

Procedural decision of 3<sup>rd</sup> September 2003, Ts 71/03  
**CONSTITUTIONAL PROGRAMME NORMS AND THE CONSTITUTIONAL  
COMPLAINT. DEADLINE FOR LODGING THE COMPLAINT**

<b>Type of proceedings:</b> Preliminary consideration of a constitutional complaint <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 1 judge
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Effective submission of a constitutional complaint requires observance of numerous conditions specified in Article 79(1) of the Constitution and in relevant provisions of the Constitutional Tribunal Act 1997 (hereinafter referred to as “the CT Act”).

An essential prerequisite for admissibility of a constitutional complaint is that the complainant’s constitutional rights or freedoms have been infringed by the challenged provision. The alleged infringement should remain connected with the application of such a provision in the complainant’s individual case (Article 79(1) of the Constitution). The rights or freedoms which have allegedly been infringed, and the manner of such infringement, should be specifically indicated in the reasoning of the constitutional complaint (Article 47(1) point 2 of the CT Act).

Furthermore, pursuant to Article 46(1) of the CT Act, a constitutional complaint must be lodged within 3 months from the date on which the complainant was delivered with a final decision in their individual case, based on the challenged provision. Although Article 48(1) of the CT Act states that a constitutional complaint shall be drawn up by an advocate or legal advisor (the so-called compulsory legal representation), section 2 of that Article permits the complainant to request the court to appoint an advocate or legal advisor *ex officio* (with the “appropriate” application of Civil Procedure Code provisions). The aforementioned time limit for lodging a constitutional complaint “shall not run” (pursuant to the CT Act) until the court adjudicates the application.

In the present case the complainant challenged two provisions of the Cooperative Law 1982 (Article 210 § 1 and Article 218 § 2), on the basis of which the District Court ordered the eviction of the complainant from the cooperative-owned residential unit given the expiry of his membership in the housing cooperative. An appeal against the abovementioned judgment of the District Court was dismissed by the Regional Court. The constitutional complaint alleged inconsistency of the challenged provisions with Article 67(1) (right to social security in the scope and form specified by statute), Article 71(1) (State’s obligation to pursue social policy taking into account the good of the family) and Article 75(1) of the Constitution (State’s obligation to pursue policies conducive to satisfying the housing needs of citizens). In the complainant’s opinion, the aforementioned provisions of the Constitution were infringed, since the challenged Act lacks regulations which would exceptionally allow – after taking into consideration the particular circumstances, including the absence of fault of the cooperative’s member – renunciation of an eviction order from a residential unit. Moreover, the

complainant indicated the necessity for the State to undertake measures to fulfill its constitutional duties expressed in the aforementioned provisions, and alleged the inconsistency of the challenged provisions with principles of social justice (Article 2 of the Constitution). The complainant also made reference to the constitutional principle of human dignity (Article 30).

With the present procedural decision, issued within the [preliminary consideration of the constitutional complaint](#) proceedings, the judge of the Constitutional Tribunal refused to proceed further with the complaint, given the complainant's failure to indicate which of his constitutional rights – and in what manner – were infringed by the challenged Cooperative Law 1982 provisions, and also given that the statutorily-defined deadlines for lodging a complaint were exceeded.

The complainant's representative challenged the aforementioned procedural decision (by submitting the so-called complaint, i.e. the method for challenging procedural decisions refusing to proceed further with applications or, as appropriate, constitutional complaints). The Constitutional Tribunal, sitting in a three-judge panel, did not admit this challenge ([procedural decision of 22<sup>nd</sup> September 2004](#), reference number as above). Accordingly, the constitutional complaint was finally considered inadmissible and was not reviewed on its merits.

## RULING

### **The Tribunal refused to proceed further with the constitutional complaint.**

#### PRINCIPAL REASONS FOR THE RULING

1. Article 71(1) and Article 75(1) of the Constitution are norms having a “programme” character which are addressed to the State. Pursuant to Article 81 of the Constitution, the shape of individual claims resulting from such duties should be specified by statute. Whereas the claimant indicates the absence, within this scope, of positive regulations which would allow the differentiation of the situation of addressees of eviction provisions. The assessment of *de lege ferenda* postulates does not fall within the Constitutional Tribunal's jurisdiction, since the Tribunal only performs the role of the so-called negative legislator, authorised to derogate norms already issued and binding.
2. In order to effectively base the constitutional complaint on an allegation that the principle of social justice (Article 2 of the Constitution) has been infringed, the contents of the right or freedom, within whose scope this principle was infringed, should be expressed more precisely.
3. The term “the time limit shall not run”, as envisaged in the second sentence of Article 48(2) of the CT Act, signifies that at the instance of appointing the representative *ex officio* the three-month time limit for lodging a constitutional complaint does not run from the beginning but is only completed by the time scope that remained from the period from

delivering the final decision to the complainant until the date of submitting the application to appoint the representative. The time limit for submission of this constitutional complaint ran from 26<sup>th</sup> April 2002 (delivery of the final decision to the complainant) until 18<sup>th</sup> June 2002 (application to appoint a representative) and, subsequently, from 4<sup>th</sup> February 2003 (appointment of the representative). Whereas the constitutional complaint was lodged on 22<sup>nd</sup> April 2003. Accordingly, the three-month deadline for lodging the constitutional complaint was exceeded (Article 46(1) of the CT Act).

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

#### Constitution

**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. 30.** The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

**Art. 67.** 1. A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.

**Art. 71.** 1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

**Art. 75.** 1. Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combatting homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.

**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.

2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.

**Art. 81.** The rights specified in Article 65, paras. 4 and 5, Article 66, Article 69, Article 71 and Articles 74-76, may be asserted subject to limitations specified by statute.

#### CT Act

**Art. 46.** 1. Constitutional complaint, further referred to as the "complaint" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the complainant, the final decision or other final judgment.

**Art. 47.** 1. The complaint shall, apart from the requirements referring to the procedural letters, include the following:

- 1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,
- 2) indication as to which constitutional freedoms and rights and in what manner have, according to the person making the complaint, been infringed,
- 3) grounds of the complaint including precise description of the facts of the case.

**Art. 48.** 1. 1. The constitutional complaint or complaint against the decision concerning refusal to proceed with further action shall be drawn up by an advocate or legal advisor unless the person making the complaint is a judge, prosecutor, notary public, professor or doctor habilitated of legal science.

2. Where the person making the complaint cannot bear the costs of legal assistance, he/she may request the district court of his/her place of residence to appoint an advocate or legal advisor ex officio on the basis of the Code of Civil Procedure. Until such time as the court adjudicates the application, the time limit specified in Article 46, paragraph 1 shall not run.