

Procedural decision of 13th October 2004, [Ts 55/04](#)
**INADMISSIBILITY OF A CONSTITUTIONAL COMPLAINT
TENDING TO SUPPLEMENT THE SYSTEM OF LAW**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A natural person	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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Wiesław G., a tax advisor, lodged a constitutional complaint challenging provisions permitting persons of that profession to appear before administrative courts as representatives of parties in tax cases. In the complainant's opinion, this legal regulation led to an unconstitutional prohibition on the participation of tax advisors as representatives in judicial proceedings other than those concerning tax issues. No such limitations have been set forth for persons admitted to the profession of an advocate or legal advisor.

The constitutional complaint was lodged with the Tribunal in connection with a decision of the Supreme Administrative Court refusing to allow the complainant to appear as a representative in proceedings concerning customs law.

Pursuant to Article 49, read in conjunction with Article 36, of the Constitutional Tribunal Act 1997 the constitutional complaint was examined, within the preliminary consideration procedure, by a single judge of the Tribunal. In a [procedural decision of 1st July 2004](#) (reference number as above) this judge refused to proceed further with the constitutional complaint, finding that the complainant had not indicated the manner in which the challenged provision infringed his constitutional rights and freedoms. The judge ruled that, in fact, the complainant had requested the supplementation of existing law with a norm which would also permit him to appear before courts as a representative of parties in customs law cases.

The complainant challenged the aforementioned procedural decision, pursuant to Article 36(4), read in conjunction with Article 49, of the Constitutional Act 1997. In his complaint (i.e. the method for challenging procedural decisions refusing to proceed further with applications or, as appropriate, constitutional complaints, cf. Article 36(4)-(7)), he made reference to the Constitutional Tribunal's judgment of 10th July 2000 [SK 12/99](#). In the aforementioned judgment the Tribunal ruled that Article 1 of the Civil Procedure Code 1964, understood as excluding financial liabilities stemming from administrative decisions from the notion of "civil cases" examined by common courts, was unconstitutional.

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. Only provisions which constituted the legal basis for a final decision of a court or an administrative organ as regards the complainant's constitutional rights and freedoms, may be the subject of a constitutional complaint (Article 79(1) of the Constitution). Moreover, the complainant should prove that the contents of the challenged provisions were the source of the alleged infringement of his/her constitutionally guaranteed freedoms and rights. In other words, the complaint should make a *prima facie* case that elimination of the regulation leading to impermissible interference with his/her constitutional status is a prerequisite to restoring a state of conformity with the Constitution.
2. The absence of the defined legal regulation, anticipated by the author of the constitutional complaint, in the legal system (i.e. the legislator's failure to act) may not be removed by a so-called interpretative judgment of the Constitutional Tribunal, i.e. the Tribunal's finding that the reviewed provision is constitutional or unconstitutional provided that it is understood in a defined manner. The Tribunal does not have the competence to "supplement" law in force with a new legal norm; the creation of such a new norm is only possible via the legislative procedure. Whereas the situation occurring e.g. in case [SK 12/99](#) (judgment of 10th July 2000) is different. In that case, the Tribunal eliminated the legal norm, inferred from the challenged provision, which represented the unconstitutional narrowing of the scope of application of that provision.

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