

Procedural decision of 16<sup>th</sup> July 2003, Pp 1/02  
**AMENDMENTS TO THE ARTICLES OF A POLITICAL PARTY**

<b>Type of proceedings:</b> Preliminary review of the articles of political party <b>Initiator:</b> Warsaw Regional Court	<b>Composition of Tribunal:</b> Plenary Session	<b>Dissenting opinions:</b> 0
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The Warsaw Regional Court keeps a record of all political parties active in Poland, together with the articles of political parties and any amendments made thereto. Where the court has doubts as to the constitutionality of the contents of any such articles, or amendments thereto, it may apply to the Constitutional Tribunal to examine the constitutionality of the political party's purposes.

In 2002, the congress of the political party acting under the name *Samoobrona Rzeczypospolitej Polskiej* ("Self-Defence of the Republic of Poland") adopted amendments to its founding articles. The Chairman of the National Council, Andrzej Lepper, notified these amendments to the Regional Court but the Court did not enter these amendments into the record, since it had doubts as to whether the amendments fulfilled the statutory requirement, contained in Article 8 of the Political Parties Act 1997, that the structure and activity of political parties must conform to the principles of democracy. The court noted that the amended articles granted an extensive array of competencies and powers to the party's Chairman. Although the Chairman is technically elected by the Congress, the election is public and the method of representation and number of Congress delegates is decided upon by the Presidium of the Council, which is in turn appointed by the party's Chairman. Apart from the post of Chairman, no other organ of the party is elected. The Chairman's powers include, inter alia, the summoning of the Ordinary Congress and decision-making in relation to party membership, including the suspension or exclusion of individual members. The Chairman also has the power to amend provisions of the party's articles concerning the proceedings for admission of new members.

The Prosecutor-General, participating in the proceedings before the Constitutional Tribunal, agreed with the Warsaw Regional Court that the challenged amendments to the party's articles were contrary to the principle of democracy within the political party and therefore incompatible with Article 8 of the Political Parties Act 1997. The Prosecutor-General noted, however, that the only permissible grounds for conducting a review on the merits of the constitutionality of political party's articles are those provided for by the Constitution itself, such as Article 11 (freedom to create political parties, founded on the basis of voluntary membership, allowing citizens equality of access to influence the formulation of State policy by democratic means, and regulating the transparency of financing political parties) and Article 13 (prohibiting certain kinds of political parties and other organisations whose programme profiles or activities are described in that provision). Having accepted that Article 11(1) of the Constitution represents the appropriate constitutional basis of review for the purpose of examining the Regional Court's concerns, the Prosecutor-General stated in his conclusion that the

constitutional principles expressed in Article had not been violated.

The Constitutional Tribunal did not undertake a review on the merits of the Regional Court's concerns since, during the course of proceedings before the Tribunal, a resolution was passed by a subsequent Congress of the "Self-Defence" party withdrawing the proposed amendments to the articles of a party. After having received the proper document from the Chairman, Mr Lepper, the Warsaw Regional Court withdrew its application to the Constitutional Tribunal. Although the Tribunal discontinued the proceedings, it first of all took the opportunity to explain a few issues relating to the grounds for, and forms of, constitutional review of the purposes and activities of political parties and the legal significance of registering amendments to the articles of a party in the records kept by the Warsaw Regional Court.

## RULING

**The Tribunal discontinued the proceedings – by reason of the withdrawal of the application by the Warsaw Regional Court, pursuant to Article 39(1) point 2 of the Constitutional Tribunal Act 1997.**

### PRINCIPAL REASONS FOR THE RULING

1. The Constitutional Tribunal's competence to adjudicate on the conformity of purposes or activities of political parties to the Constitution arises from Article 188 point 4 of the Constitution. The procedure for examining these cases is defined in Articles 55-58 of the Constitutional Tribunal Act 1997, which is referred to in Article 43 of the Political Parties Act 1997. Two forms of review performed by the Constitutional Tribunal should be distinguished in light of these provisions: preliminary review and subsequent review. Preliminary review involves the examination – in the procedure provided for examination of applications concerning the constitutionality of normative acts – of a political party's purposes, as expressed in articles thereof and its political programmes, to ensure that such purposes are not unconstitutional (cf. Article 56 of the Constitutional Tribunal Act, read in conjunction with Articles 14 and 21 of the Political Parties Act 1997). Conversely, the activities of a political party are the subject of subsequent review, in accordance with Articles 57 and 58 of the Constitutional Tribunal Act, with provisions of the Criminal Procedure Code being applied as appropriate.
2. Preliminary review may be applied for when the Warsaw Regional Court, being the court of record in respect of political parties, examines a motion for the registration of a political party into the official records (Article 14 of the Political Parties Act 1997) or, as in this case, when a political party applies to register amendments to its articles (Article 21 of the 1997 Act). The Warsaw Regional Court is the initiator of the constitutional review and the proceedings before the Constitutional Tribunal are auxiliary to the main proceedings, whose fate will be decided by the Tribunal's ruling. At the same time, a preliminary review has an abstract character, similar to an examination of the conformity of norma-

