

**Decision**  
**of 23 November 1993 (K. 5/93)**

The Constitutional Tribunal sitting with the bench composed of the Chairman and President of the Constitutional Tribunal, Andrzej Zoll, and Judges: Czesław Bakalarski, Tomasz Dybowski, Kazimierz Działocha (Reporting Judge), Henryk Groszyk, Maria Łabor-Soroka, Wojciech Łączkowski, Leonard Łukaszuk, Ferdynand Rymarc, Mieczysław Tyczka, and Janina Zakrzewska

(...)

held

**The Act dated 16 December 1992 Amending the Act on War Veterans and Some Persons Who Were Victims of Persecution During the War and in the Post-war Period (Journal of Laws, 1993, Number 29, Item 133) was ratified in accordance with the legal procedure for ratifying statutes specified in the Constitutional Act dated 17 October 1992 on the Mutual Relations Between the Legislative and Executive Branches of the Republic of Poland and Local Self government (Journal of Laws, Number 84, Item 426) by virtue of the fact that the procedure used by the Sejm applied to the amendments of the Senate which exceeded the text of the Act submitted to the Senate by the Sejm.**

Reasoning

(...)

III

The answer to the question whether, in passing the Act amending the War Veterans Act, the Sejm observed the requirements provided for under the Small Constitution and it can be, therefore, acquitted (or not) of the allegation of failure to observe the legal procedure for passing a statute required by the Constitutional Tribunal to establish important questions concerning the current law. 1. The first question that had to be established concerned the general role of the Sejm [the lower chamber of the Polish parliament] and the Senate [the upper chamber of the Polish parliament] in the process of passing laws. This question is connected with article 1 of the Small Constitution providing that the Sejm and the Senate are state legislative bodies.

With respect to the regulation of the legal status and role of the Senate in the legislative process, the Small Constitution is in principle a continuation (with necessary changes to be discussed further on) of the political model of the second chamber of parliament provided for under the Amendment to the Constitution dated 7 April 1989. The Senate is not equal to the Sejm. The recognition of the Senate as one of the two legislative bodies (article 1 of the Small Constitution) does not mean that its status was made equal to the legal status of the Sejm, with each chamber playing a different role in the process of exercising legislative powers. The role of the Senate essentially entails the possibility to exercise the right to legislative initiative (article 15, section 1 of the small Constitution) and to participate in considering the statutes passed by the Sejm. Thus, acting pursuant to article 17, section 2, the Senate may accept, amend, or reject a statute. The powers under article 17, section 2 have the significance of a necessary stage in the legislative process as all the statutes passed by the Sejm must be sent by the Speaker to the Senate so that the Senate may consider them or possibly exercise its power to amend or reject them. It must be noted, however, that the Senate may use this power at its discretion. Specifically, if within 30 days from the receipt of the statute the Senate fails to adopt a suitable resolution, the statute is deemed to be accepted (article 17, section 2 of the Small Constitution). On the other hand, if the Senate exercises its right, the Senate's

resolution rejecting or amending the statute is binding only if the Sejm fails to reject it by a majority of votes (article 17, section 4 of the Small Constitution).

The Sejm of the Republic of Poland plays a different role in exercising legislative powers. Under the Small Constitution, the legislative process essentially takes place in the Sejm. The commencement of legislative proceedings as well as the procedure of what are referred to as readings are only possible in the Sejm. It is also the Sejm that finally decides (as indicated above) the shape of a statute after rejecting the Senate's amendments by an absolute majority. Likewise, if the Head of State [President] exercises his/her right to veto, the Sejm may pass the statute one more time with a qualified majority of 2/3 of the votes (article 18, section 3). Given this, under the Small Constitution, the Sejm is the body that finally decides about the passing of statutes.

The view presented in the petition in fact negates the different roles of the Sejm and the Senate in the legislative process. This view is based on an interpretation of article 1, article 13 (in connection with article 26), and article 18, section 1 of the Small Constitution. These provisions cannot, however, serve as the basis for the view presented in the petition as the classification of the Senate as a „legislative body” does not conclusively determine the extent of the Senate's participation in the legislative authority, which is determined by the constitutional provisions (article 17, section 2) providing for the aforementioned specific powers of the Senate in the legislative process.

Likewise, article 13 of the Small Constitution, providing for the requirements concerning the quorum and the majority required for the Sejm to pass statutes (connected with article 26 of the Constitution providing for the application of article 1 accordingly to the Senate), cannot serve as evidence to support the hypothesis cited and presented in the petition. The relevant application to the Senate of the phrase used in article 13 „The Sejm passes statutes (in the situation where it concerns only the determination of the quorum and the required majority in passing statutes) cannot warrant the view that the Senate passes statutes subject to the same rules as the Sejm. The provision only obligates the Senate to use the rules strictly specified in article 13 in passing resolutions accepting, rejecting, or amending a statute passed by the Sejm.

