

## POLAND'S MEMBERSHIP IN THE EUROPEAN UNION (THE ACCESSION TREATY)

<b>Type of proceedings:</b> <a href="#">Abstract review</a>  <b>Initiator:</b> Groups of Deputies	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
<b>Legal provisions under review</b>		<b>Basis of review</b>
The Treaty concerning the accession of the Republic of Poland to the European Union, read in conjunction with certain provisions of the Treaty establishing the European Community and the Treaty on European Union		Numerous provisions of the Constitution cited by the applicants

The Treaty concerning the accession of 10 States, including Poland, to the European Union (hereinafter referred to as the Accession Treaty) was signed on 16<sup>th</sup> April 2003, in Athens. There are 25 State parties to this Treaty: the 15 existing EU Member States and the 10 acceding States.

On 7<sup>th</sup> and 8<sup>th</sup> June 2003 a referendum was held in Poland, wherein the Nation was asked, within the procedure provided for by Article 90(3) of the Constitution of the Republic of Poland, to grant consent for ratification of this Treaty. A majority of voters (77.45%) chose in favour of ratification. In accordance with the referendum results, the Polish President ratified the Accession Treaty which, together with the accompanying documents, was published in the Journal of Laws of the Republic of Poland No. 90, dated 30<sup>th</sup> April 2004. On 1<sup>st</sup> May 2004, Poland became a member of the European Union.

The Accession Treaty is accompanied by the “Act concerning the conditions of accession of the Republic of Poland and the adjustments to the Treaties on which the European Union is founded” constituting an integral part of the Treaty. The “Final Act” is of a similar character.

Pursuant to the Accession Treaty, Poland undertook to implement European Union law in its entirety, including the so-called founding treaties – the Treaty establishing the European Community (EC Treaty) and the Treaty on European Union (EU Treaty). The concept of the European Union encompasses three “Pillars”: I – the European Communities, i.e. the European Community (formerly known as the European Economic Community) and the European Atomic Energy Community; II – the Common Foreign and Security Policy; III – the Police and Judicial Cooperation in Criminal Matters. To date, only those Communities within the framework of the First Pillar have the character of inter-

national organisations; the Second and Third Pillars constitute a kind of forum for cooperation between Member States. Accordingly, the notion of “EU law” encompasses, on the one hand, Community law, i.e. the law of the First Pillar and, on the other hand, provisions connected with the functioning of the two remaining Pillars. Community law consists of the entire *acquis communautaire*, including provisions of the Treaties (the so-called primary Community law – originating directly from Member States), provisions issued by organs of the Communities (called secondary Community law), as well as the jurisprudence of the Court of Justice of the European Communities (ECJ, located in Luxembourg) and the Court of First Instance.

The Constitutional Tribunal’s judgment in the present case does not represent the Tribunal’s first statement concerning the relationship between Polish law and EU law. It refers, however, to certain problems concerning this relationship and, in particular, the relationship between the Polish Constitution and the contents of the Accession Treaty and founding treaties, in the broadest and, to date, the most fundamental manner. The issue concerning the constitutionality of the procedure for accession was dealt with in the Tribunal’s judgment of 27<sup>th</sup> May 2003, [K 11/03](#). Amongst the Tribunal’s various judgments concerning the relationship between domestic law and EU law, the following judgments deserve special attention: [K 33/03](#) (bio-components in gasoline and diesel), [K 15/04](#) (participation of foreigners in European Parliamentary elections”), [K 24/04](#) (inequality in competences of Sejm and Senate committees in respect of European Union legislative proposals) and [P 1/05](#) (application of the European Arrest Warrant to Polish citizens). The aforementioned judgments are summarised individually.

The initiators of the proceedings before the Constitutional Tribunal in the present case – three groups of Deputies from the Sejm (the lower chamber of the Polish Parliament), opposing Poland’s membership of the EU on the conditions stemming from the Accession Treaty – alleged that this accession failed to conform to the Constitution of the Republic of Poland, *inter alia*, to the constitutional principles of the sovereignty of the Polish People and the supremacy of the Constitution within the Polish legal system. In challenging these conditions of accession, which constitute an indivisible whole, in their entirety, the applicants focused their critique on the following provisions of the Treaties:

- Article 1(1) of the Accession Treaty, according to which 10 new EU Member States, including Poland, become “Parties to the Treaties on which the Union is founded as amended or supplemented”.
- Article 1(3) of the Accession Treaty: “The provisions concerning the rights and obligations of the Member States and the powers and jurisdiction of the institutions of the Union as set out in the Treaties referred to in paragraph 1 shall apply in respect of this Treaty”.

- Article 2 of the Act concerning the conditions of accession, according to which the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank prior to accession shall be binding upon the new Member States.
- Article 8 of the EC Treaty, establishing a European system of central banks (ESCB) and a European Central Bank (ECB) acting within the limits of the powers conferred upon them by this Treaty and by the Statutes of the ESCB and ECB.
- Article 12 of the EC Treaty: “Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination”.
- Article 13(1) of the EC Treaty: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” Section 2 of this Article contains complementary provisions concerning procedural matters.
- Article 19(1) of the EC Treaty: “Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.”
- Article 33 of the EC Treaty, determining the objectives and methods of organisation of the Common Agricultural Policy within the Community framework.
- Article 105 of the EC Treaty, determining the objectives and tasks of the European System of Central Banks and authorising the Council of the EU to confer the European Central Bank specific tasks concerning policies relating to the prudential supervision of certain financial institutions.
- Article 190 of the EC Treaty, concerning European Parliamentary elections and the composition of the European Parliament (EP). According to section 1, the EP is composed of the representatives of the peoples of the States brought together in the Community, elected by direct universal suffrage. Section 2 of this Article, in the wording

introduced by the Accession Treaty, determines the number of representatives elected in each Member State; Poland has 54 MEP's, i.e. the same amount as Spain (larger States, in population terms, have more places: Germany has 99 MEP's, whilst France and United Kingdom each have 78 MEP's). According to section 3, the representatives shall be elected for a term of five years. Sections 4 and 5 have the following wording: "4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements. 5. The European Parliament, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members."

- Article 191 of the EC Treaty: "Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union."
- Article 202 of the EC Treaty: "To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:
  - ensure coordination of the general economic policies of the Member States,
  - have power to take decisions,
  - confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament."
- Article 203 of the EC Treaty: "The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State. The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously."
- Article 234 of the EC Treaty: "The Court of Justice shall have jurisdiction to give preliminary rulings concerning: a) the interpretation of this Treaty; b) the validity and in-

terpretation of acts of the institutions of the Community and of the ECB; c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.”

- Article 249 of the EC Treaty: “In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force.”
- Article 308 of the EC Treaty: “If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.”
- Article 6(2) of the EU Treaty: “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.”
- Article 17 of the Charter of Fundamental Rights, adopted on 7<sup>th</sup> December 2000 by the Council of the EU during the Nice Summit: “1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. 2. Intellectual property shall be protected.”

In justifying the claim that the conditions of accession failed to conform to the Polish Constitution, the applicants referred to the Constitution’s Preamble – especially in its part concerning the

“sovereign and democratic determination of Homeland’s fate” by the Nation, and the independence of Poland – as well as to numerous constitutional provisions whose complete wording may be found in the table located at the end of this summary.

The structure of the ruling corresponds to the configuration of the challenged provisions and the bases of constitutional review attributed to them by the applicants. Whenever the Tribunal uses the formula “is not inconsistent with”, this expresses the Tribunal’s view that the constitutional provision cited by the applicant does not constitute an adequate basis upon which to review the challenged legal provision, given the absence of any significant conjunction between their contents.

#### THE TRIBUNAL’S RULING

**1. The Accession Treaty signed in Athens on 16<sup>th</sup> April 2003 conforms to the Preamble and to Articles 8(1), 21(1), 38, 83, 87, 90(1), 91(3) of the Constitution and is not inconsistent with Articles 1, 2, 4, 5, 6, 10, 13, 18, 23, 25(4), 31, 62(1), 79(1), 95, 101(1), 178(1), 188 point 1, 193, 227(1) and 235 of the Constitution.**

**2. The Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded, constituting an integral part of the Accession Treaty, conforms to the Preamble and Articles 8(1), 21(1), 38, 83, 87 and 91(3) of the Constitution and is not inconsistent with Articles 1, 2, 4, 5, 6, 10, 13, 18, 23, 25(4), 31, 62(1), 79(1), 95, 101(1), 178(1), 188 point 1, 193, 227(1) and 235 of the Constitution.**

**3. The Final Act, constituting an integral part of the Accession Treaty, is not inconsistent with the Preamble and Articles 1, 2, 4, 5, 6, 8(1), 10, 13, 18, 21(1), 23, 25(4), 31, 38, 62(1), 79(1), 83, 87, 91(3), 95, 101(1), 178(1), 188 point 1, 193, 227(1) and 235 of the Constitution.**

**4. Article 1(1) and (3) of the Accession Treaty conforms to the Preamble and Articles 8(1) and 91(3) of the Constitution and is not inconsistent with Articles 188 and 235 of the Constitution.**

**5. Article 2 of the Act mentioned in point 2 conforms to the Preamble and Articles 8(1) and 91(3) of the Constitution and is not inconsistent with Articles 188 and 235 of the Constitution.**

**6. The Accession Treaty, read in conjunction with Articles 8 and 105 of the EC Treaty, is not inconsistent with Article 227(1) of the Constitution.**

**7. The Accession Treaty, read in conjunction with Article 12 of the EC Treaty, is not inconsistent with Article 6 of the Constitution.**

**8. The Accession Treaty, read in conjunction with Article 13 of the EC Treaty, is not inconsistent with Articles 6 and 18 of the Constitution.**

**9. The Accession Treaty, read in conjunction with Article 19(1) of the EC Treaty, is not inconsistent with Articles 1 and 62(1) of the Constitution.**

**10. The Accession Treaty, read in conjunction with Article 33 of the EC Treaty, is not inconsistent with Article 23 of the Constitution.**

**11. The Accession Treaty, read in conjunction with Article 190 of the EC Treaty, is not inconsistent with Articles 2 and 101(1) of the Constitution.**

**12. The Accession Treaty, read in conjunction with Article 191 of the EC Treaty, is not inconsistent with Article 13 of the Constitution.**

**13. The Accession Treaty, read in conjunction with Articles 202 and 203 of the EC Treaty, is not inconsistent with Articles 4, 5 and 10 of the Constitution.**

**14. The Accession Treaty, read in conjunction with Article 234 of the EC Treaty, insofar as it imposes an obligation to request a preliminary ruling from the Court of Justice by a national court against whose decisions there is no judicial remedy under national law, is not inconsistent with Articles 8(1), 174, 178(1), 188, read in conjunction with Articles 190(1), 193 and 195(1), of the Constitution.**

**15. The Accession Treaty, read in conjunction with Article 249 of the EC Treaty, is not inconsistent with Articles 31(3), 83 and 87(1) of the Constitution.**

**16. The Accession Treaty, read in conjunction with Article 308 of the EC Treaty, is not inconsistent with Articles 79(1) and 95(1) of the Constitution.**

**17. The Accession Treaty, read in conjunction with Article 6(2) of the EU Treaty, is not inconsistent with Articles 21(1) and 38 of the Constitution.**

*On the basis of Article 39(1) point 1 of the Constitutional Tribunal Act, the Tribunal discontinued proceedings in relation to the review of conformity of:*

- a) the Accession Treaty, and the Acts indicated in points 2 and 3, with the Constitution in its entirety;*
  - b) the Accession Treaty, and the Act indicated in point 2, with Article 55(1) of the Constitution;*
  - c) Article 17 of the Charter of Fundamental Rights with Article 21(1) of the Constitution*
- given that it would be inadmissible to pronounce judgment on these questions.*

#### PRINCIPAL REASONS FOR THE RULING

1. The accession of Poland to the European Union did not undermine the supremacy of the Constitution over the whole legal order within the field of sovereignty of the Republic of Poland. The norms of the Constitution, being the supreme act which is an expression of the Nation's will, would not lose their binding force or change their content by the mere fact of an irreconcilable inconsistency between these norms and any Community provision. In such a situation, the autonomous decision as regards the appropriate manner of resolving that inconsistency, including the expediency of a revision of the Constitution, belongs to the Polish constitutional legislator.
2. The process of European integration, connected with the delegation of competences in relation to certain matters to Community (Union) organs, has its basis in the Constitution. The mechanism for Poland's accession to the European Union finds its express grounds in constitutional regulations and the validity and efficacy of the accession are dependent upon fulfilment of the constitutional elements of the integration procedure, including the procedure for delegating competences.
3. The Constitutional Tribunal's competence to adjudicate upon matters concerning the conformity of international agreements with the Constitution (Article 188 point 1 of the Constitution) is not dependent upon the procedure for consenting to the ratification of an agreement; it encompasses agreements which were ratified following prior statutory consent, as well as those ratified via the procedure of a nationwide referendum (Article 90(3) of the Constitution).
4. When reviewing the constitutionality of the Accession Treaty as a ratified international agreement, including the Act concerning the conditions of accession (constituting an inte-

gral component of the Accession Treaty), it is also permissible to review the Treaties founding and modifying the Communities and the European Union, although only insofar as the latter are inextricably connected with application of the Accession Treaty.

