

Procedural decision of 25<sup>th</sup> January 2005, [Ts 109/04](#)  
**COMPULSORY LEGAL REPRESENTATION IN TRIBUNAL  
 PROCEEDINGS. CONSTITUTIONAL COMPLAINT BY REASON  
 OF A TRIBUNAL DECISION**

<b>Type of proceedings:</b> <a href="#">Preliminary consideration of a constitutional complaint</a> <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 3-judge panel	<b>Dissenting opinions:</b> 0
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Mr. Marek J. lodged a constitutional complaint before the Tribunal against one of the provisions of the Tax Ordinance Act 1997. Proceedings for the preliminary consideration of the constitutional complaint (Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act) were concluded with a Tribunal decision (reference number Ts 210/03) refusing to proceed further with the complaint, given the existence of formal irregularities which the complainant’s representative failed to rectify within the appropriate time limit. Subsequently, the complainant challenged this procedural decision by way of lodging a so-called complaint (i.e. the method for challenging procedural decisions refusing to proceed further with applications or, as appropriate, constitutional complaints, cf. Article 36(4)-(7)). This complaint was drawn-up by the complainant himself. Since it was not drawn-up by a legal representative, which is expressly required by Article 48(1) of the Constitutional Tribunal Act 1997, the Tribunal decided not to proceed with consideration of this complaint. The aforementioned provision states that a constitutional complaint, and any challenge against a decision refusing to proceed further with a constitutional complaint, should be drawn-up by an advocate or legal advisor (i.e. compulsory legal representation).

The complainant (Mr. Marek J.) decided to lodge a new constitutional complaint – this time against Article 48(1) of the Constitutional Tribunal Act, as mentioned above. The complainant submitted that the aforementioned decision, by which the Constitutional Tribunal decided not to proceed with consideration of his challenge against the refusal to proceed further with his previous constitutional complaint, represented a “final decision” as regards his rights and obligations, within the meaning of Article 79(1) of the Constitution. It should be noted that the Polish model of constitutional complaint only involves the review of legal norms, as opposed to acts applying the law (e.g. judicial decisions). Nevertheless, a prerequisite for the effective lodging of a constitutional complaint is the existence of a final decision in the complainant’s individual case, considered by him to be connected to the violation of his constitutional rights and freedoms. Such a final decision must have been adopted by a “court” or an “organ of public administration” (Article 79(1) of the Constitution).

In the [procedural decision of 29<sup>th</sup> September 2004](#) (reference number as in the present case), the Tribunal, sitting in a one-judge panel, refused to proceed further with the new constitutional complaint lodged by Mr. Marek J., since the complainant did not precisely indicate which constitutional freedoms and rights had been infringed (cf. Article 47(1) point 2 of the CT Act). Furthermore, the Tribunal, referring to its earlier jurisprudence (cf. procedural decision of 28<sup>th</sup> November 2001, [SK 12/00](#)), stated that it is inad-

missible to lodge a constitutional complaint in relation to a Constitutional Tribunal decision, since the Tribunal is not a “court” within the meaning of Article 79(1) of the Constitution.

The procedural decision discussed herein was delivered by the Tribunal, sitting as a three-judge panel, as a result of the complainant’s challenge against the aforementioned procedural decision. Although the Tribunal refused to admit the challenge, given the complainant’s failure to indicate the infringed constitutional freedoms and rights, the interpretation of the notion “court”, within the meaning of Article 79(1) of the Constitution, expressed in the principal reasons for the ruling (points 3 and 4 below) may represent a change of direction from the Tribunal’s prior jurisprudence on this issue.

## RULING

**The Tribunal refused to admit the complaint against the preceding procedural decision refusing to proceed further with the constitutional complaint.**

### PRINCIPAL REASONS FOR THE RULING

1. Compulsory legal representation within the constitutional complaint procedure only refers to drawing-up a constitutional complaint or challenge (“complaint”) against a procedural decision refusing to proceed further with a constitutional complaint (Article 48(1) of the CT Act). Compulsory legal representation refers not only to documents entitled “constitutional complaint” or “complaint”, but also to all documents supplementing these actions, irrespective of whether they were delivered in response to a judicial order to rectify defects within a constitutional complaint or at the complainant’s own initiative. Except for the aforementioned documents, all other procedural letters may be prepared by the complainants themselves.
2. It is unjustified for the complainant to claim that the challenged provision deprived him of the possibility to act in the course of the proceedings, thereby infringing the rule of law principle (Article 2 of the Constitution).
3. Any interpretational doubts as regards constitutional rights and freedoms should be resolved in favour of the individual. This applies especially in relation to the right to lodge a constitutional complaint (Article 79(1) of the Constitution). The aforementioned interpretational guideline, as well as *ratio legis* of the indicated Constitution provision, justifies the adoption of an expansive interpretation of the notion “court” within this provision, so as to also comprise Tribunals.
4. Accordingly, the possibility may not be excluded that the right to lodge a constitutional complaint, understood as the right to request judgment as regards a normative act’s conformity to the Constitution (Article 79(1) of the Constitution), will be violated as a result of a Constitutional Tribunal ruling issued on the basis of the CT Act, governing the principles of lodging and considering constitutional complaints. In such cases, the constitutionality of the aforementioned provisions could be examined within the constitutional complaint procedure.

## 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. 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. 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. 48.** 1. The constitutional complaint or complaint against the decision concerning refusal to proceed with further action shall be drawn up by an advocate or legal advisor unless the person making the complaint is a judge, prosecutor, notary public, professor or doctor habilitated of legal science.

2. Where the person making the complaint cannot bear the costs of legal assistance, he/she may request the district court of his/her place of residence to appoint an advocate or legal advisor ex officio on the basis of the Code of Civil Procedure. Until such time as the court adjudicates the application, the time limit specified in Article 46, paragraph 1 shall not run.

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