109/8/A/2006

JUDGEMENT
of 22nd September 2006
File reference No. U 4/06*

In the name of the Republic of Poland

The Constitutional Tribunal composed of the following bench:

Andrzej Mączyński – as Chairman
Jerzy Ciemniewski
Teresa Dębowska-Romanowska
Marian Grzybowski
Adam Jamróz
Wiesław Johann
Biruta Lewaszkiewicz-Petrykowska
Ewa Łętowska
Marek Mazurkiewicz
Janusz Niemcewicz
Jerzy Stępień
Mirosław Wyrzykowski – as Judge Rapporteur
Marian Zdyb – as Judge Rapporteur
Bohdan Zdziennicki,

Recording Clerk: Grażyna Szałygo,

having reviewed the case, with the participation of the Applicant as well as of the Sejm and the Prosecutor General, at the hearing on 21st September 2006, concerning the application of a group of Deputies requesting to consider the conformity of:
Article 1 and Article 2 of the Resolution of the Sejm of the Republic of Poland of 24th March 2006 on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006 (Official Gazette of the Republic of Poland – Monitor Polski (M. P.) No. 24, item 265) to Article 2, Article 7 and Article 95 paragraph 2, Article 111 paragraph 1, Article 175 paragraph 1, Article 203 paragraph 1 and Article 227 of the Constitution,

has adjudicated as follows:

* The Sentencing part of the Judgement was published on 28 September 2006 in the Official Gazette of the Republic of Poland – Monitor Polski No. 66, item 680.

1. Article 2 point 1 of the Resolution of the Sejm of the Republic of Poland of 24th March 2006 on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006 (Official Gazette of the Republic of Poland – Monitor Polski (M.P.) No. 24, item 265)**:**

a) insofar as it includes within the Committee's object of examination the correctness and purposefulness of the activities of the National Bank of Poland and the organs thereof, as well as the activities of the President of the National Bank of Poland acting as the Chairperson of the Commission for Banking Supervision, does not conform to Article 227, Article 2, Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution of the Republic of Poland,

b) insofar as it concerns the representative of the President of the Republic of Poland acting as a member of the Commission for Banking Supervision, does not conform to Article 2, Article 7, Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution, and is not inconsistent with Article 227 of the Constitution.

2. Article 2 points 2 and 4 of the Resolution, referred to in point 1 above, do not conform to Article 2, Article 7 and Article 111 paragraph 1 of the Constitution, and are not inconsistent with Article 95 paragraph 2 and Article 227 of the Constitution.

3. Article 2 point 3 of the Resolution, referred to in point 1 above, does not conform to Article 227, Article 2 and Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution.

4. Article 2 point 5 of the Resolution, referred to in point 1 above, in the part concerning the persons acting on behalf of the Commission for Banking Supervision and the General Inspectorate of Banking Supervision, does not conform to Article 227, Article 2 and Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution.

5. Article 2 point 6 of the Resolution, referred to in point 1 above, in the part containing the words: "and other persons occupying the highest State posts", does not conform to Article 2, Article 7, Article 95 paragraph 2, Article 111 paragraph 1 and Article 227 of the Constitution.

6. Article 2 point 7 of the Resolution referred to in point 1 above does not conform to Article 2, Article 7, Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution, and is not inconsistent with Article 227 of the Constitution.

7. Article 2 of the Resolution referred to in point 1 above, in the parts specifying the time period relating to the object of the examination from 4th June 1989 to 19th March 2006, does not conform to Article 2 of the Constitution.

8. Article 2 of the Resolution, referred to in point 1 above, is not inconsistent with Article 175 paragraph 1 and Article 203 paragraph 1 of the Constitution.

Moreover the Constitutional Tribunal:

pursuant to Article 39 paragraph 1 point 1, read in conjunction with paragraph 2, of the Constitutional Tribunal Act of 1st August 1997 (Journal of Laws – Dz. U. No. 102, item 643, No. 48, item 552 and No. 53 item 638 of 2000, No. 98, item 1070 of 2001, as well as No. 169, item 1417 of 2005) has decided to discontinue proceedings regarding the review of Article 1 of the Resolution of the Sejm of the Republic of Poland of 24th March 2006 on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006 (Official Gazette of the Republic of Poland – Monitor Polski No. 24, item 265), given the inadmissibility of pronouncing judgement.

REASONS FOR THE RULING:

I

1. A group of Sejm Deputies in their application of 11th May 2006 challenged Article 1 and Article 2 of the Resolution of the Sejm of the Republic of Poland of 24th March 2006 on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006 (Official Gazette of the Republic of Poland (M.P.) No. 24, item 265, hereinafter referred to as the Resolution of 24th March 2006) as non-conforming to Article 2, Article 7, Article 95 paragraph 2, Article 111 paragraph 1, Article 175 paragraph 1, Article 203 paragraph 1, and Article 227 of the Constitution.

1.1. In justifying the admissibility of examining the case on its merits, the Applicant [a group of Deputies] pointed out that resolutions of the Sejm may constitute the subject of review undertaken by the Constitutional Tribunal, provided that they possess normative character. In the Applicant's opinion, the resolution under review, possesses the necessary features justifying such categorisation thereof, i.e. generality and abstractness. The resolution defines the competencies of the committee, and members thereof; its primary addressees are all Deputies, while the secondary addressees thereof include: banks, persons acting on behalf of the organs enumerated in Article 2 point 5 of the Resolution, persons occupying the highest

State posts within the scope of their activities relating to capital and ownership transformations in the banking sector, private persons and entrepreneurs. The Resolution of 24th March 2006 does not materialise on the day of the appointment of the committee, but sets a particular standard of behaviour for the Deputies implementing thereof, which remains significant throughout the time period of the committee functioning. It constitutes a „point of reference" for further activities undertaken by the committee, State organs performing particular activities entrusted to them by the committee, as well as by courts evaluating the legitimacy of the motion to apply disciplinary measures. According to the jurisprudence of the Constitutional Tribunal, the individual character of a norm shall not be determined by the use of an individual name.

1.2. Pursuant to Article 111 paragraph 1 of the Constitution, the Sejm shall appoint an investigative committee to examine a particular matter. In the Applicant's opinion, it stems from the language interpretation of the above-mentioned provision that the matter constituting the object of committee's examination should, firstly, be of individual character, and secondly, should address a particular, definite event. This finds its confirmation in dictionary definitions of the aforementioned terms, as well as in the content of the opinion of the Bureau of Research of the Chancellery of the Sejm of 20th March 2006. Meanwhile, the scope of committee's activity as defined in the Resolution, remains unclear.

Article 1 of the Resolution of 24th March 2006 specifies two groups of matters defined in a generic manner: decisions concerning capital and ownership transformations, and the activities of banking supervision authorities. The wording of the Resolution makes it difficult to deduce on the types of decisions in question; the object of the committee's examination encompasses an unspecified, potentially very large number of administrative proceedings of various character, which were conducted by banking supervision authorities within the period of time under examination.

Also Article 2 of the Resolution of 24th March 2006 instead of specifying the general framework of the committee's examination laid down in Article 1, extends the object of the examination so as to include matters that fall beyond the scope thereof. Particularly flagrant is vesting the committee with the competence to examine legal mechanisms that might lead to a potential conflict of interests between the role of the President of the National Bank of Poland acting as the Chairperson of the Council for Monetary Policy, and as the Chairperson of the Commission for Banking Supervision, as well as to examine the shape of the banking system "in comparison with other countries, particularly with middle-sized and big European Union countries". The above-mentioned clause not only fails to fulfil the requirement of specificity, but also gives rise to reservations concerning the purposefulness of such examination; in fact, this task is of study, as opposed to investigative, character. In turn, the committee's competence to examine "potential, unauthorised influence of private persons or entrepreneurs on the activities of ministers and other persons occupying the highest State posts in matters relating to decisions concerning capital and ownership transformations (Article 2 point 7 of the Resolution), paralleled with lack of sufficient precision in defining the subjective and

objective scope of its control activities, may lead to the infringement of rights and freedoms guaranteed by the Constitution (e.g. laid down in Article 47). Moreover, the aim of committee's activities, specified in Article 2 point 7 of the Resolution of 24th March 2006, presupposes that the decisions under examination were unlawful, thus undermining the authority of entities competent to take such decisions.

The aim of Article 111 paragraph 1 of the Constitution is, *inter alia*, to guarantee the persons appearing before an investigative committee the effective protection of their rights. This is because an investigative committee has been equipped with far more powerful and "wider" legal instruments than an ordinary committee of the Sejm. Insufficient degree of precision in defining the objective scope of investigative committee's activities may lead to a situation in which persons appearing before the organ are deprived of the possibility to enjoy guarantees provided for by investigative procedures in other proceedings. Given the number of matters that have been defined in an ambiguous or imprecise manner, and which may be subject to examination exercised by the committee, there is a serious threat that proceedings before the organ may be based on an arbitrary and biased choice of matters from within the 17-year long period under examination.

1.3. The contents of the challenged regulations threaten the principle of independence of the central bank, and the principle of the separation of powers. Regardless of the ongoing debate on the former issue, the admissibility of the examination of the National Bank of Poland exercised by an investigative committee – even within the scope not provided for in Article 227 of the Constitution – will result in the infringement of the independence of the central bank in regard to its right to issue money and pursue monetary policy. Setting such a precedent would provide a legal basis for the appointment of further investigative committees of similar scope of activities, which could take the form of a pressure of parliamentary organs on the independence of the central bank. The Parliament may exercise direct control over the National Bank of Poland by means of its committees (Article 22 of the Act on the National Bank of Poland of 29th August 1997, Journal of Laws – Dz. U. of 2005 r. No. 1, item 2 with amendments; hereinafter referred to as the Act on the NBP), as well as indirectly – through the Supreme Chamber of Control; yet, in such cases, the legislator has defined the limits of control that guarantee the independence of central bank.

1.4. In turn, the recognition of the committee's competence to verify and assess the decisions of banking supervision, subject, after all, to administrative courts' scrutiny, could lead to a situation in which the committee would take over the activities of independent courts, and this would result in the infringement of Article 175 of the Constitution.

[…]

III

The Constitutional Tribunal took the following elements into consideration:

1. Sejm resolutions as a subject of Constitutional Tribunal's review.

1.1. Doubts concerning the admissibility of constitutional review in relation to Sejm resolutions. Following the submission of the application to the Constitutional Tribunal, the question arose as to whether it is admissible to review the conformity to the Constitution of the Sejm Resolution of 24th March 2006 on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006 (Official Gazette of the Republic of Poland – Monitor Polski No. 24, item 265, hereinafter referred to as the Resolution of 24th March 2006). Only upon determination that the challenged resolution may be reviewed by the Constitutional Tribunal is it possible to evaluate its content as regards the conformity to the constitutional provisions claimed in the application submitted by a group of Deputies. The source of uncertainty lies in the fact that Article 188 of the Constitution, while enumerating the acts subject to Tribunal's review, does not include Sejm resolutions.

1.2. The meaning of Article 188 point 3 of the Constitution. The possibility to review the constitutionality of Sejm resolutions emerged as a consequence of political changes that commenced in 1989. As a result thereof, the Sejm ceased to be the supreme organ of State authority, and the principle of supremacy of the Constitution has become the foundation of the democratic State ruled by law. This principle shall also apply to Sejm resolutions. The Parliament shall not possess a supreme position over other organs, except for some precisely specified cases, nor shall it hold a monopolistic position in the system of State organs. Such structure has been created so as to avoid the historically known experience. This experience consists in both a risk and real threat of the oversimplified understanding of democracy leading – particularly, if not exclusively – to the omnipotent domination of parliamentary majority. In order to avoid such threat, a system of constitutional democracy, laid down in the Constitution of 1997, has been created.

The superiority of the Constitution shall encompass all Sejm activities, and not only the activities consisting in enacting statues, which are the universally binding normative acts. There are no grounds to assume that by utilising the form of the resolution, the competence of the Sejm shall be unlimited and not subject to scrutiny.

However, the question of who, and in accordance with what procedure, should exercise such control, remains to be solved. The answer to the question is contained in the Constitution itself, in Article 188 thereof. By virtue of that provision it shall be admissible for the Constitutional Tribunal to adjudicate upon the conformity to the Constitution "of legal provisions issued by central State organs". Undoubtedly, the Sejm is a central State organ. Yet, another issue arises here as to whether the Sejm resolution may be categorised as a "legal provision" within the meaning of Article 188 point 3 of the Constitution. If the resolution is a

legal provision, i.e. is normative in nature, it may then be the subject of Tribunal's review regarding the constitutionality and legality thereof. A different view would result in the possibility of the existence of normative acts adopted by the Sejm which would not conform to the Constitution, ratified international agreements or statutes, and which would not be subject to any control. The risk of a Sejm resolution infringing the law may not be excluded, especially as the procedure concerning the adoption of resolutions is less rigorous than the legislative procedure. In order to determine whether or not a Sejm resolution infringes the Constitution, it must become the subject of proceedings (assessment) before the Constitutional Tribunal.

The normative character of resolutions adopted by central State organs and challenged before the Constitutional Tribunal shall, therefore, be determined (preliminary stage) prior to issuing of a judgement on the merits. Where the Tribunal finds, in the course of the undertaken proceedings, that such resolution does not possess the normative character, it discontinues proceedings. However, to find that a resolution does not have the normative character, it is necessary to analyse its contents. The discontinuation of proceedings, given the inadmissibility to pronounce judgement, without analysing the contents of a Sejm resolution would be justifiable, only if the constitutional characteristics of this kind of a legal act precluded normative character thereof.

The Resolution of 24th March 2006, whose only individual provisions have been challenged in the application initiating the present proceedings, satisfies the formal requirements of a normative act. With a title and a beginning, comprising an introduction indicating the legal basis for issuing thereof, the Resolution is composed of four provisions, understood as the graphically distinguished, and marked by subsequent articles, editorial units of a legal text.

The expressions formulated in the Resolution in question – whose contents (as has been mentioned above) shall decide upon the normative character thereof – are inhomogeneous. The provision of Article 1 states that an investigative committee with a specific (defined therein) proper name shall be established. In accordance with the requirement laid down in Article 2 paragraph 3 of the Act of 21st January 1999 on the Sejm investigative committee (Journal of Laws – Dz. U. No. 35, item 321 with amendments; hereinafter referred to as the Act of 21st January 1999, or the Act on the Sejm investigative committee), the following (the most elaborate one) provision of the Resolution (Article 2) defines – in the seven points thereof – the scope of activity of the banking investigative committee. The subsequent article determines the number of Deputies constituting the composition of the committee (10 members), while the last one (Article 4) indicates the date of coming into force of the Resolution.

The Resolution discussed herein does not contain any other supplementary provisions, inclusion of which is statutorily permissible (cf. Article 2 paragraph 3 *in fine* of the Act of 21st January 1999), and which outline the detailed principles of the activities of the committee or specify the term of submission of a report drafted by the organ.

In practice, one legal act may comprise provisions (elements) that, from the perspective of the normative contents thereof, are of inhomogeneous character. Therefore, in the present case, given the scope of challenge against the Resolution of 24th March 2006, the necessity to assess the normative character (as a condition for reviewing the constitutionality of the Resolution on the merits), and hence the analysis of the contents, shall relate to each expression formulated in Article 1 and 2 of the act.

1.3. The discontinuation of proceedings in relation to Article 1 of the Resolution of 24th March 2006 (the act of appointment of the investigative committee). The Act of 21st January 1999 defines, *inter alia*, the elements of the procedure concerning the appointment of investigative committees, as well as the principles shaping the composition thereof. The supplementation and elaboration of these regulations have been contained, primarily, in Section II Chapter 11a of the Resolution of the Sejm of the Republic of Poland of 30th July 1992 – the Rules of Procedure of the Sejm of the Republic of Poland (Official Gazette of the Republic of Poland – Monitor Polski of 2002, No. 23, item 398; hereinafter referred to as: the Sejm's Rules of Procedure).

The provision of Article 136c paragraph 1 of the Sejm's Rules of Procedure stipulates that the process of establishing an investigative committee comprises two phases: adoption of a resolution on the appointment of a committee (which indicates, *inter alia*, the number of committee members), and adoption of a resolution on the initial composition of the committee. Moreover, the adoption of each of the resolutions shall take place on two different dates, thus allowing for a lengthy procedure for the nomination and screening of candidates for committee members, as described in Article 136c paragraphs 2-11 of the Sejm's Rules of Procedure (cf. T. Osiński, K*omentarz do art. 136c regulaminu Sejmu [A commentary to Article 136c of the Rules of Procedure of the Sejm]* [in:] M. Lewandowski, A. Kowalski, T. Osiński, *Sejmowa komisja śledcza. Ustawa z 1999 r. z komentarzem [The Sejm investigative committee. The Act of 1999 with commentary]*, Warszawa 2006, pp. 234-235).

There is no doubt (yet such allegation has not been formulated in the application submitted by the group of Deputies) that the appointment of Deputies to an investigative committee constitutes an act which falls outside the scope of jurisdiction of the Constitutional Tribunal, as defined in Article 188 point 3 of the Constitution. And it is irrelevant whether the appointment has been made – as is the case at present – by way of a separate resolution, or whether it has constituted a part of a resolution on the appointment of an investigative committee, which (within the scope relating to the provision establishing the composition of the committee) would be devoid of the normative character (cf. e.g. the Resolution of the Sejm of the Republic of Poland of 6th June 1992 on the appointment of a Committee to examine the implementation by the Minister of Internal Affairs of the Resolution of the Sejm of the Republic of Poland of 28th May 1992; Official Gazette of the Republic of Poland – Monitor Polski No. 17, item 130).

Article 1 of the Resolution of 24th March 2006 has established "the Investigative Committee to examine decisions concerning capital and ownership transformations in the

banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006".

The Constitutional Tribunal assumes that Article 1 of the Resolution creates *ad hoc* a Sejm organ in the form of an investigative committee, which has immanently resulted in the simultaneous specification of a proper name therefor. The act of appointment of a committee, as an act establishing an organ, shall possess individual character, and – as such – falls outside the scope of review of the constitutionality exercised by the Constitutional Tribunal, since pursuant to Article 188 of the Constitution, such review shall only be undertaken in relation to normative acts: statutes and ratified international agreements, as well as "legal provisions issued by central State organs".

The second provision of the Resolution of 24th March 2006 challenged by a group of Deputies (i.e. Article 2) enumerates tasks that in aggregate outline the scope of activity of the investigative committee. The tasks should not be confused with the organ's decision-making competencies (regulated by the Act of 21st January 1999) which serve to accomplish the tasks. In turn, such tasks are essential for the full reconstruction of the committee's competencies. A thorough explanation (constituting, after all, the *sine qua non* requirement for issuing a decision by the Tribunal) of the normative character of Article 2 of the Resolution of 24th March 2006, has been provided in the next point of the reasoning.

However, it entails a necessity to establish whether, except for Article 2, also Article 1 – since the individual name given to the committee simultaneously, in a general manner, outlines the object of activities thereof – should be regarded as not only establishing a new organ of the Sejm, but also defining the matter whose examination would constitute the objective of the investigative committee.

In the assessment of the Constitutional Tribunal, such a stance – presented implicitly by a group of Deputies being the Applicant in the present case – does not deserve to be upheld. This may be justified by the following circumstances:

1) the wording of Article 1 of the Resolution. The analysed provision incorporates a typical technique utilised in legal texts consisting in abbreviating complex terms (cf. § 154 paragraph 1 and 2 of the Regulation of the Prime Minister of 20th June 2002 on „The Principles of Legislative Technique", Journal of Laws – Dz. U. No. 100, item 908). In the example discussed herein, the complex term has been represented by a compound name (title) of the organ, referred to in the subsequent parts of the Resolution of 24th March 2006 by way of an abbreviation (therein: the „Committee"). It follows from the above findings that Article 1, being a constitutive element of the Resolution: firstly – creates a committee, secondly – endows the committee with a proper name, and thirdly – establishes an abbreviated name of the committee for the purpose of the Resolution. Hence, „The Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and activities of banking supervision authorities from 4th June 1989 to 4th March 2006" shall be the full name of the committee, yet only a name. It would be erroneous to infer that „the Investigative Committee" shall be the name, and „to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision

authorities from 4th June 1989 to 19th March 2006" shall be the matter entrusted to the Committee for examination. In such a case, Article 1 would have to assume the following wording: "An Investigative Committee, hereinafter referred to as the <<Committee>> shall be hereby appointed to examine decisions (...)" etc. (inferring on the basis of the rules of syntax, or syntaxis). It also should be taken into consideration that the expression "investigative committee" is not a proper name, under which a newly established organ could function, but it is a generic name for committees (internal Sejm organs) which may be set up alongside standing and extraordinary committees.

2) the internal arrangement (structure) of the Resolution. The scope of activity of the Investigative Committee (matter) has been laid down *expressis verbis* in Article 2, which enumerates partial tasks that make up the matter, and allows for the reconstruction of the essence and limits thereof. Only in the absence of Article 2, it would be necessary and admissible to seek the basis for the reconstruction of the matter to be examined by the organ in the committee's name.

3) the wording of Article 2 of the Resolution. The provision stipulates that "the scope of activity of the Committee shall include the examination of (...)". The provision, however, does not include either the following expression: "furthermore the scope of activity of the Committee shall include the examination of (...)" (which could suggest that except for Article 2, also Article 1 outlines the Committee's subject of examination), or this one: "the scope of activity of the Committee shall include the examination of, *inter alia*/particularly" (which would allow for the extensive interpretation of the Committee's objective scope of investigation).

The above findings lead to the conclusion that the name of the investigative committee appointed by way of the Resolution of 24th March 2006 shall not – irrespective of whether, given its generality, it would at all be feasible – directly serve to reconstruct the matter conferred thereupon for examination. The name may potentially constitute an interpretative hint in the process of interpretation of Article 2 of the Resolution, which directly defines the scope of the committee's activity. The scope must not, therefore, be broadened so as to include significant, new constitutive elements (cf. W. Odrowąż-Sypniewski, *w sprawie zakresu uprawnień śledczych Komisji Śledczej powołanej na podstawie uchwały Sejmu z dnia 28 maja 2004 r. [On the scope of authority of the members of the Investigative Committee appointed by way of the Sejm Resolution of 28th May 2004]*, „Przegląd Sejmowy" [*The Sejm Review*] No. 1/2005, p. 105).

An act establishing a new organ shall be the act of applying, as opposed to creating**,** the law. Thus, acts appointing Sejm committees, including extraordinary ones (see Article 19 of the Sejm's Rules of Procedure) cannot be the subject of review by the Constitutional Tribunal.

For these reasons, the Constitutional Tribunal shall discontinue proceedings in relation to the alleged unconstitutionality of the act of appointment (assessment of the constitutionality of Article 1 of the Resolution of 24th March 2006) given the inadmissibility of adjudication (lack of Tribunal's competence to exercise control, see: Article 39 paragraph 1 point 1 of the

Act of 1st August 1997 on the Constitutional Tribunal; Journal of Laws – Dz. U. No. 102, item 643 with amendments).

The Constitutional Tribunal has considered it expedient to emphasise that even though the provision of the Resolution establishing the investigative committee falls outside the scope of Tribunal's jurisdiction, yet the act must be carried out in accordance with the Constitution, and, therefore, may be assessed from this perspective.

It has to pointed out that the decision to discontinue proceedings in relation to Article 1 of the Resolution of 24th March 2006 may not be understood as the recognition by the Constitutional Tribunal of the appointment procedure of the so-called banking investigative committee or individual activities undertaken by the organ, as conforming to the current legal order. These aspects, namely the appointment and the activity of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006, even though are of considerable significance from the perspective of standards of the State ruled by law, have not been challenged in the application by a group of Deputies, and shall remain outside the scope of the present case.

1.4. The mixed legal character of the Resolution of 24th March 2006. The content of the challenged Resolution has not solely been contained in the provision concerning the individual act of appointment of the Sejm organ. Article 2 thereof, challenged in the application by a group of Deputies, defines – in its seven points – the scope of control exercised by the Committee and enumerates tasks, i.e. the objectives of the so-called banking investigative committee, which has been appointed by way of Article 1 of the Resolution. Article 2 is, therefore, a provision which outlines the objective scope (matter), whereby the Investigative Committee shall exercise – in a non-defective manner and within the prescribed limits – its competencies specified in the Constitution and the Act of 21st January 1999. The issue of the normative character of Article 2 of the challenged Resolution must, therefore, become the subject of a separate review.

1.5. In its jurisprudence, the Constitutional Tribunal has often considered the notion of the normative act and sought appropriate criteria thereof, reminding under the Constitution of 2nd April 1997 the most essential aspects influencing the understanding thereof, considered in the case Ref. No. SK 1/01 (Judgement of 12th July 2001, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 5/2001, item 127). The Judgement indicated that irrespective of some essential alterations to the respective constitutional and statutory provisions, as well as irrespective of changes in, and evolution of the views of the Constitutional Tribunal itself, one may observe in the jurisprudential line thereof the establishment of some fundamental fixed elements deciding upon the normative character of a legal act. The elements shall include: 1) the decisive importance of the contents, as opposed to the form, of an act as a criterion of assessment of the normative character thereof (the substantive definition), 2) the specific character of such assessment additionally taking into

account the systematic relationship of a given act to other acts, undoubtedly deemed normative, within the legal system, 3) the assumption that doubts concerning the normative character of some legal acts seem to be an indispensable feature of the legal system. The present legal system, in particular, is characterised by a great diversity of socially significant legal acts that are difficult to define or express by way of unambiguous terms. Moreover, the Constitutional Tribunal took the view that if it is possible to find any normative contents in such acts, then there are no grounds to exclude them from the review of the constitutionality or legality, especially in cases where the protection of freedoms and rights of the person and the citizen come into play. In such situations, the Constitutional Tribunal shall apply a specific presumption of the normative character of legal acts. Otherwise, taking into account a considerable number of such acts, issued by different State organs, and at times also by other entities, most of them would remain outside any institutional and effective control regarding their constitutionality or legality.

1.6. Against the background of, and in relation to the aforementioned fixed elements of understanding of the normative act, the Tribunal shall assume the following assumptions as the bases for the assessment of a normative character of Article 2 of the Resolution of 24th March 2006.

Firstly, the norms which outline the duties of State organs shall be reconstructed not only on the basis of the provisions of substantive law, but also on the basis of procedural provisions and regulations concerning the organisational structure of appropriate State organs.

Secondly, one may distinguish the basic types of legal provisions which shall constitute fundamental norms which directly order some activities, or grant authorisation to perform activities that establish or revise duties prescribed to a person.

Thirdly, legal texts may, nevertheless, contain numerous provisions which do not possess individual character, yet in various ways supplement, modify or limit the content of norms formulated in a general manner in fundamental provisions.

Fourthly, the Constitutional Tribunal shall exercise review of regulations which, even though do not establish complete legal norms, yet possess normative character in the sense that they constitute an element of a norm whose fundamentals have been contained in another legal act. Adopting a different stance would signify that the legislator, by employing the permissible – from the perspective of legislative principles – technique of constructing norms, could, in fact, limit the scope of competence of the Constitutional Tribunal (see e.g. Judgement of 27th November 2000, Ref. No. U 3/00, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 8/2000, item 293; cf. also: S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa [An outline of the theory of law]*, Poznań 2001, p. 153; more on the so-called content fragmentation, also called the syntactic fragmentation in legal provisions, see: M. Zieliński, *Wykładnia prawa. Zasady. Reguły. Wskazówki [Interpretation of the law. Principles. Rules. Guidelines*, Warszawa 2002, pp. 103 *et seq*.).

1.7. In the view of the Constitutional Tribunal, the present case deals with an instance of a competence norm reconstructed on the basis of a few provisions. The point of departure is Article 7 of the Act on the Sejm investigative committee, stipulating that "A committee shall be bound by the objective scope specified in the resolution on the appointment thereof" (paragraph 1). „The committee shall exercise the authorisation stemming from statutory provisions only within the scope expedient to examine the matter being the object of the activities thereof, and only in such a manner that personal rights of third parties shall not be infringed" (paragraph 2).

In accordance with the above assumptions, notwithstanding the fact that Article 7 paragraph 1 of the Act on the Sejm investigative committee is a graphically distinguished unit of a legal text, it may not constitute a building block sufficient for the reconstruction of the complete legal norm, and therefore remains an incomplete competence provision. Accordingly, the provisions of the Resolution of 24th March 2006 that outline the scope of activity of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006, should be classified as supplementary provisions**,** while it is of no significance that they have been laid down outside the Act of 21st January 1999, in an act of different kind, i.e. in the Sejm resolution.

The acknowledgement that the Resolution challenged in the present case constitutes an indispensable element serving to reconstruct the normative basis for activity of the investigative committee appointed by the act, is based on the fact that only the determination of the scope of matters to be examined by the committee allows for the specification of limits, within which the committee may exercise the authorisation stemming from the provisions of the Act of 21st January 1999. Without such supplementation, and by solely applying Article 7 of the Act, it would not be feasible to assess the legality of activity of the investigative committee or the legitimacy of imposing a penalty for breach of order against a person summoned before the committee.

1.8. It is, therefore, necessary to establish whether the norm reconstructed from the contents of Article 2 of the Resolution of 24th March 2006, read in conjunction with Article 7 of the Act on the Sejm Investigative Committee, possesses the features of generality and abstractness.

The establishment of whether a norm is of general or individual character shall be based on the manner in which the addressee thereof has been defined. A general norm is the one which defines the addressee by indicating their generic features. It has to be pointed out that the general norm may not be equated with a norm relating to more than one addressee since, in fact, there may be a few addressees, there may be one or there may be no such addressees who possess the specified generic features.

Referring these comments to the Resolution challenged in the application by a group of Deputies, it should be stated that the norms reconstructed on the basis of the Resolution possess general character. The fact that they co-shape the permissible scope of activity of the

so-called banking investigative committee may indicate that – depending on the adopted theoretical conception – its primary (direct) addressee shall be the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006. The addressee is, in fact, a collective organ defined generically by its proper name, composed of a team of persons distinguished not by their personal identity, but by the function they perform as committee members (thus, individually identified Deputies shall not constitute the addressees of the act).

Alternatively, assuming the so-called theory of the competence norm as the basis for the analysis of generality of the norm reconstructed from the Resolution of 26th March 2006 one comes to the conclusion that the addressee of the norm, granting authorisation for the so-called banking investigative committee to perform certain conventional actions (within the scope expedient to examine the matter being the object of the activity thereof), shall be any subject against whom the authoritative actions may be initiated. Also this way of reasoning indicates that a competence norm built upon the normative content contained in the Resolution challenged in the present case possesses the features of generality.

The Constitutional Tribunal will not, in the present case, review the issue – raised in the stance of the Sejm (arising from the construction adopted in the Act of 21st January 1999) – as to whether a resolution constitutes the appropriate kind of a legal act to regulate matters that co-shape the sphere of rights and obligations of persons summoned before the committee. Such allegation has not, however, been formulated in the application by a group of Deputies, and therefore shall remain outside the scope of review.

1.9. An abstract norm is a norm which regulates repeatable behaviours that may be defined in a generic manner, while a specific norm lays down for the addressee thereof (irrespective of whether the addressee is specified in an individual or general manner) a specific, one-off behaviour relating to particular circumstances.

Whereas Article 7 paragraph 2 of the Act of 21st January 1999, supplemented by provisions of the Resolution of 24th March 2006, constitutes the basis for specific, individual activities (acts of applying the law) undertaken by the so-called banking investigative committee throughout the entire time period of the functioning thereof, one has to acknowledge that the normative meaning of the provisions of the Resolution challenged in the present case shall not expire upon a single application thereof.

1.10. To conclude, the Constitutional Tribunal finds that Article 2 of the Resolution of 24th March 2006 possesses a normative character and shall be subject to constitutional review.

The analysis of this provision, defining the scope of activity of the Committee, must prove that the organ established thereby, formally classified as an "investigative committee", fulfils the prerequisites laid down in the Constitution.

2. Status of an investigative committee.

2.1. General assumptions. While determining the status of an investigative committee, one has take into account the fact that the Constitution of 2nd April 1997 rejected the superiority of any State authorities. The principle of socialist constitutionalism, stating that "The Sejm shall be supreme organ of State authority", ceased to have effect. Yet, strong reminiscences thereof are still present in the thinking about the position and scope of activities of the Sejm of the Republic of Poland. The Sejm shall constitute one of the organs of State authority. Its competencies – and therefore the scope of activities thereof – have been laid down in the Constitution and statutes. The Sejm shall have – within the limits prescribed by the Constitution – a considerable autonomy in relation to decisions concerning the law-making. Within this sphere, the degree of autonomy of the Sejm shall be greater than in other spheres of its competence, owing to the fact that that the Sejm shall be the legislative organ of State authority. The fact that the Sejm has considerable power, does not mean that it "may do anything", since what it "may do" has to remain within the limits prescribed by the Constitution and statutes. This shall also concern investigative committees whose object of activity laid down in resolutions on the appointment thereof shall be subject to review by the Constitutional Tribunal.

An investigative committee may not be established for the examination of any matter, but only the one which is of great importance to the State. The activities of an investigative committee – which is an internal organ of the Sejm, traditionally described as a supplementary one – shall be related to the constitutional objectives and functions fulfilled by the Sejm.

The activity of an investigative committee must conform to the constitutional norms and principles that outline the limits of the control exercised by the Sejm. A matter constituting the object of a committee's examination must fall within the subjective and objective scope of the control exercised by the Sejm specified in the Constitution and statutes.

An investigative committee may examine activities of public organs and institutions, as well as private persons, yet only within the scope of their activities in public administration or within the aid they receive from the State. It is unacceptable to establish committees to examine matters which fall beyond the scope of control exercised by public authority institutions (see: Constitutional Tribunal's Judgement of 14th April 1999, Ref. No. K. 8/99, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 3/1999, item 41).

Also beyond the scope of activity of an investigative committee shall remain those constitutional organs which possess the features of independence and separateness (as is the case with courts and tribunals), or only the feature of full or partial independence from other organs of State authority (as is the case with the National Bank of Poland).

Special competencies conferred upon an investigative committee will inevitably lead to a certain overlapping of committee's competencies with the competencies of other organs of public authority. This circumstance points at the necessity to exclude such manner of shaping its status and scope of activity that would lie outside the possibility of control as regards the conformity to the constitutional legal order. The Sejm shall not be authorised to

undertake, or vest its organs with, activities whose realisation entails interference in the sphere of competencies exclusively reserved to other organs of public authority.

2.2. The investigative committee as a constitutional organ. The Constitution itself in its Article 111 distinguishes this type of committee from other committees constituting the organs of the Sejm, i.e. from standing and special ones, referred to in Article 110 paragraph 3 thereof. As a constitutional organ the investigative committee shall have its own status, which has been specified not only in the provision of the Constitution that provides for the possibility of the appointment thereof (Article 111), but also in other constitutional and statutory norms, and, in particular, in the Act on the Sejm investigative committee. In matters relating to the investigative committee not provided for in the Act of 21st January 1999, provisions of the Sejm's Rules of Procedure shall apply accordingly. The fundamental regulation concerning the investigative committee has not, however, been contained in the Sejm's Rules of Procedure, but – in accordance with the reference contained in Article 111 paragraph 2 of the Constitution – in statute.

Accordingly, the investigative committee shall not be an organ whose position and competence solely and exclusively depend on the resolution concerning the appointment thereof. It does not suffice to name any Sejm committee an "Investigative Committee" for it to become one. The organ established by the Sejm must possess features derived from the Constitution and from the legislation in force, which define the normative prerequisites and the scope of activity of an investigative committee within the meaning of Article 111 of the Constitution.

While appointing a committee the Sejm shall particularly be bound by the constitutional principle of separation and balance of powers. Therefore, the tasks conferred upon a Sejm investigative committee may not be shaped in such a way that would lead to the infringement of constitutional regulations concerning relations with organs which are not subject to control exercised by the Sejm. This issue is of fundamental importance, since it stems from the Constitution itself that not every organ may be subject to direct control by an investigative committee.

2.2.1. The investigative committee shall be one of the instruments of control exercised by the Sejm, provided for in the Constitution. The control by the Sejm may be defined as the competence of this organ of legislative power to obtain information on the activities of particular public organs and institutions, as well as to provide the assessment of the activities thereof. The control shall serve not only to gather information necessary for the realisation of the legislative function, but also to enable the enforcement of political responsibility towards the government and its members. In light of Article 95 paragraph 2 of the Constitution, the scope of control of an investigative committee shall particularly encompass the activities of the Council of Ministers and organs of State administration. Moreover, the control by the Sejm shall serve to inform the public on the functioning of organs of State administration and shall ensure putting the State administration under the scrutiny of public opinion.

2.2.2. The system of Polish law does not contain a general authorisation for an investigative committee to examine any matter indicated by the Sejm. The boundaries of a committee's activity have been specified by constitutional limits of the Sejm's control. The matter constituting the object of committee's examination must fall within the subjective and objective scope of control exercised by the Sejm, as specified in the Constitution and statutes. Investigative committees may, therefore, only examine the activities of public organs and institutions that are expressly subject to control by the Sejm, as prescribed by the Constitution and statutes. (thus: Constitutional Tribunal's Judgement of 14th April 1999, Ref. No. K. 8/99 Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 3/1999, item 41).

2.2.3. The activity of each State organ, including the Sejm, a Sejm's committee and individual members thereof, shall observe constitutional objectives, rules and values. This is all the more important, since the constitutionally protected freedoms and rights may be limited by statutes, yet only within the limits specified by the Constitution. Under no circumstances is it permissible be way of other acts, even if – as is the case with Sejm resolutions – such acts originate from organs which play the major role in the legislative process. This also relates to the interference in the functioning of these State organs, which have been vested with the constitutionally guaranteed independence and separateness. Therefore, direct interference of the Sejm in the sphere of activities of courts and tribunals, whose activity is safeguarded by independence and separateness, would amount to the infringement of not only the law, but also the Constitution. Neither the Sejm, nor any other State organ shall be allowed to verify or undermine decisions thereof. Such a possibility shall exist only within the framework of the judiciary, and only by way of means of challenge prescribed by the law.

2.2.4. The prescribed degree of independence guarantee, as discussed below (cf. part III point 6.2. of the reasoning), shall also refer to the National Bank of Poland, which shall have the exclusive right to issue money as well as to formulate and implement monetary policy. The National Bank of Poland shall be responsible for the value of Polish currency. This shall be the sphere which has been vested with the constitutionally defined and guaranteed independence and separateness. Not only does the Constitution prohibit any interference in this matter on the part of the Sejm by way of resolutions or other substatutory acts, but it also defines the limits of statutory interference.

2.2.5. Activities of a committee shall neither substitute, nor assume the competence of organs which, by virtue of the law (Constitution), have been obliged to realise such competencies. The committee – being an internal organ of the Sejm – shall not be placed in the position of a "superorgan", superior to other organs of public authority.

3. Subjective scope of activity of an investigative committee and the rights and freedoms of the citizen.

3.1. Both the scope of activity of an investigative committee and the procedure applied by it, may not lead to the infringement of the constitutionally protected rights and freedoms. Although the object of the so-called Sejm investigation includes activities of organs and institutions subject to the control by the Sejm, and – hence – encompasses the members and persons constituting the administrative base thereof, yet the committee primarily summons only the persons who are in any way connected with the matter under investigation.

3.2. The Tribunal emphasises the prerequisites of correctness of questioning the persons summoned before an investigative committee since the members of an investigative committee shall be bound by the Code of Criminal Procedure. Failure to observe the norms may easily result in violation of honour and loss of good reputation of persons summoned before an investigative committee. As far as this issue is concerned, the obligations of the members of an investigative committee shall stem not only from Article 11i of the Act of 21st January 1999, but also from Article 104 paragraph 2 of the Constitution, which contains the solemn oath of the Deputy encompassing, *inter alia*, the obligation of the Deputy to observe the Constitution and other laws of the Republic of Poland, but, above all, from Article 30 of the Constitution obliging public authority and the representatives thereof to respect and protect dignity of the person, and from Article 47 of the Constitution, which stipulates that everyone shall have the right to legal protection of his private and family life, of his honour and good reputation (P. Wiliński, *Procesowe aspekty przesłuchania świadka przed sejmową komisją śledczą [Procedural aspects of questioning a witness before the Sejm investigative committee]* [in:] P. Wiliński, O. Krajniak, B. Guzik, *Prawo wobec wyzwań współczesności [Law and the present day challenges]*, Vol. 3, Poznań 2006, pp. 47-54).

The Constitutional Tribunal reminds that in relation to persons summoned before an investigative committee, the criminal procedure protection rules shall apply accordingly (Z. Kwiatkowski, *Zakazy dowodowe w procesie karnym [Prohibition of evidence in criminal proceedings]*, Kraków 2005, pp. 277-310). This signifies, *inter alia*, that:

– the person being heard before a committee shall have an opportunity to free expression within the limits defined by the subject of summons; this shall be followed by questions aiming at supplementation, clarification or control of the testimony (Article 171 § 1 of the Code of Criminal Procedure, cf. the Supreme Court's Judgement of 9th August 1976, Ref. No. V KR 34/76, Official Collection of the Supreme Court's Decisions – OSP No. 1/1979, item 8; Z. Doda, A. Gaberle, *Orzecznictwo Sądu Najwyższego. Komentarz [Supreme Court's Jurisprudence. A commentary]*, Vol. I, Warszawa 1995, pp. 187-198; J. Tylman, T. Grzegorczyk, *Polskie postępowanie karne [Polish Penal Procedure]*, Warszawa 2005, p. 439);

– a committee's member must not ask the person being heard before a committee questions suggesting an answer; the committee's chairperson shall be obliged to dismiss such

questions (Article 171 § 4 and 6 of the Code of Criminal Procedure, see: the Supreme Court's Judgement of 27th May 1974, Ref. No. I KR 498/73, Official Collection of the Supreme Court's Decisions – OSNKW No. 10/1974, item 189; K. Marszał, S. Stachowiak, Z. Zgryzek, *Proces karny [Penal procedure]*, Katowice 2005, p. 870; *Kryminalistyka [Criminalistics]*, M. Kulicki, ed., Toruń 2005, pp. 205-206);

– it is inadmissible to influence the testimony of the person being heard before a committee by means of compulsion or illegal duress (Article 171 § 5 point 1 of the Code of Criminal Procedure, see: the Judgement of the Court of Appeal in Katowice of 26th February 1998, Ref. No. II AKa 318/97, „Prokuratura i Prawo" ["Prosecutors and Law"] No. 1/1999, item 26);

– questions shall be unambiguous, comprehensible and congruent with the subject of the testimony (see: M. Lipczyńska, Z. Czeszejko-Sochacki, *Technika i taktyka zadawania pytań w procesie a rola adwokata [A technique and strategy of asking questions during proceedings and the role of an advocate]*, Warszawa 1980; P. Horoszowski, *Kryminalistyka [Criminalistics]*, Warszawa 1958, p. 114; W. Gutekunst, *Kryminalistyka. Zarys systematycznego wykładu [Criminalistics. An outline of a systematic lecture]*, Warszawa 1974, p. 208), and committee members shall avoid asking unclear or vague questions (*Kryminalistyka [Criminalistics]*, M. Kulicki, ed., Toruń 2005, p. 199; B. Hołyst, *Kryminalistyka [Criminalistics]*, Warszawa 2004, p. 1100);

