Decision

dated 26 January 1993 (U. 10/92)

The Constitutional Tribunal sitting with the bench composed up of the Chairman and President of the Constitutional Tribunal, Mieczyslaw Tyczka, and Judges Czeslaw Bakalarski, Tomasz Dybowski, Kazimierz Dzialocha (Reporting Judge), Henryk Groszyk, Maria Labor-Soroka, Wojciech Laczkowski, Leonard Lukaszuk, Remigiusz Ozzechowski, Janina Zakrzewska, and Andrzej Zoll.

(...)

held

that article 9, sections 1- 5 of the Resolution of the Sejm dated 30 July 1992 entitled the Bylaws of the Sejm (MP Number 26, Item 185, amended by MP Number 34, Item 239) **do not contravene article 14, sections 1 to 3 of the Act dated 31 July 1985 on the Rights and Duties of Deputies and Senators** (uniform text in Journal of Laws, 1991, Number 18, Item 79) **and conform with article 14 of the Constitutional Act dated 17 October 1992 on the Mutual. Relations Between the Legislative and Executive Branches of the Government of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 42 as well as with article 1 and article 4, section 1 of the Constitution of the Republic of Poland, remaining in force by virtue of article 77 of the cited Constitutional Act dated 17 October 1992.**

(...)

Reasoning

(...)

III

(...) The Constitutional Tribunal, prior to reviewing the actual subject of the Petition, considered a preliminary matter: Is the challenged act subject to the power of the Constitutional Tribunal? In spite of the fact that the general qualities of the Constitutional Tribunal regarding review over the normative resolutions of the Sejm was decided earlier (Decisions U. 6/92 and U. 15/92), the Constitutional Tribunal decided to make a separate statement as to this matter because it was necessary to define the limits of this power of the Tribunal.

In connection with this it proved necessary to consider the content, scope, and effects of parliamentary autonomy and the related legal nature of the bylaws of the Sejm. It was necessary to separately take into account the structure of the norms belonging to the realm of autonomous parliamentary law in light of the current distribution of the norms in Polish law between the parliamentary bylaws and the 1985 Act on the Rights and Duties of Deputies and Senators (hereinafter referred to as the Act of 1985) and directly base the allegations of the Applicants on the provisions of that Act.

With respect to the concept, scope, and effects of the parliament's autonomy, the Constitutional Tribunal also solicited the expert opinion of Professor Leszek Garlicki, Ph.D. That opinion, coupled with an analysis of other views on constitutional law, made it possible for the Constitutional Tribunal to establish the following:

1. The principle of parliamentary autonomy in the sphere of its internal relations is, currently, one of the basic unchallenged principles defining the parliament's position within the system of state bodies. Its existence in democratic States is independent of the model of government systems applied. By its very nature it exists in systems based on the superiority of

the parliament without any need for specific emphasis. In systems based on the separation of powers, however, it is one of the basic principles guaranteeing the independence of the parliament in questions related to its own organization and manner of operation, and therefore its independent and autonomous position in the system of state bodies.

Parliamentary autonomy is primarily made up of the right to the independent passing of bylaws defining the parliament's internal organization and method of operation, usually referred to as the autonomy of the chambers in writing their bylaws. Its emergence is closely tied to the formation of bylaws under the guise of a resolution, excluding the potential for external factors to exert an impact. Thus, the form applied in systems based on the separation of powers is usually not that of a statute. This is because the course for the ratification of a statute assumes the participation of the executive branch (Government, Head of State) in the individual phases of the legislative process. Bylaws approved in the form of a parliamentary resolution (its chambers) is therefore considered an expression of respect to parliamentary autonomy.

Today, parliamentary bylaw autonomy usually has a clear legal basis. The constitutional norm assuming the parliament's power to ratify bylaws is treated as a constitutional and legal guarantee of the parliament's independent position. Legal science also knows of views that the parliament holds such autonomy even in situations in which the methods of passing bylaws is not clearly envisaged in the constitution because it is a vital component of the status of an independent, constitutional state body.

