

Procedural decision of 24<sup>th</sup> October 2001, [SK 10/01](#)  
**CONSTITUTIONAL COMPLAINT AND THE PRINCIPLE OF EQUALITY**

<b>Type of proceedings:</b> <b>Constitutional complaint</b> <b>Initiator:</b> Natural persons	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 5
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In the Polish legal system, the mechanism of [constitutional complaint](#) represents a particular method for initiating the constitutional review of norms by the Constitutional Tribunal. In accordance with Article 79(1) of the Constitution, *locus standi* to bring a constitutional complaint is vested in natural and legal persons in respect of whom a final decision of a court or an organ of administration has been delivered. The constitutional complaint may not, however, concern the decision itself but only its legal basis. The complainant may, therefore, request the review of the constitutionality of the provision which was applied by a court or an organ of administration as the basis of the decision.

Only those provisions of the Constitution guaranteeing rights and freedoms of the complainant may constitute the basis of review in such proceedings. Where the Tribunal rules in favour of the complainant, this generally leads to the elimination of the challenged provision from the legal order and, indirectly, to the quashing of the decision taken in respect of the complainant and based on this provision (cf. Article 190(4) of the Constitution).

To date, the various judicial panels of the Constitutional Tribunal had shown no consensus as to whether Article 32 of the Constitution (the general principle of equality) may constitute an independent basis of review in constitutional complaint proceedings. The source of the inconsistency in the interpretation of this Article lies in the fact that Article 32 is located in the first part of Chapter II of the Constitution, entitled “General principles”. The entire Chapter bears the title “The Freedoms, Rights and Obligations of Persons and Citizens”. The particular rights and freedoms are enshrined in the subsequent parts of the Chapter, entitled: “Personal rights and freedoms”, “Political rights and freedoms” and “Economic, Social and Cultural rights and freedoms”.

The present case offered the opportunity for the Constitutional Tribunal to resolve the aforementioned question in plenary session. The ruling was supported by a majority of votes, with five judges dissenting. This ruling decided that the principle of equality may not represent the sole basis for a constitutional complaint. A complainant may only rely on this principle in conjunction with another provision of the Constitution which guarantee him enjoyment of a specific right or freedom.

This procedural decision was delivered in the context of constitutional complaints brought by two natural persons who were denied, firstly by an organ of administration and subsequently by the administrative court, the right to a pecuniary benefit provided for in the Pecuniary Benefit for Persons Deported for Forced Labour and Incarcerated in Labour Camps by the 3<sup>rd</sup> Reich or the USSR Act 1996. This Act’s provisions limited entitlement to the relevant pecuniary benefit to those having been deported, by the 3<sup>rd</sup> Reich or Soviet authorities, from Polish territory to: one of the two aforementioned States; or to any other country

occupied by either of those two States. Persons deported for forced labour within Polish territory were, however, outside the regulatory scope of the 1996 Act.

The complainants alleged that the aforementioned statutory limitation infringes the constitutional principle of equality by introducing an unjustified differentiating criterion between persons deported for forced labour. The allegations of an infringement of the constitutional principle of equality were not accompanied by claims of infringement of other specific constitutional rights and freedoms.

The Constitutional Tribunal ruled – by a majority of votes – that a constitutional complaint construed in such a manner was inadmissible on formal grounds. As a result, the Tribunal did not examine the merits of the case (i.e. the constitutional conformity of the legislator’s decision to exclude from the entitlement to a pecuniary benefit Polish citizens deported by Nazi or Stalinist authorities from areas located outside the borders of Poland).

