

Judgment of 14<sup>th</sup> June 2005, P 18/03  
**ADMINISTRATIVE PROCEDURE FOR REMISSION  
 OF STUDENT CREDITS**

<b>Type of proceedings:</b> Question of law referred by a court <b>Initiator:</b> Supreme Administrative Court	<b>Composition of Tribunal:</b> 3-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Competence of the Minister of National Education to decide on remission of student loans and credits due to a permanent inability to repay or the existence of difficult living conditions – by way of administrative decision  [Regulation of the Minister of National Education 1998 regarding: detailed rules, procedures and conditions for receipt, repayment and remission of student loans and credits; the amount of a student loan or credit; the conditions and methods of payments of student credit bank interests and the interest rate of a student loan or credit repaid by the borrower: § 14(8) (in the wording operative prior to 8 <sup>th</sup> September 2004)]	Conditions for authorising the issuing of a regulation  [Constitution: Article 92(1)]  Authorisation to issue a regulation regarding, inter alia, the issues described opposite  [Student Loans and Credits Act 1998: Article 15(1) point 1 and Article 15(2) point 6]

Remittable student loans and credits are, similarly to student allowances, forms of State support for students. Commercial banks allocate credits on the basis of civil-legal contracts and, in the event that such credits are remitted, banks are refunded from public funds within the Student Loans and Credits Fund. The conditions for remission (partial or total) and the procedure for decision-making in such matters are regulated by a statute and a regulation issued on the basis of this statute (cf. above). The provision of the Regulation reviewed in this case, in its wording operative prior to 8<sup>th</sup> September 2004, empowered the Minister of National Education, having consulted with the Student Credits and Loans Committee of the Ministry of National Education, to take decisions ordering the total remission of a loan or credit, in the event of a permanent inability to make repayment arising from a permanent inability to work, or to order the partial remission of a loan or credit, given the difficult living conditions of the borrower. Such decisions were regarded as administrative and were issued within a procedure regulated by the Administrative Procedure Code.

Proceedings before the Constitutional Tribunal were initiated by the Supreme Administrative Court, which was hearing a case involving a complaint against an administrative decision of the Minister of National Education. The Supreme Administrative Court's doubts related primarily to deciding whether a case involving the remission of a student credit was in fact an administrative case or a "civil case" within the meaning of Article 2 of the Civil Procedure Code and Articles 177 and 184 of the Constitution. In the latter event, litigation concerning refusal to remit a student credit would not fall within the jurisdiction of the Supreme Administrative Court but, rather, within the jurisdiction of the common courts, in accordance with civil procedure.

The Constitutional Tribunal declared the question of law admissible to the extent that it questioned the conformity of the Regulation's provision with the statutory authorisation and constitutional requirements governing the issuing of a regulation. The remaining scope of the referred question, concerning the conformity of the reviewed provision with Article 2 of the Civil Procedure Code and Articles 177 and 184 of Constitution, was deemed inadmissible since, in practice, it would require the Tribunal to provide an interpretation of the law which the Supreme Administrative Court should perform within the ambit of its own competence.

## RULING

**The reviewed provision of the Regulation of the Minister of National Education conforms to the aforementioned provisions of the Student Loans and Credits Act 1998 and Article 92(1) of the Constitution.**

*The Tribunal discontinued proceedings in relation to the remaining scope of the referred question, on the basis of 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. The legal institution of student loans and credits is one of the instruments ensuring fulfilment of the constitutional obligation for public authorities to provide students with financial and organisational support (Article 70(4) of the Constitution).
2. It follows from currently operative provisions that the functioning of student credits is based on the principles of civil-legal contracts between banks and students, which are concomitantly instruments for realising the public-legal duty incumbent upon the Minister of National Education. The legislator's decision to shape student credits, as an instrument of student support, in the form of civil-legal credit contracts, does not alter the public nature of such support as regards the distribution of public funds and the participation of authorities of higher education institutions and the Minister of National Education in remitting loans and credits, the consequences of which are financed from public funds within the Student Loans and Credits Fund. Accordingly, the freedom to choose the contracting party, the principles for providing credits, the interest rates and other elements of the contents of the contract are determined primarily by legal provisions. Moreover, in cases prescribed by the Act the legislator envisaged the legal possibility for action by the Minister of National Education, capable of having a direct impact on the legal situation of the parties to the credit contract and the contents of the contract itself.
3. Since the consequences of remitting student credits are financed from public funds within the Student Loans and Credit Fund, banks bear no financial risks associated with remissions. A bank's entitlement to autonomously decide to remit such credits, in the situations envisaged by the challenged provision of the Regulation, would risk the automatic transfer of contractual risk from the bank onto the Fund, since it would always be easier to satisfy the claim of the bank-creditor from the Fund's public finances than by enforcing payment by the student-debtor. Accordingly, the power of

the Minister of National Education to take administrative decisions in these matters stems from a statutory authorisation to issue regulations and from other provisions of the Act regulating the system of student loans and credits.

4. Where doubts arise concerning the form in which to resolve an administrative case, they should be resolved by way of an administrative decision issued within the so-called general administrative procedure (cf. Article 1 point 1 of the Administrative Procedure Code).
5. The question as to whether a “case” involving a refusal of the Minister of National Education to remit a credit is administrative in nature and falls within the jurisdiction of an administrative court, or whether such a “case” is civil in nature and falls within the jurisdiction of the common courts, as was submitted by the Supreme Administrative Court in the present case in reference to Article 2 § 1 and Article 2 § 3 of the Civil Procedure Code and Articles 177 and 184 of the Constitution, is essentially a question concerning the interpretation and application of law, which does not fulfil the requirements of a question of law prescribed by Article 193 of the Constitution. Accordingly, it is inadmissible within the meaning of Article 39(1) point 1 of the Constitutional Tribunal Act to adjudicate on this matter.

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

##### **Constitution**

**Art. 70.** [...] 4. Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute.

**Art. 92.** 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

**Art. 177.** The common courts shall implement the administration of justice concerning all matters save for those statutorily reserved to other courts.

**Art. 184.** The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration. Such control shall also extend to judgments on the conformity to statute of resolutions of organs of local self-government and normative acts of territorial organs of government administration.

**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. 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.