– questions must not be insulting, degrading, ridiculing, tricky or offensive for the person being heard before a committee (cf. the Supreme Court's Judgement of 27th May 1974, Ref. No. I KR 498/73; W. Daszkiewicz, *Swoboda wypowiedzi jako przesłanka ważności dowodu w procesie karnym [Freedom of expression as a prerequisite for evidence validity in criminal proceedings]*, „Państwo i Prawo" [State and Law], book 8-9/1979, p. 70);

– committee members shall be authorised to ask questions concerning facts, and shall not be authorised to require expression of an opinion (cf. the Supreme Court's Judgement of 8th February 1974, Ref. No. V KR 42/74, Official Collection of the Supreme Court's Decisions – OSNPG No. 7/1974, item 82; T. Hanausek, *Kryminalistyka. Zarys wykładu [Criminalistics. An outline of a lecture]*, Kraków 2004, p. 201);

– it is inadmissible to repeatedly ask and direct the same question to the person being heard before a committee (see: the Supreme Court's Judgement of 14th September 1981, Ref. No. II KR 229/81, Lex 21918, Z. Doda, A. Gaberle, *Orzecznictwo Sądu Najwyższego. Komentarz [Supreme Court's Jurisprudence. A commentary.]*, Vol. I, Warszawa 1995, p. 192);

– it is inadmissible to read out testimonies of other persons and to demand a commentary thereon or to take a stance relating to discrepancies therein;

– it is inadmissible to ask questions concerning the credibility of other persons summoned or heard before a committee (cf. Supreme Court's Judgement of 8th February 1974, Ref. No. V KR 42/74);

– it is inadmissible to infringe personal rights of the person summoned before a committee;

– it is inadmissible to enter into dispute with the person being heard before a committee or to suggest true meaning of the testimony given by the person (cf. T. Hanausek, *op.cit., pp*. 207-208);

– it is inadmissible to question the person summoned before a committee for several hours, beyond their mental and physical capabilities (cf. S. Waltoś, *Proces karny, Zarys systemu [Penal procedure. An outline of the system]*, Warszawa 2005, p. 358; S. Waltoś, *Swoboda wypowiedzi osoby przesłuchiwanej w procesie karnym [Freedom of expression of a person questioned in criminal proceedings]*, „Państwo i Prawo" ["State and Law"] book 10/1975, p. 69; J. Tylman, T. Grzegorczyk, *Polskie postępowanie karne [Polish Criminal Procedure]*, Warszawa 2005, p. 433);

– it is inadmissible to promise illicit advantages in return for giving testimony (e.g. quashing of a temporary arrest, cf. the Judgement of the Court of Appeal in Lublin of 6th May 1997, Ref. No. II AKa 68/97, „Prokuratura i Prawo" ["Prosecutors and Law"] No. 7-8/1998, item 22; S. Waltoś, *Proces karny, Zarys systemu [Penal procedure. An outline of the system]*, Warszawa 2005, p. 358);

– it is inadmissible to ask questions which are not connected with the subject matter of the hearing (cf. the Supreme Court's Judgement of 8th February 1974, Ref. No. V KR 42/74);

– it is inadmissible to repeatedly question the same person regarding the same circumstances (see: the Supreme Court's Judgement of 14th September 1981, Ref. No. II KR 229/81, Lex 21918, the Supreme Court's Judgement of 26th May 1981, Ref. No. IV KR 100/81, Official Collection of the Supreme Court's Decisions – OSNKW No. 9/1981, item 52; Z. Doda, A. Gaberle, *op.cit.*, p. 192).

It should be borne in mind that in proceedings before a committee, the appearing person shall be entitled, *inter alia*, to: put forward a motion to allow them to freely express themselves on the subject-matter under investigation or put forward a motion to dismiss a question which, in the opinion of the person, suggests the answer, is irrelevant or inappropriate (Article 11c paragraph 1 point 6 and 7 of the Act on the Sejm investigative committee), and, moreover, that the testimony given in conditions excluding the freedom of expression or obtained contrary to the above-indicated prohibitions or orders shall not constitute evidence (cf. Article 171 § 7 of the Code of Criminal Procedure).

3.3. The professional and ethical standards put on committee members shall be of great significance. They stem (also implicitly) from the Constitution and statutes. The hearings carried out by the Sejm Deputies, or the representatives of the legislative power, shall be the expression of the utmost respect for the currently binding norms. They shall constitute an example to other procedural organs. Hence, the factual knowledge, the knowledge of legal rules and guarantees stemming therefrom, shall be of great importance to committee members.

It is justified to expect from the Deputies – committee members – the utmost moral standards, manners and tact associated with due respect for the persons questioned before the committee, who remain in the "weaker" position.

This is all the more important because committee members call themselves "investigators", and this term has, for part of the society, a definitely unambiguous and negative situational and semantic connotations.

3.4. The wording of Article 11 paragraph 1 of the Act of 21st January 1999 unambiguously stipulates that each person summoned before an investigative committee has the obligation to appear before it. This constitutes a norm that obliges a person to do something, which is addressed to a person summoned before the committee. A question, however, arises as to whether a committee has the right to summon "any person". Certainly, Article 11 paragraph 1 of the above-mentioned act does not grant such authorisation. From the obligation to appear before a committee, stemming from the provision, does not follow that a committee is authorised to summon every person. From a norm obliging the addressee thereof to behave in a particular way one cannot draw conclusions that the norm shall constitute competence basis for committee's activities.

Pursuant to Article 7 paragraph 2 of the Act of 21st January 1999, an investigative committee shall exercise the authorisation stemming from the provisions laid down therein, only within the scope expedient to examine the case being the subject of the activities thereof. Therefore, the circle of persons summoned and examined before an investigative committee is strictly determined by classifying them as significant "personal sources of evidence", and hence shall, indirectly, be determined by the objective scope of activities (control) of an investigative committee, which – as discussed below – shall not be unlimited.

To conclude, any person summoned before a committee shall be obliged to appear before it. This does not, however, signify that every person may be summoned.

4. Object and scope of a resolution – the issue of the „specificity of matter" (Article 111 of the Constitution).

4.1. Pursuant to Article 111 of the Constitution an investigative committee shall be appointed "to examine a particular matter". The latter feature, i.e. the specificity of the matter, shall, therefore, constitute a prerequisite of the constitutionality of activities of a committee, being the investigative one. Against the background of the present case, it needs to be examined whether the content of Article 2 of the Resolution of 24th March 2006 provides grounds for the assessment of whether the "appointed to examine a particular matter" requirement has been fulfilled by the challenged Resolution.

An investigative committee is a procedural organ equipped, to a certain extent, with powers characteristic of prosecutor's and judicial organs. Extensive or improper use of these instruments poses a threat to the constitutionally protected values. In the event of any infringement thereof, it is admissible to undertake a control of the correctness of committee's activities. The control may be undertaken by a common court in the course of proceedings regarding the committee's motion to impose a penalty for breach of order (Article 12 of the

Act of 21st January 1999). Negative assessment of such control shall result in the refusal to take the investigative committee's motion into account.

Also because of this fact, and not only because of the wording of Article 111 of the Constitution, it is necessary to both precisely define the scope of (object) committee's activities, and to clearly and unambiguously determine the matter, which shall constitute the object of committee's investigative activities. Undertaking any such activities must be preceded by the determination of a goal, the realisation of which the activities shall serve. The identification of the subjects and the object of investigative committee's activities is a *sine qua non* requirement to precisely determine the issues to be addressed by the committee or to be considered in terms of the decision as to whether or not to undertake examination thereof.

Of fundamental significance for the correctness of the appointment of an investigative committee shall have the determination of the term "matter". "Matter" in the form of certain facts or contentions concerning specific circumstances must manifest itself before the adoption of an appropriate Sejm resolution. The determination of the existence of a matter requiring examination as a prerequisite for the establishment of a committee must be performed in an objective manner. The Sejm may not, based solely on indeterminate bases (e.g. on "social beliefs"), launch such an extraordinary investigative-control procedure.

4.2. „Particular matter" as the limit of competence of an investigative committee. The notions "investigative committee" and "investigation" shall be associated with the legal obligation to clarify a particular matter. The investigative committee shall have the possibility – yet limited – to take advantage of procedural institutions reserved for criminal proceedings. This requires that the examination of a matter by an investigative committee be conditional upon the existence of a contention concerning the need (justified by an important State interest) to hear the evidence that will provide information on facts, persons and things, as well as on relations existing between them, e.g. the existence of a presumption that a certain breach of law has taken place, thus justifying the need to make use of sources and means of evidence characteristic of criminal proceedings. It is, therefore, indispensable to identify and individualise the legal issue which has made it necessary to undertake the so-called Sejm investigation. Where such a circumstance does not occur, then – under the present model of the investigative committee derived from the Act of 21st January 1999 – the "matter", within the meaning of Article 111 of the Constitution shall not exist either (cf., *inter alia*, M. Granat, *Opinia dotycząca pytania: czy uchwała Sejmu RP w sprawie powołania Komisji Śledczej do zbadania rozstrzygnięć dotyczących przekształceń kapitałowych i własnościowych w sektorze bankowym oraz działań organów nadzoru bankowego w okresie od 4 czerwca 1989 r. do 19 marca 2006 r. jest zgodna z Konstytucją w szczególności zakres jej działania oraz czy uchwała ta może być zaskarżona do Trybunału Konstytucyjnego [An opinion concerning the question: Does the Resolution of the Sejm of the Republic of Poland on the appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006, and, in particular, the scope of the activity thereof,*

conform to the Constitution, and: May the Resolution be challenged before the Constitutional Tribunal]).

4.3. An investigative committee shall take advantage of its specific authorisation, defined by statute, yet solely within the scope specified in a resolution on the appointment thereof. Lack of specificity of the resolution in this respect may result in a significant weakening of the principle of legality of State organs (if not limited to a purely superficial role), while Sejm investigation could assume a quasi-inquisitorial form thus leaving the third parties in uncertainty as regards the scope of their rights and obligations (cf. more on this subject: A. Szmyt, *Uwagi w sprawie projektów uchwał powołujących komisje śledcze (druki sejmowe nr 400 i 401) [Remarks on projects of resolutions appointing investigative committees (Sejm papers No. 400 and 401)]).*

4.4. The "particular matter" within the meaning of Article 111 of the Constitution shall comprise a set of circumstances which constitute the object of interest of the Sejm. The set shall be specified in the Sejm's resolution on the appointment of an investigative committee. The object of investigative committee's activity must be defined, as well as specified, and understandable for all potential subjects obliged to appear before the committee or to provide appropriate materials and information required by the committee. Only then is it possible to determine, in a proper manner, the state of affairs of a given matter, which, in turn, constitutes a requirement of the correct fulfilment of a task set for the committee.

4.5. Specificity of a matter against the background of Article 2 of the Resolution of 24th March 2006. Content analysis of Article 2 of the Resolution, challenged in the present case, proves that the *ratio* thereof concerns the realisation of a multi-issue programme of examination relating to the banking system, as opposed to undertaking the so-called parliamentary investigation into a particular matter (cf. more on this subject, *inter alia*, P. Sarnecki, *Opinia w sprawie zgodności z Konstytucją uchwały sejmu RP z 24 marca 2006 r. w sprawie powołania Komisji Śledczej do zbadania rozstrzygnięć dotyczących przekształceń kapitałowych i własnościowych w sektorze bankowym oraz działań organów nadzoru bankowego w okresie od 4 czerwca 1989 r. do 19 marca 2006 r. [An opinion on the conformity to the Constitution of the Sejm Resolution of 24th March 2006 on the appointment of an Investigative Committee to examine decisions concerning capital and ownership transformations, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006], as well as* K. Skotnicki, *Opinia prawna w kwestii odpowiedzi na dwa pytania: 1. Czy Uchwała Sejmu RP w sprawie powołania Komisji Śledczej do zbadania rozstrzygnięć dotyczących przekształceń kapitałowych i własnościowych w sektorze bankowym oraz działań organów nadzoru bankowego w okresie od 4 czerwca 1989 r. do 19 marca 2006 r. jest zgodna z Konstytucją, w tym w szczególności zakres jej działania? 2. Czy uchwała ta może być zaskarżona do Trybunału Konstytucyjnego? [A legal opinion concerning the answer to two questions: 1. Does the Resolution of the Sejm of the Republic of Poland on the*

appointment of the Investigative Committee to examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006, and, in particular, the scope of the activity thereof, conform to the Constitution?, and: May the Resolution be challenged before the Constitutional Tribunal?). This confirms the very broad scope of committee's activity, which – should it relate to the infringement of criminal law – would contradict all the principles of procedural efficiency.

Expressions pointing to the necessity of undertaking investigative action should be clear, since they prejudge the existence of a matter within the meaning of Article 111 paragraph 1 of the Constitution.

4.6. While specifying the object of committee's activity in the Resolution of 24th March 2006, the Sejm has made use of notions that do not possess precisely defined meanings. It concerns the notion of "decisions", and the notion of "activities of banking supervision authorities". In turn, "banking sector" is a notion that belongs to the financial-economic terminology. A fundamental doubt arises as to whether the scope of the notion includes all institutions that perform banking functions or functions identical to banking ones (the object of activity is of significance here) or only the subjects which have been established in accordance with The Banking Law.

The Resolution, however, does not specify the "particular matter", but refers to situations encompassing hundreds or thousands of events (e.g. permissions possessing the nature of administrative decisions issued by the Commission for Banking Supervision) making up the numerous, long-lasting economic, legal and political processes.

4.7. A rational interpretation of essential parts of Article 2 is, therefore, not possible without a detailed exegesis thereof. In this respect, the stance presented by Sejm representatives stating that the investigative committee shall itself undertake such exegesis, may not be shared, as it would mean that the Sejm would not perform its task in accordance with the Constitution. By granting the committee members such extensive possibilities to determine the real scope of their activity, the Sejm would renounce its competencies, or would subdelegate them to the investigative committee to the extent that is not permitted by the Constitution

The constitutional legislator granting the Sejm – in Article 111 paragraph 1 of the Constitution – the right to "appoint an investigative committee to examine a particular matter", made at least three choices: 1) the choice of the organ in which the appointment of an investigative committee shall be vested, 2) the choice of the organ which shall determine the particular matter constituting the object of committee's activity, and, implicitly, 3) the choice of the manner in which the appointment of an investigative committee to examine a particular matter shall to take place (by way of a resolution).

