

Procedural decision of 13th February 2001, Ts 189/00
**“FINAL DECISION” AS A CONDITION FOR LODGING
A CONSTITUTIONAL COMPLAINT**

<p>Type of proceedings: Preliminary consideration of a constitutional complaint</p> <p>Initiator: A natural person</p>	<p>Composition of Tribunal: 1 judge</p>
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Proceedings before the Constitutional Tribunal initiated on the basis of a [constitutional complaint](#) constitute one of the instances of so-called specific review (i.e. review whereby the Tribunal studies a legal norm in relation to its concrete application in a particular case). In accordance with Article 79(1) of the Constitution, “everyone” has the right to lodge a constitutional complaint before the Tribunal, challenging the conformity with the Constitution of a legal norm that formed the basis of a “final decision” in his/her individual case. Similarly to the case of [abstract review](#), it is the legal provision (expressing general and abstract norms) and not the act forming the concrete application thereof (having an individual and specific character) which is reviewed under the aforementioned procedure. It is, however, a prerequisite for lodging a constitutional complaint that the complainant must have been issued with a “final decision”, adopted on the basis on the challenged norm, affecting his constitutional freedoms, rights or duties. Where the Constitutional Tribunal admits the complaint, this leads to the elimination of the unconstitutional norm from the legal order and may, indirectly, lead to the quashing of the individual decision taken in the complainant’s case (cf. Article 190(4) of the Constitution).

In the present case, the complainant challenged Article 24(1) point 1 of the Fiscal Control Act 1991. This provision authorises fiscal control authorities to issue – under specified conditions – administrative decisions defining or determining tax obligations and other budgetary due amounts in cases falling under the authority of fiscal offices. The provision constituted the basis of a Fiscal Control Office decision addressed to the complainant. When this decision was subsequently upheld by a higher instance organ (the Fiscal Chamber), the complainant lodged a constitutional complaint despite the fact that, in accordance with relevant procedural provisions, the possibility still existed for the complainant to appeal against this decision to the Supreme Administrative Court.

The author of the constitutional complaint sought a ruling that the aforementioned provisions failed to conform to the constitutional principles of the rule of law, legality and equality. On the basis of Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act, the constitutional complaint has been subject to preliminary consideration by a single Tribunal judge. In the procedural decision summarised herein, the Tribunal refused to proceed further with the complaint, finding that the Fiscal Chamber’s decision in the complainant’s case, whilst constituting a “final” decision within the meaning of the Administrative Procedure Code (*i.e.* a decision which may not be challenged in administrative proceedings), would not possess the attributes of a “final decision” for the purposes of the autonomous meaning of

Article 79(1) of the Constitution unless the complainant had exercised his right to appeal to an administrative court against this decision.

The complainant's representative lodged a challenge against this procedural decision (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). However, the Constitutional Tribunal, comprising a 3-judge panel, refused to admit this challenge ([procedural decision of 20th March 2001](#), reference number as above). *Ipsa facto* the constitutional complaint, ultimately considered as inadmissible, was not considered on its merits.

RULING

The Tribunal refused to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. The mechanism of constitutional complaint has an extraordinary and subsidiary character: it may only be resorted to in situations where complainants have no alternative procedural possibilities to institute further proceedings, in respect of their case, before a court or organ of public administration.
2. Final administrative decisions, within the definition provided by Article 145 § 1 of the Administrative Procedure Code, which remain open to challenge before an administrative court may not be treated as a final decision within the meaning of Article 79(1) of the Constitution. Accordingly, is it not possible to lodge a constitutional complaint at this stage of the proceedings.
3. The requirement that all legal means be exhausted prior to lodging a constitutional complaint, as specified in Article 46(1) of the Constitutional Tribunal Act, precludes the lodging of such a complaint where the decision of a court or organ of public administration has become final solely as a result of the concerned person's failure to exhaust all permissible means of appeal within the given system of proceedings.

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.

Art. 190. [...] 4. A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement of statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

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 claim, further referred to as the "claim" 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 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 complaint shall be subject to preliminary examination; Article 36 shall apply accordingly.