

Judgment of 10th July 2000, [SK 12/99](#)
THE NOTION OF A “CIVIL CASE”

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal Provisions under review	Basis of review
Definition of “civil cases” [Civil Procedure Code 1964: Article 1] Jurisdiction in civil cases [Ibidem: Article 2] Excluding third instance appeals (within cassation proceedings) in civil cases where the value of the disputed right is less than 5,000 Polish Zloty [Ibidem: Articles 392 and 393 point 1 (in the wording introduced in 1996, operative until 2000)]	Rule of law Principle of proportionality Right to court [Constitution: Articles 2, 31(3) and 45(1)]

The authorities of a higher education institution granted a student – Mr. Jacek B – a scholarship, a Rector’s award and an allowance. The recipient, who lodged the constitutional complaint in the present case, alleged that payment of the aforementioned benefits was delayed. Accordingly, Mr. B. demanded that the institution pay interest. He wished to initiate civil proceedings by lodging a claim against the institution before a district court. Nevertheless, the court rejected the claim on the basis that the case was not of a civil-legal nature. The legal relation between a higher education institution and its student lacks the characteristic of equivalence, which is a feature of civil-legal relations. Since the basic claim (for payment of the scholarship etc.) was not a civil-legal claim, the court considered that a derivative case concerning payable interest was not a civil-legal case within the meaning of the Civil Procedure Code. The higher instance court dismissed the claimant’s appeal. The Supreme Court rejected his cassation since the value of the disputed right, being less than 5,000 Polish Zloty, was too small.

Jacek B.’s constitutional complaint contained numerous allegations. Having selected certain thereof, the Tribunal accepted that it was permissible to review the Civil Procedure Code provisions indicated in the table above from the perspective of the constitutional guarantee of the right to court (Article 45(1)), read in conjunction with the principles of proportionality (Article 31(3)) and the rule of law (Article 2).

It follows from the judgment summarised herein that the Tribunal’s constitutional concerns related exclusively to Article 1 of the Civil Procedure Code, worded as follows: “The Civil Procedure Code regulates court proceedings in: cases arising from relations within civil, family and custodian law as well as labour law; social insurance cases; and cases to which the provisions of this Code apply by virtue of special statutes (civil cases)”.

It should be noted that, insofar as this judgment refers to the aforementioned provision of the Code (point 1 of the ruling), it has the nature of a so-called interpretative judgment. To date, the Tribunal has delivered numerous similar judgments, ruling that a particular reviewed provision conforms to the Constitution provided that it is understood in the manner indicated in the ruling. In the present case, the Tribunal used a different interpretative formula for the first time in its jurisprudence, ruling that a particular interpretation of a provision was unconstitutional. In this manner, whilst directly reviewing Article 1 of the Civil Procedure Code, the Tribunal did not review the actual content thereof (the wording of this provision was not altered following the Tribunal's judgment) but, rather, indirectly reviewed an erroneous practical application thereof, concerning an excessively restrictive understanding of the notion of a "civil case" within the Code. The Tribunal's use of this formula was undoubtedly influenced by the fact that, in light of Article 190(4) of the Constitution, a Tribunal ruling on the non-conformity of a legal norm may constitute the basis for challenging court decisions in individual cases decided on the basis of that legal norm (cf. point 10 below).

RULING

1. Article 1 of the Civil Procedure Code, understood as excluding from the notion of a "civil case" any claim regarding financial liability arising from an administrative decision, does not conform to Article 45(1), read in conjunction with Article 31(3), of the Constitution.

2. Articles 2, 392 and 393 point 1 of the Civil Procedure Code conform to Articles 2, 31(3) and 45(1) of the Constitution.

On the basis of Article 39(1) point 1 of the Constitutional Tribunal Act, the Tribunal discontinued proceedings in the remaining scope of the constitutional complaint, given that it would be inadmissible to pronounce judgment on these issues.

PRINCIPAL REASONS FOR THE RULING

1. The right to court, guaranteed by Article 45 of the Constitution, is not solely an instrument enabling the enjoyment of other constitutional rights and freedoms but is free-standing and subject to protection independently of other individual rights.
2. The right to court comprises three principal elements: the right of access to a court, i.e. the right to initiate proceedings before a court as an independent and impartial organ; the right to have court procedures shaped in accordance with the requirements of justice and transparency; and the right to obtain a binding ruling on the case before the court.
3. The term "case", as used in Article 45(1) of the Constitution, encompasses litigation resulting from both civil-legal and administrative-legal relations, as well as adjudication regarding the justifiability of criminal charges. This catalogue is not, however, exhaustive of the meaning of this term: it applies generally in situations concerning a ruling on the rights of a given person or entity.

4. The right to court exists regardless of whether the parties to litigation are factually bound by a substantive-legal relation or whether – in contrast to the submissions of one of the parties – no legal relation exists between them in a given case.
5. Given the existence of the constitutional guarantee of the right to court, the ordinary legislator's discretion is limited to deciding whether court proceedings should take place before a common court or an administrative court. It stems from Article 177 of the Constitution that, in the absence of an indication that a particular case falls within the jurisdiction of another court, the case should be considered on its merits by a common court.
6. The notion of a "civil case" within Article 1 of the Civil Procedure Code also includes claims regarding financial liability arising from an administrative act; in particular, claims for interest accruing from late payment of due benefits. Tardiness in executing monetary benefits arising from an administrative-legal relation constitutes a civil-legal event (a fact implying effects within the sphere of civil law) and legislation does not envisage the administrative judiciary's jurisdiction in respect of adjudicating on the civil-legal consequences of non-performance or improper performance of an administrative decision.
7. The Constitution's provisions endow the ordinary legislator with discretion in creating the means for appealing against judicial decisions pronounced at second instance. The exclusion of certain cases considered in civil proceedings from review within the cassation procedure does not infringe the constitutional right to court and falls within the standards of international law.
8. Any departure from the principle stipulated in Article 77(2) of the Constitution is permissible only on the basis of an explicit constitutional provision.
9. Articles 177 and 183(1) of the Constitution may not constitute the basis for reviewing norms within proceedings initiated following the lodging of a constitutional complaint.
10. A Constitutional Tribunal judgment, ascertaining an understanding of a norm which differs from the understanding that formed the basis for a final decision against the complainant, constitutes grounds for taking advantage of the means specified in Article 190(4) of the Constitution.

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

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

Art. 183. 1. The Supreme Court shall exercise supervision over common and military courts regarding judgments.

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.

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.