The limits of parliamentary autonomy under discussion are defined by the provisions of the constitution. In systems that have assumed a two-tiered model for governing the matter of parliamentary law (constitution and bylaws), when the constitution does not take up the matter of regulations regarding the parliament's organization and manner of operation, this is seen as the transfer thereof to the parliament for its autonomous regulation in the form of bylaws. In contrast, detailed constitutional regulation, primarily when other organic statutes or ordinary statutes assume the normative subject matter handled formerly by bylaws, is often treated as an expression of limiting and restricting parliamentary bylaw autonomy (compare with J. Repel: „Ze studiów nad genezą i rozwojem regulaminu parlamentarnego" [Studies on the Genesis and Development of Parliamentary Bylaws), *Acta Uniwersitatis Wratislaviensis,* Number 169, Prawo XXXVI,1972, p.130 ff).

2. The bylaws are an autonomous act of the Sejm. There is no doubt that the bylaws of the Sejm are a. normative act. The Sejm establishes therein norms of general and abstract nature, in other words, legal norms as understood in the Constitutional Tribunal's jurisprudence. The bylaws are ratified in a manner excluding the exertion of influence thereupon by any other bodies because the bylaws are a resolution of the Sejm in whose adoption only the Sejm and its bodies take part. The bylaws of the Sejm form an act which is undoubtedly ranked below the Constitution in the system of sources of law and, like every other normative act in the State, it must conform with the Constitution.

The relationship between the bylaws and a statute is much more complex. The form of the bylaws – a resolution of the Sejm – may suggest that its nature is that of a lower ranking act than a statute. Its legal force, especially when the Sejm's power to ratify the bylaws is directly based on the Constitution which specifies its scope, significantly weakens the foregoing hypothesis. If the legal force of a normative act is to be understood as the derogative strength of the given act – its ability to change other acts and the degree to which it may be modified by other acts – then statutes cannot encroach upon the subject matter of the bylaws of the Sejm which the Constitution has entrusted to the Sejm to regulate. That would be a clear violation of the Constitution. In other words: the binding constitutional regulations

have made a clear break by embracing this autonomous, extra-statutory lawmaking activity of the Sejm in that part of the statute's scope under discussion pertaining to the regulations on establishing state bodies, their jurisdiction and their course of operations. It is this exclusivity in regulating a certain scope of matters as well as the freedom given concerning how they are governed that constitutes the content of the Sejm's autonomy in respect to its bylaws.

It is the opinion of the Constitutional Tribunal that the Bylaws of the Sejm are not an executive order with respect to a statute. It is a self-evident act issued directly on the basis of the Constitution and therefore it may be treated as equal to an executive order to the Constitution. The relationship between the bylaws of the Sejm and statutes cannot be generally viewed as the relation of one type of normative act of the Sejm (statutes) to another (resolutions). The relation between a statute and the bylaws is a relation of the general to the specific. It pertains to the relation between certain general types of normative acts to a detailed specific act that has a clearly restricted subject. That subject encompasses the Sejm's organizational matters and manner of operation. Thus, the relation of the by Laws of the Sejm to statutes is not a relation between bylaws and all statutes, but only of the bylaws and statutes materially pertaining to the parliament. If one asserts that a statute pertains to this matter (as is the case with respect to the Act of 1985) and an allegation is lodged regarding the nonconformity of the bylaws with the provisions of the statute, then the preliminary question to be settled is whether the bylaws fit within the constitutionally defined scope of bylaws. If they do and there is indeed a case of nonconformity between the bylaws and the statute, then a problem emerges not of conformity between the bylaws and the statute, but between the statute and the Constitution.

This way of understanding the nature of bylaws exerts an impact on defining the scope of the Constitutional Tribunal's jurisdiction to review the bylaws of the Sejm. After having rejected the superiority of the Sejm; the review of the conformity between the entirety' of the bylaws and the Constitution cannot lead to any doubts today. The rule of law requires that the entire law conform with the Constitution. Based on the provisions of the law, article-33a; section 1 of the Constitution of the Republic of Poland, leads to the following conclusion: the review of all normative acts issued by supreme and central state bodies is permitted. Following changes in the political system, article 1 of the Constitutional Tribunal Act also no longer speaks against such an interpretation. With respect to the importance of that provision on the basis of the new system principles, the Constitutional Tribunal reaffirms its earlier stand.

