40/4/A/2012

JUDGMENT

of 18 April 2012

Ref. No. K 33/11*

In the Name of the Republic of Poland

The Constitutional Tribunal, in a bench composed of:

Marek Zubik – Presiding Judge
Stanisław Biernat
Zbigniew Cieślak
Małgorzata Pyziak-Szafnicka – Judge Rapporteur
Sławomira Wronkowska-Jaśkiewicz,

Krzysztof Zalecki – Recording Clerk,

having considered, at the hearing on 18 April 2012, in the presence of the applicant, the Sejm and the Public Prosecutor-General, an application by the President of the Republic of Poland to determine the conformity of:

1) Article 1(4)(a) of the Act of 16 September 2011 amending the Act on Access to Public Information and certain other acts (Journal of Laws - Dz. U. No. 204, item 1195), insofar as it adds paragraph 1a to Article 5 of the Act of 6 September 2001 on Access to Public Information (Journal of Laws - Dz. U. No. 112, item 1198, as amended),
2) Article 1(4)(b) of the Act of 16 September 2011, referred to in point 1, insofar as it amends Article 5(3) of the Act of 6 September 2001, referred to in point 1, to Article 118(1) as well as Article 121(2) of the Constitution of the Republic of Poland,

* The operative part of the judgment was published on 30 April 2012 in the Journal of Laws - Dz. U. of 2012 item 473.

adjudicates as follows:

1) **Article 1(4)(a) of the Act of 16 September 2011 amending the Act on Access to Public Information and certain other acts** (Journal of Laws - Dz. U. No. 204, item 1195), **insofar as it adds paragraph 1a to Article 5 of the Act of 6 September 2001 on Access to Public Information** (Journal of Laws - Dz. U. No. 112, item 1198, of 2002 No. 153, item 1271, of 2004 No. 240, item 2407, of 2005 No. 64, item 565 and No. 132, item 1110, of 2010 No. 182, item 1228 as well as of 2011 No. 204, item 1195),

2) **Article 1(4)(b) of the Act of 16 September 2011, referred to in point 1, insofar as it amends Article 5(3) of the Act of 6 September 2001, referred to in point 1,**

are inconsistent with Article 121(2) in conjunction with Article 118(1) of the Constitution of the Republic of Poland.

STATEMENT OF REASONS

[...]

III

The Constitutional Tribunal has considered as follows:

1. The course of legislative work as the subject of constitutional review.

1.1. Commencing the analysis of the application, the Tribunal stresses that, in the present case, the assessment of constitutionality comprises neither the examination of the substance of Article 5(1a) and Article 5(3) the Act of 6 September 2001 on Access to Public Information (Journal of Laws - Dz. U. No. 112, item 1198, as amended; hereinafter:

the Act on Access to Public Information), added to the Act by the Senate, nor – even more so – the correctness of the terminology applied in the Act of 16 September 2011 amending the Act on Access to Public Information and certain other acts (Journal of Laws - Dz. U. No. 204, item 1195; hereinafter: the amending Act), so to which the Public Prosecutor-General had reservations. Due to the principle that the Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint (Article 66 of the Constitutional Tribunal Act of 1 August 1997; Dz. U. No. 102, item 643, as amended), the Tribunal is bound by the scope of the President's application, and the constitutional issue raised therein only concerns the admissibility of introducing amendments by the Senate to an amending bill passed by the Sejm, i.e. the legislative procedure. In the applicant's opinion, there is a possibility that, in the course of legislative work on the amending bill, restrictions imposed on the Senate's power to introduce amendments to the bill passed by the Sejm were violated and Article 118(1) and Article 121(2) of the Constitution were infringed. The applicant's doubts concern the way of enacting Article 1(4)(a) and Article 1(4)(b) of the Act amending the Act on Access to Public Information, which have included a new paragraph, marked as '1a', and supplemented the content of paragraph 3 in the Act on Access to Public Information (Journal of Laws - Dz. U. No. 112, item 1198, as amended). The examination of the constitutionality of the way in which the said amendments have been introduced should be commenced by presenting the course of the legislative process, and should be followed by the evaluation of the process in the light of the indicated higher-level norms for the review. Due to the scope of the review in the present case, which solely comprises the course of legislative work, there is no need for the substantive analysis of the challenged provisions.