tive acts to the Constitution: it is the duty of the Tribunal to interpret the articles, programme and other documents, on which the party's activities are to be based, to analyse these with reference to the party's purposes or principles of activity and, finally, to assess these in the light of constitutional standards. From the very nature of the preliminary review, it is evident that it cannot lead to a declaration that a political party is unlawful, since this may only be done by virtue of subsequent review; the purpose of a preliminary review is to prevent the official registration of political parties which do not fulfil the legal criteria, or to prevent the registration of amendments to articles of a party where such amendments do not meet such criteria (cf. Article 14(3) and Article 21(2) of the Political Parties Act 1997).

3. Although the Polish Constitution of 2<sup>nd</sup> April 1997 came into force later than the Political Parties Act 1997, it did not repeal Articles 14 and 21 of this Act which are procedural in character. From the moment of its entry into force, however, the provisions of the Constitution constituted the substantive legal grounds for evaluating the constitutionality of the purposes or activities of political parties.
4. It is a necessary condition for the entry into force of any amendments to a political party's articles that such amendments shall be registered in the public record of political parties, in accordance with Article 21 of the Political Parties Act 1997. Until the proper registration procedure is completed, a political party must base its activities on the hitherto binding articles, the constitutionality of which has not been challenged. Any party which registers articles which, although complying with the Constitution, is really a "façade", whilst in reality conducting its activities on the basis of other provisions which are incompatible with the Constitution, must count on the possibility that subsequent review proceedings may be brought against it.
5. Procedural letters indicate that, during the Congress of the "Self-Defence" party on 24<sup>th</sup> May 2003, a resolution was passed which altered a resolution of this party's previous Congress, adopted on 7<sup>th</sup> April 2002, in respect of amendments to the articles of a party. The resolution of 24<sup>th</sup> May 2003 indicates that the party withdrew its request to register certain amendments to articles thereof, providing the Chairman of the party with extensive powers, that had prompted the Warsaw Regional Court to make an application to the Constitutional Tribunal for review of these amendments. In executing the second resolution a letter was submitted to the Court, on behalf of the party, withdrawing the "motion to register amendments to the articles of a party". As a result, the Warsaw Regional Court withdrew the application initiating the proceedings before the Constitutional Tribunal in the present case. This results in the discontinuance of proceedings, pursuant to Article 39(1) point 2 of the Constitutional Tribunal Act.

## Provisions of the Constitution and the Constitutional Tribunal Act

### Constitution

**Art. 11.** 1. The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens, and their purpose shall be to influence the formulation of the policy of the State by democratic means.

2. The financing of political parties shall be open to public inspection.

**Art. 13.** Political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be forbidden.

**Art. 188.** The Constitutional Tribunal shall adjudicate regarding the following matters:

[...]

1) the conformity to the Constitution of the purposes or activities of political parties;

[...]

### CT Act

**Art. 39.** 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

[...]

2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;

[...]

**Art. 55.** 1. The Tribunal shall determine the persons appointed to represent a political party on the basis of the act and articles thereof.

2. Where it is impossible to determine who is the person authorised to represent the party or it is impossible to contact such a person or where there has been a change of the authorised person after the application has been filed with the Tribunal, the Tribunal shall consider the person in fact leading the party during the time of undertaking by the party of the activity challenged in the application as non-conformable to the Constitution.

**Art. 56.** The Tribunal shall examine applications concerning the non-conformity to the Constitution of the purposes of political parties specified in their articles or programme on the basis and in the procedure provided for examination of applications concerning the conformity of normative acts to the Constitution.

**Art. 57.** 1. Applications concerning the conformity of activities of political parties to the Constitution shall be examined by the Tribunal by applying as appropriate the provisions of the Code of Criminal Procedure.

2. The burden of proving the non-conformity to the Constitution shall rest with the applicant, who therefore shall present or give notice of evidence indicating such non-conformity.

**Art. 58.** The Tribunal may, in order to collect and record evidence, charge the Public Prosecutor-General with conducting an investigation to a specified extent concerning conformity of the activities of the political party to the Constitution. The provisions of the Code of Criminal Procedure shall apply accordingly to the said investigation. The extent of proceedings determined in the Tribunal's decision shall be binding.