

Judgment of 12<sup>th</sup> January 2005, [K 24/04](#)  
**INEQUALITY IN COMPETENCES OF SEJM AND SENATE COMMITTEES  
IN RESPECT OF EUROPEAN UNION LEGISLATIVE PROPOSALS**

<b>Type of proceedings:</b> <a href="#">Abstract review</a> <b>Initiator:</b> Group of Senators	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 3
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Legal provisions under review	Basis of review
Failure to require the opinion of the appropriate Senate organ, in respect of the intended Polish government's position in the Council of the European Union, as regards an EU legislative proposal  [Co-operation of the Council of Ministers with the Sejm and Senate on Matters Connected to Membership of the Republic of Poland in the European Union Act 2004: Article 9]	Exercising legislative power by the Sejm and Senate  [Constitution: Article 10(2) and Article 95(1)]

Since 1<sup>st</sup> May 2004, Poland, as a member of the European Union, has participated in the Union's legislative activities. Existing EU law does not define the organs within a Member State which shall determine the country's position with respect to EU legislative proposals, nor the applicable procedure for adopting such a position. Regulation of such issues remains within the domain of domestic law. Polish legal norms concerning these matters are contained in the Co-operation of the Council of Ministers with the Sejm and Senate on Matters Connected to Membership of the Republic of Poland in the European Union Act 2004 (hereinafter referred to as the 2004 Act).

The 2004 Act imposes an obligation on the Polish government (Council of Ministers) to present various types of documents and legislative proposals, connected with Poland's membership of the EU, to the Sejm (the lower chamber of the Polish Parliament) and Senate (the upper chamber of the Polish Parliament), or in some cases to their subsidiary organs (as authorised by the rules of procedure of both chambers). Article 9(1) of the 2004 Act is of crucial importance in the present case. According to this provision, prior to the consideration of a legislative proposal by the Council of the European Union, the (Polish) Council of Ministers is obliged to seek the "opinion of an organ authorised by the Sejm's rules of procedure" concerning the intended position of the (Polish) Council of Ministers as regards that proposal. At the time the judgment summarised herein was delivered, this organ was the Sejm European Affairs Committee. Article 9(3) represents a significant limitation of this obligation: this provision authorises the (Polish) Council of Ministers to refrain from seeking the opinion of the appropriate Sejm organ due to "organisation of the activities of EU organs", with the exception of matters in which the Council of the European Union takes is required to act unanimously, and matters "resulting in a significant burden on the State budget". Where the government takes advantage of this limitation, its representative is obliged to notify the competent Sejm organ about the position taken in the Council of the European Union and explain the reasons for refraining from seeking the opinion.

It must be stressed that the challenged Article 9 concerns the stage of activity of drafting an EU legislative proposal when the (Polish) Council of Ministers has already adopted the position it intends to present at the Council of the European Union forum; the opinion of the Sejm Committee, which does not bind the (Polish) Council of Ministers, refers, therefore, to a government position which is already “prepared”. Yet, pursuant to Article 6 of the Act (which was not challenged in the present case), the (Polish) Council of Ministers forwards the drafts of EU legislative proposals to both the Sejm and the Senate immediately upon receiving them, as well as outlines of the (Polish) Council of Ministers’ positions with respect to legislative proposals; the committees of both chambers, authorised by the rules of procedure, may then pronounce opinions on these proposals.

A group of Senators challenged Article 9(1) of the 2004 Act before the Constitutional Tribunal, arguing that its failure to provide for the participation of an appropriate Senate organ, in the process of pronouncing an opinion on the government’s position, resulted in its non-conformity with the Constitution. The applicants alleged an infringement of the principle that legislative power is exercised by both parliamentary chambers (Articles 10(2) and 95(1) of the Constitution). They argued that, since Poland’s accession to the EU limited the scope of domestic legislation to the benefit of EU legislation, the domestic legislative organs ought to be guaranteed the possibility to participate in the adoption of EU legislation, as is the case in other European countries.

It is worth adding that, should the Treaty establishing a Constitution for Europe (mentioned in the Constitutional Tribunal’s reasons for the present ruling) enter into force, the position of national parliaments in the process of adopting European law will be strengthened. A particularly significant change will be that all documents will be sent directly to national parliaments, without the intermediation of Member States’ governments; this concerns, in particular, legislative proposals submitted to the European Parliament. National parliaments will also be able to directly present their opinions, as regards the conformity of a legislative proposal with the principle of subsidiarity, at the European Union forum. In respect of bi-cameral parliaments, these rules will apply to each chamber.