1.2. The bill amending the Act was referred to the Sejm by the Council of Ministers and concerned the transposition into Polish law of the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (the Sejm Paper No. 4434 of 13 July 2011). Due to the need to fulfil treaty obligations by the Republic of Poland, i.e. to implement the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (*OJ L 345, 31.12.2003, p. 90*; hereinafter: the Directive), as failure to fulfil them resulted in action brought against Poland before the Court of Justice of the European Communities (C-362/10), the bill was classified as urgent. Moreover, the intention of the author of the bill was to establish a separate category of restrictions on

access to certain public information. In accordance with the bill (Article 1(5)), Article 5(1) of the Act on Access to Public Information was to signal the introduction of a new restriction, apart from those arising from "provisions on the protection of classified information as well as on the protection of other secrets protected by statutory provisions". Pursuant to Article 1(6) of the bill amending the Act, the proposed restriction was to be specified in Article 5a of the Act on Access to Public Information, in accordance with:

"Article 5a. The right to public information concerning:

1) statements, opinions, instructions or analyses drafted by or on request of the Republic of Poland, the State Treasury or a unit of local self-government, for the purposes of:

a) issuing a determination or making a declaration of will in the course of managing the property of the State Treasury or of the units of local self-government, including the commercialisation and privatisation of that property,

b) carrying out proceedings before courts, tribunals and other adjudicating organs, with the participation of the Republic of Poland, the State Treasury or the units of local self-government,

2) using it for negotiation guidelines as well as for agreed drafts of international agreements within the meaning of the Act of 14 April 2000 on International Agreements (Journal of Laws - Dz. U. of 2000 No. 39, item 443, of 2002, No. 216, item 1824 as well as of 2010 No. 213, item 1395),

3) using it for negotiation instructions for the representatives of the organs of government administration who take part in the sessions of the European Council as well as the Council of the European Union and its preparatory bodies

– shall be subject to restrictions until the time of issuing a final determination, making a declaration of will in the course of managing property, completing proceedings or signing an international agreement, finishing work on a given case by the European Council as well as the Council of the European Union and its preparatory bodies, in order to protect public order, security and an important economic interest of the state".

1.3. The first reading of the bill amending the Act was held by the Committee on Administration and Internal Affairs on 26 July 2011, then the bill was referred to a subcommittee for legislative work, which at its meetings on 26, 27 and 28 July 2011 considered the bill and made a number of editorial changes as well as specified particular regulations in greater detail. During the work carried out by the subcommittee, it was

decided to give up on plans to establish a new category of restrictions on access to public information, by making a unilateral decision on deleting Article 1(6) from the proposed bill (the addition of Article 5a to the amending Act), which had ignited controversy from the very beginning of the legislative process, as: "the government bill classified as urgent is not authorised to make such interference with the Act on Access to Public Information" (quoted from the opinion voiced by the chairman of the subcommittee – Deputy Marek Wójcik, Bulletin of the Committee on Administration and Internal Affairs, No. 5452/6th term, p. 3). Moreover, transitional provisions were made more specific. The decision to eliminate Article 1(6) was made after considering the opinions of non-governmental organisations which had participated in the work of the subcommittee, and also after the analysis of the opinion presented by the Bureau of Research of the Chancellery of the Sejm. The report of the subcommittee was the subject of the meetings of the Committee on Administration and Internal Affairs held on 17 and 18 August 2011. The bill together with the amendments (the Sejm Paper No. 4555) was adopted on 18 August 2011. The report was referred to the Sejm on 30 August 2011 to be considered during the second reading. For that reason, the said bill was again referred to the Committee on Administration and Internal Affairs for it to consider proposed amendments. The Committee on Administration and Internal Affairs considered the amendments (the Sejm Paper No. 4555-A), which need not to be discussed here, as they did not pertain to the issues covered by the President's application. The Sejm adopted the bill during the third reading, on 31 August 2011, in the version proposed by the Committee on Administration and Internal Affairs, together with one amendment which authorised a minister competent for matters concerning computerisation to assign certain authorities with the task of managing a central database repository.

1.4. Pursuant to Article 121(1) of the Constitution, the Marshal of the Sejm sent the bill to the Marshal of the Senate for the Senate to analyse the said bill. It should be emphasised that the bill passed by the Sejm, in the version submitted to the Senate, concerned the specifically defined objective of the amending bill, i.e. the implementation of the directive, and it did not contain provisions which would provide for the introduction of restrictions on access to public information (see the Senate Paper No. 1352, the 7th term of the Sejm).