## RULING

**The Tribunal discontinued the proceedings given that that it would be inadmissible to pronounce judgment.**

### PRINCIPAL REASONS FOR THE RULING

1. Article 32 of the Constitution expresses the principle of equality both as a norm of substantive law and, as a derivative of this norm, the individual’s subjective right to equal treatment. This right has the nature of a second-degree right (a “meta-right”), in the sense that it exists only in conjunction with other specific legal norms or in relation to concrete actions of the organs of public authority. Where these norms or actions have no direct connection with the individual rights and freedoms set out in the Constitution, the right to equal treatment may not be said to possess the nature of a constitutional right. In consequence, it may not be protected by way of constitutional complaint under Article 79(1) of the Constitution.
2. According to Article 79(1), an infringement of individual subjective rights stemming from sub-constitutional legislation may not represent the basis of a constitutional complaint. Such rights are protected by alternative means (cf. Articles 80 and 208(1) of the Constitution).
3. An important characteristic of the model of constitutional complaint adopted in Poland is the fact that the constitutional bases of review are limited to those constitutional provisions indicated by the complainant. Only provisions governing the claimant’s freedoms or individual subjective rights may constitute an appropriate basis of review. The wording of the final part of Article 79(1) justifies the conclusion that the only admissible bases of constitutional review are provisions guaranteeing those rights and freedoms which were the subject of the final decision delivered in the claimant’s case by a court or organ of public administration.
4. Prior to examining a case on its merits, the Constitutional Tribunal must first examine whether a constitutional complaint meets all the necessary conditions for admissibil-

ity. When examining the merits of a case, the Tribunal remains under a duty to discontinue proceedings if it becomes apparent that the criteria for admissibility have not been fulfilled.

## MAIN ARGUMENTS OF THE DISSENTING OPINIONS

### *- judge Lech Garlicki*

- The interpretation adopted by the Tribunal is contradicted by the wording of Article 32(1) of the Constitution, which clearly speaks of “the right to equal treatment by public authorities” (including the legislator) and by arguments relating to the perception of the Constitution as the expression of a certain system of values. Given the existence of any doubt, constitutional provisions should be interpreted in such a manner as to facilitate the realisation of this system of values to the fullest possible extent.
- Article 32 of the Constitution should be interpreted as representing not merely an obligation to treat “everyone” equally in the shaping of their constitutional rights and freedoms, but in a broader way – as an obligation to treat “everyone” equally in all actions taken by public authorities. If, therefore, a given right of an individual does not enjoy constitutional status, but is regulated solely at the level of ordinary legislation, the legislator must take into account the obligation to ensure equal treatment when regulating that right.
- If the constitutional right to equal treatment has the nature of an individual subjective right (which is not disputed by the Tribunal) then excluding this right from the scope of protection offered by the mechanism of “constitutional complaint” would be permissible only if the Constitution expressly provided for this (as it does in relation to foreigners in Article 79(2)). Such an exclusion may neither be presumed nor inferred from an interpretation which qualifies the right to equal treatment as a “second-degree right”. Where the Constitution provides for a right or freedom, this right or freedom is protected by Article 79(1). Any alternative interpretation runs counter to the obligation to interpret the Constitution in a manner most favourable to the protection of an individual’s rights and freedoms.

### *- judge Krzysztof Kolasiński*

- The Constitution contains no limits on the admissibility of constitutional complaints other than those referred to in Article 79(1).
- There is no justification for treating the rights and freedoms provided for in the first part of Chapter II of the Constitution, entitled “General principles” in a distinct manner. The formulation of such rights and freedoms in more general terms does not deprive the provisions in which they are enshrined of normative content and, in consequence, it may not be said that they do not create constitutional rights. This is also true of the principle of equality before the law (Article 32). Any legal regulation found to represent discrimination against a specific group of citizens, for any reason, breaches the right to equal treatment.

### *- judge Marek Safjan*

- In determining whether the right to equal treatment has been respected, it is necessary to refer to specific statutory regulations. This does not, however, preclude the possibility that this right may be an individual subjective constitutional right and may represent the sole basis of a constitutional complaint. The necessity to relate the right to equal treatment to concrete legal regulations does not mean that this right is devoid of its own independent content. Any difference between this right and other individual subjective constitutional rights relates only to the method for the realisation of the right to equal treatment in the legal order: the right to equal treatment is always realised by way of ordinary legislation, whereas the content of other individual subjective rights may be determined directly at the constitutional level.
- In other [procedures before the Constitutional Tribunal](#) (i.e. question of law and abstract review), Article 32 is undisputedly regarded as an individual basis of constitutional review. In such cases, the right to equal treatment forms the basis not only of the review of provisions concerning rights and freedoms enshrined directly in the Constitution, but also of regulations not covered by constitutional guarantees. It is unconvincing to describe the right to equality as a “second-degree right”, as the Tribunal stated in the principal reasons for its ruling in this case, since this right may successfully constitute an independent basis for the constitutional review of norms.
- Constitutional guarantees in relation to the right to equal treatment must be of universal character since, whenever this right is breached – whether within the sphere of constitutional rights and freedoms or outside