The judgment was reached by a majority of votes. Three judges of the Constitutional Tribunal submitted dissenting opinions.

## RULING

**Article 9 of the challenged Act, insofar as it omits the obligation to seek the opinion of an organ authorised by the Senate’s rules of procedure, does not conform to Articles 10(2) and 95(1) of the Constitution.**

## PRINCIPAL REASONS FOR THE RULING

1. The legislative competences specified in the Constitution of the Republic of Poland should now be construed in a manner which takes account of the principally new conditions for the adoption of legislation. Since legislation adopted by EU organs will be operative within Poland’s territory, in part directly and in part following the

adoption of implementing legislation by the Polish Parliament, the expression of opinions by the latter with respect to EU legislative proposals becomes a significant form of the Polish Parliament's joint participation in the adoption of EU law. The pronouncement of such opinions allows the domestic legislature to exert some influence on the process of the Union's development as a whole. Concomitantly, the participation of national parliaments in the process of adopting EU law constitutes a factor strengthening the credibility and democratic mandate of the Union's organs.

2. The Polish Constitution contains no provisions which directly regulate the role of the Sejm and Senate in the process of adopting EU law. Given this, it is inevitable to attempt to interpret constitutional norms in such a way as to ensure that the influence of Polish State organs (including Parliament) on the adoption of EU law is incorporated into the existing framework of the Polish system of government. Such an approach also conforms to the principle of interpreting the Constitution in a manner sympathetic towards European integration.
3. The Sejm's control over Council of Ministers' activity, exercised pursuant to Article 95(2) of the Constitution, is permissible solely insofar as specified by provisions of the Constitution or statute. In light of the Constitution's provisions, the instruments of such control encompass, primarily: the institution of the vote of no-confidence (Articles 158 and 159); the possibility to appoint a Sejm investigative committee (Article 111); interpellations and Deputies' questions (Article 115(1)); questions on current affairs (Article 115(2)); and the right to review implementation of the Budget Act and to approve, or disapprove, financial accounts (Article 226).
4. The competences and nature of the Senate stem, directly, from the principle of representation and, indirectly, from the principle of sovereignty of the Polish People (cf. Article 4 of the Constitution).
5. The fundamental reason for refusing to grant the Senate (organ authorised by the Senate's rules of procedure) the right to pronounce an opinion on a position which the Council of Ministers intends to take, with respect to a legislative proposal, in the Council of the European Union – a right which is, pursuant to Article 9(1) of the reviewed 2004 Act, vested in the organ authorised by the Sejm's rules of procedure – was the fear that the Senate would exercise control over the government in a manner which is reserved by the Constitution for the Sejm. However, the Polish Parliament's co-decision procedure in respect of issues connected to the shaping Poland's negotiating position does not fall within the exercise of control (Article 95(2) of the Constitution) but, rather, within executing the legislative function (Articles 10(2) and 95(1) of the Constitution). Failure to include the Senate (organ authorised by the Senate's rules of procedure) infringes the principle of exercising legislative power by both the Sejm and Senate, as expressed in the two legal bases of review. As long as the constitutional legislator wishes to maintain a bi-cameral Parliament, both chambers should be guaranteed equal participation in activities concerning the shaping of Poland's position in the field of adopting EU law.
6. The challenged provision's failure to conform to the Constitution relates to its failure to ensure the duty to seek the opinion of the organ authorised by the Senate's rules of procedure. Given the requirement of precision and non-ambiguity, this provision should be subject to legislative intervention as soon as possible, to amend its wording to the decision given in the ruling of the judgment. However, until such time as

the relevant amendment has been introduced, there exist no legal obstacles to the Council of Ministers also presenting information, as regards its position in respect of EU legislative proposals, to the competent Senate organ and seeking the latter's opinion on these matters. Furthermore, it is desirable that this should occur.

## MAIN ARGUMENTS OF THE DISSENTING OPINIONS

### *- judge Jerzy Ciemniewski:*

- The title of the reviewed Act contains the term “co-operation”. It is rather a descriptive category of a praxeological nature, as opposed to a legal category. The Act primarily describes parliamentary practice and refers to the forms of contact between the government and chambers in the parliamentary-cabinet system to actions of State organs stemming from Poland's membership of the European Union. It does not, however, establish the rights and obligations of the specified organs.
- The challenged Article 9 of the Act does not regulate the competences of the Sejm and Senate as constitutional State organs, but refers to the activities of their subsidiary organs – the authorised committees. Accordingly, Articles 10(2) and 95(1) of the Constitution may not represent the bases of constitutional review of this provision.
- The pronouncement of opinions on legislative proposals does not fall within the scope of exercising legislative power, since it is not authoritative in nature. Pronouncing opinions which cause no legal effects and do not even have in their background any explicitly specified political consequences, may not be recognised as a realisation of State authority in the constitutional-legal sense.