The bill passed by the Sejm was referred to the Committee on Local Self-Government and State Administration as well as the Committee on Human Rights, Rule of

Law and Petitions, which recommended that the bill should be enacted without any amendments. During the debate on the said bill, at the 83rd sitting of the Senate of the 7th term, Senators B. Paszkowski and M. Rocki submitted legislative amendments to be included in the minutes of the sitting (see verbatim record no. 2432 from the sitting of the Senate of 14 September 2011, p. 1). The said amendments were submitted for consideration to the above-mentioned joined Senate committees, and none of the amendments was accepted by the committees. Attention should be drawn here to an amendment proposed by Senator M. Rocki (hereinafter: Rocki's amendment), which comprised the incorporation of paragraph 1a into Article 5 of the Act on Access to Public Information and which accordingly changed the wording of Article 5(3) (see the Report of the Committee on Local Self-Government and State Administration as well as the Committee on Human Rights, Rule of Law and Petitions, the Senate Paper No. 1352-Z). It reads as follows:

„3a) In Article 5:

a) after paragraph 1, the following paragraph 1a shall be added:

«1a. The right to public information is subject to restrictions due to the protection of a vital economic interest of the state, within the scope and at a time when providing the information:

1) would weaken the negotiating position of the State Treasury in the course of managing it property or the negotiating position of the Republic of Poland in the course of signing an international agreement or adopting decisions by the European Council or the Council of the European Union;

2) would significantly hinder the protection of the property interests of the Republic of Poland or the State Treasury in proceedings before a court, tribunal or another adjudicating organ.»

b) paragraph 3 shall read as follows:

«3. Subject to paragraphs 1, 1a and 2, a restriction may not be imposed on access to information concerning cases which are determined in proceedings before state organs, and in particular in administrative, criminal or civil proceedings, due to the protection of the interests of a party, if the proceedings concern public authorities or other authorities performing public duties or public functions – within the scope of those duties or functions»".

In accordance with the justification presented at a plenary sitting by Senator J. Sepioł, Rocki's amendment regards instances where providing public information could

weaken the negotiating position of the State Treasury in the course of managing its property or could seriously hinder the protection of the property interests of the Republic of Poland. It is plain to see that the proposed provisions, word for word, render the content of the above Article 1(5) and (6) of the government bill.

Although the amendment was rejected by the committees, it was adopted by the Senate on 14 September 2011 (voting no. 163).

1.5. In the course of further legislative work in the Sejm, at the sitting of the Committee on Administration and Internal Affairs held on 15 September 2011, the Legislative Bureau of the Sejm raised constitutional doubts as to the scope of the Senate's amendment. During the discussion of the Senate's proposal, they were pointed out by the Deputy-rapporteur, and the Committee on Administration and Internal Affairs recommended that the Sejm should reject the amendment proposed by the Senate (see verbatim record from the 100th sitting of the Sejm of the Republic of Poland, 16 September 2011, p. 230). However, the Sejm did not reject the amendment and it became an integral part of the amending bill, submitted to the President of the Republic of Poland for signature. The President signed the said bill on 24 September 2011, and subsequently lodged an application with the Tribunal for it to review whether the said Act was consistent with the Constitution. The Act was published in the Journal of Laws on 28 September 2011 and entered into force on 29 December 2011 (with the exception of Article 1(5)-(7) and (10), insofar as they regarded a central database repository, which are to enter into force after 12 months from the date of the publication of the Act, i.e. on 29 September 2012).

2. The reconstruction of the higher-level norms for the constitutional review.

2.1. The applicant alleged that the introduction of Rocki's amendment had infringed Article 118(1) and 121(2) of the Constitution. The assessment of the validity of that allegation is facilitated by the well-established jurisprudence of the Constitutional Tribunal and the doctrine which supports it, which together emphasise the need to distinguish between two separate institutions: the Senate's right to introduce legislation (Article 118(1) of the Constitution) and the Senate's right to propose amendments to a bill passed by the Sejm (Article 121(2) of the Constitution). The Tribunal has warned against blurring the borderlines between the two legal institutions and overlooking the differences

between them. The fact that they have been devised as separate serves the implementation of the main goal of legislative proceedings i.e. ensuring that "basic content which ultimately becomes part of a statute will be adopted after the entire legislative procedure has been carried out" (the judgment of 24 June 1998, Ref. No. K 3/98, OTK ZU No. 4/1998, item 52, p. 339; likewise the judgment of 21 October 1998, Ref. No. K 24/98, OTK ZU No. 6/1998, item 97, p. 518).

