

Procedural decision of 22<sup>nd</sup> October 2003, P 21/02  
**INADMISSIBILITY OF ACCESSORY INTERVENTION IN PROCEEDINGS  
BEFORE THE CONSTITUTIONAL TRIBUNAL**

<b>Type of proceedings:</b> <b>Question of law referred by a court</b> <b>In this case:</b> Intervention of a natural person <b>Initiator:</b> Supreme Administrative Court	<b>Composition of the Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
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Mr M.K. appealed to the Supreme Administrative Court against a decision of the Minister of Justice which upheld a resolution of the Krakow District Advocates' Council (a district branch of the Chief Council of Advocates – the self-regulatory professional society of advocates). The resolution in question denied Mr M.K. admission to the advocate “traineeship”, completion of which is a prerequisite for a candidate to take the competitive advocates' examination and consequently to practise as an advocate.

The Supreme Administrative Court stayed proceedings and, in accordance with Article 193 of the Constitution, referred a question of law to the Constitutional Tribunal. The question hinged on whether certain provisions of the Bar Act 1982, authorising the self-regulatory organs of the advocates' profession to determine the rules governing the advocates' competitive examination and leaving them considerable discretion in shaping the criteria for admission of advocate trainees and the maximum number of such trainees, were in conformity with the Constitution. The proceedings before the Constitutional Tribunal were concluded on 18<sup>th</sup> February 2004 with a judgment (reference number as above) in which the Tribunal ruled that the challenged provisions of the Act were inconsistent with the Constitution. This judgment is summarised separately.

In the course of these proceedings, Mr M.K. (in July 2003) submitted a motion to the Constitutional Tribunal asking to be allowed to join the proceedings as an accessory intervener. The applicant relied upon Article 76 of the Civil Procedure Code which states that: “Anyone having a legal interest in a case being resolved in favour of one of the parties may, at any stage of the case prior to conclusion of the hearing at second instance, accede to that party (accessory intervention)”. Article 20 of the Constitutional Tribunal Act states that the provisions of the Civil Procedure Code are to be applied “as appropriate” to proceedings before the Tribunal.

Furthermore, the applicant argued that it was necessary, for reasons of equality of the parties to proceedings, to permit him to participate as an accessory intervener in the proceedings before the Constitutional Tribunal, since the Tribunal had allowed the Chief Council of Advocates to submit opinion on the case.

**RULING**

**The Tribunal dismissed the motion of Mr M. K. asking for permission to participate as an accessory intervener in proceedings initiated by a question of law referred by the Supreme Administrative Court.**

## PRINCIPAL REASONS FOR THE RULING

1. In cases initiated by the referral of a question of law by a court (Article 193 of the Constitution) the substance of the Tribunal's ruling is the evaluation – from the perspective of the constitutional bases of review relied upon by the referring court – of whether provisions of a particular normative act representing the legal basis of the court's ruling, are compatible with provisions of an Act having higher legal status. There is thus no conflict of interests between the parties to proceedings before the Constitutional Tribunal and the feature of dispute settlement “in favour of one of the parties”, as referred to by the Civil Procedure Code, is absent. Accordingly, the necessary and adequate conditions are not fulfilled for the purposes of permitting a party to the proceedings before the court referring the question to join the proceedings before the Constitutional Tribunal as an accessory intervener, in accordance with Article 76 of the Civil Procedure Code, read in conjunction with Article 20 of the Constitutional Tribunal Act.
2. The enumeration, contained in Article 27 of the Constitutional Tribunal Act, of the categories of potential participants in proceedings before the Constitutional Tribunal is a closed list.
3. The fact that, in the present proceedings, the Presiding Judge of the bench of the Constitutional Tribunal asked the Chief Council of Advocates to submit opinion on the case, which is permissible in accordance with § 24(3) point 2 of the Constitutional Tribunal's Rules of Procedure, remains in direct relation with the subject of the question of law referred by the Supreme Administrative Court, concerning the constitutionality of statutory provisions allowing organs of the advocates' self-regulatory professional society to determine rules governing the advocates' traineeship and competitive examination. This is in no respect synonymous with granting the Chief Council of Advocates the status of a participant in the proceedings before the Tribunal and does not infringe the principle of trial equality. By examining the question of law referred by the Supreme Administrative Court, the Constitutional Tribunal is required to adjudicate on the constitutionality of the provisions of the challenged Act, whereas it will not examine a resolution of a self-regulatory organ of the advocates' professional society which was issued in the individual case of the applicant on the basis of this Act. The applicant's right to a fair hearing, guaranteed by Article 45(1) of the Constitution is ensured, in relation to the aforementioned resolution of the Chief Council of Advocates, in proceedings before the administrative court, where the requirements stemming from Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms should be observed.

### Provisions of the Constitution, the Constitutional Tribunal Act and the Constitutional Tribunal's Rules of Procedure

#### Constitution

**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.

**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. 20.** In relation to cases not regulated in the Act concerning the proceedings before the Tribunal, the provisions of the Code of Civil Procedure shall apply as appropriate.

**Art. 27.** The participants in the proceedings before the Tribunal shall be:

- 1) a subject who submitted an application or complaint concerning constitutional infringement;
- 2) an organ which issued an act included in the application or complaint concerning constitutional infringement;
- 2a) the court, which has presented a question of law to the Constitutional Tribunal, provided that it has notified participation in proceedings initiated as the result of that legal question and has appointed amongst the judges of that court its authorized representative;
- 3) the statutory body of a party - in cases for the confirmation of conformity to the Constitution of the purposes or activities of political party;
- 4) any central constitutionally recognised State organ to which a dispute of powers refers;
- 5) the Public Prosecutor-General;
- 6) representatives of the Sejm, the President of the Republic of Poland and the Minister of Foreign Affairs - in cases for the confirmation of the conformity to the Constitution of international agreements ratified according to the procedure of Article 89, paragraph 1 of the Constitution,
- 7) representatives of the President of the Republic of Poland and the Minister of Foreign Affairs - in cases for the confirmation of the conformity to the Constitution of other ratified international agreements;
- 8) the Commissioner for Citizens' Rights where he/she has given notice of his/her participation in the proceedings in relation to complaints concerning constitutional infringements.

**Appendix to the Resolution of the General Assembly of Judges of the Constitutional Tribunal of 22<sup>nd</sup> October 1997 – Constitutional Tribunal's Rules of Procedure**

**§ 24** [...] 3. The adjudicating bench of the Tribunal, in the course of preparation of the hearing may, on a motion from the Presiding Judge of the bench or a Judge-rapporteur, decide on the Presiding Judge of the bench turning to: (...) 2) specified state organs or institutions, social organizations or scientific institution for an opinion on the indicated questions regarding the case under examination.