Each of the choices is of great significance, and none may be examined in isolation from the others. One needs to assume that the constitutional legislator intentionally and

rationally balanced the scope of constitutional competencies which shall be reserved for the Sejm *in pleno*, and those which shall be realised by internal organs thereof (e.g. considering amendments to a bill by committees; Article 119 paragraph 3). The constitutional choice of the organ which shall determine the matter to be examined by an investigative committee shall also take into account the character, tasks, status, and the composition of the organ. With the choice made in accordance with such criteria, one could justifiably assume that the authorisation vested in the Sejm (and not the committee) shall be exercised with due regard to the principle of political pluralism, represenativeness of decisions, as well as with respect for parliamentary minorities, providing the non-attached Deputies with the possibility to influence the contents of the act defining the matter entrusted to the investigative committee. Vesting the Sejm with a given authorisation is not without significance since its sessions shall be subject to the constitutional principle of openness to public (Article 113), guaranteeing general accessibility and inclusion of the public in the debate on a given issue and in the course of Deputies' work. The principle, however, shall not apply to activities of internal organs of the Sejm (see: L. Garlicki, *nota 4 do art. 113 [Note 4 to Article 113]* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz [The Constitution of the Republic of Poland. A commentary]*, L. Garlicki, ed., Vol. II, Warszawa 2001; compare the following on the principle of openness of activities in relation to investigative committees: W. Odrowąż-Sypniewski, *Opinie związane z pracami komisji śledczej [Opinions connected with the activities of an investigative committee]*, „Przegląd Sejmowy" ["The Sejm Review"] No. 6/2005, p. 176).

All these circumstances must be taken into consideration when evaluating the admissibility of the so-called subdelegation. Considering that the Constitution does not formulate the authorisation for the Sejm to grant subdelegation concerning the "determination of matter" to an investigative committee itself, and on account of the fact that the "determination of matter" constitutes the *essentialia* of what is supposed to be settled by the Sejm in the resolution on the appointment of an investigative committee (which simultaneously legitimise the necessity to establish a committee of this kind), the Constitutional Tribunal finds that such subdelegation is not permissible. This signifies that the resolution that formulates the scope of activity of an investigative committee shall meet the precision and non-ambiguity criteria.

4.8. „Indeterminateness of matter" is a derivative of the manner in which the Resolution of 24th March 2006 formulates the seven fundamental issues indicated in Article 2 thereof, and which the committee is obliged to address. Such a formulation shall constitute a point of departure for the extension of the objective scope of committee's examination resulting from a subjective and arbitrary defining of the scope of by committee members.

It has to be pointed out, however, that the use of imprecise notions by the legislator is not, *in genere,* constitutionally impermissible. While the standard concerning the determinateness of legal provisions is high, especially in regard to criminal liability provisions, yet sometimes (e.g. when the usage of a given legal institution is based on

assessment criteria, but for the purpose of undertaking a particular assessment one has to consider several circumstances, which may differ from matter to matter, and whose expression in a general and exhaustive manner in one catalogue would be impossible) the use of general notions is simply unavoidable (cf. the Constitutional Tribunal's Judgement of 16th January 2006, Ref. No. SK 30/05, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 1/A/2006, item 2). It has to be taken into account, however, that this finding relates to a situation, in which ambiguous notions and general clauses are being filled with contents by courts, whom Article 173 of the Constitution guarantees independence from other branches of power and whose judges adjudicating upon a given case shall be independent in exercising their office (Article 178 paragraph 1 of the Constitution). Consequently, the process shall take place in accordance with the rules of interpretation adopted in the legal culture, and in accordance with the requirement of impartiality of the court that interprets legal provisions. The court decision shall be subject to review by a higher instance court, which, in particular, shall entail the evaluation of the correctness of the interpretation of the contents of a provision containing ambiguous notions or general clauses. Therefore, court proceedings provide for both institutional and procedural guarantees that create conditions for the establishment of a uniform and precise interpretation of law.

However, entrusting the investigative committee with the task consisting in the establishment of the meaning of Article 2 of the Resolution of 24th March 2006, has to be assessed differently. Although, pursuant to the Act of 21st January 1999, persons acting as members of the committee are obliged to fulfil the requirement of impartiality (cf. Article 6), yet they are appointed on the basis of a political criterion (cf. Article 2 paragraph 2), rather than on the basis of factual knowledge concerning the rules of provision exegesis.

It is important insofar as the decision of the committee's chairperson to refuse a request submitted by a person summoned before the committee in matters specified in Article 11c paragraph 1 points 5-9 of the Act of 21st January 1999 (e.g. concerning the dismissal of an irrelevant question) may be appealed against before the committee, hence before a group of Deputies. The possibility of judicial verification of the correctness concerning the understanding of notions relating to the scope of the matter entrusted to the committee for examination arises only in proceedings concerning the committee's motion to impose a penalty for breach of order against a person summoned before the committee who unjustifiably evades giving testimony. Such action may not be regarded as a solution fulfilling the above-indicated standards concerning the use of ambiguous notions and ambiguously defined phrases in legal acts.

Proceedings before an investigative committee shall not necessitate institutional or procedural guarantees, which are present in court proceedings. Therefore, formulating the scope of committee's activity with the use of ambiguous notions shall be impermissible in a democratic State governed by the rule of law (cf. Constitutional Tribunal's Judgement of 23rd March 2006, Ref. No. K 4/06, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 3/A/2006, item 32), insofar as it poses a real threat of an uncontrolled and unconstitutional infringement of the principle of separation and balance of powers, as well as

of excessive interference in the sphere of freedoms of persons summoned before the committee.

4.9. Given the ambiguous determination of the scope of the matter by the Sejm, it is impossible to adequately apply the statutory means related to committee's activities. The indeterminateness of the committee's scope of activity makes the objective, for the realisation of which the committee was appointed, unattainable.

It has to be clearly pointed out that the matter entrusted to an investigative committee shall be – based on objective criteria – eligible for examination, which should be understood as the existence of a possibility (in practice not always taken advantage of) for the investigative committee to attain the aims set therefor. Otherwise, not only the scope of activity of the investigative committee (constituting the basis for the reconstruction of the "matter" entrusted thereto), but also the sole appointment thereof may give rise to constitutional reservations. This results not only from the character of an investigative committee as an organ appointed *ad hoc* by the Sejm, but also from the literal wording of Article 111 paragraph 1 of the Constitution, whereby the objective of an investigative committee (at the same time constituting a prerequisite for the appointment thereof) shall be to "examine" a matter (perfective form), as opposed to a task consisting in "examining" (imperfective form) an issue or a fact in a permanent manner. It should, therefore, be acknowledged that it shall be impermissible not only to ambiguously (indeterminately) define the matter entrusted to an investigative committee, but also to specify the matter by means of parameters (subject, object, time period under investigation) which shall automatically preclude (make impossible) the examination thereof.

If the objective of the appointment of a committee may not be attained due to the constitutionally incorrect determination of the committee's tasks, this signifies that also another constitutional obligation concerning the functioning of public organs, namely the obligation to ensure diligence and efficiency in the work of public bodies, as stemming from the Preamble to the Constitution, has not been fulfilled. The Resolution neither specifies the "particular" matter, nor defines the object thereof. Thus it is impossible to reliably and accurately specify the activities that should be undertaken by the investigative committee, or assess the legality of instruments utilised by it. As a result of such a regulation, the matter which should have been specified, becomes an abstract matter.

4.10. Conclusion. Taking into account the imprecise nature of the language used in the Resolution, including the use of ambiguous notions contained therein, the open nature of the catalogue of events and subjects, as well as the extensiveness of the "decoded" scope of the investigate committee's activities and vagueness concerning relations between particular parts of the provisions, occurring to a degree which makes it impossible to unambiguously determine the objective, for the purpose of which the committee has been appointed, the Constitutional Tribunal acknowledges that the Resolution of 24th March 2006 does not specify

the matter in accordance with the requirements laid down in Article 111 paragraph 1 of the Constitution.

5. Time scope concerning the investigative committee's object of examination.

Both the title of the Resolution reviewed in the present case, and Article 1 thereof in the part specifying the name of the committee state that the investigative committee shall examine decisions concerning capital and ownership transformations in the banking sector, and the activities of banking supervision authorities from 4th June 1989 to 19th March 2006.

The same time period has again been indicated (additionally) to specify the committee's scope of activities concerning the examination of the correctness and purposefulness of the activities of the National Bank of Poland and the Commission for Banking Supervision, as the organs of banking supervision authorities (Article 2 point 1 of the Resolution), as well as the activities of ministers and other persons occupying the highest State posts in matters relating to decisions concerning capital and ownership transformations in the banking sector (Article 2 point 2 of the Resolution).

Such specification of the time period under examination by the committee may not be rationally explained from the perspective of the purpose and the object of the investigation exercised by it. This has been expressed in statements made by Sejm representatives during a hearing before the Constitutional Tribunal. On 4th June 1989 there was no legal act issued which would have constituted a turning point for legal regulations concerning capital and ownership transformations in the banking sector. Neither was any legal act concerning banking supervision authorities issued on that day. Should one seek a date significant from the perspective of the object of the committee's activities, it would have to be a date relevant to certain legal decisions or events (e.g. economic ones) that would show a direct and strong connection with the committee's object of examination.

Also the adoption of the second date outlining the time parameter of the matter entrusted to the investigative committee is unacceptable, notwithstanding the fact that the Deputies decided that the so-called Sejm investigation would involve solely facts from before the date of appointment of the committee (a control involving future events, being a preventative measure, could, in practice, be utilised to exert impermissible pressure on organs subject to control, or interference with matters under discussion, cf. Bulletin No. 423/V on the Meeting of the Legislative Committee of 21st March 2006), which deserves approval. However, the legislative technique used for drafting of the analysed Resolution led to the conclusion that also the latter date has been chosen arbitrarily (not to say accidentally) and without any relevance to the object of the investigative committee's activity. The Resolution on the appointment of the Investigative Committee to examine decisions concerning capital and ownership in the banking sector, and the activities of banking supervision authorities was adopted by the Sejm on 24th March 2006, and therefore the date of 19th March 2006 shall specify an inadequate period.

Having regard to the above circumstances, the Constitutional Tribunal finds that Article 2 of the Resolution of 24th March 2006 in the part where it arbitrarily specifies the time period of the object of the examination from 4th June 1989 to 19th March 2006, does not conform to Article 2 of the Constitution.

6. Assessment of the constitutionality of Article 2 point 1 of the Resolution of 24th March 2006.

6.1. In accordance with the wording of Article 2 point 1 of the Resolution challenged in the application by a group of Deputies, the scope of activity of the Investigative Committee shall include the examination of the correctness and purposefulness of the activities of the National Bank of Poland, and the Commission for Banking Supervision, being the organs of banking supervision authorities, from 4th June 1989 to 19th March 2006, in particular within the scope of:

a) granting permissions to establish a bank and conduct banking activities,

b) granting approvals to exercise voting rights at general meetings of banks' shareholders,

c) reliability, together with completeness, of materials prepared by the General Inspectorate of Banking Supervision at meetings of the Commission for Banking Supervision in matters referred to in letters a and b,

d) documenting activities of banking supervision authorities.

The organ adopting the Resolution utilises here polysemous notions whose meaning may only be specified in the course of the committee's work. This, however, infringes the principle stating that an investigative committee is required to have the object of examination as well as the scope of activity thereof specified *ex ante,* and that it must not be specified by way of activities of the committee itself (subdelegation), but shall be decided upon by the Sejm *in pleno* (cf. part III point 4.7 of the reasoning). The regulation contained in Article 2 point 1 of the Resolution of 24th March 2006 does not fulfil this requirement.

The most serious doubt concerns the manner in which the scope of committee's activity has been specified. The organ adopting the Resolution assumed that the "scope of the Committee's activity shall include the examination of the correctness and purposefulness of activities of the National Bank of Poland and the Commission for Banking Supervision, being the banking supervision authorities, from 4th June 1989 to 19th March 2006". It has therefore specified the scope of committee's activity in a general manner ("activities of the National Bank of Poland and the Commission for Banking Supervision"), using vague criteria that require prior specification (defining in detail) by the Committee (correctness and purposefulness).

The use by the organ adopting the Resolution of the expression "in particular" to indicate the most important types of activities of the National Bank of Poland and the Commission for Banking Supervision explicitly confirms that the situations defined as "particular" are merely exemplary in nature, and do not narrow the scope of committee's

activity (*numerus clausus*). In practice, this signifies that the Sejm *de facto* delegated to the investigative committee its sole and exclusive competence to specify the scope of the activities of the National Bank of Poland and the Commission for Banking Supervision, which were to be examined by the investigative committee. Such manner of regulating the matter, being the committee's object of investigation, does not fulfil the constitutional requirement of "specificity", which is supposed to be a feature arising from the contents of the Sejm resolution.

6.2. The issue of admissibility of control of the National Bank of Poland exercised by an investigative committee. The National Bank of Poland [hereinafter referred to as: the NBP] shall be the central bank of the State, which – by virtue of Article 227 paragraph 1 of the Constitution – shall have the exclusive right to issue money as well as to formulate and implement monetary policy. The National Bank of Poland shall be responsible for the value of Polish currency. The independence of the central bank is a consequence of the assumption that it is rational to limit the interference on the part of politicians in the activity of the organ. Such demand is justified by historical context, legal-comparative studies, and practical experience based on mutual relations between the political power and the central bank. Previously – in its Judgement of 28th June 2000 (Ref. No. K. 25/99, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 5/2000, item 141) – the Constitutional Tribunal sitting in a full bench found that the "Specific position of the NBP, as the central bank of the State, consists in its independence from State organs on the one hand, and political neutrality thereof, on the other hand". The NBP operates in the sphere of public finances, yet its competencies shall remain separated from those of the government.

The above-cited view found its continuation and elaboration in the case Ref. No. K 26/03, where the Constitutional Tribunal found that although the Constitution does not directly formulate the principle of independence of the central bank of the State, yet the realisation by the NBP of the constitutional tasks entrusted thereto requires a considerable degree of independence. Publications concerning administrative, and constitutional law, as well as economics classify the independence of the central bank in various ways (cf. *Status banku centralnego: Doświadczenia i perspektywy. Materiały z konferencji zorganizowanej 29 XI 1994 r. przez Komisję Polityki Gospodarczej, Budżetu i Finansów oraz Biuro Studiów i Ekspertyz, tom 7 serii „Konferencje i Seminaria" [The status of a central bank: experience and prospects. Materials from a conference organised on 29th November 1994 by the Committee of Economic Policy, Budget and Finances, as well as by the Bureau of Research, Vol. 7 of a series "Conferences and Seminars"],* Warszawa 1995; as well as R. Huterski, *Niezależność banku centralnego [The independence of the central bank]*, Toruń 2000). The independence may be considered in various aspects. Financial independence consists in the exclusion of a possibility of exerting financial pressure on the central bank's decisions or of the possibility of financing government expenditures (budget deficit) directly or indirectly by means of credits taken up in the central bank. Functional independence is a broader notion since it also encompasses independence in fulfilling other statutory functions of the central

bank. Institutional independence concerns mainly the position of the central bank in the system of other State organs, and the manner of appointing and dismissing the central bank's authorities. Constitutional provisions relating to the National Bank of Poland indicate that the constitutional legislator included all of the three aspects of central bank's independence (see: Judgement of 24th November 2003, Official Collection of the Constitutional Tribunal's Decisions – OTK ZU No. 9/A/2003, item 95). In the opinion of the Constitutional Tribunal the independence of the NBP has, therefore, been implicitly guaranteed by Article 227 of the Constitution.

