

Procedural decision of 16th January 2002, [Ts 138/01](#)
**CONSTITUTIONAL COMPLAINT OF AN UNSUCCESSFUL
POST-DOCTORAL LECTURESHIP CANDIDATE**

<p>Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A natural person</p>	<p>Composition of Tribunal: 1 judge</p>
---	--

Polish law envisages three formal qualification degrees in any given academic discipline. The first academic qualification is the doctoral degree (*doktor*), awarded to persons who have passed the doctoral examination and successfully defended the doctoral dissertation (*rozprawa doktorska*) submitted by them. The second academic qualification is the post-doctoral lectureship degree (*doktor habilitowany*), awarded to persons who, whilst holding the doctoral degree, have evidenced significant scholarly achievements, submitted an extra dissertation (*rozprawa habilitacyjna*) and successfully completed the successive stages of review, debate and defence. Both of the aforementioned degrees are awarded by authorised academic institutions, operating in particular at the level of higher education schools. The third academic qualification, representing the crowning achievement of an academic's career, is the title of professor, conferred by the President of the Republic of Poland.

A special State organ, composed of persons elected from amongst the ranks of those holding the title of professor, plays an important supervisory function in ascertaining the qualifications of candidates for academic degrees and titles. At the time the procedural decision summarised herein was delivered, this organ was known as the "Central Commission for Academic Titles and Degrees" (*Centralna Komisja do Spraw Tytułu Naukowego i Stopni Naukowych*). From 2003, following an expansion of its competencies, this organ became the "Central Commission for Degrees and Titles" (*Centralna Komisja do Spraw Stopni i Tytułów*). The Commission's functions involve, inter alia, ensuring that doctoral degrees and post-doctoral lectureship degrees are awarded only on the basis of dissertations reaching an appropriate academic standard. One of the instruments with which the legislator equipped the Commission is the need to ensure the Commission's approval to a decision of an appropriate academic body awarding the degree of *doktor habilitowany* to a particular person.

The factual background to this constitutional complaint involved the Central Commission's refusal to approve the decision taken by the Faculty Council of a public higher education school, awarding the complainant the degree of *doktor habilitowany* in humanities. On the basis of the internal review of the candidate's achievements, conducted by the Faculty Council, the Central Commission found that the requirements for awarding the aforementioned degree had not been fulfilled. The complainant's appeal to the Commission and his subsequent complaint to the Supreme Administrative Court failed to result in the quashing this decision.

The aspiring *doktor habilitowany* brought a constitutional complaint alleging that a number of the provisions of the Academic Title and Degrees Act of 12th September 1990, as applied in this case, failed to

conform to constitutionally guaranteed fundamental rights. The complainant argued that the statutory requirement for the Central Commission to approve decisions awarding the degree of *doktor habilitowany*, issued by the relevant organs of higher education schools, constituted an inadmissible limit on the autonomy of such schools, as guaranteed by Article 70(5) of the Constitution. According to the complainant, the assessment carried out by the Central Commission, external to the higher education school, concomitantly restricts the right to freedom of academic research, since the Commission may select reviewers “holding certain opinions”. The very existence of the Central Commission was argued by the complainant to be inconsistent with the constitutional principle of equality, since the challenged act allowed the Senate of the Catholic University of Lublin (a non-public higher education school linked to the church hierarchy) to confer the academic title of professor without any interference from the Commission.

The procedural decision summarised herein was delivered during the procedure for preliminary consideration of the constitutional complaint (Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act 1997). The complainant’s representative lodged a complaint against this procedural decision but the Constitutional Tribunal, sitting in a 3-judge panel, refused to admit this complaint ([procedural decision of 24th April 2004](#), reference number as above). *Ipsa facto* the constitutional complaint, ultimately considered as inadmissible, was not examined on its merits.

RULING

The Tribunal refused to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. The review of norms under the [constitutional complaint](#) procedure (Article 79 of the Constitution) reveals distinctions between this procedure and review exercised in proceedings instituted by submission of an application or a question of law. The exclusive basis for review initiated by a constitutional complaint is a constitutional provision regulating a freedom or right vested in the complainant, and only where a final ruling in the complainant’s case concerned this freedom or this right.
2. Pursuant to Article 47(1) of the Constitutional Tribunal Act 1997, the complainant is obliged not only to precisely identify the normative act (or part thereof) which allegedly fails to conform to the Constitution, but also to indicate which constitutionally guaranteed freedoms or rights are – according to the complainant – alleged to have been infringed and in what manner. In order to fulfil this requirement, it is insufficient to merely refer to any constitutional provision; the provision must be such that its content allows it to represent an adequate basis for assessment of the infringement alleged by the complainant.
3. Since the complainant has indicated, as the appropriate bases for review of the constitutionality of the challenged provisions, constitutional norms whose content is either inadequate to the facts of the case, as indicated in the complainant’s reasoning, or which do not constitute a basis for freedoms or rights vested in the complainant, the Tribunal must refuse to proceed further with the constitutional complaint,

Tribunal must refuse to proceed further with the constitutional complaint, pursuant to Article 36(3) of the Constitutional Tribunal Act 1997.

4. The constitutionally guaranteed right to education (Article 70(1) of the Constitution) should be understood as a right to educate oneself and not as the right to pursue academic research, the basis for which lies in another provision of the Constitution (Article 73).
5. The autonomy that ought to be guaranteed by the legislator for higher education schools under Article 70(5) of the Constitution implies (according to the etymology of this word) that higher education schools are authorised to determine rules governing their activity. Such autonomy does not preclude legal provisions introducing supervision of the activities of higher education schools by relevant State organs, including provisions aiming to ensure abidance with the rules operating within the scope of such autonomy.
6. The autonomy is vested in higher education schools and not in natural persons employed or educated at such schools; Article 70(5) of the Constitution does not directly express any subjective right vested in such persons that could be subject to protection under the constitutional complaint procedure.
7. The functioning of a hierarchical system of academic degrees, together with assessment of academic achievements carried out by the relevant organs of higher education schools and the Central Commission for Academic Title and Degrees, representing the basis for a decision to accept or refuse the award of a certain academic title or degree, does not infringe the freedom to pursue academic research and to disseminate the fruits thereof, as guaranteed in Article 73 of the Constitution.
8. The right to obtain an academic degree is one of statutory rank and is not encompassed within the scope of the constitutionally guaranteed freedom to pursue academic research.
9. The situation of the complainant, as a natural person, is distinct from the situation of higher education schools, as legal persons. Accordingly, it is impermissible to compare their situations in order to justify claimant's allegations that the constitutionally guaranteed principle of equality has been infringed (Article 32).
10. The grounds for the allegation regarding the appointment by the Central Commission of reviewers "holding certain opinions" may not be considered by the Constitutional Tribunal, since such an allegation concerns the application of legal provisions, whereas the Tribunal is only authorised to review the conformity of normative acts with acts possessing a higher rank in the hierarchically structured legal system (Article 188 of the Constitution).

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. 70. 1. Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfillment of schooling obligations shall be specified by statute.

[...]

5. The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute.

Art. 73. The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.

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.

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, para. 1.

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. 49. The complaint shall be subject to preliminary examination; Article 36 shall apply accordingly.