

Procedural decision of 25th July 2006, [Ts 143/06](#)
**THE NEW MODEL OF CASSATION IN CIVIL CASES AND THE DEADLINE
FOR LODGING A CONSTITUTIONAL COMPLAINT**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A legal person	Composition of Tribunal: 1 judge
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The principles in line with which a constitutional complaint may be lodged (Article 79(1) of the Constitution) are laid down precisely in the Constitutional Tribunal Act 1997. Within the meaning of Article 46(1) thereof, a constitutional complaint may be lodged once all legal remedies available to a complainant within a given system of proceedings have been exhausted, within 3 months of the day a final decision or final judgment in an individual case is delivered to a complainant.

Between 1996 and 2005, civil proceedings in certain cases were based on a three-instance system. In such cases, the parties to proceedings had the right to bring a cassation to the Supreme Court against the decisions of second-instance courts. In the then jurisprudence of the Constitutional Tribunal, the prevailing view was that the requirement of exhausting all legal remedies in civil proceedings entailed the necessity of bringing a cassation, if such means were available in a given case; in other cases, the aforementioned prerequisite was deemed fulfilled upon the issuing of the final decision by a second-instance court.

The Civil Procedure Code and Organisation of Common Courts Amendment Act 2004, which entered into force on 6th February 2005, introduced, in place of cassation against non-final second-instance court judgments and procedural decisions, the institution of the so-called cassation complaint. Such a complaint is a legal remedy initiating review of the legality of final decisions issued by civil courts (cf. Article 398¹ of the Civil Procedure Code). Put on the agenda in this way was the issue of how to construe the requirement regarding the exhausting all legal remedies (literally “trying all legal means”, as the wording of Article 46(1) of the Constitutional Tribunal Act 1997 has it), in the context of the new model by which judicial decisions in civil cases might be challenged.

The constitutional complaint in the present case, examined by the Constitutional Tribunal under the preliminary consideration procedure (see Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act 1997), had been lodged by a company. The factual background to this complaint was the following: on 1st March 2002, the Regional Court, adjudicating as court of first instance, awarded from an insurance company, to the benefit of the company lodging the complaint (a claimant in the civil case), the payment arising from the property insurance contract. Subsequently, the Court of Appeal, in its judgment of 29th October 2002, dismissed the defendant’s appeal. As a result of a cassation brought by the defendant (examined in accordance with the principles in force prior to the entry into force of the Amendment Act 2004), the Supreme Court quashed the decisions of the first- and second-instance courts and ordered a retrial by the Regional Court. Following its reconsideration of the case, the Regional Court basing itself on the legal interpretation expressed in the decision of the Supreme Court, dismissed the claimant’s action in

its judgment of 27th September 2004. In turn, the Court of Appeal, in its judgment of 28th June 2005, dismissed the claimant's appeal. On 4th November 2005 the claimant lodged a cassation complaint, in accordance with the new principles the Amendment Act 2004 had introduced. The Supreme Court, in its decision of 15th February 2006, refused to admit the cassation complaint for consideration (cf. Article 398⁹ of the Civil Procedure Code).

The constitutional complaint was only lodged on 7th June 2006, i.e. almost one year after the Court of Appeal issued its final judgment.

RULING

The Tribunal declined to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. The requirement of “trying all legal means”, referred to in Article 46(1) of the Constitutional Tribunal Act 1997, should be understood as the exhausting by a complainant of all legal remedies available to him by way of the different instances and allowing a case to be considered on its merits. The aforementioned statutory notion is related to the issuing of a final judgment, final decision or any other final ruling. This leads to the conclusion that, following the delivery to the complainant of a final court judgment, resort to any other legal measures serving to challenge final judgments exerts no influence upon the deadline for a constitutional complaint to be lodged.
2. With the entry into force of the Civil Procedure Code Amendment Act 2004, the cassation complaint acquired the status of an extraordinary appellate measure against final court decisions (cf. Article 398¹ § 1 of the Civil Procedure Code). Accordingly, the requirement that all legal remedies be exhausted is fulfilled once a person lodging a complaint has taken advantage of the possibility to file an appeal to a second-instance court and has obtained the said court's ruling on the merits of the case. Following the aforementioned modifications of the civil procedure, the 3-month deadline for lodging a constitutional complaint runs, as in criminal cases, from the date of the delivery to the complainant of the final second-instance court decision, irrespective of whether or not a cassation complaint may still be brought before the Supreme Court in a given civil case.

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.

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 complainant, the final decision or other final judgment.

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