The independence of the NBP as the central bank shall involve other competencies specified in the Act of 29th August 1997 on the National Bank of Poland (Journal of Laws – Dz. U. of 2005 No. 1, item 2 with amendments; hereinafter referred to as: the Act on the NBP). The statutory legal basis for vesting the central bank and its organs with additional competencies shall not diminish the independence of the NBP, also in matters other than those which have been constitutionally defined. On the contrary, it is justified to assume that the legislator, also on account of the feature of independence, vested the competencies in the NBP, and not in other organs of the State, e.g. in the minister responsible for public finance, or – which is also permissible – in any other special organ of the State established solely for this purpose.

The determination of competencies of the National Bank of Poland, its position and principles of co-operation thereof with competent State organs in the Constitution and the Act on the NBP, as well as the position of the President of the National Bank of Poland (cf. the prerequisites for their dismissal), points to the construction – adopted by the constitutional legislator and, in consequence, by the legislator itself – guaranteeing the independence of the NBP that is indispensable for the proper realisation of the activities thereof. The norm expressed in Article 3 paragraph 1 of the Act on the NBP is characteristic of this model of constitutional and statutory status of the NBP. The norm stipulates that the "Primary goal of the activity of the NBP shall be maintaining stable price level, along with supporting economic policy of the Government provided that it does not limit the primary goal of the NBP".

The principles of independence of the central bank and the minimal level of guarantee thereof have also been laid down in European Community legal acts, which currently constitute an element of the internal legal order of the Republic of Poland (cf. especially Article 108 and Article 109 of the Treaty Establishing the European Community (consolidated text – Official Journal of the EC No. C 325 of 24th December 2002, pp. 1-181), as well as Article 7 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank). These principles shall bind all organs of the Polish State, including legislative chambers, imposing an obligation to both make laws serving the realisation thereof, and to counteract attempts to undermine it (by way of statute of any other form of activity of public authority organs).

The reasoning deriving the authorisation to exercise Sejm's control over the President of the NBP by way of an investigative committee from the provisions granting the committee

the competence to submit a preliminary motion to bring to responsibility before the Tribunal of State, *inter alia*, the person holding the office of the President of the NBP (cf. Article 18 of the Act on the Sejm investigative committee, as well as Article 6 paragraph 3 of the Act of 26th March 1982 on the Tribunal of State, Journal of Laws – Dz. U. of 2002 No. 101, item 925 with amendments; hereinafter referred to as: the Act on the Tribunal of State) has proved faulty. Submission of a preliminary motion (this competence in relation to the President of the National Bank of Poland, has been vested – besides the investigative committee – in the President of the Republic of Poland, and a group of at least 115 Deputies) shall initiate appropriate proceedings aiming at the determination of the necessity to bring a given person to constitutional accountability. The proceedings follow a special procedure regulated in the Act on the Tribunal of State, and always take place before a standing committee of the Sejm – the Constitutional Accountability Committee (hereinafter referred to as: the CAC). This is the organ of the Sejm which shall be, in the light of the legislation in force, competent to exercise control (whose findings allow for the possible formulation of a motion, then considered by the Sejm and subject to final validation by an organ of the judiciary – separate and independent from other powers) regarding instances of the infringement of the Constitution and statute by the President of the NBP in connection with the occupied office or duties arising therefrom. It should be recognised that some subjects (including the investigative committee) have been granted the right to submit only preliminary motions to bring the President of the NBP to responsibility, because the control of the latter, within the scope allowing for the formulation of charges, which are ultimately considered by the Tribunal of State, has been statutorily reserved to the CAC.

The Act on the Tribunal of State does not extend the subjective scope of Article 95 paragraph 2 of the Constitution, i.e. the sphere of parliamentary control, on either the NBP or the President thereof. The National Bank of Poland, the President of the NBP or any other organ thereof shall not constitute a part of the Council of Ministers, nor shall be deemed a part of the public administration subordinate thereto. These subjects shall not be held politically responsible before the Sejm.

Admittedly, the Act on the NBP imposes an obligation on the President of the NBP and other representatives of its organs to provide information and explanations concerning monetary policy and activities of the NBP before the Sejm, the Senate and the committees thereof (Article 22 paragraph 2), yet, firstly, the constitutionality of such a solution remains outside the scope of review of the Constitutional Tribunal in the present case, and, secondly – the creation of a statutory basis to apply one of the means of control remaining at the disposal of the Sejm in relation to the National Bank of Poland does not automatically lead to the conclusion that it is admissible to apply other means, especially those characterised by higher intensity (and subjecting a given entity to the control by an investigative committee constitutes such a means when compared to the obligation to provide information and explanations).

The President of the NBP shall not have "immunity" within the scope of his/her activity. This does not, however, signify that it is appropriate to create an impression of the

existence of political pressure; such impression may have a negative "freezing effect" on the realisation of statutory competencies of organs independent from the Sejm.

Given the above circumstances, the Constitutional Tribunal finds that the Sejm shall not be authorised to appoint an investigative committee to examine the activity of the National Bank of Poland, the President of the NBP or other organs thereof (the Management Board of the NBP or the Council for Monetary Policy). The Resolution of the Sejm on the appointment of the Investigative Committee could create a new system of relations between the Sejm and the National Bank of Poland, which would not be based on the Constitution or statutes. Under the Constitution of the Republic of Poland of 2nd April 1997, it shall be impermissible to change the constitutional order of the State by way of resolutions of the Sejm.

The Constitutional Tribunal indicates that the independence of the central bank does not signify that the Sejm is deprived of any instruments of influencing the NBP. Pursuant to Article 203 paragraph 1 of the Constitution, the activity of the National Bank of Poland shall be subject to the audit of the Supreme Chamber of Control (hereinafter referred to as: the SCC), which may be commissioned by the Sejm or by any organs thereof, thus primarily by its committees (Article 6 paragraph 1 of the Act of 23rd December 1994 on the Supreme Chamber of Control, Journal of Laws of 2001 No. 85, item 937 with amendments). Moreover, as has been mentioned above, the President of the NBP shall be subject to constitutional accountability (Article 198 paragraph 1 of the Constitution), hence, the activity of a person holding this post shall be subject to review by the Constitutional Accountability Committee. Additionally, the activity of the President of the NBP, as well as other persons being the members of the organs thereof, shall be subject to prosecutor's investigation in cases where a suspicion of committing a crime has occurred (the Constitution does not grant immunity for the persons), notification of which may be filed by an investigative committee itself.

6.3. The issue of admissibility of control of the Commission for Banking Supervision by an investigative committee.

The Commission for Banking Supervision (hereinafter referred to as CBS, or the Commission) shall be a central, collective organ of the State, which shall not possess the constitutional status, and which shall perform activities within the scope of public, yet – which needs to be strongly emphasised – non-governmental administration. The legal bases concerning the activities, functions, methods of operation and composition of the CBS have been laid down in the Act on the NBP, and in the Act of 29th August 1997 – The Banking Law (Journal of Laws – Dz. U. of 2002, No. 72, item 665 with amendments; hereinafter referred to as: The Banking Law).

The Commission for Banking Supervision is not an organ of the National Bank of Poland. Neither the Constitution (Article 227), nor the Act on the NBP includes the CBS among the organs of the NBP.

Pursuant to Article 26 of the Act on the NBP (in the wording before the amendment introduced by way of Article 35 point 3 of the Act of 21st July 2006 on the financial market supervision, Journal of Laws – Dz. U. No. 157, item 1119), i.e. the provision that lays down

the basis for the establishment of the present personal composition of the CBS, the following persons shall make up the composition of the Commission: the President of NBP (as the Chairperson of the Commission), the Minister of Finance or the Secretary or Undersecretary of State in the Ministry of Finance delegated by the Minister (acting as the Deputy Chairperson of the Commission), the representative of the President of the Republic of Poland, the President of the Management Board of the Bank Guarantee Fund, the Chairperson or the Deputy Chairperson of the Polish Securities and Exchange Commission, a representative of the Minister of Finance, and The General Inspector of Banking Supervision. Such a mixed character of the composition shall guarantee that the organ's decisions will be optimal from the perspective of various objectives and values (economic, social, financial etc.). The decisions are supposed to result from discussions and analyses undertaken from different perspectives, assumed by the persons constituting the CBS and representing the respective institutions and organs of public authority. The mixed character of the composition of the CBS is based on a rational premise which aims at counteracting a situation, in which an organ of public authority would play a dominant role – through its representative or, indirectly, through the identity of a person formally holding two separate functions – on the Commission for Banking Supervision. It is a mechanism of "internal brakes", balance and compromise resulting from different opinions, views and arguments presented by the representatives or persons coming from various institutions and organs of public authority.

The accepted model of the organ of banking supervision signifies that the mechanism of control exercised over the organ is a derivative of the function (competence) thereof, as well as of the character of the activities entrusted to the CBS by way of statute. Members of the CBS representing the respective organs of public authority, shall be responsible before the organs they represent. Although the persons who have been statutorily appointed to the CBS on account of their post (hence *ex officio*) will formally act within the Commission on their own account and in their own name, yet *de facto*, due to the functional relation, they shall be subject to comprehensive assessment within the scope and forms relating to their presence in organs predestining them to being a member of CBS. Additionally, it should be pointed out that the decisions of the Commission for Banking Supervision shall be subject to control of legality performed by administrative courts.

The Commission for Banking Supervision, as an organ of non-governmental administration, shall not be subject to control by the Sejm, as referred to in Article 95 paragraph 2 of the Constitution, including the control exercised by an investigative committee. This does not signify, however, that the Sejm does not possess any means to exercise its investigative competence over the members of the CBS. It is permissible indirectly, that is – given the above findings – through control of behaviours of persons being the members of the CBS and coming from, or representing organs of public authority that are subject to parliamentary control. Such control, given the character of an organ, shall be feasible towards the Minister of Finance and a Secretary or Undersecretary in the Ministry of Finance delegated by the Minister (acting as the Deputy Chairperson of the Commission), the President of the Management Board of the Bank Guarantee Fund, the Chairperson or the Deputy Chairperson

of the Polish Securities and Exchange Commission, the representative of the Minister of Finance and the General Inspector of Banking supervision. The control of the Sejm shall not, however, include the Chairperson of the Committee for Banking Supervision, an office vested by virtue of the law in the President of the NBP, for reasons indicated in part III point 6.2. of the reasoning.

Further consideration is needed, separately and independently from the above-mentioned findings, as to whether it shall be admissible for an investigative committee to control a member of the Commission for Banking Supervisions acting on behalf of the President of the Republic of Poland. In the assessment of the Constitutional Tribunal, by precluding the parliamentary responsibility of the President of the Republic of Poland, one also excludes the possibility to hold persons being the representatives of the President accountable, even before the organs which by virtue of statutes are subject to parliamentary control. It has to be emphasised, however, that the situation concerns persons who have been selected or appointed by the President to the personal composition of collective organs of State authority, and who act on his/her behalf, and, hence, whose vote or address shall be attributed to the President (this distinction has also been noted in the doctrine, cf. L. Garlicki, *uwaga 5 do art. 187 [Remark no. 5 to Article 187]* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz [The Constitution of the Republic of Poland. A commentary]*, L. Garlicki, ed., Vol. IV, Warszawa 2005).

The inclusion of the representative of the President of the Republic of Poland to the persons subject to control exercised by the investigative committee shall constitute an infringement of Article 7 and Article 95 paragraph 2 of the Constitution due to the fact that the Resolution exceeds the subjective scope of Sejm's control, as specified by the Constitution and statutes.

6.4. To conclude, the Constitutional Tribunal finds that Article 2 point 1 of the Resolution of 24th March 2006:

a) insofar as it includes within the Committee's object of examination the correctness and purposefulness of the activities of the National Bank of Poland and the organs thereof, as well as those of the President of the National Bank of Poland acing as the Chairperson of the Commission for Banking Supervision, does not conform to Article 227, Article 2 and Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution,

b) insofar as it concerns the representative of the President of the Republic of Poland acting as a member of the Commission for Banking Supervision, does not conform to Article 2, Article 7, Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution, and is not inconsistent with Article 227 of the Constitution.

7. Assessment of the constitutionality of Article 2 point 2 of the Resolution of 24th March 2006.

7.1. The Applicant also challenged Article 2 point 2 of the Resolution of 24th March 2006, which stipulates that: "The scope of Committee's activity shall include the examination of the shape of the banking system in Poland in comparison with other countries, particularly with middle-sized and big European Union countries, and the reasons behind such state of affairs, as well as the influence of banking supervision authorities on such state, including, in particular, the examination of the ownership structure of banks operating as joint-stock companies in Poland in comparison with middle-sized and big European Union countries and the influence of banking supervision authorities as well as the President of the Office of Competition and Consumer Protection (formerly: The Antimonopoly Office) on such state of affairs".

According to the above findings (cf. part III point 4.2. of the reasoning), an investigative committee shall undertake proceedings that would provide information on factual events, persons and things, as well as relations existing between them, so as to assess the reconstructed course of events and relations from the perspective of the consequences thereof on the "shape of the banking system". In a situation, however, where the Resolution specifies the task of the committee to be the examination of "the shape of the banking system in Poland (...) and the reasons behind such state of affairs as well as the influence of banking supervision authorities on such state" in comparison with "other countries, particularly with middle-sized and big European Union countries", the matter does not concern the retracing the course of events, or circumstances, but it prescribes the reconstruction and description of the current state of affairs. Accordingly, from the perspective of the Resolution of 24th March 2006, the committee is not supposed to fulfil investigative functions, but must undertake study work, since such task has been specified in Article 2 point 2 of the analysed legal act.

The Resolution does not define the meaning attributed to the notion "middle-sized and big European Union countries", and whether it should be understood that by taking into account the size criterion (e.g. the size of the territory, or the number of inhabitants), the Committee should undertake the analyses of banking systems of all middle-sized and big European Union countries, or only of those countries chosen by the organ (given another, also indeterminate criterion, put forward by the Committee itself). Neither does the Resolution under review in the present case determine what other countries, except for (the similarly indeterminate) middle-sized and big European Union ones, shall constitute the basis for the assessment of the shape of the banking system in Poland.

It has also not been specified whether the period between 4th June 1989 and 19th March 2006 shall constitute a point of reference for the analyses of the shape of banking systems in middle-sized and big EU countries and in other countries from outside the EU. It may be assumed that banking systems in the countries which the Committee might recognise as representative for its comparative studies, were shaped before the year 1989. It may not, therefore, be excluded that since the Sejm outlined the time period from 1989 to 2006 within the name of the Committee (which might constitute a certain interpretative hint), this might signify that, for this reason, the Committee could not set such countries with representative

banking system as examples, and hence the intended objective of the committee's activity could not be attained.

For the purpose of fulfilling the tasks specified in Article 2 point 2 of the Resolution, the Sejm shall not exercise its investigative powers. The realisation thereof may be achieved by other means, i.e. by well-known and universally applied methods of scientific/research as well as study and analytical methods preceding legislative procedure or methods that accompany the legislative work, e.g. studies and analyses of legal and organisational, economic and banking infrastructure conditions.

The existing structure of investigative committees allows for a reasonable assumption that the objective specified in Article 2 point 2 of the Resolution of 24th March 2006 may be attained by way of undertaking appropriate activities by the existing, standing committees of the Sejm, acting separately or collectively (the Public Finances Committee, the Economic Committee or the State Treasury Committee, to name a few). A thorough assessment of the banking system, especially based on comparative studies, is possible within ordinary competencies of the Sejm. Therefore, the inclusion of an investigative committee to achieve an objective that may be achieved by other means (parliamentary standing committees), would result in the infringement of the principle of rationality and proportionality of public authority activities, as stemming from Article 2 of the Constitution. Additionally, the remarks made in relation to the prohibition for the Sejm to grant subdelegation to an investigative committee concerning the determination of the object and scope of committee's activity, also remain relevant here.

7.2. Banks operating as joint-stock companies shall not be subject to parliamentary control. Only the minister carrying out ownership functions in companies, whose shares are held by the State Treasury, shall be subject to such control.

Banks operating as joint-stock companies are the private law entities, established in accordance with the rules characterising private-legal and trade relationships, which shall be subject to control and supervision outlined in provisions concerning banking supervision. It does not mean that a Sejm committee may not undertake an analysis of the ownership structure of a bank, which does not pose any problem given that the structure is public and information thereupon is widely available. There is no need to appoint an investigative committee, nor apply measures reserved therefor, to obtain information that is widely available for any interested State organ, or even any citizen. The State Treasury shall fulfil its ownership functions by way of its administrative organs (the minister). Accordingly, the committee may acquire essential information from the person representing the State Treasury in a given bank operating as joint-stock company.

7.3. The Tribunal emphasises that investigative forms of control exercised by the Sejm shall constitute an exception to the ordinary Sejm control, and therefore, being an exception, shall not be subject to expansive interpretation. Consequently, substituting the functions of parliamentary committees – possessing sufficient means to undertake studies and analyses of a given occurrence, whose examination is possible with the use of ordinary methods utilised in

the analysis of the law or economic phenomena – for an investigative committee, with its investigative measures, shall amount to a constitutional excess since the proportionality between the means used for the achievement of a goal to the goal itself has not been maintained.

It is worth mentioning here that also Article 168 of the Code of Criminal Procedure, which finds its application before an investigative committee (cf. Article 11i of the Act of 21st January 1999) envisages that well-known facts, or facts known *ex officio*, shall not require evidence. Moreover, the Supreme Court takes the stand that the statutory expression "a well-known fact" shall also include "historical facts described in academic literature, *ergo* the account of some events, including the political ones, that took place in the past, and that have been revealed by historians in accordance with the principle of research methodology, i.e. on the basis of various sources. This shall particularly concern facts which – given their political, social, scientific, cultural and other influence – have become the object of various publications and public statements, in the form of articles, books, radio programmes" (The Supreme Court Judgement of 9th March 1993, Ref. No. WRN 8/93, Official Collection of the Supreme Court's Decisions – OSNKW No. 7-8/1993, item 49).

7.4. As a result of the above findings, the Constitutional Tribunal acknowledges that Article 2 point 2 of the Resolution of 24th March 2006 does not conform to Article 2, Article 7 and Article 111 paragraph 1 of the Constitution, and is not inconsistent with Article 95 paragraph 2 and Article 227 of the Constitution. Entrusting the Investigative Committee, appointed in accordance with Article 111 of the Constitution, with tasks indicated in Article 2 point 2 of the Resolution infringes the principle of correct legislation since the realisation of the tasks by means of instruments reserved – according to the Act of 21st January 1999 – to an investigative committee, shall be precluded.

8. Assessment of the constitutionality of Article 2 point 3 of the Resolution of 24th March 2006.

8.1. Pursuant to Article 2 point 3 of the Resolution, the scope of activity of the investigative committee shall include the examination of "the correctness of the activity of the Management Board of the National Bank of Poland within the scope of evaluation undertaken by it in relation to the functioning of the banking system in Poland".

Taking into account the object of the committee's activity, it has to be pointed out that the Management Board of the NBP does not constitute a banking supervision authority, while carrying out evaluation of the functioning of a banking system does not entail any issuing of decisions. The results of the evaluation shall not possess decisive nature and shall not ultimately solve any issues.

The Management Board of the National Bank of Poland, as an NBP organ, shall not be subject, by virtue of Article 95 paragraph 2 of the Constitution, to control activities exercised by the Sejm within the scope of its constitutionally and statutorily defined tasks.

Hence, the possibility of examination by an investigative committee of the correctness of the activity of the Management Board of the NBP within the scope of the undertaken evaluation of the banking system in Poland, shall be excluded in this respect. An attempt to establish such a self-contained legal basis by way of including particular contents in the Resolution of 24th March 2006, must be – for reasons analogous to the ones that refer to the status of the NBP – deemed constitutionally inadmissible.

Moreover, is has to be emphasised that – according to the Act on the NBP – the members of the Management Board of the NBP shall be appointed and dismissed by the President of the Republic of Poland. The political (parliamentary) accountability in this respect has been taken over – by way of countersignature – by the President of the Council of Ministers.

Interpretational doubts may arise with respect of the wording of the analysed provision of the Resolution of the Sejm. It needs to be considered what meaning has been assigned to the following phrase: "examination of the correctness of the activity of the Management Board of the NBP within the scope of evaluation undertaken by it in relation to the functioning of the banking system in Poland". The phrase "Correctness of the activity" may be understood as the realisation of rules concerning the manner in which materials concerning the evaluation of the functioning of the banking system in Poland are being prepared for the meetings of the Management Board of the NBP. "Correctness of activity" may also relate to the principles of convening the Management Board meetings, to the required *quorum* necessary to make valid decisions or assuming positions, to the manner of forwarding appropriate decisions of the Management Board to competent addresses, etc. The realisation of rules concerning the procedure of preparing the activities of the Management Board shall (may) be the requirement determining the validity of the decisions taken.

8.2. The second issue is associated with the realisation of the statutory function by the Management Board of the NBP consisting in the evaluation of functioning of the banking system. Doubts arise as to whether the examination of the correctness of activity of the Management Board of the National Bank of Poland within the scope of evaluation of the functioning of the banking system undertaken by it may, at all, be extended so as to include the examination of the correctness of the evaluation of the functioning of the banking system. Should such an interpretation be adopted, another question comes into light: is an investigate committee a competent body to exercise examination based on the merits in relation to the criteria adopted by the Management Board of the NBP for the purpose of realisation of its competence to undertake evaluation of the banking system.

In the opinion of the Constitutional Tribunal, within the scope of the assessment of the constitutionality in relation to the solutions adopted therein, the arguments concerning the status of the NBP (i.e. exceeding the scope of parliamentary control) remain relevant here, and together with the above-presented findings lead to the conclusion that Article 2 point 3 of the Resolution of 24th March 2006 does not conform to Article 227, Article 2 and Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution.

9. Assessment of the constitutionality of Article 2 point 4 of the Resolution of 24th March 2006.

9.1. Pursuant to the next provision challenged by the Applicant – Article 2 point 4 of the Resolution – the scope of activity of the investigative committee shall include the examination of "the issue of a potential conflict of interests between the roles of the President of the National Bank of Poland as the Chairperson of the Council for Monetary Policy and as the Chairperson of the Commission for Banking Supervision".

The issue of a potential conflict of interests, as specified in the Resolution, concerns legal-institutional matters. The use of proper names of two State organs shows that it is not the activity of particular persons specified in the Resolution, but rather the model of functioning of State organs that constitutes the object of examination. In this context, it may not be assumed that a conflict of interests comes into play, as it would be difficult to accept a hypothesis where two organs of the State represent or realise interests that remain in conflict (i.e. the realisation of one of them hinders or makes the realisation of the other one impossible). The assumption that the legislator erred by vesting the organs with specific competencies and instruments for the realisation of the competencies must be rejected, since it contradicts the assumption of the rationality of the legislator.

A situation may not be excluded where a person discharging one function may also discharge another function, also specified by statutory provisions. It may not be excluded, but also may not be presupposed that discharging one function will lead to a collision with discharging the other one. It shall not, however, be a conflict of interests, since State organs do not represent "their own" interests, but a particular public interest. There might possibly occur a conflict of roles of various degree.

9.2. The determination of the existence of a conflict of roles is a relatively easy task whose realisation may be entrusted in an ordinary (not possessing the status of an investigative one) committee (committees) of the Sejm. It constitutes a subject-matter appropriate for legislative studies and analyses, but certainly not for an investigative committee. The potential legislator's error may and should be rectified in accordance with the legislative procedure.

If, however, it turned out that in the course of legislative work that had led to the adoption of the regulation containing a conflict of roles there were situations which, e.g. might be qualified as a suspicion of committing a crime, and which triggered an intentionally faulty legislative process, one may consider the appointment of a special investigative committee to examine the governmental process of drafting a bill that led to the adoption of a regulation resulting in a conflict of roles between State authorities and contributing to the emergence of pathological phenomena. A prerequisite to institute such an inquiry would have to include, e.g. committing of a crime in the course of laying a bill on the table by a person discharging the function of a representative or an employee of an organ of State authority; yet, Article 2 point 4 of the Resolution of 24th March 2006 does not concern this issue.

9.3. Taking the above into account, the Constitutional Tribunal acknowledges that entrusting the investigative committee with tasks specified in Article 2 point 4 of the Resolution does not conform to Article 2, Article 7 and Article 111 paragraph 1 of the Constitution, since it infringes the principles of correct legislation due to the fact that the tasks may not be accomplished by means of instruments which are – according to the Act of 21st January 1999 – reserved to investigative committees.

10. Assessment of the constitutionality of Article 2 point 5 of the Resolution of 24th March 2006.

Pursuant to Article 2 point 5 of the Resolution, the scope of activity of the investigative committee shall include the examination of "the activities of persons acting on behalf of the Commission for Banking Supervision, the General Inspectorate of Banking Supervision, the Office of Competition and Consumer Protection (formerly: The Antimonopoly Office), the Polish Securities and Exchange Commission, as well as the Ministry of the Treasury and the Ministry of Finance with regard to the potential existence of a conflict of interests affecting the impartiality when taking decisions by these persons".

Considering the allegations relating to the above-cited provision it has to observed that the disposition embodied therein consisting in the examination of persons with regard to the potential existence of a conflict of interests shall have a different character than the disposition contained in Article 2 point 4 of the reviewed Resolution.

Firstly, the disposition concerns persons acting on behalf of the specified organs of State authority. Secondly, it concerns the examination of the activity of persons acting on behalf of the specified organs with regard to the existence of a conflict of interests affecting their impartiality when taking decisions. Therefore, where such a conflict of interests existed, the notion of "impartiality" of the persons when taking decisions would constitute an assessment criterion of their activity.

According to Article 95 paragraph 2 of the Constitution, the Sejm's control shall encompass not only the Council of Ministers, but also all other central organs and government administration agencies. As L. Garlicki points out, the expression "Council of Ministers", as used in the provision, should be understood as "a collective determination of all organs and institutions making up the organisational system subordinate to and managed by the Council of Ministers" (by the same author: *uwaga 7 do art. 95* [*Remark no. 7 to Article 95*], [in:] *Konstytucja Rzeczypospolitej Polskiej*. *Komentarz [The Constitution of the Republic of Poland. A commentary],* L. Garlicki, ed., Vol. I, Warszawa 1999).

Pursuant to Article 24 paragraph 1 of the Act of 15th December 2000 on the protection of competition and consumers (Journal of Laws – Dz. U. of 2005 No. 244, item 2080 with amendments), the President of the Office of Competition and Consumer Protection shall constitute a central organ of government administration competent in matters concerning the protection of competition and consumers. The supervision of the organ shall be exercised by

The President of the Council of Ministers. In turn, within the meaning of Article 24 paragraph 6 of the aforementioned Act, the Office of Competition and Consumer Protection shall assist the President thereof to fulfil their duties.

Also the Polish Securities and Exchange Commission (hereinafter referred to as: the PSEC) was – to the day of repealing of Article 6 of the Act of 29th July 2005 on supervision over the capital market (Journal of Laws – Dz. U. No. 183, item 1537 with amendments) by way of Article 62 point 1 of the Act on the financial market supervision – a collective organ of government administration vested with a significant degree of independence. The supervision over the PSEC was exercised by the minister responsible for the affairs of finical institutions.

Therefore, the Constitutional Tribunal states that in relation to the persons acting on behalf of the Office of Competition and Consumer Protection (formerly the Antimonopoly Office), the Ministry of the Treasury and the Ministry of Finance, as well as the Polish Securities and Exchange Commission there exists a possibility to apply mechanisms of control exercised by the Sejm, including the examination by an investigative committee. It may not, however, be *in abstracto* definitively excluded that in certain situations doubts may arise as to the scope of examination by an investigative committee regarding those areas of activities of the institutions in question (especially the Office of Competition and Consumer Protection) which are connected with the realisation of their functions, which are regulated by statues and treaties, and which are subject to control exercised by independent courts.