### *- judge Ewa Łętowska:*

- The Tribunal correctly identifies the existence of a constitutional lacuna. Accordingly, there exists no basis upon which to declare the unconstitutionality of the reviewed statutory provision on the grounds that it contradicts such a lacuna.
- The constitutional basis of review of the norm examined by the Constitutional Tribunal need not be expressed *à la lettre* in the text of the Constitution. It may be reconstructed from several constitutional provisions; the entire process of such reconstruction must, however, be carried out. The Tribunal, nevertheless, did not derive a norm from the provisions of the Constitution such as would require granting the Senate competences mirroring those of the Sejm, following the example of the legislative competences. If the Tribunal succeeded in reconstructing such a basis, then it would not be possible to speak of the existence of a constitutional lacuna.
- An allegation of unconstitutionality must be distinguished from allegations of legislative incoherence, lack of efficiency, counter-productivity, inoperativeness of the created mechanism, incorrectness of legislative policy etc.
- The competence concerned in the present case is not a clearly legislative competence. The challenged provision concerns an opinion regarding how the government should behave (Parliament's control function) in the procedure of adopting Community law (the legislative function). However, the two indicated constitutional bases of review concern the participation of both chambers in the process of directly adopting Polish law.

### *- judge Janusz Niemcewicz:*

- It is not possible to agree with the statement that the competence envisaged by the challenged provision constitutes an element of Parliament's legislative function, exercised by both the Sejm and the Senate, and not the control function, vested solely in the Sejm. The legislative function consists in adopting legal acts of statutory rank and the control function – in acquiring information regarding the activity of the government and the administration subordinate thereto, as well as forwarding opinions and suggestions to the government. The examined competence relates to acquiring information about a position already adopted by the Council of Ministers and to the possible pronouncement of an opinion on this matter and, accordingly, it falls within the control function.
- Since Articles 10(2) and 95(1) of the Constitution concern the legislative function of both chambers, the exercise of which remains unregulated by the challenged Article 9, they do not constitute appropriate bases of review of this provision's constitutionality.

### Provisions of the Constitution

**Art. 4.** 1. Supreme power in the Republic of Poland shall be vested in the Nation.  
2. The Nation shall exercise such power directly or through their representatives.

**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. 95.** 1. Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate.  
2. The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.

**Art. 111.** 1. The Sejm may appoint an investigative committee to examine a particular matter.  
2. The procedures for work by an investigative committee shall be specified by statute.

**Art. 115.** 1. The Prime Minister and other members of the Council of Ministers shall furnish answers to interpellations and Deputies' questions within 21 days.  
2. The Prime Minister and other members of the Council of Ministers shall furnish answers to matters raised in the course of each sitting of the Sejm.

**Art. 158.** 1. The Sejm shall pass a vote of no confidence by a majority of votes of the statutory number of Deputies, on a motion moved by at least 46 Deputies and which shall specify the name of a candidate for Prime Minister. If such a resolution has been passed by the Sejm, the President of the Republic shall accept the resignation of the Council of Ministers and appoint a new Prime Minister as chosen by the Sejm, and, on his application, the other members of the Council of Ministers and accept their oath of office.  
2. A motion to pass a resolution referred to in para. 1 above, may be put to a vote no sooner than 7 days after it has been submitted. A subsequent motion of a like kind may be submitted no sooner than after the end of 3 months from the day the previous motion was submitted. A subsequent motion may be submitted before the end of 3 months if such motion is submitted by at least 115 Deputies.

**Art. 159.** 1. The Sejm may pass a vote of no confidence in an individual minister. A motion to pass such a vote of no confidence may be submitted by at least 69 Deputies. The provisions of Article 158, para. 2 shall apply as appropriate.  
2. The President of the Republic shall recall a minister in whom a vote of no confidence has been passed by the Sejm by a majority of votes of the statutory number of Deputies.

**Art. 226.** 1. The Council of Ministers, within the 5-month period following the end of the fiscal year, shall present to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.  
2. Within 90 days following receipt of the report, the Sejm shall consider the report presented to it, and, after seeking the opinion of the Supreme Chamber of Control, shall pass a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers.