

Procedural decision of 21st March 2005, [P 11/04](#)
**REQUIREMENT FOR A RELATIONSHIP TO EXIST BETWEEN
PROCEEDINGS BEFORE A COURT AND A QUESTION OF LAW
REFERRED THEREBY TO THE CONSTITUTIONAL TRIBUNAL.
COMMUNES' RIGHT TO JUDICIAL PROTECTION**

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| Type of proceedings: Question of law referred by a court Initiator: Court of Appeal in Kraków | Composition of Tribunal: 5-judge panel | Dissenting opinions: 0 |
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Until 31st August 2004, any issues regarding compensation for damages caused by an unlawful administrative decision were regulated by Article 160 of the Administrative Procedure Code, which was applicable in the case referred to the Constitutional Tribunal by the Kraków Court of Appeal. In principle, the level of compensation was to be determined within administrative proceedings. The appropriate organ for issuing a decision regarding compensation was the so-called organ of higher instance in relation to the organ required to pay such compensation. Since the proceedings were administrative in nature, the organ thus required did not enjoy the rights of a party to proceedings before the organ issuing the compensation decision; in particular, it was not entitled to challenge such a decision before an administrative court. Neither was that organ entitled to request that the case be referred to civil proceedings before a common court; such a procedural right was vested solely in the party to the administrative proceedings who was entitled to compensation.

On 1st September 2004, Article 160 of the Administrative Procedure Code lost its binding force and, as of that date, any compensation-related cases against administrative organs fell within the competence of the common courts. Pursuant to transitional provisions, this change had no impact on the case pending before the Kraków Court of Appeal.

The following represents a brief summary of the case: An administrative decision issued to Ms. Danuta F. by Commune M. was declared invalid within administrative proceedings by an organ of higher instance (the Świętokrzyski Governor). The Commune was ordered to pay Ms. Danuta F. compensation to the amount of 119,000 Polish Zloty. Subsequently, the Commune brought a civil complaint before the Kielce Regional Court, arguing that no such compensation was due. The Court rejected the complaint on the basis that it was inadmissible to challenge administrative decisions within civil proceedings (before the common courts). The Commune appealed against that ruling before the Kraków Court of Appeal.

Whilst considering the appeal, the Court of Appeal referred a question of law to the Constitutional Tribunal regarding the constitutionality of Article 160 § 5 of the Administrative Procedure Code, pursuant to which the right to bring a civil complaint before a common court is vested solely in a party dissatisfied with the compensation awarded to them within administrative proceedings. The Court of Appeal indicated the constitutional rule of law clause (Article 2) and constitutional guarantees to assert one's rights before a court (the so-called right to court, cf. Article 45(1) and Article 77(2)).

RULING

The Tribunal discontinued proceedings, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act – given that it would be inadmissible to pronounce judgment.

