Judgment of 24th March 2004, K 37/03

DEPUTIES' AMENDMENTS TO A BILL DURING PARLIAMENTARY DISCUSSION THEREOF. PROMULGATION OF A BILL FOLLOWING THE DATE OF ITS ENTRY INTO FORCE

Type of proceedings: Preliminary review of an Act **Initiator:** President of the Republic of Poland	**Composition of Tribunal:** Plenary session	**Dissenting opinions:** 0

Legal provisions under review	**Basis of review**
Organisational and competency-related alterations adopted as a result of amendments submitted by Deputies to a government bill, during Parliamentary discussion thereof, which were unanticipated in the original version of the bill (concerning different matters) [Real Estate Management Act 1997 and Certain Other Acts Amendment Act 2003 – submitted to the President of the Republic for signature: Article 2(1)-(7) and Article 2(9)-(13) together with Article 9(1) point b, Article 9(3) point b and Article 9(11)]	Specification of the class of subjects authorised to introduce legislation Principle of three readings of a bill in the Sejm Specification of the class of subjects authorised to introduce amendments in the Sejm [Constitution: Article 118(1) and Article 119(1) and (2)]
Specifying the entry into force of some provisions of the aforementioned Act, as of 30th December 2003, occurring prior to promulgation of the Act in the Journal of Laws [*Ibidem*: Article 19 *in fine*]	Rule of law Conditioning the entry into force of a normative act upon the promulgation thereof [Constitution: Article 2 and Article 88(1)]

The President of the Republic of Poland challenged, within the preliminary review procedure (Article 122(3) of the Constitution), certain parts of a bill submitted to him for signature (provisions indicated in point 1 of the Tribunal's ruling). The provisions in question were inserted into the bill as a result of amendments submitted by Deputies whilst the Sejm (the lower chamber of Polish Parliament) was considering a draft submitted by the Council of Ministers. According to the aforementioned draft, the bill was to introduce amendments to the Real Estate Management Act 1997. The challenged amendments meant that the bill would also modify the status of the Central State Geodesist (*Główny Geodeta Kraju*), one of the organs of central government administration, by transforming it into an auxiliary organ of the Minister for construction and management of local land and housing.

The President's refusal to sign the bill and referral thereof to the Constitutional Tribunal (on 22nd December 2003) meant that, pursuant to Article 19 *in fine*, the entry into force of some of the challenged provisions – on 30th December 2003 – occurred prior to the date on which this present Tribunal judgment was issued. Thus, these provisions entered into force prior to the date on which the President signed the bill (with the omission of those provisions found by the Tribunal to be inconsistent with the Constitution) and on which it was promulgated in the Journal of Laws. Accordingly, the second presidential allegation related to an alleged infringement of the principle of non-retrospective effect of law and constitutional requirements for promulgation of legal provisions.

RULING

1. Articles 2(1)-(7), 2(9)-(13), 9(1) point b, 9(3) point b and Article 9(11) of the Act of 28th November 2003, submitted for signature by the President of the Republic of Poland, do not conform to Article 118(1) and Article 119(1) and (2) of the Constitution.

2. Article 19 *in fine* of the aforementioned Act does not conform to Article 2, read in conjunction with Article 88(1), of the Constitution.

3. The provisions indicated in points 1 and 2 are not inseparably connected with the whole Act.

PRINCIPAL REASONS FOR THE RULING

1. The Constitutional Tribunal's competence to adjudicate upon the conformity of a statute with the Constitution, based on Article 188(1) of the Constitution, comprises not only an examination of the contents of the statute but also requires the ascertainment of whether or not the statute was issued in conformity with provisions governing the legislative procedure (cf. Article 42 of the Constitutional Tribunal Act 1997). In the latter case, the facts concerning the procedure for the Sejm's consideration of the challenged statute are of essential significance in proceedings before the Tribunal.