this sphere – the same value is protected. Protection of this right – regardless of the rank and subject matter of the provision it concerns – is always aimed at protection of the individual. The differentiation introduced by the Tribunal is incomprehensible and arbitrary. The formal nature of the right to equal treatment requires that it be taken into account in all areas of legal regulation and not merely in the sphere of rights and freedoms having constitutional status. Furthermore, the need for an independent application of the right to equal treatment is all the greater in relation to areas of legal regulation which are not subject to other specific constitutional guarantees.

- This assessment is not affected by the fact that the individual’s right to equal treatment in Article 32(1) is not subject to the principle of proportionality, as expressed in Article 31(3) of the Constitution. The delimitation of the field of application of Article 32 is subject to the mechanism of identifying a specific characteristic used to differentiate a given category of subjects, construed with regard to the analysed normative solution. Therefore the weighing of constitutional rationales and values justifying the validity of the adopted differentiation is done as a consequence at a different level than when applying the criteria defined in Article 31(3), in particular through taking into account the criteria of social justice (Article 2). It is worth noting that the constitutional right to protection of dignity, as enshrined in Article 30 and – similarly to the principle of equality – located amongst provisions defining the general principles of the chapter on rights and freedoms, may not be subjected to limitations allowed for by Article 31(3), since none of the values included in this provision justify limits on the constitutional guarantees of the dignity of the human being.
- The right to equal treatment is sometimes erroneously viewed as an obligation to “equate” the situation of subjects enjoying a certain benefit. Such an interpretation would reduce this right to a mere obligation to broaden the sphere of beneficiaries of certain legal instruments. However, a finding that a legal provision has unconstitutionally violated the right to equal treatment does not determine the existence of the right to a given benefit in the future but, rather, simply means that its scope of application has been construed defectively. It is then for the legislator to shape the content of the challenged provision or to remove it from the legal order altogether.

*- judge Jerzy Stepien*

- The legal differentiation between constitutional rights and freedoms which an individual may use directly to defend by himself and those rights which may only be relied upon with the intermediation of a State organ, is a reflection of a particular kind of State paternalism. This is incompatible with the constitutional protection of the dignity of the human being (Article 30) and the principle of subsidiarity in relations between the individual and the State (as expressed in the preamble of the Constitution).
- The location of Article 32 in the first part of Chapter II of the Constitution, entitled “General principles”, does not imply, that the right to equal treatment does not constitute a constitutional right for the individual. On the contrary, the scheme of constitutional provisions under discussion is an expression of the legislator’s will to ensure that certain individual rights shall be treated as especially important from the perspective of the individual’s constitutional position.

*- judge Janusz Trzcinski*

- The importance and gravity of certain constitutional human and civil rights of the individual has led to their location in the first part of Chapter II of the Constitution, entitled “General principles”. This positioning does not represent a diminution of their legal significance but, quite the contrary, serves to underline their importance for determining the legal position of the individual towards the State.
- To limit an individual’s ability to protect their constitutional rights, by virtue of the mechanism of “constitutional complaint”, to only some of these rights is to limit the notion of “constitutional rights and freedoms” expressed in Article 79(1) of the Constitution. This constitutes an unjustified restriction of the citizen’s constitutional right to bring a constitutional complaint.

#### Provisions of Constitution

**[Preamble]** Having regard for the existence and future of our Homeland [...] we, the Polish Nation [...] hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on subsidiarity principle [...]

**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 citi-

zens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

**Art. 31.** [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 32.** 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.  
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**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. 80.** In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority.

**Art. 190.** [...] 4. A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

**Art. 208.** 1. The Commissioner for Citizens' Rights shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts.