> of May), the Sejm of the Republic of Poland (i.e. the lower house of the Polish Parliament) adopted the Electoral Law to the European Parliament Act 2004. On the basis of this Act the Polish President, on 9<sup>th</sup> March 2004, issued a Decision calling elections to the European Parliament. Subsequently, the Decision was published in the Journal of Laws. The need to introduce the 2004 Act and to hold elections on 13<sup>th</sup> June 2004, both of which decisions were taken prior to Poland's formal acquisition of EU Member-State status, was justified by the requirement to adhere to the terms of the so-called election calendar. Further justification was provided by the fact that, pursuant to decisions taken at Community level, European Parliamentary elections were to be held simultaneously in all Member States in accordance with framework principles defined by Community law.

A group of Sejm Deputies initiated proceedings before the Constitutional Tribunal in which they challenged several provisions of the Electoral Law to the European Parliament Act 2004 and the President's Decision calling such elections, alleging that these acts did not conform to Article 4(1) of the Polish Constitution (the principle of sovereignty of the Polish People). The applicants' claim of unconstitutionality concerned, in particular, allowing EU citizens not holding Polish nationality to participate in elections to be held on Polish territory.

The claims against the Electoral Law to the European Parliament Act 2004 were examined by the Tribunal at a hearing on 31<sup>st</sup> May 2004 (the judgment of the Tribunal, delivered on the same day and having the same reference number as this decision, is summarised separately). In the procedural decision summarised here, delivered in camera prior to the judgment dealing with the merits of the claim against the 2004 Act, the Tribunal found the application against the President's Decision to be inadmissible.

RULING

**The Tribunal discontinued proceedings concerning examination of the conformity of the President's Decision of 9<sup>th</sup> March 2004, calling European Parliamentary elections, with Article 4(1) of the Constitution – by reason of the inadmissibility of delivering judgment on this question, pursuant to Article 39(1) of the CT Act 1997.**

## THE PRINCIPAL REASON FOR THE RULING

The Decision of the President of the Republic calling European Parliamentary Elections is an “official act” within the meaning of Article 144(1) of the Constitution, similar in nature to presidential Decisions calling elections to the Sejm and Senate. Such Decisions are not of a legislative nature, in contradistinction to presidential regulations and executive orders (cf. Article 142(1) of the Constitution). Given the non-normative character of this Decision, it may not be reviewed in proceedings before the Constitutional Tribunal, since such proceedings are limited to the review of normative acts and/or legal norms contained therein.

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

#### Constitution

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

**Art. 92.** 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.

**Art. 93.** 1. Resolutions of the Council of Ministers and orders of the Prime Minister shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such act.

2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects.

3. Resolutions and orders shall be subject to scrutiny regarding their compliance with universally binding law.

**Art. 142.** 1. The President of the Republic shall issue regulations and executive orders in accordance with the principles specified in Articles 92 and 93.

2. The President of the Republic shall issue decisions within the scope of discharge of his other authorities.

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

**Art. 188.** The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79, para. 1.

#### CT Act

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

- 1) if 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 the paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.

3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment necessary for protecting constitutional freedoms and rights.