

Procedural decision of 6th October 2004, [SK 42/02](#)
**CONSTITUTIONAL TRIBUNAL'S LACK OF COMPETENCE TO REVIEW
LOCAL LAND MANAGEMENT PLANS**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: Plenary session	Dissenting opinions: 0
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In contradistinction to the construction of the individual applications adopted in the constitutions of numerous European countries, or in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the constitutional complaint, envisaged in the Polish Constitution, is a specific measure for initiating the review of the conformity of legal provisions with the Constitution. Pursuant to Article 79 of the Constitution, any constitutional complaint submitted to the Tribunal for examination may only challenge the constitutionality of a statute or another normative act, on the basis of which a court or organ of public administration issued a final decision in the complaint's individual case. In general, both national and local law enactments, within the meaning of Article 87(2), read in conjunction with Article 94, of the Constitution may constitute the subject-matter of a constitutional complaint. The ruling of the court or administrative organ concerning the individual complainant merely represents the necessary "background", but not the subject of a challenge, in constitutional complaint proceedings.

In the present case the Constitutional Tribunal, sitting in a plenary session, unambiguously settled a hitherto unclear issue of whether or not it was possible to undertake the constitutional review of local land management plans (cf. summary of the ruling in case [Ts 139/00](#)).

In the case discussed herein, the complainant challenged provisions contained in an unpublished annex of the local land management plan of commune M., alleging that they failed to conform to provisions of the Constitution dealing with the rule of law principle (Article 2); the principle of legality (Article 7); and the restrictive conditions for imposing limitations on the right of ownership, specifically the requirement that such limitations may only be imposed by statute (the principle of legal reservation, contained in Article 31(3), read in conjunction with Article 64(3)). The complainant indicated that, on the basis of the challenged provisions of the local land management plan, an administrative organ of commune M. had issued a decision refusing the complainant determination of conditions concerning construction developments on land where the complainant intended to begin a particular construction investment. The administrative court ruled that the aforementioned decision conformed to the law. Accordingly, the complainant was deprived of any possibility of realising his investment plans.

RULING

The Tribunal discontinued the proceedings, pursuant to Article 39(1) point 1 of the Constitutional Tribunal Act 1997, given that it would be inadmissible to pronounce judgment on this question.

PRINCIPAL REASONS FOR THE RULING

1. Enactments of local law, as a source of universally binding law (Article 87 (2) of the Constitution), are issued in accordance with principles and procedures laid down by statute (Article 94 of the Constitution). The power to enact such measures may derive either from detailed statutory authorisation or from provisions endowing administrative organs with a general competence to adopt particular types of local enactments.
2. The Constitution refers only to the general term “enactments of local law” despite the extensive differences between such enactments, as regards their name and subject-matter and also as regards the organs empowered to issue them. Accordingly, an appraisal of the individual types of local enactments requires separate treatment of each type, in light of the Constitutional Tribunal’s scope of jurisdiction, as defined in Article 188, read in conjunction with Article 79, of the Constitution.
3. Article 14(8) of the Local Land Management Plan Act 2003 unequivocally states that each local land management plan is an enactment of local law. In the light of Article 87(2) of the Constitution, this means that enactments of local law may define the rights and obligations of subjects indicated therein, particularly citizens, insofar as the binding nature of such local enactments is limited to the territorially defined areas within which the enacting organ (of the defined rank and type) operates (Article 94 of the Constitution). As is the case in respect of other sources of universally binding law within the Republic of Poland, the entry into force of such local enactments is conditional upon their being promulgated on the basis of principles and procedures laid down by statute (Article 88 (1) and (2) of the Constitution).
4. Local land management plans are a specific type of enactments of local law, placed between classical normative acts and classical acts of an individual character (i.e. whose adoption relates to application of the law, e.g. in individual cases). The specificity of land management plans is mainly related to their subject-matter – they relate to particular geographical areas. The function of a land management plan is to define the expedient designation of the specified area, pursuant to assumed local demands and within a framework outlined by a number of statutes on spatial management. Such a plan does not, however, represent a compilation of provisions related to the allocation of specific plots of land, since it may also refer to future plots of land which may come into existence as the result of various transformations (the specific “repetitive” nature of the plan’s application). Such a plan also refers to all persons subsequently obtaining the right to administer a given plot of land (the specific “multilateral” character of the plan).
5. The legal provisions concerning the Constitutional Tribunal’s scope of jurisdiction contain neither the substantive nor procedural regulations appropriate to allow it to examine the factual background influencing the determination of the contents of land

management plans. Furthermore, the Tribunal is not empowered to assess the application of land management law, nor provisions on conservation of nature or environment, agricultural land protection etc., by local administrative organs authorised by statute to adopt such plans.

6. For the aforementioned reasons (paragraphs 2, 4 and 5 above) the Constitutional Tribunal lacks the competence to examine the manner in which organs of local self-government exercise their competences within the sphere of land management.
7. The Tribunal's inability to review the constitutionality of local land management plans does not mean that interested subjects are deprived of the possibility to initiate a judicial examination of the conformity of these plans with the current legal order, in order to protect their subjective rights. Pursuant to the second sentence of Article 184 of the Constitution, the Supreme Administrative Court and other administrative courts shall, *inter alia*, exercise control over enactments adopted by local self-government organs. Such enactments are subject to review *vis-à-vis* their conformity with statutes (the criterion of conformity with the law) and may be quashed in whole or in part by the competent administrative court (cf. Article 101 of Commune Self-Government Act 1990 and Article 3 § 2 point 5 of the Proceedings before the Administrative Courts Act 2002). Accordingly, no lacuna exists within the legal system as regards the constitutional protection of rights and freedoms related to local land management plans. The administrative courts ensure the conformity of such plans with statutes, whilst these statutes – as well as executive acts issued on the basis thereof (i.e. regulations) – are subject to constitutional review performed by the Constitutional Tribunal.

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. 7. The organs of public authority shall function on the basis of, and within the limits of, the law.

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. 64. [...] 3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

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. 87. 1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

2. Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

Art. 88. 1. The condition precedent for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof.

2. The principles of and procedures for promulgation of normative acts shall be specified by statute.

3. International agreements ratified with prior consent granted by statute shall be promulgated in accordance with the procedures required for statutes. The principles of promulgation of other international agreements shall be specified by statute.

Art. 94. On the basis of and within limits specified by statute, organs of local self-government and territorial organs of government administration shall enact local legal enactments applicable to their territorially defined areas of operation. The principles of and procedures for enacting local legal enactments shall be specified by statute.

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. 188. The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79(1).

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.