The nature of parliamentary autonomy, however, forces the Constitutional Tribunal to demonstrate extra reticence in reviewing the norms established in the matter of this autonomy.

When reviewing the constitutionality of parliamentary bylaws, it should be assumed that the parliament, in establishing regulations concerning its own organization and manner of operation, has at its disposal a broad field for maneuvering. For this reason, the Tribunal should make the very strong assumption of conformity between the bylaws and the Constitution. As a rule nonconformity between the bylaws and statutes may only be asserted when the bylaws exceed their scope without constitutional legitimacy and when bylaw regulations encroach upon the subject matter handled by statutes.

In principle, in order to adjudicate this matter, it was necessary for the Constitutional Tribunal to establish whether the norms embodied in article 9, sections 1 to 5 of the Sejm bylaws challenged by the Applicants are indeed within the scope of the bylaws as defined by constitutional regulations or if, perhaps, they are the subject matter of statutes.

3. The power of the Sejm to ratify bylaws before the Constitutional Act dated 17 October 1992 on the Mutual Relations Between the Legislative and Executive Authorities of

the Republic of Poland and on Local Self government (herein referred to as the Small Constitution) came into force was founded on article 23, section 4 of the Constitution of the Republic of Poland that stated: „The order of business of the Sejm and the types and numbers of commissions shall be defined by bylaws ratified by the Sejm." When the Small Constitution dated 17 October 1992 came into force, that power was found in article 14 of that act. It states: „The bylaws ratified by the Sejm shall specify the details of the organization and course of operation of the Sejm.

„Article 14 of the Small Constitution was the basis for establishing the scope of the bylaws just as article 23, section 4 of the Constitution of the Republic of Poland were at the moment when the bylaws of the Sejm dated 30 July 1992 challenged in this Petition were ratified. In spite of the different wording in the two constitutional regulations, the subject of the bylaws of the Sejm was stated similarly.

The wording of article 23, section 4 of the Constitution of the Republic of Poland clearly states that the Sejm, in its bylaws, is to define the order of its business, types of commissions, and their number. A problem emerged in interpreting this provision, however Are only these matters to have been the subject of the bylaws of the Sejm, in other words, should the wording be treated as specifying the complete contents of the bylaws? An affirmative answer would result in bylaws that only regulate certain matters in the field of the internal structure of the Sejm (the determination of the types and numbers of Sejm commissions) and matters pertaining to the operation of the Sejm (the regulation of the order of business). The concept of „order of business" as contained in the wording provides a basis for wider interpretation, however. The Sejm's order of business should be understood as the manner of implementing its power. The business of the Sejm is directed at the performance of its function, while the order of business signifies a certain established and organized method of discharging those functions. An ordered manner of operation simultaneously assumes the expedient organization of the Sejm. It is something of a prerequisite to such action because without proper organization it would be impossible. In light of this, on the basis of article 23, section 4 of the Constitution of the Republic of Poland, the accepted interpretation is that the commissions of the Sejm listed by the creator of the political system in the cited article of the Constitution serves only as an example, not an exhaustive list defining the organizational matter of the Sejm that should be found in the bylaws of the Sejm (A. Gwiżdż). Thus, the scope of the bylaws pursuant to article 23, section 4 of the Constitution of the Republic of Poland should include the entirety of matters linked to the organization of the Sejm as well as the manner whereby its power is performed – i.e. the manner of work of the Sejm. It is to such an interpretation of article 23, section 4 of the Constitution of the Republic of Poland that article 14 of the Small Constitution clearly referred (*nolens volens*) in defining the subject of the bylaws of the Sejm in a manner stating that they are „the details of the organization and course of operation of the Sejm."

4. The Small Constitution, in using the term „bylaws of the Sejm," does not create a new concept, but uses an existing concept that has a specified definition in Polish legal practice. Thus, in order to establish the scope of the bylaws, it would be fitting to review the contents of earlier bylaws, ratified before the Small Constitution came into force. In light of the subject matter to be reviewed, it was important to determine whether this scope encompasses the forms of organization of the members of the Sejm, primarily the institution of a caucus. The following may be derived from the history of Polish law, commencing at the outset of the Second Republic of Poland:

(...) The bylaws of the Sejm are an act that is empowered – and is in its essence the most appropriate in light of the autonomous nature of the parliament in the system of separation of powers – to regulate the principles of establishing parliamentary caucuses (clubs) (and other

forms of organization of members of the Sejm) as well as the rights of such caucuses with respect to the bodies of the Sejm. The bylaws of parliaments in democratic States usually also define the number of deputies necessary to establish a caucus. The fact that this was not done by the bylaws of the Sejm of the former People's Republic of Poland, inclusive of the bylaws of the Sejm of 1986, may be explained by the non-democratic principles of the political system that, up to the moment when article 3 of the Constitution of the People's Republic of Poland was struck by way of amendment in December 1989, permitted the existence of only three approved parties.

Today, all these matters belong to the scope of matters regulated in line with article 14 of the Small Constitution independently of the Sejm by way of bylaws. The challenge embodied in the Petition of article 9, sections 1 to 5 of the Bylaws of the Sejm therefore fits within the, constitutional concept of the „detailed organization and course of operation of the Sejm" as the, subject matter of bylaws and, in this sense, conform with article 14 of the Small Constitution. The ratification of the Act dated 31 July 1985 on the Rights and Duties of Deputies and its subsequent amendment on 27 December 1989 did not change the existing principle regulating the institution of the caucus in the bylaws, although the ratification of this Act signifies the introduction of dual-tracking of regulations governing these matters encompassed by parliamentary autonomy, including the forms of organization of members of the Sejm, by way of an act and a resolution regarding the bylaws of the Sejm. It is the opinion of the Constitutional Tribunal that this dual-tracking does not have a right to exist under the new system conditions of the Republic of Poland.

IV

The distribution of parliamentary legal norms in the field of forms of organization of the deputies between statutes and the bylaws of the Sejm, regardless of the assessment of this fact, is at this time a legal fact and it is this fact that the Applicants had in mind in applying the wording of the Act of 1985 as the basis for challenging article 9, sections 1 to 5 of the bylaws of the Sejm of 1992. The regulation in article 14, sections 1 to 5 of the Act basically establishes a limit whereby it is only possible to create caucuses (clubs), circles, or teams of deputies in the Sejm (section 1), as well as joint Sejm-Senatorial parliamentary caucuses (section 3), and the possibility of establishing offices for administering the activities of the parliamentary caucuses (clubs) if so petitioned by the presidium of the caucus (sections 4 and 5): The Act also obligates. the groups of deputies to inform the Presidium of the Sejm of their composition and their internal bylaws (charters) that are to satisfy the conditions it lists (section 2).

Article 9, sections 1 to 5 of the bylaws of the Sejm challenged in the Petition, defines the principles according to which deputies establish caucuses or circles as well as teams. Caucuses or circles are to be based on an undefined „political principle" (section 1), while teams are to be organized on the basis of a different principle (section 6). The provisions of the bylaws define the minimum number of deputies needed to establish a caucus at fifteen (section 2), while the number required for a circle is a minimum of three (section 3). The provisions of the bylaws also allow caucuses or circles to establish joint representation in the Convention of Seniors on the basis of mutual understandings (section 5). As to the authorities of the caucuses, circles, and teams as well as mutual understandings, the bylaws apply the obligation of informing the Presidium of the Sejm of their personnel composition and their internal bylaws (charters) (section 7).

Regardless of the assessment made on the splintering of legal regulations concerning the forms of organization of deputies between the Act of 1985 and the bylaws of the Sejm of 1992 – which was discussed above – the regulations contained in these various parliamentary

acts (constitution, statutes, bylaws) should be cohesive. This primarily signifies the requirement of conformity of statutes and bylaws with the Constitution, but it also signifies the absence of nonconformity between the bylaws and statutes of the Sejm that stand higher in the hierarchy of legal acts. In reviewing and evaluating the allegations of nonconformity, one must bear in mind that bylaws – as was stated – are not an executive order to a statute. Special account must also be made of the priority of the Sejm's right to regulate issues of internal organization and the manner of operations of the Sejm by bylaws which is founded on the constitutional principle of parliamentary autonomy.