5. Statutes authorising the ratification of an international agreement are adopted with observance of the appropriate procedural requirements governing the decision-making process within the Sejm and the Senate. These requirements, as regards the regulation contained in Article 90(1) and (2) of the Constitution, which refer to international agreements concerning the delegation of competences of Polish public authority organs to an international organisation or international organ, are significantly strengthened – in comparison with the ratification mentioned in Article 89 of the Constitution. In the discussed field, the Sejm and Senate function as organs representing the Nation-sovereign, in accordance with the principle expressed in Article 4(2) of the Constitution. The reference to a sovereign decision of the Nation is even more intensive and direct where consent for the ratification of an international agreement concerning the delegation of certain competences is not expressed by statute (Article 89(1), read in conjunction with Article 90(2), of the Constitution) but rather via the procedure of a nationwide referendum (Article 90(3)).
6. It is insufficiently justified to assert that the Communities and the European Union are “supranational organisations” – a category that the Polish Constitution, referring solely to an “international organisation”, fails to envisage. The Accession Treaty was concluded between the existing Member States of the Communities and the European Union and applicant States, including Poland. It has the features of an international agreement, within the meaning of Article 90(1) of the Constitution. The Member States remain sovereign entities – parties to the founding treaties of the Communities and the European Union. They also, independently and in accordance with their constitutions, ratify concluded treaties and have the right to denounce them under the procedure and on the conditions laid down in the Vienna Convention on the Law of Treaties 1969. The expression “supranational organisation” is not mentioned in the Accession Treaty, nor in the Acts constituting an integral part thereof or any provisions of secondary Community law.
7. Article 90(1) of the Constitution authorises the delegation of competences of State organs only “in relation to certain matters”. This implies a prohibition on the delegation of all competences of a State authority organ or competences determining its substantial scope of activity, or competences concerning the entirety of matters within a certain field.
8. Neither Article 90(1) nor Article 91(3) authorise delegation to an international organisation of the competence to issue legal acts or take decisions contrary to the Constitution, being the “supreme law of the Republic of Poland” (Article 8(1)). Concomitantly, these provisions do not authorise the delegation of competences to such an extent that it would signify the inability of the Republic of Poland to continue functioning as a sovereign and democratic State.
9. From an axiological perspective of the Polish Constitution, the constitutional review of delegating certain competences should take into account the fact that, in the Preamble of the Constitution, emphasising the significance of Poland having reacquired the possibility to determine her fate in a sovereign and democratic manner, the constitutional legislator declares, concomitantly, the need for “cooperation with all countries for the good of a Human Family”, observance of the obligation of “solidarity with others” and universal values, such as truth and justice. This duty refers not only to internal but also to external relations.

10. The regulation contained in Article 8(1) of the Constitution, which states that the Constitution is the “supreme law of the Republic of Poland”, is accompanied by the requirement to respect and be sympathetically predisposed towards appropriately shaped regulations of international law binding upon the Republic of Poland (Article 9). Accordingly, the Constitution assumes that, within the territory of the Republic of Poland – in addition to norms adopted by the national legislator – there operate regulations created outside the framework of national legislative organs.
11. Given its supreme legal force (Article 8(1)), the Constitution enjoys precedence of binding force and precedence of application within the territory of the Republic of Poland. The precedence over statutes of the application of international agreements ratified on the basis of a statutory authorisation or consent granted (in accordance with Article 90(3)) via the procedure of a nationwide referendum, as guaranteed by Article 91(2) of the Constitution, in no way signifies an analogous precedence of these agreements over the Constitution.
12. The concept and model of European law created a new situation, wherein, within each Member State, autonomous legal orders co-exist and are simultaneously operative. Their interaction may not be completely described by the traditional concepts of monism and dualism regarding the relationship between domestic law and international law. The existence of the relative autonomy of both, national and Community, legal orders in no way signifies an absence of interaction between them. Furthermore, it does not exclude the possibility of a collision between regulations of Community law and the Constitution.
13. Such a collision would occur in the event that an irreconcilable inconsistency appeared between a constitutional norm and a Community norm, such as could not be eliminated by means of applying an interpretation which respects the mutual autonomy of European law and national law. Such a collision may in no event be resolved by assuming the supremacy of a Community norm over a constitutional norm. Furthermore, it may not lead to the situation whereby a constitutional norm loses its binding force and is substituted by a Community norm, nor may it lead to an application of the constitutional norm restricted to areas beyond the scope of Community law regulation. In such an event the Nation as the sovereign, or a State authority organ authorised by the Constitution to represent the Nation, would need to decide on: amending the Constitution; or causing modifications within Community provisions; or, ultimately, on Poland’s withdrawal from the European Union.
14. The principle of interpreting domestic law in a manner “sympathetic to European law”, as formulated within the Constitutional Tribunal’s jurisprudence, has its limits. In no event may it lead to results contradicting the explicit wording of constitutional norms or being irreconcilable with the minimum guarantee functions realised by the Constitution. In particular, the norms of the Constitution within the field of individual rights and freedoms indicate a minimum and unsurpassable threshold which may not be lowered or questioned as a result of the introduction of Community provisions.
15. The Communities and the European Union function, in accordance with the Treaties establishing these organisations, on the basis of, and within the limits of, the powers conferred upon them by the Member States. Consequently, the Communities and their institutions may only operate within the scope envisaged by the provisions of the Treaties. The Member States maintain the right to assess whether or not, in issuing particular legal provisions, the Community (Union) legislative organs acted within the delegated competences and in accordance with the principles of subsidiarity and proportionality. Should

