

Procedural decision of 21<sup>st</sup> July 2006, Ts 98/05  
**INADMISSIBILITY OF A CONSTITUTIONAL COMPLAINT LODGED  
BY A STATE SCHOOL AGAINST LEGAL PROVISIONS CONCERNING  
TEACHERS' DISCIPLINARY PROCEEDINGS**

Type of proceedings: Preliminary consideration of a constitutional complaint Initiator: A state school	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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High School No. 1 in Olkusz, a state school administered by the local authority, challenged before the Constitutional Tribunal statutory and executive legal provisions governing disciplinary proceedings in respect of teachers, insofar as that these provisions fail to envisage the possibility of an employer (in this case: the High School lodging the constitutional complaint) filing before a court a challenge to a decision issued in the course of such disciplinary proceedings. According to the complainant, the aforementioned legal regulation fails to conform to the following constitutional provisions: Article 2 (the rule of law principle), Article 32(1) (the principle of equality), Article 45(1) (the right to court) and Article 78 (the right to appeal against judgments and decisions made at first instance).

The reason for lodging the constitutional complaint was the rejection as inadmissible, by the Court of Appeal, of the challenge filed by the Olkusz High School's (i.e. the complainant's) headmaster against the decision of the Second-instance Teachers Disciplinary Committee (*Odwoławcza Komisja Dyscyplinarna dla Nauczycieli*) in a case against a teacher employed at that School.

Within the procedure by which preliminary consideration is given to a constitutional complaint (Article 36, read in conjunction with Article 49, of the Constitutional Tribunal Act 1997), the Tribunal, sitting as a one-judge panel, issued a procedural decision of 15<sup>th</sup> February 2006 (reference number as above), refusing to proceed further with the complaint. In its reasoning for that procedural decision, the Tribunal emphasised that the complainant is an administrative unit discharging public duties as regards education, and hence an entity lacking the *locus standi* required to lodge a constitutional complaint (cf. Article 79(1) of the Constitution).

The Secondary School challenged the aforementioned procedural decision (by lodging a so-called complaint, cf. Article 36(4), read in conjunction with Article 49, of the Constitutional Tribunal Act 1997).

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. There is no categorical exclusion of the possibility of a public legal person exercising the right to lodge a constitutional complaint. However, the *locus standi* of this kind of entity is conditional upon certain additional prerequisites being met. Of prime importance is the demonstration that such entities are addressees of constitutional norms expressing subjective rights falling within the scope of the permissible grounds for lodging a constitutional complaint. Only a person whose constitutional rights or freedoms have been infringed is entitled to lodge such a complaint (Article 79(1) of the Constitution). Accordingly, the effective lodging of complaints alleging infringement of particular constitutional rights is conditional upon the person doing this being able to demonstrate that such rights have been vested therein. A further condition for the filing of a constitutional complaint is that the aforementioned infringement be shown to have been caused by the legal provisions challenged in the complaint.
2. The issue of holding school employees accountable to competent public bodies may not reasonably be considered in the context of constitutional rights or freedoms being protected. A constitutional complaint might potentially be filed by a person against whom the aforementioned activities have been undertaken (i.e. a teacher against whom disciplinary proceedings had been instituted), but not by public authorities before which such a person was held accountable.
3. A possible review by the Constitutional Tribunal of provisions challenged in the present case, shaping the pursuit of disciplinary proceedings against teachers, would be permissible in proceedings whose initiation is not conditional upon the prior infringement of constitutional rights or freedoms of an entity initiating such a review, e.g. within the framework of the [abstract review](#) procedure.

### 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. 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. 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.

#### 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.