In light of the conclusions reached by the Constitutional Tribunal with respect to the nature of the bylaws and their relationship to the Act of 1985 as well as an analysis of the wording of the appropriate provisions of the bylaws of the Sejm and the statute, the Applicant's primary allegation that since the statute does not define the number of members of a caucus, then restrictions in the form of a minimum number of fifteen deputies cannot be instituted by the bylaws of the Sejm is not substantiated.

The norms contained in article 9, sections 1 to 3 of the bylaws of the Sejm introduce a certain amount of differentiation envisaged by the formula for forms of organization of deputies – caucuses and circles – within the framework of the general formula of article 14, section 1 of the Act of 1985 („Deputies may form parliamentary caucuses, circles, or teams in the Sejm"). This differentiation is based on the criterion of a minimum number of deputies being capable of establishing a specified group of deputies on a political basis – caucuses or circles. This criterion conforms with the autonomy of bylaws by which the chamber independently molds the forms of its organization and activity; as was mentioned, this is also in line with the parliamentary practice of shaping the size of parliamentary fractions in the law and the practice of democratic States.

Regardless of any legal consequences flowing from the interpretation of article 14 of the Small Constitution as well as from article 23, section 4 of the former Constitution, which boil down to the ability to regulate freely the principles for organizing deputies by an act of the Sejm in parallel to the Act, it is also difficult to perceive any nonconformity with the letter of the Act of. 1985 in the challenged provisions of the bylaws. The Act does not define the number of deputies necessary to establish a caucus or circle while the silence of the Act in this matter cannot, in light of the meaning of the words „caucus' („circle") be read as permission to establish caucuses without any conditions regarding their size. What is more, the placement in the Act of two different organizational names points to the fact that they must differ from one other – e.g. by the number of members required.

2. The confirmation of the conformity between the challenged provisions of article 9, sections 1 to 3 of the bylaws of the Sejm and the provisions of the Act dated 1985 cited in the Petition does not imply that these provisions thus, by virtue of content, conform with the Constitution, although, as was said, they fit within the principle of the Sejm's autonomy to establish bylaws. Because, as was stated earlier, the bylaws of the Sejm are not an executive order to a statute, but an independent act issued directly on the basis of the Constitution, the regulations pertaining to the definition of the principles for establishing caucuses, especially those not encompassed by the Act, may directly contravene the Constitution. In spite of the fact that the Applicants did not touch upon this matter in their Petition, in line with its power to establish the basis for the review of norms, the Constitutional Tribunal examined the challenged provisions of the bylaws to test if they conform with the Constitution in a material sense. First, they conform with the constitutional principle of establishing political parties and their function in shaping State policy as based on article 4, section 1 of the Constitution of the Republic of Poland? The challenged regulation does have a link with such a freedom as well as with the realization by a party of the function of molding State policy. The Tribunal makes

reference to this link conscious of the need for a broader basis for assessing the constitutionality of the bylaws challenged by the Applicants besides the Act of 1985 as cited and parliamentary autonomy as embodied in article 14 of the Small Constitution whose nature is primarily that of power. Thus, the question is whether or not the Sejm, in issuing the bylaws challenged in the Petition, exceed its autonomy and in overstepping the bounds thereof contravened other Constitutional principles and norms.

The political systems of a modern democratic State assume the performance by political parties of the function of exercising authority. This function should be exercised through parliamentary mechanisms. In practice, the primary tie between the political party and that mechanism is the parliamentary party caucus. In light of the above, it may be stated that the freedom of establishing parties as well as the requirement that parties influence the shaping of state policy by democratic means (article 4, section 1 of the Constitution of the Republic of Poland) forces the guarantee of legal conditions to facilitate the free fulfillment of the democratic function of shaping state policy to political parties, especially through the parliament. These requirements also pertain to regulations regarding the parliament's organization and course of operation. These regulations, in order to conform with the cited constitutional principles, cannot restrict the freedom of action of political parties nor their parliamentary activities.