the adoption of provisions infringe these frameworks, the principle of the precedence of Community law fails to apply with respect to such provisions.

16. The Court of Justice of the European Communities (ECJ) is the primary, but not the sole, depositary of powers as regards application of the Treaties within the legal system of the Communities and Union. The interpretation of Community law performed by the ECJ should fall within the scope of functions and competences delegated to the Communities by its Member States. It should also remain in correlation with the principle of subsidiarity. Furthermore, this interpretation should be based upon the assumption of mutual loyalty between the Community-Union institutions and the Member States. This assumption generates a duty for the ECJ to be sympathetically disposed towards the national legal systems and a duty for the Member States to show the highest standard of respect for Community norms.
17. The principle that judges of the courts and Constitutional Tribunal are subject to the norms of the Constitution (Article 178(1) and 195(1)) also encompasses the duty to apply Community law binding upon Poland. Such a duty arises as a result of the ratification, in compliance with the Constitution and on the basis thereof, of international agreements concluded with the Member States of the Communities and the European Union, which constitute a part of international law binding upon Poland (Article 9 of the Constitution). The ECJ's competence to declare a binding interpretation of Community law, particularly via the procedure for delivering preliminary rulings (Article 234 of the EC Treaty), constitutes an element of the aforementioned agreements. The referral to the appropriate Community organ, by a Polish court or tribunal, of a question regarding the validity or content of Community law to be applied in accordance with the obligations stemming from ratified Treaties, does not conflict with Article 174 of the Constitution, pursuant to which the "courts and tribunals shall pronounce judgments in the name of the Republic of Poland".
18. Article 188 of the Constitution determines the Constitutional Tribunal's competences (scope of jurisdiction). The application of Article 234 of the EC Treaty neither constitutes a threat to these competences, nor narrows them. If the Constitutional Tribunal decided to request a preliminary ruling concerning the validity or content of Community law, the Tribunal would undertake this within the framework for exercising its adjudicative competences, as stipulated in Article 188 of the Constitution, and only where, in accordance with the Constitution, the Tribunal ought to apply Community law.
19. The direct review of the conformity with the Constitution of particular decisions of the ECJ, as well as the "permanent jurisprudential line" derived from these decisions, does not fall within the Constitutional Tribunal's scope of jurisdiction (Article 188 of the Constitution).
20. The principle of the democratic State governed by the rule of law (as expressed in Article 2 of the Constitution) refers to the functioning of States and not necessarily to international organisations. This concerns, in particular, the concept of separation and balance of powers: the legislature, executive and judiciary (Article 10 of the Constitution), constituting an element of the aforementioned principle. Accordingly, the Constitutional Tribunal may not treat these principles as adequate bases of review for institutional solutions within the Communities and European Union, including the composition and legislative competences of the Council.
21. The formal requirements for adopting Polish law, as specified in the Polish Constitution, are not directly applicable to the procedures and principles governing adoption of Community law.

