

Procedural decision of 9th July 2002, [K 1/02](#)
**INADMISSIBLE APPLICATION CONCERNING THE PROCEDURE
FOR DISMISSING THE SEJM'S MARSHAL AND VICE-MARSHALS**

Type of proceedings: Abstract review Initiator: Group of Deputies	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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In November 2001 the Sejm (the lower chamber of Polish Parliament) adopted a resolution on the involuntary dismissal of one of its Vice-Marshals. Supporters of the dismissed Vice-Marshal, Andrzej Lepper, challenged the legality of this resolution, claiming that the Sejm's Rules of Procedure only envisage the appointment of the Sejm's Marshal and Vice-Marshals and contain no provisions concerning the conditions and procedure for dismissing a person from these positions during the Sejm's term of office.

Since the Constitutional Tribunal's jurisdiction is, in principle, limited to review of legal norms (cf. Article 188 of the Constitution), it was not possible to bring a [constitutional complaint](#) against the resolution concerning this dismissal, since it was not a normative act. However, a group of Deputies challenged the (frequently amended) Exercise of the Mandate of Deputy or Senator Act 1996, insofar as it failed to regulate the issue of dismissing the Sejm's Marshal and Vice-Marshals and accordingly, in the applicants' opinion, did not conform to Article 110(1) of the Constitution and the Sejm's Rules of Procedure.

RULING

On the basis of Article 39(1) point 1 of the Constitutional Tribunal Act, the Tribunal discontinued proceedings, given that it would be inadmissible to pronounce judgment.

PRINCIPAL REASONS FOR THE RULING

1. The principle of Parliament's autonomy, expressed in Article 112, read in conjunction with Article 124, of the Constitution, signifies the exclusive right of each legislative chamber to regulate its own affairs. A significant element of this autonomy is each chamber's right to independently shape its Rules of Procedure, defining its internal organisation and mode of functioning. Such issues may not be regulated by statute, since the legislative procedure involves both the executive and the second parliamentary chamber.
2. On the basis of the Constitution, three spheres should be distinguished: the sphere of exclusivity of statutes, with which parliamentary Rules of Procedure shall not interfere; the sphere of exclusivity of the Sejm's and the Senate's Rules of Procedure, with which statute shall not interfere (see point 1 above); and the sphere encompassing issues which may be regulated by statute and also, in more detail, by parliamentary Rules of Procedure provided that the latter conform to the Constitution and to opera-

tive statutes. The latter sphere includes detailed matters connected with the performance of constitutional and statutory duties by State organs vis-à-vis the Sejm (Article 112 of the Constitution). The provisions of parliamentary Rules of Procedure concerning such issues must conform to both the Constitution and operative statutes.

3. It does not stem from Article 110, nor any other provision of the Constitution, that matters relating to the dismissal of the Sejm's Marshal and Vice-Marshals shall be regulated by statute. This issue concerns the Sejm's internal organisation and, as such, belongs (in absence of a constitutional regulation) to the exclusive scope of the Sejm's Rules of Procedure, adopted on the basis of Article 112 of the Constitution, and shall not be regulated by statute. However, it is not possible to derive from constitutional provisions an absolute requirement that the conditions and procedure for dismissing the Sejm's Marshal and Vice-Marshals be regulated within the Sejm's Rules of Procedure. Given there exists no specified term of office for the aforementioned positions (functions), issues connected with dismissal therefrom may also be left to be determined by parliamentary practice.
4. Article 188 of the Constitution exhaustively determines the Constitutional Tribunal's scope of jurisdiction. Assessing the legality of acts applying the law by Parliament and its organs falls outside this scope.
5. In proceedings before the Constitutional Tribunal, the Rules of Procedure of the Sejm and the Senate may constitute the basis of review of a statute from the perspective of complying with procedure specified in legal provisions for the enactment thereof. Such Rules of Procedure may not, however, form the basis of reviewing the content of normative acts.
6. The Constitutional Tribunal reviews normative content which is positively expressed in normative acts. The Tribunal has no competence to adjudicate on the legislator's "failure to act", concerning the failure to issue a normative act, even where the obligation to issue such an act stems from constitutional norms. However, in respect of an issued and operative normative act, the Tribunal is also competent to review its constitutionality from the perspective of whether its provisions fail to regulate an issue which, given the nature of the subject-matter regulated by the act, raise doubts as to its constitutionality. Accordingly, an allegation of unconstitutionality may concern both what the legislator regulated within an act and what was omitted from the act in contravention of the Constitution.
7. In the present proceedings, the allegation of a legislative "failure to act" concerning the absence of a regulation regarding dismissal of the Sejm's Marshal and Vice-Marshals, falls outside the scope of regulation of Exercise of the Mandate of Deputy or Senator Act 1996.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 110. 1. The Sejm shall elect from amongst its members a Marshal of the Sejm and Vice-Marshals.

2. The Marshal of the Sejm shall preside over the debates of the Sejm, safeguard the rights of the Sejm as well as represent the Sejm in external matters.

3. The Sejm shall appoint standing committees and may also appoint special committees.

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. 124. The provisions of Article 110, Article 112, Article 113 and Article 120 shall apply, as appropriate, to the Senate.

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(1).

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.