

Procedural decision of 23rd February 2005, Ts 35/04
**INADMISSIBILITY OF COMMUNE'S
CONSTITUTIONAL COMPLAINT**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: Capital City of Warsaw	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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Within the Polish legal system, the constitutional complaint procedure constitutes a special mechanism for initiating review of the constitutionality of legal provisions. Pursuant to Article 79(1) of the Constitution, the right to lodge a constitutional complaint is vested in “everyone” whose constitutional rights or freedoms were infringed by a final decision in their individual case, issued on the grounds of a provision which, in the complainant’s opinion, fails to conform to constitutional guarantees of rights and freedoms. The aforementioned constitutional provision is contained in Chapter II of the Constitution governing rights, freedoms and duties of persons and citizens.

The Constitutional Tribunal’s jurisprudence unambiguously indicates that a constitutional complaint may be lodged not only by a natural person but also, under certain conditions, by a private legal person. The discussed problem is different as regards the *locus standi* of public legal persons established on the basis of decisions adopted by the legislator or other State authorities and fulfilling tasks of a public-legal nature. This refers, in particular, to communes and other units of local self-government.

In the present case, a constitutional complaint was lodged by the Capital City of Warsaw (hereinafter referred to as “complainant”), represented by its President (a one-person administrative organ). Warsaw has a specific legal status, since it is a commune having the status of a city and possessing the rights of a district.

In the background of the present case, litigation was taking place regarding the level of compensation to be paid by the City of Warsaw to a certain limited liability company, pursuant to a decision of the Local Self-government Appeals Committee (*Samorządowe Kolegium Odwoławcze*; i.e. a second-instance organ adjudicating upon matters falling within the scope of competence of local self-government organs). In 1997, the City authorities issued a decision establishing the conditions for construction developments and land management regarding land where the company intended to undertake a particular construction investment. In 2000, the Local Self-government Appeals Committee declared the aforementioned decision invalid, and, three years later, ordered that the company be paid compensation for the costs borne thereby in preparing the investment and necessary related documentation. Article 160(1) of the Administrative Procedure Code represented the basis for the latter decision, vesting a party to administrative proceedings with the right to obtain compensation in the event that a final administrative decision is declared invalid.

Pursuant to Article 160(4) of the Administrative Procedure Code, compensation was granted in administrative proceedings. The Local Self-government Appeals Committee was the competent body in

this matter, since it is a second-instance organ in matters falling within the scope of competence of local self-government organs. From the perspective of administrative procedural law, the City of Warsaw did not appear as a party to the proceedings but rather as the administrative authority (the City organ was the first-instance administrative organ) and was not entitled to appeal against the compensation award. Furthermore, the City was not authorised to request that the case be referred to civil procedure; Article 160(5) of the Administrative Procedure Code only grants such a possibility to “a party dissatisfied with the compensation award”. Attempts by the President of Warsaw to challenge the compensation award before the Supreme Administrative Court proved ineffective by virtue of that Court’s lack of competence in such matters.

For the aforementioned reasons, the City authorities decided to challenge Articles 160(4) and 160(5) of the Administrative Procedure Code before the Constitutional Tribunal. Constitutional complaint was chosen as the mechanism for this challenge (Article 79(1) of the Constitution), as opposed to the procedure for initiating the abstract review of norms (cf. Article 191(1) point 3, read in conjunction with Article 191(2), of the Constitution); in accordance with Article 191 of the Constitution, the latter procedure would require the adoption of an appropriate resolution by Warsaw City Council.

The authors of the constitutional complaint submitted that challenged provisions of the Administrative Procedure Code failed to conform to Article 32(1) (principle of equality), Article 78 (right to appeal against first-instance judgments and administrative decisions) and Article 165(2) of the Constitution (guarantee of judicial protection of the self-governing – i.e. autonomous – nature of local self-government units). The first and second of the aforementioned provisions are contained in Chapter II of the Constitution, governing the rights, freedoms and duties of persons and citizens; the third provision is contained in Chapter VII, governing local self-government. In the complainant’s opinion, the absence of a possibility to appeal against a decision determining the level of compensation, or to challenge such a decision before the courts, infringed constitutionally guaranteed rights.

Within the preliminary consideration of the constitutional complaint procedure (Article 36 and Article 49 of the Constitutional Tribunal Act), the Tribunal, sitting as a one-judge panel, issued [procedural decision of 12th October 2004](#) (reference number as above), refusing to proceed further with the complaint. In the reasons for this ruling, the Tribunal emphasised the fundamental objective of a constitutional complaint, i.e. the protection of rights vested in an individual (a natural person) against acts of organs of public authority.

The complainant challenged the aforementioned procedural decision (by lodging a so-called complaint, cf. Article 36(4) of the Constitutional Tribunal Act), arguing that its situation, as a legal person within proceedings regarding compensation to be paid for unlawful acts committed by its organs, is analogous to the situation of a natural person participating as a party to administrative proceedings.

It should be noted that, on 1st September 2004, the legislator repealed Article 160 of the Administrative Procedure Code. Matters concerning compensation for harm caused by administrative organs currently fall within the regulatory scope of the Civil Code and the common courts are permitted to adjudicate upon such issues. This fact did not, however, influence the Tribunal’s assessment of the present case.