22. The scope of activity of the Polish legislative power is limited to the territory of the Republic of Poland. Accordingly, Article 308 of the EC Treaty may not be reviewed from the perspective of its conformity with Article 95(1) of the Constitution, which stipulates that legislative power in Poland shall be exercised by the Sejm and Senate.
23. Article 31(3) of the Constitution, specifying the conditions permitting the introduction of limitations on the enjoyment of constitutional rights and freedoms within the domestic legal system (including the requirement that such limitations be laid down by statute and be proportionate), is addressed to the Polish legislator. It is, therefore, unjustified to transfer the requirements stemming from this constitutional provision directly to the field of issuing norms of secondary Community law (Article 249 of the EC Treaty). This does not, however, preclude the possibility of reviewing legal provisions, including Community Regulations, insofar as they are in force within the territory of Poland, from the perspective of observing the requirements laid down in Article 31(3) of the Constitution.
24. The requirement to observe the law of the Republic of Poland, as expressed in Article 83 of the Constitution, also encompasses provisions of ratified international agreements and Community regulations (*cf.* Articles 87(1) and 91 of the Constitution).
25. The Polish constitutional legislator may, in a sovereign manner, regulate the process of elections to State authority organs and elected organs of local self-government within the territory of Poland. Regulation of elections to the organs of the Communities and European Union, however, remains beyond the remit of the Polish Constitution, since it constitutes the subject-matter of international agreements establishing the Communities and European Union (in particular, Article 190 of the EC Treaty). This does not preclude the Polish legislator's possibility to regulate – by way of an ordinary statute – the mere course of elections to the European Parliament held on the territory of Poland. Such legal provisions must take account of the Treaty principle, arising in consequence of the existence of citizenship of the European Union, that the right to vote and to stand as a candidate at European Parliament elections is enjoyed by all European citizens within the territories of all Member States and not only by citizens of the State on whose territory the voting takes place. Any such statutory regulation should also take into consideration the constitutional principle of sympathetic disposition towards the process of European integration and co-operation between States.
26. The right to vote and to stand as a candidate at local elections vested in EU citizens who, although not holding Polish citizenship, are resident in Poland (Article 19(1) of the EC Treaty) does not constitute a threat to the Republic of Poland as a common good of all Polish citizens (Article 1 of the Constitution) nor to its national independence. The local self-governing community participates in exercising public authority of a local nature, and decisions or initiatives regarding the State as a whole may not be adopted within local self-government (*cf.* Article 16 of the Constitution).
27. Furthermore, granting foreign EU citizens the right to vote and to stand as a candidate at local elections does not contradict Article 62(1) of the Constitution, which guarantees Polish citizens the right to elect, *inter alia*, their representatives to organs of local self-government. The aforementioned constitutional right is not of an exclusive character, in the sense that, should the Constitution grant it directly to Polish citizens, it might not also be vested in the citizens of other States.
28. The prohibition on discrimination based on nationality, race, sex and other personal characteristics is a canon of both international and national fundamental legal rules. The Republic of Poland is obliged to observe this prohibition given its membership of the United

Nations and the Council of Europe, including, in particular, ratification of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. Furthermore, this prohibition constitutes a legal consequence of the constitutional principle of equality before the law (Article 32(1)) and has been directly introduced in Article 32(2) of the Constitution. As regards the criterion of sex, the principle of equal treatment (and the prohibition on discrimination inevitably inherent therein) has been directly expressed in Article 33 of the Constitution. For these reasons, the prohibitions on discrimination contained in Articles 12 and 13 of the EC Treaty do not introduce a normative novelty in comparison with Articles 32 and 33 of the Constitution.

29. Marriage, being the union of a man and woman, has acquired a distinct constitutional status within the domestic law of the Republic of Poland, on the basis of Article 18 of the Constitution. Any modification of this status would be possible only by the way of an amendment of the Constitution (according to Article 235 thereof); in no circumstances would it be possible by way of a ratified international agreement.
30. The prohibition on discrimination based on sexual orientation, as formulated in Article 13 of the EC Treaty, refers to natural persons (and also possibly to their organisations); it does not refer to the institution of marriage as such.
31. The scope of application of Article 191 of the EC Treaty (the role of political parties in the EU) and Article 13 of the Constitution (prohibition on the existence of parties possessing features stipulated in this provision) remain, in principle, separate. The former of the aforementioned provisions may not be directly applied within the Member States. Given this, it is not possible for a collision to occur between these two provisions.
32. The objectives of the Common Agricultural Policy, as stipulated in Article 33 of the EC Treaty – and particularly the increase of agricultural productivity by promotion of technical progress and ensuring the rational development of agricultural production and optimum utilisation of the factors of production, especially labour – do not contradict the principle of the Polish agricultural system being based upon the model of the family farm, as expressed in Article 23 of the Constitution. It remains within the legislator's domain to shape the principles governing the agricultural system and Article 33 of the EC Treaty contains no direct order or prohibition in this regard. On the contrary, amongst the factors that should be taken into account when planning the Common Agricultural Policy, Article 33(2) of the EC Treaty indicates the particular nature of agricultural activity, resulting from the social structure of agriculture in the particular Member States.
33. Article 105 of the EC Treaty is not self-executory in nature, and it is, therefore, not possible to directly speak of a collision between this provision and Article 227(1) of the Constitution, which establishes the National Bank of Poland as the central bank of the State, vests therein the exclusive right to issue money, endows it with the competence to formulate and implement monetary policy, and imposes upon it responsibility for the value of the Polish currency. The absence of any such a collision does not preclude the expediency and need to consider, prior to the anticipated introduction of the common currency within the territory of Poland, the relationship between legal provisions governing, on the one hand, the European System of Central Banks, the European Central Bank and common monetary policy (Articles 8 and 105 of the EC Treaty) and, on the other hand, the Polish Constitution. This may require the adoption of a decision within the procedure applicable for amendment of the Constitution.