2.2. Pursuant to Article 118(1) of the Constitution, "the right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers". The right to introduce legislation should be understood as a right to introduce a bill to the Sejm (see L. Garlicki [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz,* L. Garlicki (ed.), Vol. II, Warszawa 2001, commentary on Article 118, p. 12 and the subsequent pages). Article 118(1) of the Constitution (as well as Article 118(2), which has not been pointed out by the applicant) contains two important indications in that regard. Firstly, the right to introduce a bill is granted to subjects enumerated in the Constitution. Secondly, in the case one of the said subjects exercises the right to introduce legislation, the Polish Parliament (in the first place – the Sejm) is obliged to consider a given bill in accordance with the procedure specified by law. The said procedure is specified by the Constitution (Articles 119-123 together with special provisions, e.g. Articles 222-225 and Article 235), the rules of procedure of the Sejm and the Senate, as well as – within a narrow scope – statutes (e.g. by setting out certain obligations of consultation). What determines the effective exercise of the right to introduce legislation is the fact that a given bill should meet certain requirements, e.g. it must be formulated in the form of a legal text and must contain a statement of reasons (see the judgment of the Constitutional Tribunal of 24 March 2004, Ref. No. K 37/03, OTK ZU No. 3/A/2004, item 21). In the case of the organs of the state (the Senate or the Council of Ministers), legislation may be introduced on the basis of a relevant resolution.

2.3. The second one of the higher-level norms for the review indicated by the President, Article 121(2) of the Constitution, stipulates that "the Senate, within 30 days of submission of a bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. If, within 30 days following the submission of the bill, the Senate fails to adopt an appropriate resolution, the bill shall be considered adopted according to the wording submitted by the Sejm". A resolution of the Senate, containing amendments or

a proposal to reject a bill passed by the Sejm, is always subject to the Sejm's examination, and it is the Sejm that ultimately decides about the rejection or adoption thereof. Article 121(2) of the Constitution leaves no doubt that an amendment – regardless of the fact whether it is an amendment proposed by Deputies at the stage of legislative work on a given bill carried out by the Sejm or whether it is an amendment proposed by the Senate, and thus submitted with regard to a bill passed by the Sejm – constitutes a secondary proposal in relation to the introduced legislation. What is of significance for the review of the admissibility of a given amendment, in the light of the Constitution, is the moment when it is proposed. The Senate's amendment which the Tribunal deals with in the review in the present case is always introduced in the course of work on a bill that has already been passed by the Sejm, and thus, due to its nature, it may not be considered at the first stage of legislative proceedings which comprises three readings in the Sejm.

2.4. The allegation that the two above-mentioned provisions have been infringed indicates, in the President's opinion, that Rocki's amendment was indeed a form of introducing legislation and – as such – did not fulfil the requirements set out in Article 118(1) of the Constitution. The Tribunal shares the view of the Marshal of the Sejm that, despite the fact that the President has indicated two provisions of the Constitution as equivalent higher-level norms for the review, one allegation appears to be more striking, namely the allegation that the Senate went beyond the scope indicated in Article 121(2) of the Constitution, whereas the allegation of the infringement of Article 118(1), in a sense, merely expresses the applicant's suggestion with regard to the implicit character of the Senate's activity. Although it is pointed out in the doctrine that when the content and scope of proposed changes result in a shift from proposing amendments to introducing legislation, one may consider whether this does not infringe Article 118(1) of the Constitution (see M. Dobrowolski, "Prawo Senatu do wnoszenia poprawek do ustaw uchwalanych przez Sejm w świetle orzecznictwa Trybunału Konstytucyjnego", *Przegląd Sejmowy* Issue No. 5/2001, p. 33; M. Zubik, "Prawo parlamentarne i postępowanie ustawodawcze w orzecznictwie Trybunału Konstytucyjnego", [in:] *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego*, p. 711), however, the Tribunal concludes that the last-mentioned higher-level norm for the review may only be regarded as one that is read in conjunction with others. Indeed, it is difficult to assess the constitutionality of an amendment proposed by the Senate from the point of view of standards set for introducing legislation.