The ban against establishing regulations to limit and restrict the right to participate in political activity are not absolute in nature, however The freedom to establish a political party and its subsequent activities may be in collision with other constitutional principles and norms. Therefore, such freedom may be subject to restrictions, but no restriction of any constitutionally recognized right and liberty, including the freedom to establish a party, may go so far as to completely abrogate the essence or principle of the given right. The Constitutional Tribunal has already taken a stance in this matter several times (e.g. Decisions K. 7/90 Collection of the Constitutional Tribunal's Decisions, 1990, p. 55 and K. 1/91 Collection of the Constitutional Tribunal's Decisions,1991, p. 91). Second, such restrictions must take into account the need for balancing the rank of the right or freedom subject to restriction and the rank of the law, each and every time, to test if the principle justifies the restriction. Failure to maintain the proportionality necessary in this case or any conclusion that the assumed restriction is unnecessarily excessive may result in the unconstitutionality of the given regulation. Third, the established restrictions cannot be arbitrary in nature; they cannot be based on classifications deprived of justification applying rational and constitutional criteria – i.e. they cannot be inconsistent with equality.

It is on the basis of the above assumption that the Constitutional Tribunal evaluated the content of the bylaws of the Sejm challenged in the Petition and also made its conclusions as to the allegation made by the Applicants that the changes introduced by way of the new bylaws of the Sejm are an effort to influence the shape of the Polish political scene by administrative means. Upon ascertaining that the freedom of creating parliamentary groups is an element of the overall freedom to establish political parties and as such should be giving constitutional rank; the Constitutional Tribunal concluded that the regulations embodied in particular in article 9, section 2 of the bylaws of the Sejm („A caucus shall be made up of no less than fifteen deputies") puts boundaries on that freedom. This restriction, however, in the assessment of the Constitutional Tribunal is clearly supported by another constitutional principle (and the interests protected by the Constitution) which is to guarantee to the parliament the legal conditions for performing its constitutional tasks. This principle, although not formulated *expressis verbis* in any constitutional provision, has been derived by the Constitutional Tribunal from the overall concept of a democratic State under the rule of law (article 1 of the Constitution of the Republic of Poland), from a free mandate (article 6 of the

Small Constitution) and its related internal parliamentary autonomy (article 14, of the Small Constitution) as well a the general power and tasks of parliament with whose performance the Constitution encumbers it.

System consequences stemming from these principles lie at the basis of the provisions regulating the creation of parliamentary fractions (caucuses). This is the reason why in both the law aiid political practice of Western European States (France, Italy, Spain, and the Federal Republic of Germany) the principle that a fraction must exceed a minimum size does not generate any doubts. It may also be assumed that this also pertains to the bylaws of the Senate of 23 November 1990 that, in their official wording; require that the minimum number of members of a Senate parliamentary caucus with the right to a representative in the Convention of Seniors is defined as at least seven Senators (article 16, section 2).

The need to guarantee the effective course of parliamentary work results in and is the result of the varied positions of stronger and weaker political groups in the system of organizing the parliament's business. The rule of democracy based on the level of support given a party in elections actually assumes this possibility. The Federal Constitutional Tribunal of the Federal Republic of Germany justifies restrictions and differentiation of this type for reasons of „efficiency of representation and the effectiveness of the operation of the parliament" (Decision of the FCT dated 16 June 19912BvE 1/91).

Bearing this in mind, the Constitutional Tribunal has come to the conclusion that the assumed restrictions regarding the establishment of parliamentary caucuses (clubs) conform with the need for the harmonious interpretation of internally differentiated constitutional principles and norms. It should also be very strongly stressed that in the solutions accepted in the bylaws of the Sejm, there was no direct evaluation from the point of view of the above mentioned capacity of the parliament to effectively perform its tasks – i.e. there is no determination of what better serves the effective work of parliament. All that was stated was that the Sejm, acting within the boundaries of its autonomy, had the right and obligation to take into consideration the consequences flowing from other constitutional principles, including the order to create legal and organizational conditions for the effective operation of parliament.

