

Procedural decision of 25<sup>th</sup> May 2004, [Ts 174/02](#)  
**SUBSIDIARY CHARACTER OF A CONSTITUTIONAL 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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Within the Polish legal system, a [constitutional complaint](#) constitutes a means for initiating the so-called specific (concrete) review of legal norms, i.e. review performed in connection with a particular instance of applying a norm, the constitutionality of which gives rise to concerns. The interested natural or legal person may lodge a constitutional complaint only where a “final decision” has been issued in their case by a court or an organ of public administration (cf. Article 79(1) of the Constitution). The constitutional prerequisite that any such decision be “final” is complemented by Article 46(1) of the Constitutional Tribunal Act 1997, according to which a constitutional complaint may only be lodged following the exhaustion of all available legal remedies, where such remedies are envisaged.

The Constitutional Tribunal’s jurisprudence has consistently stated that, as regards final administrative decisions capable of being challenged before the administrative court, the prerequisite that a decision be “final”, within the meaning of Article 79(1) of the Constitution, is fulfilled only where the complainant utilised the possibility of such a challenge (cf. procedural decision, issued by a plenary session of the Tribunal, of 4<sup>th</sup> February 1998, [Ts 1/97](#)).

Since 1<sup>st</sup> January 2004, there exists a two-instance system of administrative jurisdiction. An administrative decision may be challenged before a regional administrative court. A first-instance judgment or a procedural decision concluding the proceedings, issued by the regional administrative court, may be challenged before the Supreme Administrative Court by way of lodging a cassation complaint.

In the present case, the complainant lodged a constitutional complaint directly following a first-instance administrative court’s decision dismissing his challenge against a final administrative decision. The author of the constitutional complaint failed to utilise the possibility of lodging a cassation complaint to the Supreme Administrative Court. Within the proceedings provided for in Article 49, read in conjunction with Article 36, of the CT Act, the Constitutional Tribunal, sitting as a one-judge panel, issued the [procedural decision of 7<sup>th</sup> April 2004](#) (reference number as above), refusing to proceed further with the constitutional complaint, given the complainant’s failure to exhaust all available legal remedies.

The complainant’s representative challenged the aforementioned procedural decision (by lodging a so-called complaint, cf. Article 36(4), read in conjunction with Article 49, of the CT Act). He alleged that, whilst Article 46(1) of the CT Act makes review of a constitutional complaint on its merits conditional upon the complainant’s prior exhaustion of all available legal remedies, interpretation of this provision must take into account the entire contents of that Article. A further part of Article 46(1) of the CT Act states that the time limit for lodging a constitutional complaint shall begin to run upon delivery to the com-

plainant of a “final judgment, final decision or other final ruling”. In the complainant’s opinion, a rational legislator would have already undertaken steps to remove the notion of a “final decision” from the text of the discussed provision if it had been intended to have the meaning ascribed to it by the Tribunal in the challenged procedural decision.

## 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 subsidiary character of a constitutional complaint, which is a specific means for protecting constitutional rights and freedoms, stems from its essence. The possibility of relying upon this legal means is strictly limited to cases where, within the ordinary appellate procedure, it is not possible to review decisions which, in the complainant’s opinion, infringe their rights and freedoms.
2. The wording of Article 46(1) of the CT Act, in accordance with which the time limit for lodging a constitutional complaint shall begin to run from the date on which a “final judgment, final decision or other final ruling” is delivered to the complainant, does not limit the prerequisite of the complainant having exhausted all available legal remedies. It was not without reason that, within this Article, the legislator first mentions the final judgment, i.e. the type of a judicial decision which usually concludes a legal action. Since there is also a technical character to the provision governing the method for determining the moment from which the time limit for lodging a constitutional complaint begins to run, the legislator could not omit from this provision situations where legal provisions (despite constitutional guarantees) fail to envisage the possibility for the complainant to obtain a court’s final decision. Accordingly, reference in the reviewed provision to the moment where a “final decision or other final ruling” is delivered to the complainant serves to determine the moment from which the time limit for lodging a constitutional complaint begins to run in situations where the complainant is unable to refer such a “decision” or “other ruling” for verification by a court.
3. The present constitutional complaint is inadmissible since the complainant failed to utilise the possibility to lodge a cassation complaint before the Supreme Administrative Court against the judgment of the Regional Administrative Court.

#### 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 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. 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.

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

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