2. Constitutional norms indicate the existence of three distinct institutions: the introduction of legislation (Article 118); introducing amendments to a bill whilst it is being considered by the Sejm (Article 119(2) and (3)); and Senate (the upper chamber of Polish Parliament) amendments to a bill already adopted by the Sejm (Article 121(2) and (3)). The notion of an "amendment" – which includes amendments submitted by the sponsor (i.e. promoter) of the bill during the Sejm's consideration thereof (auto-amendments), amendments made by the Council of Ministers or by Deputies and amendments submitted by the Senate to a bill already adopted by the Sejm – must be interpreted in such a manner so as not to efface the distinction between, on the one hand, an amendment and, on the other hand, the introduction of legislation. Such an interpretation would constitute an evasion of the constitutional requirements concerning the right to introduce legislation.

3. The right to introduce legislation, stemming from the Constitution, implies an obligation for the Sejm to consider the submitted bill. Whilst it is true that the Constitution does not impose any deadlines on the Sejm, in the light of Article 119, read in conjunction with Article 118, of the Constitution, it may not be assumed that the Sejm has merely a right, as opposed to an obligation, to consider the submitted bill (i.e. that it is authorised to choose whether to consider the bill or not). In consequence, the Sejm should adopt a position on each properly submitted bill.

4. When an authorised subject exercises the right to introduce legislation, this does not permit the Sejm to adopt a statute whose contents are unrestrainedly defined during the course of considering the submitted bill. Provisions governing the legislative procedure, and in particular Article 119(1) of the Constitution (the principle of three readings of a bill in the Sejm), determine the permissible scope and "depth" of amendments. At each stage of the legislative procedure, the Sejm should consider the same bill – in a substantive, as opposed to a merely technical, sense. Accordingly, the "scope-identity" of the bill under consideration is necessary. Within thus designated

limits it is even permissible to introduce amendments completely changing the direction of solutions proposed by the entity having exercised its right to introduce legislation. Such amendments must, however, as a matter of principle fall within the subject-matter of the bill originally submitted by the authorised subject and submitted for first reading. Departure from the substantive scope of the bill, as specified by its sponsor, is only permissible where the contents of the amendment remain strictly connected with the subject-matter of the bill, especially where such an amendment proves necessary for full realisation of the sponsor's concept.

5. The very notion of a statute assumes that it is a legal act governing a certain sphere of social life and is constructed in a certain systematic, rational and logical manner. Accordingly, a statute should not be a legal act comprised of unrelated provisions, accidentally consolidated into one act despite the absence of any substantive interrelationship (cf. § 2, § 3(2) and § 3(3) of the annex to the Prime Minister's Regulation 2002 concerning "Principles of the Legislative Technique"). This results in a general prohibition on unrestrainedly expanding the contents of bill in the course of legislative proceedings by the addition of legal solutions unrelated to the subject-matter of the bill.

6. Use of the word "Deputies" (in the plural form), within Article 119(2) of the Constitution, does not constitute an obstacle to assuming, in accordance with parliamentary tradition dating back to the inter-war period, that the right to introduce amendments is an individual right of each Deputy, in contradistinction to the right to introduce legislation which is vested in, and exercised by, a group of Deputies collectively (Article 118(1)).

7. The principle of the Sejm's autonomy to establish its own rules of procedure, stemming from Article 112 of the Constitution, does not signify that this organ was vested with the right to engage in legal interpretation of the constitutional concepts concerning parliamentary law.

8. The Geodesic and Cartographic Law Act 1989 represents the legal basis for the functioning of the Central State Geodesist, as one of the organs of central government administration. Modification of the legal status of this organ, together with the related alterations to its competencies and organisation envisaged by the challenged 2003 Act, have no significant formal-legal or substantive relationship with the amendments proposed by the Council of Ministers, as sponsor of the challenged bill, to the Real Estate Management Act 1997. The introduction of such provisions, originally lodged in the guise of amendments submitted by Deputies whilst the Sejm was considering the aforementioned government bill, amounted to an infringement of the legislative process, in the light of Article 118 and Article 119 of the Constitution.

