

**Judgment of the Polish Constitutional Tribunal concerning the constitutionality
of Poland's accession to the European Union**

(release of 11th May 2005)

On 11th May 2005, sitting in a plenary session, the Constitutional Tribunal issued a judgment regarding the constitutionality of the Treaty signed on 16th April 2003, concerning the accession of 10 States, including the Republic of Poland, to the European Union (Accession Treaty), in conjunction with certain provisions of the Treaty establishing the European Community and the Treaty on the European Union.

The Tribunal ruled that the Accession Treaty as a whole, as well as particular provisions of the Treaties challenged in this case, do not infringe the provisions of the Constitution of the Republic of Poland, as indicated by the applicants. In the reasoning accompanying the verbal pronouncement of the judgment, a number of significant questions concerning the nature of the binding force of European Union law for the Republic of Poland and the relationship between this law and the Polish Constitution were explained.

The Accession Treaty was signed in Athens on 16th April 2003. On 7th and 8th June 2003 a referendum was held in Poland, wherein a majority of voters chose in favour of ratification of the Treaty. On that basis, the President of the Republic of Poland ratified the Treaty. Since 1st May 2004, Poland is a member of the European Union.

Proceedings before the Constitutional Tribunal in the case regarding the constitutionality of the Accession Treaty and certain provisions of the founding Treaties were initiated by three groups of Deputies (members of the *Sejm* – the first chamber of the Polish Parliament). In alleging the non-conformity of Poland's accession to the European Union and the challenged provisions of the Treaties with the Constitution of the Republic of Poland, the applicants referred to numerous constitutional principles and norms, *inter alia*: the principle of the sovereignty of the Polish People (Article 4(1) of the Constitution) and the superiority of the Constitution within the Polish legal system (Article 8(1) of the Constitution). They also indicated the constitutional limits upon transferring “to an international organisation or international institution the competence of organs of State authority in relation to certain matters” (Article 90(1)) which, according to the applicants, were exceeded.

In its reasoning for the decision regarding the constitutionality of the Treaties provisions, the Tribunal particularly emphasised that recognition of the Constitution as the “supreme law of the Republic of Poland” (Article 8(1)) is accompanied by the constitutional legislator's observance of international law regulations which are appropriately shaped and are operative within the territory of the Republic of Poland (Article 9 of the Constitution).

Pursuant to Article 91(1) of the Constitution, an international agreement shall, following its promulgation in the Journal of Laws, become part of the legal order of the Republic of Poland and shall be directly applied, unless its application is conditional upon the enactment of a statute. International agreements envisaged in Article 90(1) of the Constitution, concerning the transfer of competences of State authority organs “in relation to certain matters” to an international organisation or an international organ, constitute one of the categories of international agreements subject to ratification. Ratification of such an agreement takes place under a procedure containing notably more onerous requirements, when compared with ratification of other agreements (Article 90(2)-(4) of the Constitution). These protective measures concern

all cases of transferring competences to the organs of the European Communities and the European Union.

Within the framework of Article 90, competences belonging to the legislative, executive and judicial power may be transferred. Nevertheless, no such transfer of competences is allowed in any of these areas where the transfer would undermine the sense of the existence and functioning of State organs, leading to a situation where an international organisation would become the sovereign. The transfer of competences under the procedure contained in Article 90 of the Constitution may not deprive the State of the ability to act as a sovereign, since this would amount to an infringement of the principles expressed in Article 4 (“Supreme power in the Republic of Poland shall be vested in the Nation”) and Article 5 (“The Republic of Poland shall safeguard its independence”). Accordingly, the Constitution prevents the transfer of competences insofar as it would lead to the Republic’s loss of a status as a sovereign State.

The European Communities and the European Union function, in accordance with the Treaties establishing these organisations, on the basis of powers conferred upon them by the Member States, by virtue of the latter’s sovereign decisions. This signifies that they may only operate within the scope envisaged by the Treaties’ provisions. This concerns, in particular, the enactment of legal norms by Community institutions. Such norms are binding upon the Republic of Poland insofar as Poland, by way of its sovereign decision, transferred certain legislative competences to the Community institutions by ratifying an international agreement.

The dynamic nature of European integration does not signify an extension of the scope of the prerogatives of the European Union’s organs to areas which are not encompassed by the transfer of competences. It is impermissible for an international organisation to independently determine its own competences, disregarding the appropriate procedures governing the transfer of competences by Member States on the basis of legal norms in force within these States.

Poland’s accession to the European Union does not undermine the status of the Constitution as the “supreme law of the Republic of Poland” (Article 8(1)). Within the territory of Poland, the Constitution enjoys the precedence of binding force and the precedence of application, also in relation to all international agreements binding upon Poland, including those transferring the competencies of State authorities to international organisations and, *a fortiori*, in relation to legal norms of secondary Community law. The precedence of application of a ratified international agreement, and also the law established by an international organisation on the basis of such an agreement, over Polish statutes, as envisaged in Article 91(1) and (3) of the Constitution, in no way signifies the precedence of such an agreement or law over the Constitution.

Following Poland’s accession to the European Union, there exist two autonomous legal systems (i.e. those of Poland and the European Union) which are simultaneously in force. This does not preclude, on the one hand, their mutual interaction nor, on the other hand, the possibility of a conflict between European law and the Constitution. In the event of any such conflict occurring, it is for a sovereign decision of the Republic of Poland whether to introduce an appropriate constitutional amendment, or to initiate amending the Community legal regulations, or, ultimately, to withdraw from the European Union.

The Constitutional Tribunal did not support the applicants’ submissions as regards the alleged inconsistency between, on the one hand, the scope of competence of the Court of Justice of the European Communities (ECJ), as defined by the Treaties and, on the other hand, the principle of sovereignty of the Republic of Poland, the supremacy of its Constitution in the Polish

legal system and the specific legal status of the Constitutional Tribunal. The latter mentioned, in particular, that the ECJ is an authorised guard of the correct understanding of the Treaties, but it is not the only one. The ECJ's interpretation of Community law should be performed within the scope of competence and functions conferred thereupon by the Member States and should respect the principle of mutual loyalty of Community authorities and Member States authorities. The latter principle implies a duty upon the ECJ to be friendly predisposed to the domestic legal systems and a duty upon the Member State to respect Community norms to the highest extent possible.

The hypothetical reference, by the Constitutional Tribunal, of a preliminary question to the ECJ, pursuant to Article 234 of the EC Treaty, concerning the validity or interpretation of Community law, would not infringe the superiority of the Constitution and the specific legal status of the Constitutional Tribunal. The latter would be allowed to decide as to whether or not to refer such a question solely during examination of a case in which it would be obliged, on the basis of the Constitution, to apply Community law.

The hearing, closed on 4th May 2005, was presided over by the President of the Constitutional Tribunal, Marek Safjan. The judge rapporteur was Marian Grzybowski.

The judgment is final and its ruling shall be published in the Journal of Laws.

The full text of the judgment in Polish, accompanied by voluminous reasoning, will be published in the official collection of the Tribunal's judicial decisions and on this website.

An English summary will be available on this site in a few weeks.

The reference number of the case: K 18/04.