

Procedural decision of 6<sup>th</sup> February 2001, [Ts 139/00](#)  
**SUBJECT OF REVIEW INITIATED BY CONSTITUTIONAL COMPLAINT.  
 “FINAL DECISION” AS A CONDITION FOR LODGING THE COMPLAINT**

<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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The [constitutional complaint](#) is a specific means of initiating the constitutional review of norms, performed by the Constitutional Tribunal. In accordance with Article 79(1) of the Constitution, the right to lodge such a complaint is vested in natural or legal persons with regard to whom a final decision has been issued by a court or an organ of public administration. Proceedings before the Tribunal which have been initiated by the lodging of a constitutional complaint represent one example of the so-called specific (concrete) review of norms: the catalyst for initiating the review is provided by the concrete application of the reviewed norm in the complainant’s individual case. The aforementioned constitutional provision requires that constitutional complaints be lodged in relation to a “final decision” of a court or an organ of public administration in the complainant’s individual case, such as affects the complainant’s freedoms, rights or duties.

Accordingly, in the constitutional complaint procedure, it is the legal provision (expressing general and abstract norms) and not the act of application thereof (having an individual and specific character), which is directly “attacked”, as is also the case in [abstract review](#) proceedings. Nevertheless, constitutional complaints must remain directly related to decisions exhibiting features of a “final decision” of a court or an organ of public administration in the complainant’s case. Moreover, it stems from Article 46(1) of the Constitutional Tribunal Act that constitutional complaints must be lodged within an absolute period of 3 months from the date on which such a decision was delivered to the complainant.

A natural person, appearing as complainant in this case, challenged the local land management plan of the waste utilisation facility in Wrocław, approved by the City Council. Firstly, in accordance with the procedure defined in provisions on land management, the complainant (as well as other residents of Wrocław) lodged claims against the draft local plan. These claims were rejected by a resolution of the City Council of 17<sup>th</sup> June 1999. The interested party challenged this resolution before the Supreme Administrative Court, which dismissed the complaint (judgment of 12<sup>th</sup> April 2000). At that time, the Supreme Administrative Court adjudicated finally in the first (and the final) instance. The applicant was unable to challenge the decision of the administrative court; he could merely petition one of the authorised State organs empowered to initiate a so-called extraordinary appeal, leading to the Supreme Administrative Court’s judgment being reviewed by the Supreme Court. The Commissioner for Citizen’s Right represents, *inter alia*, one such authorized organ.

In the present case, the Commissioner for Citizen's Rights did not find grounds for lodging an extraordinary appeal and informed the complainant of this in a correspondence delivered to him on 3<sup>rd</sup> August 2000.

Having received this correspondence, the complainant (acting through his representative) lodged a constitutional complaint. The two aforementioned resolutions of the Wrocław City Council were challenged: the first resolution had rejected the complainant's claims against the draft local land management plan and the second resolution which had approved this plan. The constitutional complaint alleged an infringement of constitutional provisions governing: the principle of sustainable development; the right to protection of one's health; and the duty of public authorities to ensure ecological security.

In accordance with Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act, the constitutional complaint was subject to preliminary consideration by a judge of the Tribunal. In a procedural decision dated 29<sup>th</sup> November 2000, this judge refused to proceed further with the complaint, considering that the challenged acts did not constitute the legal bases of a final decision in the complainant's case. The procedural decision discussed herein (of 6<sup>th</sup> February 2001), definitively concluding the examination regarding admissibility of the constitutional complaint, was issued in response to the complainant's challenge regarding the procedural decision of 29<sup>th</sup> November (i.e. the remedy available against a Tribunal's decision refusing to proceed further with an application or constitutional complaint; cf. Article 36(4) of the Constitutional Tribunal Act).

In its reasons for the ruling, the Tribunal explained a few significant elements of the constitutional and statutory regulation of the institution of constitutional complaint. Special attention should be paid to the statement summarised in paragraph 3 (below). It confirms that local law norms may also, in principle, constitute the subject of a constitutional complaint (other than in the case of abstract review, which may only refer to international agreements, statutes and other acts issued by central State organs – cf. Article 188 of the Constitution).

## 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. The correspondence of the Commissioner for Citizens' Rights informing the complainant about the absence of grounds for lodging an extraordinary appeal against the Supreme Administrative Court's judgment does not possess the features of a final decision within the meaning of Article 79(1) of the Constitution. Consequently, the date on which this correspondence was delivered to the complainant may not be considered as the outset of the period within which a constitutional complaint must be lodged, in accordance with Article 46(1) of the Constitutional Tribunal Act.

2. The challenged normative act should constitute the grounds for the final decision within the meaning of Article 79(1) of the Constitution. In general, this requirement is satisfied when the decision – with the same subject to adjudication and scope of the case – would (or could) be different, had the legal norm containing the challenged contents not been in force. Moreover, it is not of a crucial importance whether or not the organ conducting the concluded case explicitly mentioned the provision challenged by the complainant.
3. Acts of local law may constitute the subject of a constitutional complaint provided they comprise general and abstract norms and may be included among acts of universally binding law (this conclusion is derived from Article 79(1), read in conjunction with Article 188 point 5, of the Constitution).
4. The resolution of the commune (city) council on enacting the local land management plan has the character of a normative act. The specific provisions of such a plan, referring to the purposes of specified areas, the use of land and localisation of facilities, do not affect the conclusion that this is an act dealing with the rights and duties of abstractly defined addressees.
5. No normative character may be attributed to the resolution of the commune (city) council in the case of rejecting challenges lodged by residents against the draft land management plan; such resolutions represent a legal process for settling individual cases within the scope of public administration and, as such, represent individual and specific acts.

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

##### **Constitution**

**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 paragraph 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. 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. 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. 46.** 1. Constitutional complaint, further referred to as the "complaint" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgment.

2. The Tribunal shall consider a complaint on the principles and in accordance with the procedure provided for the consideration of a application for the confirmation of conformity of statutes to the Constitution and of other normative acts to the Constitutions and statutes.

**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.