

Procedural decision of 24th November 2004, [Ts 57/04](#)
**CONDITIONING ADMISSIBILITY OF A CONSTITUTIONAL COMPLAINT
UPON PRONOUNCEMENT OF A DECISION
IN THE COMPLAINANT'S CASE**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A natural person	Composition of Tribunal: 1 judge
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It stems from Article 79(1) of the Constitution that only a legal provision, as opposed to a judicial decision in the complainant's individual case, is challengeable by way of a constitutional complaint. Concomitantly, a constitutional complaint is admissible insofar as the challenged provision constituted the grounds for the judicial decision in the complainant's case. The latter prerequisite relates to the issue of admissibility of a constitutional complaint where the individual's duty stems directly from statute and is not concretised by any decision of a court or an organ of public administration which refers to the complainant individually.

The complainant in the case summarised herein is a judge of the common court. The relevant statute obliges judges to submit periodical declarations as regards their property status (concerning both personally-owned property and that encompassed by the marital community of property). Such declarations shall be submitted, in two copies, to the President of the relevant Court of Appeal. The subject authorised to collect declarations is obliged to convey one copy to the Tax Office (i.e. Inland Revenue) appropriate for the judge's place of residence. The Tax Office may undertake certain control actions.

Members of other professional groups are not obliged to submit periodical declarations regarding their property status to Tax Offices.

The complainant alleged that the statutory provisions imposing such a duty in respect of judges failed to conform to, inter alia, the principle of equality before the law and constitutional guarantees of privacy and personal data protection, considered in conjunction with the principle of proportionality.

Whilst justifying the formal admissibility of the summarised constitutional complaint, its author submitted that, where no ordinary legal remedies existed by which to challenge the aforementioned statutory obligation, the norm conditioning the right to submit a constitutional complaint upon delivery to the complainant of a final decision in their case (cf. Article 46(1) of the Constitutional Tribunal Act) does not apply. The hypothetical possibility of obtaining such a decision would, in the complainant's opinion, only exist in the event that he failed to fulfil the obligation to submit the relevant declaration, thus running the risk of disciplinary consequences whose determination would be related with issuing the appropriate decision.

The summarised procedural decision was issued within proceedings for the preliminary consideration of a constitutional complaint (Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act). This decision became final by virtue of the complainant's failure to submit a challenge (cf. Article 36(4) of the CT Act).

RULING

The Tribunal refused to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. One of the prerequisites upon which depends the proper and legally effective submission of a constitutional complaint is the pronouncement, by a court or an organ of public administration, and on the grounds of the legal provision challenged in the complaint, of a final decision as regards the complainant's constitutional rights, freedoms and duties (conclusion derived from Article 79(1) of the Constitution and Articles 46(1) and 47(2) of the Constitutional Tribunal Act). Accordingly, it is insufficient to merely indicate that an unconstitutional provision was applied with regard to the complainant and that application of such provision infringed the complainant's constitutional freedoms and rights. The prerequisite for effectiveness of a constitutional complaint occurs only where the infringement of these rights and freedoms has occurred in a qualified manner, in particular by the issuing of a final decision.
2. The term "final decision" (within the meaning of the aforementioned provisions) does not include the mere fact of the entry into force of the legal provision which the complainant alleges to constitute an impermissible interference within the sphere of their constitutional rights and freedoms.
3. The prerequisite of a final decision having been issued in the complainant's case (Article 79(1) *in fine* of the Constitution) may not be associated with the prerequisite of exhausting all legal remedies ("trying all legal means", cf. Article 46(1) of the CT Act).
4. It may happen that an infringement of constitutional rights and freedoms stems directly from statute. Such an infringement, therefore, occurs independently of the issuing of any decision, by a court or an organ of public administration, defining an individual's legal situation. In such a situation, a constitutional complaint is – for the aforementioned formal reasons – inadmissible. This does not, however, signify that such an unconstitutional legal provision is not capable of being reviewed as regards its conformity with the Constitution; such review may be initiated in proceedings other than those of constitutional complaint (cf. Article 191 and Article 193 of the Constitution). As regards the provision challenged in the present case, such review could be performed not only in light of those constitutional provisions defining an individual's constitutional rights and freedoms (as in the case of a constitutional complaint), but also of those determining the constitutional status of a judge.
5. The Constitutional Tribunal is bound, pursuant to Article 195(1) of the Constitution, by constitutional regulation, irrespective of its assessment thereof.

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.

Art. 188. The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- 4) the conformity to the Constitution of the purposes or activities of political parties;
- 5) complaints concerning constitutional infringements, as specified in Article 79, para. 1.

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.

Art. 193. Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.

Art. 195. 1. Judges of the Constitutional Tribunal, in the exercise of their office, shall be independent and subject only to 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. 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.

Art. 47. [...] 2. The judgment, order or another ruling, given on the basis of the challenged normative act, together with an indication of its delivery date shall be enclosed with the complaint.

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