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. Constitutional rights and freedoms define the position of the individual vis-à-vis public authorities. In particular, they fulfil a protective function, in the sense that they are intended to prevent public authorities from excessively interfering with an individual's situation. A further function of such rights and freedoms is to impose upon organs of public authority an obligation to create conditions in which the individual may enjoy the rights vested in them, including a duty to guarantee protection against infringement by third parties. Proper realisation of these functions requires constitutional rights and freedoms to have the character of subjective public-legal rights, correlated with the obligations of public authority organs.
2. Constitutional rights and freedoms are addressed to, above all, natural persons. The constitutional expression of this assumption is contained in Article 30, which provides that the dignity of the person constitutes the source of rights and freedoms and that these rights and freedoms have a primary character vis-à-vis law created by the State. The constitutional character of rights and freedoms, thus defined, is significant when establishing the normative contents thereof. This is also true in respect of the right to constitutional complaint: Article 30 of the Constitution has essential significance when interpreting the notion "everyone" within Article 79(1).
3. Legal persons may be subjects of constitutional rights and freedoms to a limited degree. Certain of these rights and freedoms may not, by virtue of their substance, be vested in legal persons. As regards other constitutional subjective rights, a legal person may be the subject of such rights to the extent that this facilitates fuller enjoyment thereof by natural persons (in other words, vesting legal persons with constitutional rights has a derivative character in relation to the individuals' rights). The same is true in respect of entities which are not endowed with legal personality, e.g. ordinary associations.
4. Local self-government participates in the exercise of public authority by performing public duties (Article 16(2) of the Constitution). This relates in particular to communes, which are basic units of local self-government. The performance of public duties, as mentioned in Article 16(2) and Article 163 of the Constitution, occurs when communes operate, through their organs, in the sphere of public power (*imperium*) and when they operate in the sphere of proprietary power, in civil-legal transactions (*dominium*). By endowing local self-government units with legal personality, and guaranteeing the right of ownership and protection by the courts, Article 165 of the Constitution ensures the proper performance of public duties. The rights of an individual are, however, based upon the dignity and freedom of the individual; therefore an individual may freely enjoy their rights, within legally-defined limits, whereas a commune exercises its rights for the purpose of realising public duties.

5. Protection by the courts of the self-governing nature of local self-government units, as guaranteed in Article 165(2) of the Constitution, is not identical to the right to court mentioned in Article 77(2) and Article 45(1) of the Constitution. The judicial protection of communes is intended to guarantee the proper performance of public duties, whereas the right to court is one of the means for protecting an individual's constitutional rights and freedoms. A similar differentiation exists in respect of protecting, on the one hand, the ownership right of communes (cf. Article 165(1)) and, on the other hand, an individual's right to ownership (cf. Article 64(1)).
6. For the aforementioned reasons, the rights of communes indicated in Article 165 of the Constitution do not fall within the notion of "constitutional rights and freedoms" within the meaning of Article 79(1) of the Constitution.
7. The right to appeal against first instance judgments and decisions, as expressed in Article 78 of the Constitution, constitutes a means to protect constitutional rights and freedoms. Accordingly, the scope of application of Article 78 relates mainly to the subjective scope of these rights. Should an individual's rights stem solely from statute, the right to challenge decisions amounts to realisation of the constitutional principle of the citizens' trust in the State.
8. There is no similarity between the legal situation of legal persons performing public duties, particularly communes, and the legal situation of natural persons and private legal persons, such as would justify including the former within the scope of application of the constitutional right to equal treatment by public authorities (Article 32(1)).
9. The identical, or similar, definition of the position of all legal persons at a statutory level does not determine their legal situation at a constitutional level. Accordingly, no grounds exist for treating as identical the constitutional scope of protecting local self-government units and the constitutional scope of protecting private legal persons, by virtue of the submission that all these entities are endowed with legal personality.
10. Conditioning the application of Article 79(1) of the Constitution solely upon the complainant's possession of legal personality would lead to the conclusion that the State Treasury may also refer a constitutional complaint. Such an assumption would contradict the essence of the constitutional complaint and, in fact, would signify that the State may lodge a constitutional complaint against itself. Likewise, permitting a commune's constitutional complaint to be reviewed on its merits could lead to the settlement of disputes between organs of public authority within the constitutional complaint procedure.
11. The impermissibility of a commune utilising the constitutional complaint procedure does not signify that communes may not initiate the review of legal provisions from the perspective of constitutional guarantees concerning judicial protection of their self-governing nature. As regards matters within a commune's scope of activity, stemming from normative acts in force, a commune's constitutive organs may appear before the Constitutional Tribunal in respect of applications regarding the [abstract review](#) procedure (conclusion from Article 191(1) point 3, read in conjunction with Article 191(2), of the Constitution).

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 16. [...] 2. Local self-government shall participate in the exercise of public power. The substantial part of public duties which local self-government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

Art. 30. The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

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. 45. 1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

Art. 64. 1. Everyone shall have the right to ownership, other property rights and the right of succession.

Art. 77. [...] 2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.

Art. 78. Each party shall have the right to appeal against judgments and decisions made at first instance. Exceptions to this principle and the procedure for such appeals 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.
2. The provisions of para. 1 above shall not relate to the rights specified in Article 56.

Art. 163. Local self-government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.

Art. 165. 1. Units of local self-government shall possess legal personality. They shall have rights of ownership and other property rights.
2. The self-governing nature of units of local self-government shall be protected by the courts.

Art. 191. 1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,
- 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2;
- 3) the constitutive organs of units of local self-government;
- 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations;
- 5) churches and religious organizations;
- 6) the subjects referred to in Article 79 to the extent specified therein.

2. The subjects referred to in para. 1 subparas. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

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