Furthermore, the hypothesis presented in the petition cannot be justified by reference to article 18, section 1 of the Small Constitution as this provision cannot be interpreted without regard for the preceding provisions in articles 15,16, and 17. These provisions determine the conduct of the participants of the legislative process in a logical sequence through its stages. Article 18 concerns the stage following the Senate's participation in the legislative process (as determined in article 17), and the direct purpose of the phrase used in section 1 („The Speaker of the Sejm shall submit a statute that is passed by the Sejm and the Senate for signing by the Head of State [President]”) is precisely the express specification of the commencement of the stage connected with the participation of the Head of State [President] in the process of passing a statute. Any attempt at an autonomous interpretation of article 18, section 1 without allowance for the rules of system interpretation is bound to -fail. This manner of regulation, subordinate to the determination of the sequence of the required conduct by the participants in the legislative process, results in the inconsistent use of the term „statute” in this part of the Small Constitution. On one hand, the term is used with reference to a resolution of the Sejm after passing through the procedure of consecutive readings of the draft statute (articles 13 and 17), and on the other hand, the term is used with reference to the resolution of the Sejm after its consideration by the Senate and the acceptance or rejection of the Senate's amendments (article 18).

2. The second thing that the Constitutional Tribunal established in this case on which this decision is based refers to the notion of amendments that the Senate may introduce (pursuant to article 17, section 2) to the text of the statute submitted by the Sejm. Apart from the fundamental change in the manner of voting, Senate resolutions concerning statutes considered by the Senate and the justified need for the elimination of what is known as a legislative stalemate, a change was introduced to the effect of replacing the phrase „proposals to make... specific changes” in the statute (article 27, section 1 of the Constitution of the Republic of Poland) by the phrase „amendments... to the text” of the statute (article 17, section 2 of the Small Constitution).

On the only possible assumption that the said regulation is rational, it must be conceded that the change was deliberate. It removes the earlier, fairly imprecise and broad notion of „changes in the statute” and introduces the narrower notion of „amendments to the statute”, having a more unequivocal meaning in parliamentary law. The Small Constitution clearly distinguishes the „statute” submitted by the Speaker of the Sejm to the Senate (article 17, section 1) from amendments to its text that can be introduced by the Senate (article 17, section 2). So, the Senate may only amend the text of the statute submitted by the Sejm. As rightly noted in the statement issued by the Sejm on this issue, the Senate has the right to amend only a statute that has not become law, but has already been passed by the Sejm.

The Constitutional Tribunal has established that, unlike a draft statute proposed under the procedure for initiating legislation, Senate amendments are clearly limited in scope. They can be formal as well as substantive in nature, but they must directly concern the matter that were subject to regulation in a given text submitted to the Senate. At the same time, merely the title of a statute or its generally defined purpose (as laid down in the resolution of the Senate’s Constitutional Committee of 10 January 1990 concerning the interpretation of article 27 of the Constitution of the Republic of Poland) cannot be used to determine whether the Senate has observed the form of amendment.

It is possible to determine whether one deals with a Senate amendment or with a proposal of new regulation only by examining the text of a specific amendment to a specific statute. However, generally one may assume that there are no problems with determining the scope of the amendments when a new statute regulating an issue for the first time reaches the Senate or when the Senate deals with a subsequent statute regulating a given issue, repealing the entire existing statute and regulating the same issue in a new way. In such a case, the substantive scope of the Senate’s amendments is practically unlimited. They can concern all the provisions of the statute as well as include completely different regulations from the ones passed by the Sejm. A problem arises, however, when a statute merely amends another existing statute, and specifically when the extent of the amendments is small. In such a case, it is essential that the Senate limit its amendments only to the amended statute, that is to the text submitted to the Senate for consideration. Going beyond the text cannot be considered an amendment to the statute as such a change may concern issues that have not even been considered by the Sejm. A situation where for reasons of logic and substance an amendment to the text of the amending statute requires corresponding changes in the text of the amended statute.

An analysis of the text of the Senate’s amendments to the Law on the Amendment of the War Veterans Act dated 16 December 1992 as well as an analysis of the documents connected with the process of passing them by the Senate and consideration by the Sejm led the Constitutional Tribunal to the conclusion that the Senate did not in fact introduce amendments, but a proposal of a new regulation, which should go through all the stages of the legislative-process.

3. The third premise on which the Constitutional Tribunal based its decision is the determination of the proper function of the individual stages of the legislative process, a function determined by parliamentary law.