PRINCIPAL REASONS FOR THE RULING

1. Article 193 of the Constitution and Article 3 of the Constitutional Tribunal Act both express the principle that any court may refer a question of law to the Constitutional Tribunal as regards the conformity of a normative act with the Constitution, provided that the ruling of the case pending before that court depends on the answer to the referred question of law. Pursuant to Article 32(3) of the CT Act, a question of law should indicate how the answer to the question may influence the ruling in the case with reference to which the question was referred. It stems from the aforementioned provisions that a strict relationship must exist between the results of the Tribunal reviewing the constitutionality of the provision and ruling in the particular proceedings before the court referring the question of law. Allowing courts the right to initiate constitutional review does not, therefore, serve to initiate an abstract review of normative acts but is, rather, considered as an instrument ensuring a correct adjudication in an individual case (specific review).
2. The absence of any relationship between the answer to a question of law referred by a court and the ruling in a case pending before that court constitutes one of the reasons for the inadmissibility of adjudication by the Constitutional Tribunal and, consequently, for the discontinuation of proceedings pursuant to Article 39(1) point 1 of the CT Act.
3. A Constitutional Tribunal possible decision that Article 160(5) of the Administrative Procedure Code infringes the Constitution would have no influence on the ruling in the case presented in the question of law referred by the Kraków Court of Appeal. The claimant – Commune M. which, following the Governor's administrative decision, was required to pay compensation to the defendant – sought to challenge the Governor's final administrative decision before the court, within civil proceedings. Within the Polish legal system, however, it was, and still is, impermissible for the common courts to review administrative decisions. Our legal system assumes the principle of judicial dualism, pursuant to which administrative decisions are reviewable within administrative proceedings and by administrative courts; they may not, however, be challenged within proceedings before the common courts. From the perspective of the aforementioned principle, Article 160(5) of the Administrative Procedure Code undoubtedly represented an exception; taking into account the subject of the decision – a compensation award – the legislator permitted review by the common courts, upon the initiative of the person wronged by an administrative decision. The only result of a finding that Article 160(5) of the Administrative Procedure Code was unconstitutional would be to deprive the injured party of the possibility to demand, before a court, a correction of the level of compensation. The Constitutional Tribunal's judgment would, however, have no influence upon the legal situation of Commune M.; even if Article 160(5) of the Administrative Procedure Code were eliminated from the legal system, that Commune – required, on the basis of the administrative decision, to pay compensation – would still not be entitled to challenge the Governor's decision before a court. Permitting such a demand would

require not merely the elimination of Article 160(5) from the legal order but, rather, supplementation thereof, by virtue of expanding the scope of the exception envisaged in that provision with the relevant commune's entitlement. The Tribunal does not, however, possess the competence to issue law-making decisions replacing those of the "positive" legislator.

4. Article 45, as well as Article 77, of the Constitution are located within chapter II, governing – as stated in the title – “Freedoms, Rights and Obligations of Persons and Citizens”. The former provision is located amongst Articles regulating “Personal Freedoms and Rights”, whereas the latter is the first provision regulating “Means for Protection of Freedoms and Rights”. Accordingly, the constitutional scheme indicates that the right to a fair and public trial (Article 45(1) of the Constitution) is considered as the right of an individual; the prohibition on barring recourse to the courts (Article 77(2) of the Constitution) is also to serve the protection of rights and freedoms. The aforementioned legal provisions may not automatically be relied upon by all legal subjects and, in particular, they may not be considered as a means for protecting public-legal entities, inter alia, units of local self-government, including communes. The constitutional right to court, construed on the grounds of Article 45(1) and Article 77(2) of the Constitution, may serve to protect legal persons, even those of a public-legal nature, but only insofar as they are exercising rights or freedoms vested in individuals. For instance, a commune appearing as the owner of real estate would certainly be entitled to rely upon Article 45(1) and Article 77(2) of the Constitution, should its recourse to court be barred. However, the situation is different for a commune as a subject of public law, issuing administrative decisions and having responsibility related to the performance of such competences. Such cases do not concern the judicial protection of a commune's “rights and freedoms” but, rather, concern the protection of entities subject to the public authority performed by the commune.
5. On the basis of Article 165(2) of the Constitution, judicial protection concerns the self-governing nature of communes and other units of local self-government, especially as subjects of public law in their relations with other entities of the same nature, particularly the State.

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. 45. 1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

Art. 77. 1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.

2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.

Art. 165. [...] 2. The self-governing nature of units of local self-government shall be protected by the courts.

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.

CT Act

Art. 3. Any court may refer a question of law to the Tribunal as to the conformity of a normative act to the Constitution, ratified

international agreements or a statute if the answer to this question of law determines the matter pending before the court.

Art. 32. [...] 3. The question of law shall also indicate the scope within which an answer to the question may influence settlement of the case in relation to which the question has been asked and, additionally, it shall indicate the organ before which the proceedings are pending as well as the designation of the case.

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.

3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment is necessary for protecting constitutional freedom and rights.