The Constitutional Tribunal also came to the conclusion that article 9, section 2 of the bylaws in question does not, by its very essence, infringe upon the freedom of a party or its rights to influence by democratic means, primarily through parliamentary institutions, the shape of state policy (article 4, section 1 of the Constitution of the Republic of Poland) for the following reasons:

1) the bylaws do not set up a ban against organizing representatives of smaller parties into parliamentary groups besides caucuses. The members of such parties may create parliamentary circles. Such circles, regardless of their separate rights, are not completely deprived of procedural rights that are the domain of parliamentary caucuses. In line with mutual agreements and understandings, they may designate joint representation in the Convention of Seniors (article 9, section 5 of the Bylaws). The representatives of such understandings, if they represent at least fifteen deputies, are full-fledged members of that body (article 16, section 1 of the Bylaws) and take part in the implementation of all the tasks of the Convention.

2) The differentiated legal status of a parliamentary caucus and circle as manifest in the bylaws of the Sejm does not infringe upon the essence of the freedom of political parties and their rights to be active in the Sejm because that principle must be interpreted bearing in mind the free mandate of the deputy as discussed in article 6 of the Small Constitution. The legal status of a member of the Sejm, including the right to establish parliamentary fractions, is

formed not only through the constitutionally designated role of political parties but also by the provisions of the Small Constitution that states that deputies are the representatives of the Nation; they are not bound by the instruction of their constituents and they cannot be recalled. Thus, it is a matter for the Sejm to define, by way of its bylaws, the rights of deputies and the manner of their execution. Specifically, the Sejm may define what rights of a procedural nature should be differentiated by way of the bylaws with respect to groups of deputies from the point of view of the parliament's ability to discharge its constitutional tasks.

For the above reasons, it is also the assessed view of the Constitutional Tribunal that the established minimum number of fifteen deputies capable of establishing a parliamentary caucus is not discriminatory in nature with respect to smaller groups of deputies. It is based on a substantively justified criterion for classifying groups of deputies in light of constitutional assumptions. It should also be noted that this figure was and is correlated with may provisions of the bylaws requiring a specific number of signatures on a motion by a deputy – i.e. to appoint the Speaker of the Sejm (article 3, section 1), ratify a statute (article 29, section 2), or adopt a resolution (article 30). In all these cases, fifteen signatures of deputies are necessary. Groups of deputies of smaller size (three or five, for example), cannot independently submit draft legislation, for example. Besides, the bylaws set an even higher threshold for many motions by deputies in the form of thirty-five or thirty signature of deputies (article 27, article 98, section 2, article 113; section 5, and article 114, section 3 of the Bylaws of the Sejm)

3. The Constitutional Tribunal has also reviewed the content of other allegations raised in the Petition and with respect to their arguments has held as follows:

1) The interpretation of article 14, section 2 of the Act dated 1985 („Parliamentary caucus, circle, and team authorities shall inform the Presidium of the Sejm regarding their composition... „) gives no basis, contrary to the allegations contained in the Petition, to the view ? that „only the authorities of parliamentary caucuses, circles, and teams may make decisions regarding their composition, and therefore their size." The size of a given group of deputies is, first and foremost, the result of parliamentary elections, while their composition, which as practice has shown, changes often, is also dependent on the will of the individual deputies. The authorities of the caucuses, circles, and teams, as is stated *expressis verbis* in the wording of article 14, section 2 of the Act of 1985, are only obligated to forward information as to their composition to the Presidium of the Sejm following their establishment and subsequently each time their composition changes.

2) Lack of representation in the Convention of Seniors is not an „attenuation of the legislative rights of deputies." The examples cited in the Petition – the ratification of the Sejm's work plans, agendas, determination of debate procedures, and the shapes of the Sejm's commissions – were never and are not legislative rights of individual deputies. They are the task, applied by the Bylaws, of one of the bodies of the Sejm – the Convention of Seniors. Its composition and, in effect, participation in the execution of these tasks was always determined in the Sejm by way of its bylaws. The same is true of the nature of the other rights of deputies to act within the Sejm and its bodies. As rights of the representatives of the Nation they exist only as membership rights in the parliament that are mutually subordinate to each other (they can be „outvoted"); they are not individual rights of deputies with a legal basis.

