

Judgment of 11th December 2002, [SK 27/01](#)
**PENALTY FINE FOR BAD FAITH SUBMISSION OF A CHALLENGE
AGAINST A JUDGE**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
Legal provisions under review		Basis of review
Obligation for courts to impose a penalty fine upon a party to civil proceedings having submitted a bad faith challenge against a judge [Civil Procedure Code 1964: Article 53]		Principle of equality Right to a fair trial [Constitution: Articles 32 and 45(1)]

The legal institution of challenging a member of a judicial panel (a judge), where particular circumstances justify a suspicion of partiality, represents one of the guarantees of conducting a fair trial. Depending on the reason for such a challenge, it may either occur automatically, i.e. by virtue of law (*iudex inhabilis*; automatic disqualification), or by virtue of a court decision taken on the initiative of a party to the proceedings or the relevant judge (*iudex suspectus*; challenge at the instance of a party).

Within civil proceedings, this second type of challenge must be justified by the existence of a personal relationship, between the judge and one of the parties, which “could raise doubts as to the judge’s impartiality” (Article 49 of the Civil Procedure Code). In the event that a party abuses the right to challenge a judge, in order to obstruct the proceedings, a sanction was envisaged by Article 53 of the Civil Procedure Code – which was successfully challenged in the case summarised herein. This provision stated that, upon the bad faith submission of a challenge against a judge, the court dismissing such an application was obliged to impose a penalty fine on the applicant, amounting to a sum not exceeding 500 Polish Zloty.

In the present case, a penalty fine was imposed upon the person lodging the constitutional complaint. The complainant alleged that the operation of such an obligatory sanction intimidates the party challenging a judge, thereby amounting to an infringement of the right to a fair trial (Article 45(1) of the Constitution). According to the complainant, since no analogous sanction exists within criminal procedure, the challenged civil procedure norm also infringes the constitutional principle of equality before the law (Article 32).

The constitutional complaint also concerned provisions of the Civil Procedure Code permitting an appeal against a decision imposing the aforementioned penalty fine, to be examined by a second instance court in the absence of the penalised person. Nevertheless, the Constitutional Tribunal discontinued the proceedings within this scope (cf. points 7 and 8 below).

RULING

Article 53 of the Civil Procedure Code does not conform to Article 45(1) and is not inconsistent with Article 32 of the Constitution.

On the basis of Article 39(1) point 1 of the Constitutional Tribunal Act, the Tribunal discontinued proceedings insofar as concerning the allegation that Article 397 § 1, read in conjunction with Article 394 § 1 point 5, of the Civil Procedure Code does not conform to Article 45(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The right to court (Article 45(1) of the Constitution) comprises: 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 a court judgment, i.e. the right to obtain a binding court ruling on a given case.
2. The close functional relationship between the constitutional obligation for public authorities and, in particular, the legislator, to ensure the impartiality of the courts, with the basic guarantee thereof – the institution of challenging a judge – does not justify the particular entitlements within this institution being attributed with the legal value of constitutional rights or freedoms. The ordinary legislator is endowed with significant discretion in shaping the institution of challenging a judge. An allegation that Article 45(1) of the Constitution was infringed would be justified only in the event that this institution was shaped in a manner which undermines the essence of the right to an impartial court.
3. No fundamental objections exist to the legislator's aspiration to shape the procedure for considering applications challenging a judge – whilst respecting the fundamental objective of this institution – so as to simultaneously ensure respect for the authority and good reputation of the court (of the administration of justice) and protection of the rights of other participants in the proceedings. Accordingly, it is both justified and desirable that procedural solutions exist to prevent the abuse of applications challenging a judge. The introduction of such limitations must, however, take into account the importance of the reviewed institution as the primary mechanism guaranteeing realisation of the principle of a court's impartiality.
4. The legislator's use of ambiguously defined phrases, such as the term "bad faith" in the challenged Article 53 of the Civil Procedure Code, may not *per se* be regarded as an infringement of constitutional principles and values. The use of such phrases within the construction of specific legal norms often represents the only sensible option. An appropriate interpretation of such phrases should be ensured primarily by procedural norms, requiring an indication of the basic conditions for the application, in a concrete case, of a legal norm construed with the use of an ambiguous term.

5. Given its excessively repressive nature, the mechanism adopted in the challenged provision – obliging a court to impose a penalty fine amounting to a sum not exceeding 500 Polish Zloty for bad faith submission of an application challenging a judge – constitutes a threat to realisation of the constitutional right to an impartial court. Such repressiveness is exacerbated by the absence of an obligation to notify the party of the date of the appeal proceedings hearing (cf. Article 397 § 1, read in conjunction with Article 394 § 1 point 5, of the Civil Procedure Code), *ipso facto* depriving the party of the right to a hearing.
6. Differences in the manner in which a specific procedural institution is regulated in statutes regarding particular court procedures (in the present case: the absence of a counterpart of the challenged Article 53 of the Civil Procedure Code within the provisions of the Criminal Procedure Code) do not *per se* justify an allegation concerning infringement of the principle of equality, as expressed in Article 32 of the Constitution.
7. The subject of a challenge within the constitutional complaint procedure (Article 79(1) of the Constitution) may only be the provisions of a statute, or other normative act, constituting the normative basis for a judicial decision infringing the complainant's constitutional rights or freedoms. It is the complainant's obligation to precisely state which constitutional rights or freedoms, and in what manner, have – in their opinion – been infringed by the provisions challenged in the complaint (Article 47(1) points 1 and 2 of the Constitutional Tribunal Act).
8. Whilst the present complaint was declared admissible during the stage of preliminary consideration thereof (Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act), insofar as it fails to fulfil the requirements indicated in point 7 above, proceedings at the stage of considering the case on its merits shall be discontinued, given the inadmissibility of adjudication (Article 39(1) point 1 *in fine* of the CT Act).

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

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. 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. 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.

CT Act

Art. 36. 1. The President of the Tribunal shall direct the application [...] to a judge of the Tribunal, designated by him/her, for preliminary consideration at proceedings in camera.

2. Where the application fails to satisfy the formal requirements, the judge of the Tribunal shall order the defects therein to be

repaired within a period of seven days from the date of notification thereof.

3. Where the application is evidently groundless or its defects have not been repaired within the specified period of time, the judge of the Tribunal shall refuse to proceed with further action.

4. The person submitting the application shall, with respect to the decision concerning refusal to proceed with further action, be entitled to lodge a complaint to the Tribunal within a period of seven days from the date of delivery of the said decision.

5. The Tribunal, sitting in camera, shall decide not to proceed with consideration of the complaint filed after the expiry of the period specified in paragraph 4.

6. The President of the Tribunal shall, having found that the complaint has been filed in due time, refer the same for consideration of the Tribunal at proceedings in camera and shall determine the date for consideration thereof.

7. The Tribunal shall, having admitted the complaint, refer the case for consideration at a hearing. The decision concerning non-admittance of the complaint shall not be subject to appellate proceedings.

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.

Art. 47. 1. The complaint shall, apart from the requirements referring to the procedural letters, include the following:

- 1) a precise identification of the statute or another normative act on the basis of which a court or another organ of public administration has given ultimate decision in respect of freedoms or rights or obligations determined in the Constitution and which is challenged by the person making the complaint for the confirmation of non-conformity to the Constitution,
- 2) indication as to which constitutional freedoms and rights and in what manner have, according to the person making the complaint, been infringed,
- 3) grounds of the complaint including precise description of the facts of the case.

2. The judgment, order or another ruling, given on the basis of the challenged normative act, together with an indication of its delivery date shall be enclosed with the complaint.

Art. 49. The [constitutional] complaint shall be subject to preliminary examination; Article 36 shall apply as appropriate.