Judgment of 8th March 2000, Pp 1/99

CHAIRMAN'S POWERS WITHIN THE "CHRISTIAN DEMOCRATIC PARTY OF THE THIRD POLISH REPUBLIC"

Type of proceedings: Preliminary review of the articles of political party Initiator: Warsaw Regional Court	Composition of Tribunal: Plenary Session	Dissenting opinions: 0

Legal provisions under review	Basis of review
Competence of the Chairman of the Party to appoint and dismiss the party's regional administration chairmen [Articles of the Christian Democratic Party of the Third Polish Republic: § 30(d)]	Constitutional status of political parties [Constitution: Article 11]

The Warsaw Regional Court maintains 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 regards the constitutionality of the contents of any such articles, or amendments thereto, it may apply to the Constitutional Tribunal to examine their conformity with the Constitution (Article 14 and Article 21 of the Political Parties Act 1997, read in conjunction with Article 188 point 4 of the Constitution).

In the present case, the first one of its kind before the Constitutional Tribunal, the Warsaw Regional Court had doubts regarding the constitutionality of the articles of the Christian Democratic Party of the Third Polish Republic (*Chrześcijańska Demokracja III RP*; the political party associated with Lech Wałęsa). More precisely, such doubts concerned a provision of the articles granting the Chairman of the Party unrestricted competence to appoint and dismiss the party's regional administration chairmen.

The general legal issue dealt with by the Tribunal in the present case concerned the relationship between the new Constitution, which entered into force on 17th October 1997, and the "pre-Constitution" Political Parties Act 1997, which entered into force on 19th September of the same year. The Act stipulates that the Regional Court shall apply to the Constitutional Tribunal where it considers that the articles of a political party seeking registration (Article 14 of the 1997 Act), or amendments to the articles of a registered party (Article 21 of the 1997 Act), violate the statutory requirement that the structure and activity of political parties be consistent with principles of democracy (Article 8 of the 1997 Act). The question arose as to whether, and to what extent, provisions of the new Constitution concerning political parties (Articles 11 and 13) and proceedings before the Constitutional Tribunal (Articles 188 *et seq*.), resulted in the repeal of the aforementioned statutory provisions.

RULING

§ 30(d) of the articles of the Christian Democratic Party of the Third Polish Republic, insofar as referring to the appointment and dismissal of that party's regional administration chairmen, conforms to Article 11 of Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In principle, the entry into force of the new Constitution has no impact on the binding force of legal norms established prior to that moment. Within our legal culture, it is typical for the new constitutional legislator to "take over" norms existing prior to the adoption of a new Constitution ("pre-Constitution" norms), rather than rebuild the entire legal system anew. Nevertheless, the constitutional legislator does not take over and legitimise all hitherto operative legal norms, but only those which do not infringe the new Constitution.

2. The impact of the entry into force of a new constitutional norm on the continuing binding force of an earlier (pre-Constitution) statutory norm, which fails to conform to the new constitutional norm, depends on the relationship between the content of the new constitutional norm and the content of the pre-Constitution norm. The direct repeal of a pre-Constitution statutory provision, in accordance with the *lex posterior derogat legi priori* principle, occurs only where symmetry of contents exists between the statutory norm and the new constitutional norm. Such symmetry occurs where, in the formal sense, the scopes of contents of both norms are identical and where, in the material sense, they contain mutually exclusive, logically contradictory contents. As regards other types of unconstitutionality of a pre-Constitution statute (so-called secondary unconstitutionality), only a Constitutional Tribunal judgment may lead to the unconstitutional norm losing binding force.

3. No provision of the 1997 Constitution governs the procedure for reviewing the constitutionality of a political party's articles, or amendments thereto, prior to their entry into the court record of political parties; in particular, no such regulation may be derived from Article 191 or Article 193 of the Constitution. Accordingly, the new Constitution did not repeal Article 14 nor Article 21 of the Political Parties Act 1997 governing the procedure for such review, which may be referred to as "preventive" (preliminary), since it prevents the occurrence of unconstitutional events.

4. It is necessary to distinguish preliminary (preventive) review from the classic type of proceedings before the Constitutional Tribunal, as provided for in Article 188 point 4 of the Constitution, i.e. subsequent review. The latter may be performed during the lifetime of a political party, where an authorised entity has doubts as to the constitutionality of the party's purposes, as expressed in its articles or political programme. In such a case, proceedings before the Constitutional Tribunal may only be initiated by the entities specified in Article 191(1) of Constitution. The court maintaining the record of political parties, however, falls outside that list.

5. From the moment of the entry into force of the new Constitution, its provisions represent the substantive legal grounds for the review envisaged in Article 188 point 4 – in respect of both preliminary and subsequent review.

6. On the one hand, a political party is a structure for realising the freedom of association (Article 58(1) of the Constitution) and, in particular, for realising the aspiration for organised co-operation in the exercise of power. On the other hand, it constitutes an element of the political system, since it is capable of influencing the formulation of State policy (cf. Article 11 of the Constitution). Since political parties have their roots in the individual's freedom to realise their political aspirations within organised structures and since they exert an influence on State policy, certain general constitutional

assumptions arise concerning the freedom to create, and functioning of, political parties, as well as the permissibility of limiting such freedom.

7. Pursuant to Articles 11, 13 and 58 of the Constitution, any limitations on exercising the freedom to create, and functioning of, political parties may only stem directly from the Constitution. Statutory provisions may not constitute a source of such limitations; at most, they may clarify such restrictions.

8. The relationship between a political party's internal structures and methods of activity and its role and methods in influencing formulation of State policy, is relative in nature. Accordingly, the freedom to shape a political party's internal structures and principles of its activity may not be limited, provided that exercise of this freedom does not collide with the party's fulfilment of its constitutional role and does not directly result in undemocratic methods of influencing State policy. This may only be evaluated in concrete cases and after having taken into account the entirety of a political party's purposes, activities and articles. The prohibitions contained in Article 13 of the Constitution are the only constitutional limitations – abstract and absolute – on the freedom to shape a political party's internal structures and principles of activity.

9. The requirement, laid down in Article 8 of the Political Parties Act 1997, for a political party's internal structures and principles of activity to be shaped "in accordance with democratic principles, in particular by ensuring the transparency of such structures, the appointment of all party organs by means of free election and the adoption of resolutions by a majority of votes", must be interpreted in conformity with the Constitution (cf. points 6-8 above).

10. In reviewing the challenged provisions of the articles of the Christian Democratic Party of the Third Polish Republic in the light of all of the articles' provisions governing that party's authorities, doubts arise as regards the conformity with democratic principles of the manner for shaping the party's internal structures, which to a noticeable degree depart from the principles of electing all party organs and, instead, vest the party Chairman with special creative rights (as regarding appointment to such structures, and dismissal therefrom). Nevertheless, no clear and unambiguous inconsistency arises between the reviewed provision and Article 11 of the Constitution.

Provisions of the 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. 58. 1. The freedom of association shall be guaranteed to everyone.
2. Associations whose purposes or activities are contrary to the Constitution or statutes shall be prohibited. The courts shall adjudicate whether to permit an association to register or to prohibit an association from such activities.
3. Statutes shall specify types of associations requiring court registration, a procedure for such registration and the forms of supervision of such associations.

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, para. 1.

Art. 191. 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,
2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
3) the constitutive organs of units of local self-government;
4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
5) churches and religious organizations;
6) the subjects referred to in Article 79 to the extent specified therein.

Art. 193. Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.