Fundamental doubts arise in relation to the possibility of examination of persons acting on behalf of the Commission for Banking Supervision and the General Inspectorate of Banking Supervision. The answer to the question on the constitutional admissibility to examine the activities of such persons within the scope specified in the Resolution is a derivative of prior findings concerning both the necessity of existence of constitutional or statutory legal bases for the control exercised by the Sejm, and the scope of such control, especially one that is exercised by way of an investigative committee, as well as findings concerning the status of the National Bank of Poland and implications arising therefrom. The Tribunal acknowledges that findings contained in the reasoning regarding the unconstitutionality of the scope of Article 2 point 1 of the Resolution, remain relevant also in relation to the Commission for Banking Supervision and the General Inspectorate of Banking Supervision.

Accordingly, the Constitutional Tribunal acknowledges that Article 2 point 5 of the Resolution, in the part containing the following names: "the Commission for Banking Supervision", as well as "the General Inspectorate of Banking Supervision" does not conform to Article 227, Article 2 and Article 7, read in conjunction with Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution, since the organs shall not be subject to parliamentary control performed by the Sejm, and simultaneously their activity shall not constitute the object of examination by an investigative committee.

11. Assessment of the constitutionality of Article 2 point 6 of the Resolution of 24th March 2006.

11.1. Pursuant to the challenged Article 2 point 6 of the Resolution, the scope of the investigative committee's activity shall include the examination of "activities of ministers and other persons occupying the highest State posts in matters relating to decisions concerning capital and ownership transformations in the banking sector from 4th June 1989 to 19th March 2006".

The Resolution of 24th March 2006 refers to a vague notion of "persons occupying the highest State posts". While seeking elucidation of the notion, one has to take into consideration regulations that would reflect the most probable intention of the organ adopting the Resolution.

Such regulation is contained in an act which most comprehensively specifies managerial positions in the State administration, i.e. in the frequently amended Act of 31st July 1981 on the remuneration of persons occupying the highest State posts (Journal of Laws – Dz. U. No. 20, item 101 with amendments). In accordance with the wording operative on the day of adoption of the challenged Resolution, Article 2 of the act enumerates persons occupying the highest State posts (according to a criterion based on the principles of remuneration), who, *inter alia*, include**:** the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the President of the Council of Ministers, the Vice-president of the Council of Ministers, the President of the Supreme Chamber of Control, the President of the Constitutional Tribunal, the minister, the President of the National Bank of Poland, the Commissioner for Citizen's Rights, the Inspector General for the Protection of Personal Data, the President of the Institute of National Remembrance, the President of the National Broadcasting Council, the President of the Office of the General Attorney of the Treasury, the Chief of the Chancellery of the Sejm, the Chief of the Chancellery of the Senate, the Deputy Chief of the Chancellery of the Sejm, the Inspector General for Employment, the Manager of the National Electoral Office, the President of the Polish Academy of Sciences, the Member of the National Broadcasting Council, the First Deputy of the President of the National Bank of Poland, the Undersecretary of State (deputy minister), the Deputy President of the National Bank of Poland, the Secretary of the Office of the Committee of European Integration, the Deputy Commissioner for Citizen's Rights, the Deputy Inspector General for the Protection of Personal Data, the Insurance Ombudsman, the manager of a central organ, the Vice-President of the Polish Academy of Sciences and the province governor.

It has to emphasised that the act has often been amended, and between 4th June 1989 and 19th March 2006 the above-mentioned Article 2 thereof was subject to 13 amendments.

11.2. The first issue that arises here relates to the determination of the range of persons occupying the highest State posts, to whom Article 2 point 6 of the Resolution of 24th March 2006 shall relate from the perspective of "definitiveness" of the matter entrusted to the investigative committee for examination. There exist at least two interpretational possibilities. The first possibility: the range shall concern persons enumerated in Article 2 of the Act on the remuneration of persons occupying the highest State posts on the day of adoption of the

Resolution on appointing the investigative committee. The second possibility: the range shall concern persons enumerated in the Act on the remuneration of persons occupying the highest State posts at the moment significant from the perspective of a particular matter being the object of examination by the investigative committee.

This controversy is of fundamental significance, and may not be settled by the committee itself, since it would amount to the encroachment in the competencies vested solely in the Sejm. Additionally, the time period of the provision – should it be recognised as one that allows for the reconstruction of the notion of "persons occupying the highest State posts" – remains indeterminate to such an extent that must be regarded as non-conforming to Article 111 paragraph 1 of the Constitution.

11.3. In turn, including within the category of persons subject to control by an investigative committee, even potentially, persons exercising the office of the President of the Republic of Poland or the President of the Constitutional Tribunal goes beyond the authorisation of an investigative committee laid down in the Constitution and statutes. Such a broad determination of persons subject to control in proceedings before an investigative committee would result in the infringement of Article 7, Article 95 paragraph 2 and Article 111 of the Constitution.

The fact that such a real threat of infringement of the above-mentioned provision exists, was reflected in the view of the representatives of the Sejm expressed in the course of proceedings, settled by way of a decision issued by an administrative court, concerning the admissibility of control of the President of the Supreme Administrative Court in relation to a matter concerning ownership or capital transformations.

11.4. In conclusion, the Constitutional Tribunal acknowledges that Article 2 point 6 of the Resolution of 24th March 2006 in the part containing the expression "and other persons occupying the highest State posts" does not conform to Article 2, Article 7, Article 95 paragraph 2, Article 111 paragraph 1 and Article 227 of the Constitution.

12. Assessment of the constitutionality of Article 2 point 7 of the Resolution of 24th March 2006.

12.1. The provision of Article 2 point 7 of the Resolution challenged by a group of Deputies stipulates that the investigative committee's scope of activity shall include the examination of the potential, unauthorised influence of private persons or entrepreneurs on the activities of ministers and other persons occupying the highest State posts in matters relating to decisions concerning capital and ownership transformations in the banking sector from 4th June 1989 to 19th March 2006.

While examining the allegations formulated in relation to this provision, the Constitutional Tribunal considered whether it is admissible for the investigative committee to examine private entities – by way of exception – given the inseparable connection between the

activities of private entities with the improper performance of duties by persons holding public office.

The point of departure for the deliberations in this respect was the stance of the Constitutional Tribunal expressed in the case Ref. No. K. 8/99, stating that "The activity of private entities which do not perform any tasks from within the scope of public administration, nor take advantage of State aid" shall not be encompassed within the scope of control exercised by the Sejm. "Investigative committees shall (...) solely examine the activity of organs and institutions expressly subject to the control exercised by the Sejm, as laid down in the Constitution and statutes".

In the present case, the category of subjects under control has not been narrowed, but rather broadened so as to include all private persons and entrepreneurs, including those who do not fulfil any tasks from within the scope of public administration, nor take advantage of State aid. This signifies that, potentially, every private person or entrepreneur whose activities will be regarded by the investigative committee as possessing the nature of a "potential, unauthorised influence" on the activities specified in Article 2 point 6 of the Resolution, may be subject to control exercised by the committee.

12.2. Neither the Constitution, nor statutes authorise an investigative committee to broaden the scope of Sejm's control so as to include private persons or entrepreneurs in a situation of a suspicion of them exerting a potential, unauthorised influence on the activities of ministers or other persons occupying the highest State posts. The sphere of autonomy of private persons or entrepreneurs has been guaranteed by constitutional and statutory norms and shall be fundamental from the point of view of the status of the individual. The boundaries of the autonomy have also been laid down in constitutional and statutory norms. The influence of organs of public authority on private persons and entrepreneurs has been, both from the substantive and procedural perspective, specified in statutes. The constitutional freedoms and rights of individuals may be limited, yet exclusively be statute, only for values specified in Article 31 paragraph 3 of the Constitution, and only within the scope which shall not violate the essence of these freedoms and rights.

Article 2 point 6 of the challenged Resolution, were it deemed constitutionally admissible, would legitimise the broadening of the scope of control by the Sejm so as to include all behaviours of private persons and entrepreneurs subject to court jurisdiction. This would signify that any matter, arbitrarily indicated by the Sejm as the object of examination by an investigative committee, would enable the Sejm to exercise control over private persons and entrepreneurs by means of investigative measures and with the omission of court proceedings. As a result, the constitutional and statutory limits of the activity of administrative authority, as well court guarantees towards the individual could be repealed by a resolution of the Sejm. This would lead to the elimination of the guarantee function of the Constitution and statutes, and would amount to the return to a situation which was legitimately described as one in which individuals could not be certain of their lives, freedom or property so long as the Sejm was debating.

The Sejm shall not be authorised to alter the constitutional and statutory status of the individual by way of a resolution thereof. The acceptance of the construction contained in the reviewed provision of the Resolution of the Sejm would amount to the alteration of the constitutional order of the State since it would create a possibility of shaping the status of the individual (and guarantees arising therefrom) not by way of constitutional or statutory norms, but by way of provisions non-conforming to the Constitution or statutes and contained in a resolution.

12.3. This, however, does not signify that no circumstances may occur that could lead the committee to conclude that there exists a situation of a "potential, unauthorised influence of private persons or entrepreneurs" on the activities specified in Article 2 point 6 of the Resolution of 24th March 2006. Formulation of such a hypothesis may result from correct, lawful proceedings of an investigative committee, yet on the condition that the object of committee's examination includes the activities of ministers and other persons occupying the highest State posts (within the constitutionally admissible scope) in relation to whom suspicion arises that they had been under the potential, unauthorised influence of private persons or entrepreneurs. Findings of the investigative committee (concerning the exertion of unauthorised, and therefore illegal influence on the part of natural persons or entrepreneurs) may then be verified by way of procedural actions undertaken by competent State organs, especially the prosecutor's office.

It shall be inadmissible to establish investigative committees to control the activities of private persons or entrepreneurs, since the scope of control exercised by the Sejm, particularly realised by way of an investigative committee, shall not encompass private persons or entrepreneurs. It shall, however, concern ministers and organs subordinated to them, over whom the Sejm shall exercise control by way of Article 95 paragraph 2 of the Constitution. One issue is the control exercised by an investigative committee over the activities of ministers in relation to whom the potential, unauthorised influence on the part of private persons and entrepreneurs has been exerted (submitting to influence); and the control exercised over persons suspected of exerting such influence, who are not subject to control by the Sejm, is another issue.

A different problem concerns the summoning of private persons and entrepreneurs before an investigative committee for the purpose of giving evidence, which is legally permissible, yet only on account of the fact that the activities of ministers, as opposed to the behaviours of private persons or entrepreneurs, constitute the object of examination.

12.4. Therefore, the Constitutional Tribunal acknowledges that Article 2 point 7 of the Resolution of 24th March 2006 does not conform to Article 2, Article 7, Article 95 paragraph 2 and Article 111 paragraph 1 of the Constitution, and is not inconsistent with Article 227 of the Constitution.

13. The issue of review of conformity of Article 2 of the Resolution of 24th March 2006 to Article 175 paragraph 1 and Article 203 of the Constitution.

The provision of Article 8 of the Act on the Sejm investigative committee stipulates: "Carrying out proceedings or a legally binding conclusion thereof shall not exclude the possibility of instituting proceedings before the committee" (paragraph 1). "The object of the committee's activity shall not include the assessment of lawfulness of judicial decisions" (paragraph 2); "The committee, following the consent of the Marshal of the Sejm, may suspend its activities until certain part of or entire proceedings have been concluded before another organ of public authority" (paragraph 3); "Proceedings carried out by the committee may be stayed, particularly when there is a justified supposition that materials gathered in proceedings before another organ of public authority or a decision made by it could prove useful to a thorough examination of the matter by the committee" (paragraph 4).

In the Judgement concerning the above-cited provision delivered in the aforementioned case Ref. No. K. 8/99, the Constitutional Tribunal stated, *inter alia,* that: "the constitutional principles of the independence of judges and courts shall not forbid the committee to undertake the examination of a matter, despite the fact that the circumstances and events constituting the matter of committee's examination, also constitute or constituted the matter under examination in court proceedings. In practice, this concerns predominantly criminal proceedings. (…) the activity of an investigative committee and court proceedings have different objectives. The aim of court proceedings in a criminal case is to determine criminal liability of a given person. In turn, the aim of an investigative committee is to examine the activity of a given organ of public authority, particularly in order to determine the scope and background of irregularities in the activity of the organ. Gathering information shall make it possible for the Sejm to take any expedient political steps so as to counteract the irregularities and improve the activity of the State administration. They may, for example, consist in amending the legislation in force or in holding a given person constitutionally accountable. Accordingly, the object of an investigative committee's examination shall not coincide with the object of a court's examination."

Adopting the above findings and taking into account the decision issued in consequence thereof, acknowledging that Article 8 paragraph 1 of the Act on the Sejm investigative committee conforms to Article 178 paragraph 1 of the Constitution, the Constitutional Tribunal finds that since the activity of an investigative committee will not undermine the independence of the judiciary, then, *a fortiori*, it will not constitute an interference with the administration of justice constitutionally reserved in Article 175 paragraph 1 for the Supreme Court, common courts, administrative courts and military courts. The examination by an investigative committee of the matter entrusted thereto is not the administration of justice, hence Article 175 paragraph 1 of the Constitution shall not constitute an adequate basis on which to review the Resolution.

Similar conclusions may be drawn when confronting the Resolution challenged in the present case with Article 203 paragraph 1 of the Constitution, whereby "the Supreme Chamber

of Control shall audit the activity of the organs of government administration, the National Bank of Poland, State legal persons and other State organisational units regarding the legality, economic prudence, efficacy and diligence". Since constitutional principles of independence of courts and judges shall not forbid the committee to undertake the examination of the matter, despite the fact that the circumstances and events constituting the matter under committee's examination, also constitute or constituted the matter under examination in court proceedings, hence one has to come to the conclusion (*a maiori ad minus*) that it is all the more permissible to initiate parliamentary investigation in relation to matters subject to control exercised by the Supreme Chamber of Control, which is an organ subordinate to the Sejm. Accordingly, the Resolution on the appointment of the investigative committee specifying the scope of matter entrusted thereto for examination may not be confronted regarding the conformity thereof to Article 203 paragraph 1 of the Constitution, which specifies the scope of competence of the Supreme Chamber of Control.

This conclusion shall not contradict the above finding that the principle of rationality (diligence and efficiency) of work of public authority organs each time obliges the Sejm to consider whether the clarification of a given matter indeed requires – for the necessity of application of instruments specified in the Act of 21st January 1999 – the appointment of an investigative committee, given that the accomplishment of the objective by means of other measures or procedures is not feasible.

In conclusion, the Constitutional Tribunal acknowledges that Article 2 of the Resolution of 24th March 2006 is not inconsistent with Article 175 paragraph 1 and Article 203 paragraph 1 of the Constitution.

For the reasons presented above the Constitutional Tribunal has adjudicated as in the sentence of this Judgement.

Translated by *Marek Łukasik*