The allegation discussed above would find justification as an infringement upon the rights of individual deputies to participate in the work of the Sejm if regulations restricted the individual rights of the deputies in a manner actually closing the door to their influence over the activities of the Sejm or its managing bodies (the Speaker, the Presidium) – i.e. if it awarded the legal instruments for such influence exclusively to parliamentary caucuses through the mediation of the Convention of Seniors as the reviewing body. The contents of

the bylaws of the Sejm with respect to the order of meetings of the Sejm and time allocation and procedures for debates contained in detail in article 12, article 99, and articles 107 to 109 do not; however, justify the allegation that individual deputies are deprived of such influence, which was proven during proceedings (Minutes of the Proceedings, pp.15-23). Additionally, it should be kept in mind that in the matters specified above, especially regarding the daily and session agendas, the final decision rests with the Sejm (all deputies). As to deputies in parliamentary circles, they have a guaranteed right to mass participation in the activities of the Sejm and its bodies through the right of circles to present opinions in matters as discussed in article 8, section 9, article 72, section 3, and article 76, section 2 of the Bylaws of the Sejm as well as. which was stressed earlier, the right to participate in the work of the Convention of Seniors in line with the principles of article 9, section 5 of the bylaws of the Sejm.

3) The allegation that the bylaws of the Sejm in question deprive deputies and senators of the same political groups of the possibility of joining together in joint parliamentary representation – i.e. nonconformity with article 14, section 3 of the Act of 1985 – is unjustified primarily because the bylaws of the Sejm may only regulate the organization of deputies (not of deputies and senators) and the new bylaws of the Sejm adhere to this principle.. Although the modification or abolition of joint parliamentary organizations for deputies and senators permitted pursuant to the regulations of the Act of 1985 – is the result of the wording of the 1989 amendments, even if ratified under the specific political situation of the 10th Term of the Sejm of the People's Republic of Poland and the 1st Term of the Senate, may legally only take place by way of statute, because it not only pertains to the Sejm but also to the Senate. Second, the bylaws of the Sejm, in their essence, do not apply to joint parliamentary caucuses of deputies and the senate and do not, simultaneously, ban the creation of such mutual organizations. Simply, they do not grant them any rights inherent in the case of deputies and their organizations in the Sejm because this would be outside the boundaries of regulation allowed by the bylaws of the Sejm. In this respect, the bylaws of the Sejm do not ban their existence.

4) In evaluating the following allegation, namely that the challenged bylaws of the Sejm impinged upon the acquired rights of deputies to create caucuses with less than 15 deputies, the Constitutional Tribunal has in principle concurred with the stance of the Prosecutor General that we are not dealing with modifications to the acquired rights of the entities so endowed but only with modifications to the organization of the Polish Sejm's work in the challenged Bylaws of the Sejm.

The Constitutional Tribunal has taken the stance that the possibility of establishing parliamentary caucuses pursuant to the conditions defined by the provisions of law in terms of their subject matter is not the realization of a defined public right by an entity, especially in the realm of political life. It does not apply to a legal situation in line with which a citizen (a group of citizens) may, on the basis of the norms of the Constitution or a statute protecting his/her legal interests, effectively demand of the State, especially when taking the judicial route, the satisfaction of rights due or the prevention of encroachment into the legal sphere of secured individual liberties. The ability to establish parliamentary caucuses follows from the Sejm's defined work organization solutions and is something due to deputies as members of a given political group in light of the nature and tasks of the legislative body of which they are a component part. As a consequence, the legal provisions applicable to the institution of the parliamentary caucus are system (organizational) norms in nature from which public subject matter rights, in line with the accepted concept of public rights, do not evolve.

For this reason the Constitutional Tribunal did not agree with the Applicants' allegation that the challenged bylaws of the Sejm, especially article 9, section 2, infringe upon the rights of deputies acquired before these bylaws came into force.

Furthermore, the Constitutional Tribunal did not agree with the allegation formulated by the Applicants during the course of proceedings that the Bylaws setting a minimum size for a parliamentary caucus – something unknown to the previous bylaws of the Sejm – infringe upon the certainty of law, a concept broader than the protection of acquired rights. As stated by the Applicants, the certainty of law would specifically require the modification of such regulations prior to elections to the Sejm. The Constitutional Tribunal decided that there is no such link between the size of a parliamentary caucus and general elections to the Sejm. Rather, it is the results of the elections that determine the size of the Caucuses although this cannot restrict the right of the Sejm in each term in office to regulate questions of its internal regulations in line with parliamentary autonomy.

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