2.5. At the same time, in the view of the Tribunal, despite the fact that the President has indicated only two higher-level norms for the review, when examining the application, one may not disregard their normative context. On the contrary, it is necessary to take into account also other provisions of the Constitution that regulate the legislative process. Above all, what should be emphasised is the significance of Article 119(1) of the Constitution, pursuant to which the Sejm shall consider bills in the course of three readings, as well as Article 120 thereof, which begins with the following wording: "the Sejm shall pass bills". Moreover, one should bear in mind consequences derived from the content of Article 123(1) of the Constitution, which are related to classifying a bill as urgent.

3. The scope of admissible amendments proposed by the Senate.

3.1. What follows from the need to distinguish between the Senate's right to introduce legislation and the Senate's right to propose amendments, which is stressed by the Tribunal, is a number of restrictions imposed on the latter. The scope ratione materiae of legislation to be introduced depends solely on its author, whereas an amendment must fall within the scope of the substance of a given bill to which it has been proposed. Since – pursuant to Article 119(1) of the Constitution – the Sejm shall consider bills in the course of three readings, it should be assumed that the more advanced is the stage of parliamentary work on a bill, the smaller the possibility of introducing amendments. Therefore, there are particular restrictions imposed on amendments proposed by the Senate. This is primarily justified by the advanced stage of parliamentary work on a bill, as well as by the model of two-house system adopted by the constitution-maker in the Polish Parliament.

3.2. According to the said model, the Senate carries out work on a bill which has already been passed by the Sejm (pursuant to Article 120 of the Constitution), and not on a bill (bills) which has merely been considered by the Sejm. This conclusion is drawn on the basis of the linguistic interpretation of the provisions of the Constitution. Although all four paragraphs of Article 119, regarding legislative proceedings conducted in the first house of the Polish Parliament (the Sejm), mention "a bill", Article 121, concerning the work carried out in the second house of the Polish Parliament (the Senate), mentions the phrase "a bill passed by the Sejm". The linguistic interpretation is confirmed by the functional

interpretation. Indeed, if the goal of the analysed provisions of the Constitution is to preserve the entire legislative process as regards the fundamental normative content of statutes, it may not be allowed that at the stage of the Senate's work on a bill passed by the Sejm, which has been discussed in the course of three readings, totally new content be included therein.

The above interpretation of the provisions of the Constitution is well-established in the Tribunal's jurisprudence and is accepted in the doctrine. In its judgment of 23 February 1999, ref. no. K 25/98 (OTK ZU No. 2/1999, item 23), while assessing the Senate's amendments to a bill the scope of which had considerably been narrowed down in the course of the Sejm's work on the bill, the Tribunal stated that: "However, when a bill is passed by the Sejm then the situation changes to the extent that the work conducted by the Senate may only concern the bill as regards the content, shape and scope that has been passed by the Sejm" (p. 140). In a gloss to the cited ruling which supports the above argumentation, P. Winczorek draws attention to the fact that: "What the Senate may deal with and what it may consider to be the basis of its amendments is only the text ultimately passed by the Sejm, in accordance with the procedure set out in Articles 118-120" (*Państwo i Prawo* Issue No. 6/1999, p. 106, likewise: J. Galster and Z. Witkowski, a gloss in *Przegląd Sejmowy* Issue No. 2/1998, p. 170 as well as M. Kudej, a gloss in *Przegląd Sejmowy* Issue No. 3/1999, p. 167). Due to the course of legislative work in the present case, particular significance should be assigned to the judgment of 22 May 2007, ref. no. K 42/05 (OTK ZU No. 6/A/2007, item 49), in which the Constitutional Tribunal held that, even when a certain provision was part of a government bill, but was not passed by the Sejm, it might not - in the course of the Senate's work – be, in a sense, "revived" and treated as part of introduced legislation. The Tribunal stated that: "the subject of the third reading which has not been included in a bill passed by the Sejm may only be historical in character" (p. 777). The said assertion is particularly apt if a given passage from the bill has been rejected by the Sejm at the stage of the first reading. Thus, the previous jurisprudence fully justifies the thesis that the stages of work carried out by the Sejm differ from those of the Senate, *inter alia* since the Sejm analyses a bill, whereas the Senate considers a bill which has already been passed by the "first house" of the Parliament (see L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu,* Warszawa 2006, s. 239; M. Zubik, *op.cit.*, s. 714).