9. A legal provision of a statute, stating that certain provisions specified therein shall enter into force at a date preceding promulgation thereof in the Journal of Laws, fails to conform to Article 2 of the Constitution, since it evidently infringes the principle of non-retrospective effect of law, stemming from the rule of law principle. For the same reasons, it is also inconsistent with Article 88(1) of the Constitution.

10. Article 19 of the reviewed Act (of 28th November 2003) states that the Act shall enter into force three months following promulgation thereof, save for certain provisions mentioned in the final part of this Article, which were to enter into force on 30th De-

cember 2003. Such stipulation of the date of an Act's entry into force is, whilst worthy of criticism in the light of the principle of correct legislation, not *per se* inconsistent with the Constitution. Nevertheless, since 30th December 2003 had already passed by the time the Constitutional Tribunal reviewed the aforementioned matter within preliminary review proceedings, the constitutional evaluation thereof is negative. The challenged provision's failure to conform to the Constitution does not stem directly from the wording of Article 19 of the Act but, rather, has a subsequent character – it arises because the President exercised the right to initiate preliminary review of a statute's conformity with the Constitution. This presidential referral leads to suspension of the time-limits for signature of a bill and promulgation thereof in the Journal of Laws (Article 122(6), read in conjunction with Article 122(2), of the Constitution).

11. The consequence of upholding the challenge to the constitutionality of Article 19 *in fine*, representing *lex specialis* in relation to the general norm contained in the first part of that provision, is that the scope of application of the general norm is extended. Accordingly, all provisions of the 2003 Act will enter into force three months following the date of promulgation thereof in the Journal of Laws.

12. It is incorrect, in an application lodged before the Tribunal (also in preliminary review proceedings), to use the expression: "to declare conformity of the statute with the Constitution". Given the existence of a presumption that the statute conforms to the Constitution, it would be superfluous for the applicant to request the Tribunal to declare the existence of such conformity. Article 122(3) the Constitution states that the President may apply to the Constitutional Tribunal for "an adjudication upon its [i.e. the statute's] conformity to the Constitution". Correspondingly, Article 188 of the Constitution endows the Tribunal with the authority to "adjudicate regarding the conformity of statutes and other legal provisions with the Constitution". An adjudication "upon (regarding) the conformity" assumes the possibility to issue various rulings, in particular as to the conformity or non-conformity of a provision. Nevertheless, the applicant's certainty, or at least serious and justified doubts, as to the conformity of the statute with the Constitution always represents the starting point. An "affirmative" application, lodged merely to confirm the President's opinion that a statute conforms to the Constitution, would be inadmissible pursuant to Article 126(2) of the Constitution.

13. In the present case, it stems from the President's application that the applicant considers that part of the statute fails to conform to the Constitution, which is why the request to "declare conformity" must be understood as a request to review the constitutionality of certain provisions of the challenged Act.

14. The Constitutional Tribunal reviews a legislative act only to the extent indicated by the applicant (cf. Article 66 of the Constitutional Tribunal Act). Accordingly, only those normative provisions challenged by the applicant, and to which the applicant's allegations refer, may represent the subject of review. When reconstructing the contents of the challenged norm, if it should prove necessary for the Tribunal to take to take into consideration other parts of the same statute which have not been expressly indicated by the applicant, this does not amount to the Tribunal exceeding the limits of the application.

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. 88. 1. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.

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. 118. 1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
3. Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

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. 121. 1. A bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm.
2. 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.
3. A resolution of the Senate rejecting a bill, or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of Deputies.

Art. 122. […] 2. The President of the Republic shall sign a bill within 21 days of its submission and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).
3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.
4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.
[…]
6. Any such reference by the President of the Republic to the Constitutional Tribunal for an adjudication upon the conformity of a statute to the Constitution, or any application for reconsideration of a bill, shall suspend the period of time allowed for its signature, specified in para. 2, above.

Art. 126. […] 2. The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.

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. 42. The Tribunal shall, while adjudicating on the conformity of the normative act or ratified international agreement to the Constitution, examine both the contents of the said act or agreement as well as the power and observance of the procedure required by provisions of the law to promulgate the act or to conclude and ratify the agreement

Art. 66. The Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint.