

Procedural decision of 6<sup>th</sup> July 2004, [SK 6/03](#)  
**CONSIDERING THE ADMISSIBILITY OF A CONSTITUTIONAL  
COMPLAINT WITHIN SUBSTANTIVE EXAMINATION PROCEEDINGS**

Type of proceedings: <b>Constitutional complaint</b> Initiator: A natural person	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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Each constitutional complaint is subject to [preliminary consideration](#), within the procedure provided for in Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act 1997 (hereinafter referred to as the “CT Act”). If a complaint fulfils all formal requirements and, concomitantly, is not evidently groundless, a judge of the Constitutional Tribunal shall decide to proceed further with the complaint, signifying initiation of the procedure for substantive examination of the constitutional complaint, which usually culminates with a hearing and a Constitutional Tribunal ruling on the merits of the case. If a constitutional complaint contains formal irregularities which are incapable of correction, or were not corrected by the complainant within the fixed time limit, the Constitutional Tribunal, sitting as a one-judge panel, shall issue a decision refusing to proceed further with the complaint. The complainant may challenge such a decision; any such challenge is usually reviewed by the Tribunal sitting as a three-judge panel. Where the Tribunal upholds such a challenge, this has the same consequences as the aforementioned decision to proceed further with the complaint.

From the very outset, the nature of the complainant’s individual case, representing the “background” to this challenge against a provision of the Council of Ministers’ Regulation 1999 governing proceedings in cases concerning infringements of public finances discipline, raised doubts as regards admissibility of the constitutional complaint in the present case. Nevertheless, within the procedure for preliminary consideration of the complaint, the Constitutional Tribunal, sitting as a three-judge panel, found the complaint to be admissible (cf. procedural decision of 11<sup>th</sup> February 2003, [Ts 90/02](#), summarised separately). Later, however, the Tribunal, sitting as an appropriate panel to review constitutional complaints on their merits, arrived at the conclusion that the complaint was inadmissible and, in the procedural decision summarised herein, discontinued the proceedings.

The person lodging the constitutional complaint (complainant) exercised the function of a District Court President and, as such, was accountable for any infringements of public finances discipline. While considering an allegation that the complainant had infringed financial discipline, the Commissioner for Public Finances Discipline (affiliated to the Minister of Justice) issued a decision rejecting an application to punish the complainant, which he justified on the basis of the complainant’s judicial immunity. Nevertheless, the complainant alleged that the reasoning of the aforementioned Commissioner’s decision indicated that he had infringed public finances discipline. The complainant disagreed with this reasoning and challenged the decision before the Chief Commissioner for Public Finances Discipline (a second-instance organ). The latter upheld the decision. The complainant was instructed that there was no possibility to appeal

against the decision of the Chief Commissioner. The aforementioned instruction was based on § 56 of the Council of Ministers' Regulation 1999 governing proceedings in cases of infringements of public finances discipline; pursuant to this provision, decisions of the Chief Commissioner, issued following a review of the challenge, are "final".

The complainant alleged that the aforementioned provision infringed the right to court, as guaranteed by Article 45(1), read in conjunction with Article 77(2), of the Constitution.

The decision summarised herein definitively precludes the possibility that the Constitutional Tribunal will pronounce judgment on the merits of the complainant's case.

## RULING

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

### PRINCIPAL REASONS FOR THE RULING

1. A constitutional complaint is not a means permitting anyone to demand an "abstract" review of the conformity of a legal provision with a given legal basis. Pursuant to Article 79(1) of the Constitution, the right to lodge a constitutional complaint is vested in persons in whose cases the following prerequisites occur jointly: their rights or freedoms were infringed; a court or organ of public administration delivered judgment, based on the challenged legal provision, on that person's rights, freedoms or duties; the judgment was of a final character. The absence of even one of the aforementioned conditions precludes the right to effectively lodge a complaint and, if the complaint was already lodged, it precludes the possibility for the Constitutional Tribunal to pronounce judgment on the merits of the case.
2. In the complainant's case, no court or organ of public administration "made a decision" on his rights, freedoms or duties. Decisions of the Commissioner for Public Finances Discipline are not "decisions" within the meaning of Article 79(1) of the Constitution. The decisions referred to by the complainant do not find him to be guilty of anything but merely note the "infringement" of public finances discipline and that the act of which the complainant was suspected "amounts to a petty offence consisting in infringement of public finances discipline". The decision refusing to lodge an application for punishment was based on formal grounds (the complainant's judicial immunity), as opposed to substantive grounds, and the subjective convictions of the organ issuing that decision, as regards the complainant's guilt, may not be treated as a decision as to guilt. Such a decision may only be issued by the proper committee, before which the Commissioner for Public Finances Discipline is merely a party to such proceedings (cf. Article 158(1) of Public Finances Act 1998).
3. The primary aim of preliminary consideration of a constitutional complaint (performed on the basis of Article 36, read in conjunction with Article 49, of the CT Act) is to eliminate from further proceedings those complaints which are evidently ground-

less or which contain formal irregularities that were not corrected within the prescribed time limit. Referring a constitutional complaint for consideration at a hearing, pursuant to Article 36(7) of the CT Act, does not signify that the grounds for discontinuing such proceedings, including Article 39(1) point 1 of the CT Act, subsequently fail to apply. Where the Constitutional Tribunal considers that a constitutional complaint fails to fulfil all of the conditions defined in Article 79(1) of the Constitution, it is obliged to discontinue proceedings regardless of the stage at which they may be.

#### Provisions of the Constitution and the Constitutional Tribunal Act

##### 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. 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. 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.

##### 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.

3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment is necessary for protecting constitutional freedom and rights.

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