3.3. The main consequence of the adopted interpretation is the assumption that it is inadmissible for the Senate to propose amendments which go beyond the scope of matters regulated in a bill passed by the Sejm and referred to the Senate for consideration. Since the judgment of 23 November 1993, ref. no. K 5/93 (OTK of 1993, part 2, item 39), the Constitutional Tribunal has maintained a consistent stance that: "amendments proposed by the Senate are clearly limited in scope. They may be formal and legislative as well as substantive in character; however, they must directly refer to matters that have been the subject of regulation in the text referred to the Senate", they may not "concern issues which did not at all constitute the subject of consideration by the Sejm", and may not enable "some authorities that enjoy the right to introduce legislation (e.g. the government) to bypass the earlier stages of the legislative process" (p. 387, 389; see also the subsequent judgments of: 9 January 1996, Ref. No. K 18/95, OTK ZU No. 1/1996, item 1 as well as 13 January 1998, ref. no. K 5/97, OTK ZU No. 1/1998, item 3). In the above-mentioned judgment of 23 February 1999, ref. no. K 25/98, the Tribunal concluded that: "the introduction of such amendments into the text of a bill passed by the Sejm destroys its legislative identity and leads to a situation where – at a very advanced stage of legislative work – a text emerges with a completely different scope of the subject of regulation" (p. 140).

3.4. It is assumed that the scope ratione materiae of a bill passed by the Sejm determines the "width" of admissible amendments proposed by the Senate. However, in its previous jurisprudence, the Tribunal has stated that an amendment proposed by the Senate may, in an unrestricted way, modify matters already included in a bill passed by the Sejm; thus, there are no restrictions as to the "depth" of the Senate's amendments. As the Tribunal has stated, "within the scope of the subject matter of the bill passed by the Sejm, amendments proposed by the Senate may provide for solutions which are alternative (contrary to the content passed by the Sejm). However, the said alternativeness (contrariness) of subject matter included in the Senate's amendment must refer to the text of the bill passed by the Sejm that was referred to the Senate for consideration (the judgment of 20 July 2006, Ref. No. K 40/05, OTK ZU No. 7/A/2006, item 82, p. 825 as well as the judgment of 19 September 2008, Ref. No. K 5/07, OTK ZU No. 7/A/2008, item 124, p. 1273).

An apt conclusion to the above analysis, which points out risks arising from the different wording of the scope of the Senate's amendments, is the view presented by

P. Winczorek, who states that: “If the Senate tried to propose amendments to a different bill than the one referred to the Senate by the Marshal of the Sejm, the Senate would violate the constitutional provisions concerning the right to introduce legislation, the provisions on the three readings of a bill in the Sejm, as well as the provisions setting requirements as to a majority required for the Sejm to pass a bill (a majority vote), thus forcing Sejm Deputies to summon an absolute majority to reject the said amendments” (a gloss to the judgment in the case K 25/98, *Państwo i Prawo* Issue No. 6/1999, p. 103).

3.5. The said restriction of the scope of the Senate’s admissible amendments - delineated by the scope of a bill passed by the Sejm - which determines the “width” thereof, is general in character in a sense that it follows from the provisions of the Constitution that regulate the ordinary legislative procedure and, therefore, it concerns work on all bill passed by the Sejm. In the light of the Tribunal’s jurisprudence, the said restriction gains an additional basis, due to the character of the bill to be enacted or due to the procedure for the consideration thereof. In the case of the first situation, it should be deemed that limiting the scope of the Senate’s interference is even more justified in the legislative process that concerns an amending bill. In such a case, undoubtedly, the possibility of proposing amendments which directly refer to the amending bill is ruled out, if they exceed the scope set by the bill passed by the Sejm. The fact that the bill to be enacted is an amending bill does not justify the introduction of other changes, by means of the Senate’s amendments, in the amended Act, which were not provided for in the amending bill passed by the Sejm. As it was adopted by the Tribunal in its judgment of 24 June 2002, ref. no. K 14/02 (OTK ZU No. 4/A/2002, item 45): “A much narrower scope for shaping the subject matter regulated in a bill by the Senate’s amendments are provided for in the context of a bill amending a binding statute, especially when the scope of amendments is inconsiderable” (p. 645).

3.6. By contrast, when it comes to restrictions arising from the special legislative procedure, they are imposed by Article 123 of the Constitution, which concerns proceedings in the case of a bill classified as urgent. In the above-mentioned judgment of 9 January 1996, ref. no. K 18/95, the Tribunal stated that: “in the case of examining a bill classified as urgent, Sejm Deputies may not introduce amendments which randomly broaden the scope of statutory regulation going beyond the scope of matters included in a bill classified as urgent and introduced by the Council of Ministers” (p. 14). The remark

should be elaborated on, by emphasising that the broadening the scope of a regulation classified as urgent is definitely inadmissible as part of amendments proposed by the Senate, i.e. at the final stage of legislative work.