34. The apprehension – constituting the basis of allegations of an infringement of Article 21(1) of the Constitution – that EU law guarantees of property rights, as derived from Article 6(2) of the EU Treaty, read in conjunction with Article 17 of the EU Charter of Fundamental Rights, could be utilised to attempt to undermine the property rights of Polish citizens in the Western and Northern regions of the Republic of Poland (territories that, on the basis of decisions of the three Great Powers, accrued to Poland after the Second World War), is unjustified. The European Community does not directly interfere in the Member States' systems of property rights, as is unambiguously confirmed in Article 295 of the EC Treaty. Community law may not limit a Member State's discretion in shaping the property rights within its territory, provided that there exists no infringement of the principle of non-discrimination and no disproportionate influence on the enjoyment or disposition of existing rights of ownership. Community norms may not regulate ownership relations created following conclusion of the Second World War, firstly given the existence of the *lex retro non agit* principle and, secondly, given the absence of a unanimous delegation of such matters by Member States to the scope of competences of the Communities and the European Union.
35. The aforementioned assessment is not weakened by the fact that Article 116 of the Basic Law (*Grundgesetz*) of the Federal Republic of Germany regulates the German citizenship of persons originating from territories currently constituting Poland's Western and Northern regions and that some of these persons formulate expectations regarding real estates located within these territories. The principle of respecting common "constitutional traditions", as formulated in Article 6(2) of the EU Treaty, by no means implies an obligation to respect such expectations. Regardless of the fact that it is an arbitrary assumption to derive such expectations from Article 116 of the German *Grundgesetz*, it would be unfounded to reduce the notion of common "constitutional traditions" to the constitutional system of a single EU Member State. Given its literary formulation, at the very least, this notion must take account of principles common to many of the Member States' constitutional systems.
36. Regardless of the review on the merits summarised in points 34 and 35 above, the Constitutional Tribunal is not empowered to adjudicate upon the constitutionality of Article 17 of the Charter of Fundamental Rights. In the form in which this Charter was proclaimed in Nice, it currently maintains features more closely resembling a declaration than a legal act; the provisions of this Charter do not have legally binding force.
37. The Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), adopted by the Council of the European Union on 13<sup>th</sup> June 2002, may not be reviewed from the perspective of its conformity with the categorically formulated provision of Article 55(1) of the Polish Constitution, given the generality of this Framework Decision and the solely directional nature of its disposition. This Decision, issued within the Third Pillar of the EU, merely constitutes an intergovernmental obligation; it is not an international agreement. Accordingly, it may not be treated as a source of law binding within the territory of the Republic of Poland (within the meaning of Article 87(1) of the Constitution). Conversely, the Constitutional Tribunal reviewed the constitutionality of Article 607t § 1 of the Polish Criminal Procedure Code, which implements the aforementioned Framework Decision, in its judgment of 27<sup>th</sup> April 2005, [P 1/05](#).

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

### Constitution

**[Preamble]** Having regard for the existence and future of our Homeland, which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate, we, the Polish Nation - all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources, equal in rights and obligations towards the common good - Poland, beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values, [...] aware of the need for cooperation with all countries for the good of the Human Family, [...] hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of aiding in the strengthening the powers of citizens and their communities. [...]

**Art. 1.** The Republic of Poland shall be the common good of all its citizens.

**Art. 2.** The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

**Art. 4. 1.** Supreme power in the Republic of Poland shall be vested in the Nation.  
2. The Nation shall exercise such power directly or through their representatives.

**Art. 5.** The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

**Art. 6. 1.** The Republic of Poland shall provide conditions for the people's equal access to cultural goods which are the source of the Nation's identity, continuity and development.  
2. The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage.

**Art. 8. 1.** The Constitution shall be the supreme law of the Republic of Poland.  
2. The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise.

**Art. 9.** The Republic of Poland shall respect international law binding upon it.

**Art. 10. 1.** The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.  
2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

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

**Art. 16. 1.** The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law.  
2. Local self-government shall participate in the exercise of public power. The substantial part of public duties which local self-government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

**Art. 18.** Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

**Art. 21. 1.** The Republic of Poland shall protect ownership and the right of succession.  
2. Expropriation may be allowed solely for public purposes and for just compensation.

**Art. 23.** The basis of the agricultural system of the State shall be the family farm. This principle shall not infringe the provisions of Articles 21 and 22.

**Art. 25. [...]** 4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.

**Art. 31. 1.** Freedom of the person shall receive legal protection.  
2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.  
3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 32. 1.** All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.  
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**Art. 33. 1.** Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.  
2. Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.

**Art. 38.** The Republic of Poland shall ensure the legal protection of the life of every human being.

**Art. 55.** 1. The extradition of a Polish citizen shall be forbidden.

**Art. 62.** 1. If, no later than on the day of vote, he has attained 18 years of age, a Polish citizen shall have the right to participate in a referendum and the right to vote for the President of the Republic of Poland as well as representatives to the Sejm and Senate and organs of local self-government.

**Art. 79.** 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

**Art. 83.** Everyone shall observe the law of the Republic of Poland.

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

2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

**Art. 89.** 1. Ratification of an international agreement by the Republic of Poland, as well as denunciation thereof, shall require prior consent granted by statute - if such agreement concerns:

- 1) peace, alliances, political or military treaties;
- 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
- 3) the Republic of Poland's membership in an international organization;
- 4) considerable financial responsibilities imposed on the State;
- 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

2. The President of the Council of Ministers (the Prime Minister) shall inform the Sejm of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.

3. The principles of and procedures for the conclusion and renunciation of international agreements shall be specified by statute.

**Art. 90.** 1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators.

3. Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Article 125.

4. Any resolution in respect of the choice of procedure for granting consent to ratification shall be taken by the Sejm by an absolute majority vote taken in the presence of at least half of the statutory number of Deputies.

**Art. 91.** 1. After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.

2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.

3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

**Art. 95.** 1. Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate.

2. The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.

**Art. 101.** 1. The Supreme Court shall adjudicate upon the validity of the elections to the Sejm and the Senate.

**Art. 125.** 1. A nationwide referendum may be held in respect of matters of particular importance to the State.

2. The right to order a nationwide referendum shall be vested in the Sejm, to be taken by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, or in the President of the Republic with the consent of the Senate given by an absolute majority vote taken in the presence of at least half of the statutory number of Senators.

3. A result of a nationwide referendum shall be binding, if more than half of the number of those having the right to vote have participated in it.

4. The validity of a nationwide referendum and the referendum referred to in Article 235, para. 6, shall be determined by the Supreme Court.

5. The principles of and procedures for the holding of a referendum shall be specified by statute.

**Art. 174.** The courts and tribunals shall pronounce judgments in the name of the Republic of Poland.

**Art. 178.** 1. Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.

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

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79(1).

**Art. 190.** 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.

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

**Art. 195.** 1. Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to the Constitution.

**Art. 227.** 1. The central bank of the State shall be the National Bank of Poland. It 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.

**Art. 235.** 1. A bill to amend the Constitution may be submitted by the following: at least one-fifth of the statutory number of Deputies; the Senate; or the President of the Republic.  
 2. Amendments to the Constitution shall be made by means of a statute adopted by the Sejm and, thereafter, adopted in the same wording by the Senate within a period of 60 days.  
 3. The first reading of a bill to amend the Constitution may take place no sooner than 30 days after the submission of the bill to the Sejm.  
 4. A bill to amend the Constitution shall be adopted by the Sejm by a majority of at least two-thirds of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators.  
 5. The adoption by the Sejm of a bill amending the provisions of Chapters I, II or XII of the Constitution shall take place no sooner than 60 days after the first reading of the bill.  
 6. If a bill to amend the Constitution relates to the provisions Chapters I, II or XII, the subjects specified in para. 1 above may require, within 45 days of the adoption of the bill by the Senate, the holding of a confirmatory referendum. Such subjects shall make application in the matter to the Marshal of the Sejm, who shall order the holding of a referendum within 60 days of the day of receipt of the application. The amendment to the Constitution shall be deemed accepted if the majority of those voting express support for such amendment.  
 7. After conclusion of the procedures specified in para 4 and 6 above, the Marshal of the Sejm shall submit the adopted statute to the President of the Republic for signature. The President of the Republic shall sign the statute within 21 days of its submission and order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).

#### **CT Act**

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

- 1) if the pronouncement of a judicial decision is superfluous or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;
- 3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.

2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.

**Should you have any questions or comments, you may write to us:**  
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