

Procedural decision of 27th February 2006, [Ts 198/05](#)
**INADMISSIBILITY OF A CONSTITUTIONAL COMPLAINT ALLEGING
INFRINGEMENT OF A THIRD PARTY'S RIGHTS**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A natural person	Composition of Tribunal: 1 judge
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Mr Józef S. lodged a constitutional complaint challenging a provision of the Social Security Benefits in the Event of Sickness or Maternity Act 1999. In accordance with the challenged provision, as the basis for sickness benefit (a social security benefit substituting remuneration for work in the event of an employee's sickness) is being established, bonuses paid by an employer to an employee shall not be taken into account, unless the legal provisions in force or collective labour agreements envisage a decrease in the size of this bonus over a sickness period.

Sickness benefit is paid to an employee by an employer which, in simultaneously constituting the payer of the social insurance contribution, settles accounts with the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*) in respect of expenditures incurred as the benefit is paid out.

The present constitutional complaint was lodged in response to the finding by the Social Insurance Institution, arrived at on the basis of the legal provision challenged by Mr S., that sickness benefit had been overpaid by virtue of a bonus being included within the basis upon which the level of the said benefit was calculated. The first- and second-instance courts, as well as the Supreme Court, had agreed with this reasoning on the part of the Social Insurance Institution.

The constitutional complaint alleged that the challenged provision failed to conform to the constitutional guarantee regarding the right of a citizen to social security whenever incapacitated for work by reason of sickness (Article 67(1)), read in conjunction with the principle of equality (Article 32), as well as to the principle of the citizen's trust in the State and its laws (as stemming from Article 2 of the Constitution).

The constitutional complaint was examined under the preliminary consideration procedure (see Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act 1997). Subsequently, the complainant challenged the procedural decision summarised herein, as issued by the Constitutional Tribunal sitting as a one-judge panel (cf. Article 36(4), read in conjunction with Article 49, of the Constitutional Tribunal Act 1997). Nonetheless, the Tribunal, sitting as a three-judge panel, refused to admit the challenge (see [procedural decision of 19th July 2006](#), reference number as above).

RULING

The Tribunal refused to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. The right to lodge a constitutional complaint (Article 79(1) of the Constitution) is conditional upon the existence of an infringed constitutional right or freedom whose protection the complaint is to serve. Such constitutional rights or freedoms may relate solely to the individual, and should be vested individually in the person making a complaint, as opposed to another (third) person. Accordingly, it is impossible to treat a constitutional complaint as *actio popularis*.
2. The beneficiary of the right to social insurance, as specified in Article 67(1) of the Constitution, is a person incapacitated for work, rather than the party under a statutory obligation to pay the sickness benefit thereby allowing that right to be enjoyed. For this reason, an employer's being obliged to return overpaid sickness benefit may not be assumed tantamount to the right to social security vested therein being infringed. The potential prejudicing of the right to social security vested in the employee may not justify the lodging of a constitutional complaint by an employer.
3. The principle of equality (Article 32 of the Constitution) may not constitute an autonomous basis upon which a constitutional complaint is lodged. The invoking of the principle in question is each time conditional upon the complainant's indication of the particular constitutional right or freedom which has been prejudiced as a result of the principle of equality being infringed in his or her case.
4. The complainant in the present case seems to associate the infringement of the principles stemming from Article 2 of the Constitution, not so much with the content of the challenged statutory provision as with the application thereof by the Social Insurance Institution in his case. In this regard, the complaint thus refers not to the content of the law but to the implementation thereof, something which is beyond the competence of the Constitutional Tribunal.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

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. 67. 1. A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute.

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 considera-

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