4. The assessment of the challenged amendment in the light of the constitutional law.

4.1. The Constitutional Tribunal has fully maintained its previous jurisprudence as regards its characteristics of the Senate's amendments to a bill passed by the Sejm. However, it is impossible to verify in abstract terms whether the "width" of amendments does not go beyond the admissible limits. The criteria formulated in the jurisprudence with regard to the admissibility of introducing amendments at the stage of the Senate's examination of the bill passed by the Sejm always refers to particular legislative proceedings; restrictions should each time be examined in the light of matters which they concern. The Tribunal draws attention to the fact that, in the present case under examination, there was the accumulation of all factors limiting the scope of admissible amendments proposed by the Senate.

First of all, although the original bill, submitted to the Sejm by the Council of Ministers, contained two provisions regulating the restriction of access to public information, due to the negotiating position of the state, the said provisions were rejected already at the stage of first reading and were not the subject of further legislative work in the Sejm. Thus, one may not state that the regulation introduced as a result of the Senate's amendment, due to its virtually identical content (the difference when juxtaposed with the government's draft of the provision amounted to different wording as well as to the premisses of the scope and period of the restriction), in a sense, constituted the continuation of the legislation introduced by the government. The Senate's amendment may not be made legitimate by the content of the legislation introduced by the government in its original shape, for the provisions which were introduced by means of the said amendment were rejected by the Sejm. In the light of the view hitherto presented by the Tribunal, it should be concluded that the original version of the government's bill has merely a historical character and, under no condition, its content may be regarded as one that sets the substantive scope of the Senate's admissible amendments. On the contrary, the said scope was restricted by the content of the bill referred to the Senate for consideration. As the Marshal of the Sejm has pointed out, it is significant that the bill passed by the Sejm

and referred to the Senate contained no provisions concerning the restriction of access to public information. The addition of provisions regulating such a restriction, by means of an amendment proposed by the Senate, was tantamount to the introduction of new content, which had been absent from the bill passed by the Sejm.

Secondly, it should be emphasised that the bill referred to the Senate was an amending bill, and thus, by its nature, it was aimed at amending the passages of the amended Act indicated therein, which had certain normative content. In the present case, additionally, the aim of the changes was specified very strictly, as it was determined by the necessity to implement the Directive 2003/98/EC, which required the introduction of another procedure for accessing public information into Polish law (it was about the rules for "re-use", as it was stated in the explanatory note for the amending bill and as it was ultimately specified in the bill passed by the Sejm).The subject matter of the bill passed by the Sejm and referred to the Senate was thus narrow and determined by the aim of the amending bill; one may say that it was monothematic. Rocki's amendment, which introduced the restriction of access to public information that was not regulated by statute, in an obvious way exceeded the scope of the subject matter considered by the Senate, and – with the complete disregard for the aim of the amending bill classified as urgent – has considerably changed the Act on Access to Public Information.

Thirdly, one should note that the government's bill amending the Act on Access to Public Information was classified and considered as urgent, which - in the light of the Tribunal's jurisprudence – constituted another argument for stringent rendering of the scope of admissible modifications. Rockie's amendment definitely went beyond the scope of the subject matter which – due to international obligations that bind Poland – justified the consideration of the government's bill as an urgent one. Thus, this procedure for enacting a bill was in a sense abused so that a provision could be introduced into the amending bill, the enactment of which did not require the procedure for bills classified as urgent.

4.2. In conclusion, the Tribunal shares the view, presented by the applicant, the Sejm and the Public Prosecutor-General, that the challenged provision concerned the subject matter that had not been regulated in the bill passed by the Sejm on 31 August 2011, i.e. it comprised new normative content in relation to the subject matter of the amending bill. The Senate was authorised only to act within the scope of certain normative subject matter set by the content of the bill passed by the Sejm on

31 August 2011. The provisions challenged by the President have undoubtedly went beyond the said scope, by introducing new content into the bill passed by the Sejm. The introduced changes – restrictions on access to public information that had not been provided for in the amending bill – were to such an extent separate that it is impossible to regard them as changes fulfilling the same objective as the one intended by the bill passed by the Sejm. Consequently, the Constitutional Tribunal states that the Senate's amendments, consisting in adding paragraph 1a to Article 5 as well as in assigning new content to paragraph 3 in that Article of the Act on Access to Public Information, exceeded the constitutionally admissible scope.

4.3. In addition to the above findings, the Tribunal points out that the Sejm was notified about constitutional reservations about the amendments (this is also confirmed by remarks voiced by a representative of the Legislative Bureau of the Sejm at the sitting of the Committee on Administration and Internal Affairs on 15 September 2011), despite that the Sejm did not reject them. Therefore, the Constitutional Tribunal needs to analyse whether, in the course of examining the Senate's amendments by the Sejm, the excessively broad scope of the amendments was not, in a sense, validated by the occurrence of new circumstances.

As the Constitutional Tribunal stated in the above-mentioned judgment in the case K 25/98: "the adoption of the new bill which includes amendments proposed by the Senate to the bill passed by the Sejm, pursuant to Article 121(3) of the Constitution – due to the fact that they were not rejected by an absolute majority vote – does not result in the said validation of the infringed procedure for legislative proceedings" (p. 141). Thus, since the Sejm may not introduce amendments to amendments proposed by the Senate (but may only adopt them or reject them), possible validation of an amendment introduced in infringement of the standards of the legislative procedure would result in the restriction of the Sejm's role in the process of enacting new law. The Sejm may not refrain from considering amendments proposed by the Senate, even if they exceed the scope of admissible amendments to a given bill passed by the Sejm. By contrast, an assessment whether the Senate has gone beyond the said admissible scope is solely carried out by the Constitutional Tribunal. The said view was adopted in the judgments in the cases K 14/02 and Kp 1/08 (the judgment of 4 November 2009, OTK ZU No. 10/A/2009, item 145, p. 1571), and the bench adjudicating in the present case accepts and upholds it. Therefore, it should be concluded that the adoption of the Senate's amendments, pursuant to Article 121(3) of the Constitution - due to

the fact that they were not rejected by an absolute majority vote - does not result in the said validation of the infringed procedure for legislative proceedings, for it is incompatible with the role set for the Senate in the legislative process by the Constitution.

5. The conclusion.

In the view of the Constitutional Tribunal, the rules for legislative proceedings which have been regulated in the Constitution constitute procedural guarantees for the enactment of law in a democratic state ruled by law, and thus they play a role in ensuring that the process is carried out with particular caution, in the context of existence and observance of institutional requirements for comprehensive examination of legislative proposals before they become binding law. Shortening or simplifying the legislative process falls outside the scope of the autonomy of the Sejm and Senate, even if the required majority votes in favour of that. The introduction of certain regulations at an inappropriate stage of legislative proceedings, by authorised persons participating in the legislative process, is tantamount to an infringement of constitutional guarantees regarding the enactment of law. Thus, this is the way in which the Senate's introduction of amendments to the amending bill, which comprised solutions going beyond the scope of the subject matter of the bill, should be classified in the present case.

The Tribunal emphasises that the Senate has the power to introduce amendments which introduce far-reaching legislative changes, in a situation where it deems it necessary, while examining a bill passed by the Sejm. However, the appropriate procedure in that regard should be the exercise of the right to introduce legislation, pursuant to Article 118(1) of the Constitution. This procedure is also explicitly provided for in Article 69(1) of the resolution of the Senate of the Republic of Poland of 23 November 1990 - the Rules of Procedure of the Senate (Official Gazette - *Monitor Polski* (M. P.) of 2002 No. 54, item 741, as amended), in accordance with which if, in the course of legislative work on a bill passed by the Sejm, a Senate committee recognises a need to introduce legislative changes that go beyond the scope of the subject matter of the bill under consideration, the committee may file a motion to introduce legislation, with a draft resolution, where the Senate accepts the bill passed by the Sejm without amendments, introduces amendments to the bill or rejects the bill, as well a relevant new bill.

Taking the above remarks into consideration, it should be concluded that the allegation of the Senate's infringement of the legislative procedure specified by the

Constitution in the course of work on the challenged amending Act is justified. However, as it has been stressed at the beginning, the Tribunal did not assess the substantive content of the challenged provisions, but merely the way in which they had been introduced into the Act; in the operative part of the judgment, the Tribunal has indicated that the passages of the amending Act, challenged by the President, are unconstitutional by virtue of the fact that they add new provisions into the Act on Access to Public Information, regardless of the requirements set in Article 121(2) in conjunction with Article 118(1) of the Constitution.

For the above reasons, the Constitutional Tribunal has adjudicated as in the operative part of the judgment.