

Procedural decision of 11th February 2003, [Ts 90/02](#)
BASIS OF A DECISION AS THE SUBJECT OF A CONSTITUTIONAL COMPLAINT. CONDITIONING THE ADMISSIBILITY OF A COMPLAINT UPON THE FINALITY OF THE DECISION

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A natural person	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
---	--	----------------------------------

It stems from Article 79(1) of the Constitution that only a legal provision – as opposed to a judgment (decision) in a complainant’s individual case – may constitute the subject of review within constitutional complaint proceedings. Concomitantly, a constitutional complaint is permissible only where the legal provision challenged by the complainant constituted the “basis” of the decision in their individual case. Such a decision must be of a “final” character. Neither the Constitution nor the Constitutional Tribunal Act 1997 defines the notion of the “basis” of a decision. The prerequisite of finality of the decision is, however, precisely defined in Article 46(1) of the Constitutional Tribunal Act, according to which a constitutional complaint may be lodged only after “trying all legal means” (i.e. exhausting all legal remedies).

The person lodging the constitutional complaint in the present case (complainant) exercised the function of the President of the District Court and, as such, was accountable for any infringements of public finances discipline. While considering an allegation that the complainant had infringed financial discipline, the Commissioner for Public Finances Discipline (affiliated to the Minister of Justice) issued a decision rejecting the application to punish the complainant, justifying this with the judicial immunity vested in the complainant. Nevertheless, the complainant alleged that the reasoning of the aforementioned Commissioner’s decision indicated that he had infringed public finances discipline. The complainant disagreed with this reasoning and, subsequently, challenged the decision in question before the appropriate organ of second instance (i.e. Chief Commissioner for Public Finances Discipline) which refused to quash the decision. The complainant was instructed that there was no possibility to appeal against the decision of the Chief Commissioner. The aforementioned instruction was based on § 56 of the Council of Ministers’ Regulation 1999 governing proceedings in cases concerning infringements of public finances discipline; pursuant to this provision, decisions of the Chief Commissioner, issued following a review of the challenge, are “final”.

The complainant alleged that the aforementioned provision infringed guarantees of the right to court, as stemming from Article 45(1), read in conjunction with Article 77(2), of the Constitution.

In the course of preliminary consideration to assess the admissibility of the constitutional complaint (Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act) the Tribunal, sitting as a one-judge panel, refused to proceed further with the complaint ([procedural decision of 9th October 2002](#), reference number as above). In the reasons for this ruling, the Tribunal stated that the challenged

provision did not constitute the basis of the decision of the Chief Commissioner for Public Finances Discipline in the complainant's case, since this provision had no influence on the contents of the decision.

Pursuant to Article 36(4) of the Constitutional Tribunal Act, the complainant challenged (by lodging a so-called complaint) the aforementioned procedural decision of 9th October 2002. In the procedural decision discussed herein, the Tribunal admitted the complainant's challenge, meaning that the Tribunal decided to proceed further with the complaint. A judgment (i.e. a decision on the merits of the case) was not issued, however, since the Tribunal, sitting in a panel appropriate to review constitutional complaints on their merits, found the complaint to be inadmissible for formal reasons (cf. judgment of 6th July 2004, [SK 6/03](#)).

RULING

The Tribunal admitted the complaint against the preceding procedural decision refusing to proceed further with the constitutional complaint.

PRINCIPAL REASONS FOR THE RULING

1. The challenged procedural decision, refusing to proceed further with the constitutional complaint, is based on the assumption that, in light of Article 79(1) of the Constitution, the only legal provision capable of being challenged in a constitutional complaint is one which formed part of a final decision in the complainant's case. Such a narrow understanding of the term "basis" of a decision is not justified in constitutional provisions. The legal regime of the decisions of courts and organs of public administration, discussed in Article 79(1) of the Constitution, is formed not only by substantive provisions defining the content of these decisions, but also by legal provisions classifying the decision in a particular manner and vesting it with a certain characteristic or attribute. The notion "basis" of a decision, within the meaning of Article 79(1) of the Constitution, comprises, in particular, a legal regulation excluding the possibility to challenge such a decision before a court.
2. No rule stems from the Constitution such as would restrict the admissibility of a constitutional complaint to instances where the final decision in the complainant's case was issued by a court. On the contrary, Article 79(1) expressly mentions the final decision of a "court or organ of public administration". Therefore, the notion "final" decision, within the meaning of the aforementioned provision, also covers (as in the present case) an administrative ruling – provided that no legal provision envisages the possibility to challenge this ruling, following exhaustion of the administrative means of appeal, before a court. In such circumstances, it is not required that the interested person attempt other, formally separate, measures which could lead to a judicial ruling in their favour (e.g. in the present case, it is not a prerequisite for admissibility of the constitutional complaint that the complainant attempt to initiate the procedure to deprive him of judicial immunity).
3. It should be noted that the complainant has exhausted all legal remedies in the present case, since the challenged § 56 of the Council of Ministers' Regulation 1999 vests decisions issued in appellate proceedings of financial discipline cases with a "final"

character, meaning that decisions of the Chief Commissioner for Public Finances Discipline are unchallengeable before a court. Accordingly, this provision practically prevents the complainant from initiating judicial review of the decision, despite the fact that this provision is incoherent with Article 16(1) point 2 of the Supreme Administrative Court Act 1995. The complainant may not be burdened with risking whether or not the administrative court would be willing to assess the potential complaint despite the aforementioned obstacle. The risk is even greater since, should such a complaint be rejected by an administrative court, the complainant may exceed the deadline for submission of a constitutional complaint.

4. The second-instance decision of the Chief Commissioner for Public Finances Discipline, refusing to institute proceedings concerning the complainant's financial discipline violation, as a result of the judicial immunity enjoyed by the latter's position, constituted an obstacle to proceed further (so-called negative procedural prerequisite). Within the meaning of Article 79(1) of the Constitution, such a ruling is a decision on the complainant's constitutional rights and freedoms since, in its reasoning, it contains a statement that the complainant violated financial discipline – as if proceedings were instituted and concluded with a finding against the complainant. The complainant proved *prima facie* that the provision preventing him from challenging the aforementioned decision before the court infringes his rights as guaranteed in Article 45(1) and Article 77(2) of the Constitution.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

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