

Procedural decision of 25<sup>th</sup> October 2005, [K 37/05](#)  
**INABILITY TO CHALLENGE A STATUTE PRIOR TO PUBLICATION.  
THE EFFECT OF EXPIRY OF PARLIAMENT'S TERM OF OFFICE  
ON PROCEEDINGS BEFORE THE TRIBUNAL INITIATED  
BY A GROUP OF SENATORS**

Type of proceedings: <a href="#">Abstract review</a> Initiator: Group of Senators	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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On 5<sup>th</sup> September 2005, members of the Senate (i.e. the upper chamber of the Polish Parliament) submitted an application challenging a provision of the Act Amending the Nurse and Midwife Professions Act and the Physician and Dentist Professions Act 2005, which was published in the Journal of Laws on 12<sup>th</sup> September 2005.

Insofar as concerns the subject-matter of point 4 below, this procedural decision refers to a line of Tribunal jurisprudence established during previous parliamentary terms of office, according to which the discontinuation of parliamentary activity, in consequence of the beginning of new terms of office of the Sejm and Senate, also has an impact on proceedings initiated before the Tribunal by Deputies or Senators. In relation to the most recent change of the parliamentary term of office, the Tribunal also pronounced similar procedural decisions in cases numbered [K 31/05](#) (summarised separately), [K 29/04](#) and [K 48/05](#).

#### RULING

**The Tribunal discontinued the proceedings, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act 1997, given that it would be inadmissible to pronounce judgment on this question.**

#### PRINCIPAL REASONS FOR THE RULING

1. In light of Article 88(1) of the Constitution, the publication of a statute is a precondition for its entry into force. Accordingly, a statute (or other normative act) does not represent a source of universally binding law within the meaning of Article 87(1) of the Constitution until it has been properly promulgated.
2. The right, vested in of a group of Senators, to submit applications to the Constitutional Tribunal regarding the conformity of statutes with the Constitution (cf. Article 191(1) point 1 of the Constitution) does not encompass statutes prior to their publication. The only entity entitled to initiate proceedings before the Tribunal regarding the conformity of an unpublished statute is the President of the Republic of Poland who may, prior to signing a statute, submit an appropriate application on the basis of Article 122(3) of the Constitution.
3. The act challenged in the present case, adopted by the Sejm (following consideration of Senate amendments) on 29<sup>th</sup> July 2005 and signed by the President of the Republic

of Poland on 23<sup>rd</sup> August 2005, was not published prior to submission of the present application but rather in the Journal of Laws No. 175 of 12<sup>th</sup> September 2005. Accordingly, the application submitted by the group of Senators on 5<sup>th</sup> September 2005 was premature.

4. On the basis of the Decision of the President of the Republic of Poland of 28<sup>th</sup> September 2005, the President convened the first sitting of the newly-elected Sejm for 19<sup>th</sup> October 2005. This signifies that the previous Senate's term of office expired on 18<sup>th</sup> October 2005 (cf. Article 98(1) of the Constitution), on which date the Senators' mandates expired and, *ipso facto*, the initiators – as members of the previous Senate – lost their *locus standi* as regards proceedings before the Constitutional Tribunal. The latter constitutes a prerequisite for discontinuing proceedings on the basis of Article 39(1) point 1 of the Constitutional Tribunal Act.

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

##### Constitution

**Art. 87.** 1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

**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. 98.** 1. The Sejm and the Senate shall be chosen each for a 4-year term of office. The term of office of the Sejm and Senate shall begin on the day on which the Sejm assembles for its first sitting and shall continue until the day preceding the assembly of the Sejm of the succeeding term of office.

**Art. 122.** [...] 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.

**Art. 191.** 1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,

[...]

##### 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.