The legislative authority of the parliament (its chambers) and the related powers of other entities are realized under formalized legislative law, covering individual stages at which the participants of the process are entitled to take specific steps influencing the content or the form of the statute. In the course of the legislative process, each of these steps (acts) has a specific purpose, and taking such steps has specific legal consequences. Taking a step in a manner that is inconsistent with its purpose or at the wrong stage in the legislative process can also destroy- the fundamental values inherent in the parliamentary method of making the law.

As a participant in the legislative process, the Senate has the three rights mentioned above: the right to legislative initiative, the right to introduce amendments to the text of a statute passed by the Sejm, and the right to reject a statute passed by the Sejm. Each of the rights has its own, separate purpose, and has specific legal consequences. The rights are exercised at different stages of the legislative process in a strictly defined order.

(...) Any *a maiori ad minus* argumentation (cf. Resolution of the Senate's Constitutional Committee dated 10 January 1990, p. 22) – based on the premise that if the Senate is permitted to do more (the right to table a draft statute), it is certainly permitted to do less (to formulate new proposals in the amendments) – is, therefore, worthless. Such argumentation should be countered with a different point of view: If the Small Constitution highlights and grants the Senate two different powers (the right to legislative initiative and the right to introduce amendments), the Senate should exercise them in proper forms and at the right stages in the legislative process. The possibility to implement the proposal to extend the scope of the War Veterans Act of 1991 to cover new groups of the citizens by way of a separate legislative initiative and even the question of the development of relevant projects were noted during sessions both in the Sejm and the Senate.

4. Based on what has been established here, the Constitutional Tribunal concluded that in the case under consideration the Senate's violation of the constitutional rules concerning amendments by the Senate is beyond any doubt. It was a more complex problem to establish the important issue in this case of how the Sejm can determine whether the Senate's amendment satisfies the conditions provided for under the law.

(...) The Constitutional Tribunal took the view that both chambers of parliament are autonomous and do not examine the constitutionality of each other's conduct. However, the Sejm has not only the right, but even the obligation to assess whether its acts within the legislative process conform with the Constitution. This obligation follows mainly from article 3 of the Constitution of the Republic of Poland. In the case of a legislative body, compliance with the laws of the Republic of Poland first of all means compliance with the Constitution and implementation of the primary obligation following from its legal character, which means passing no laws that are in contravention of the Constitution. The Sejm's self review of the constitutionality of its conduct in the legislative process prior to the eventual passing of a statute by the Sejm constitutes one of the means leading to the fulfillment of this obligation. So, if the Sejm voted the Senate's amendment going beyond the powers of this chamber of Parliament, the Sejm would violate the Constitution in particular by omitting the earlier stages in the legislative process. (...)

If one applies the above considerations to the object of the case under consideration, one must assume that the Sejm had the right to determine in an ordinary manner whether the Senate's amendments introduced to the statute passed by the Sejm (Act Amending the War Veterans Act dated 16 December 1992) conform in substance with the constitutional notion of

the Senate's amendments to the text of a statute passed by the Sejm. Only a positive answer to the question whether the amendment satisfies the requirements of the constitutional provisions is the condition of making it subject to the special procedure (voting) provided for under article 17, section 4 of the Small Constitution and guarantees the Sejm's compliance with the legal procedure for passing statutes.

The Constitutional Tribunal shares the position presented in the petition of the Presidium of the Senate (p.3) that „the resolution referred to in article 17, section 4 of the Small Constitution is the only and exclusive form of the Sejm taking a position toward Senate resolutions passed under article 17, section 2 of the Act.” The conclusion following from the Tribunal's overall reasoning is that the condition necessary for the Senate's amendment to be considered according to this procedure is for the Senate's resolution to be actually passed pursuant to article 17, section 2 of the Small Constitution. Otherwise, as was the case in the statute under consideration, the Sejm has the right not to consider such amendment for formal reasons, which can be decided by resolution passed by a simple majority of the votes.

To finish these considerations, the Constitutional Tribunal would like, however, to emphasize clearly that one cannot lodge the categorically claim that every doubt concerning the content of a Senate resolution and the acceptance of the Senate's motion to introduce an amendment to a statute passed by the Sejm automatically forces the Sejm to make the decision not to vote on the said motion in the qualified manner pursuant to article 17, section 4 of the Small Constitution. This would be a dangerous practice, which could deform the system of relations between the Sejm and the Senate in the course of the legislative process as well as distort the sense of the procedure described in article 17, section 4. Failure to subject the Senate's amendments to the procedure described in article 17, section 4 should be considered in terms of the Sejm's right, justified by a thorough assessment of the content of the Senate's amendments.