

Procedural decision of 7th December 2004, [Ts 99/04](#)
**INABILITY TO REINSTATE TIME LIMIT FOR LODGING
A CONSTITUTIONAL COMPLAINT**

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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On 8th May 2004, Ms. S. lodged a constitutional complaint challenging the conformity of certain provisions of the Labour Code with the Constitution. The Supreme Court's procedural decision, delivered to Ms. S. on 4th February, represented a final decision in her case, issued on the basis of the challenged provisions. Article 46(1) of the Constitutional Tribunal Act 1997 lays down a 3-month time limit for lodging a constitutional complaint, which begins to run from the date on which a final decision was delivered to a complainant. Accordingly, in Ms. S.'s case, this time limit had expired.

The complainant applied to the Tribunal with a motion to reinstate the time limit for lodging a constitutional complaint. The institution of reinstating time limits for initiating a procedural action is provided for in Articles 168-172 of the Civil Procedure Code. Provisions of that Code are applied "as appropriate" within proceedings before the Constitutional Tribunal (Article 20 of the CT Act).

Following preliminary consideration of the constitutional complaint (Article 36 and 49 of the CT Act), the Constitutional Tribunal, sitting as a one-judge panel, issued a [procedural decision of 29th September 2004](#) (reference number as above) refusing to proceed further with the complaint, primarily due to the expiry of the statutory time limit for lodging such a complaint. The Constitutional Tribunal's jurisprudence has consistently stated that this time limit is one of substantive, as opposed to procedural, law and may not, therefore, be reinstated.

The complainant challenged the aforementioned procedural decision refusing to proceed further with the constitutional complaint (by lodging a so-called complaint, cf. Article 36(4), read in conjunction with Article 49, of the CT Act). In the procedural decision of 7th December 2004, issued following examination of the complainant's challenge and summarised herein, the Tribunal, sitting as a three-judge panel, upheld the position expressed in the previous procedural decision.

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. A constitutional complaint may not be considered as a subsequent appellate measure, following an appeal and cassation. A constitutional complaint is an extraordinary

means for protecting infringed constitutional rights and freedoms; the admissibility of lodging any such complaint depends upon observance of a number of prerequisites laid down by the Constitution and by statute (cf. Article 79(1) of the Constitution). The time limit for lodging a constitutional complaint, laid down in Article 46(1) of the CT Act, is identical in character to, for example, time limits for asserting rights of a proprietary character in civil law.

2. The relatively short time limit for lodging a constitutional complaint is related to two significant features of this legal remedy. Firstly, a constitutional complaint serves to protect against current infringements of constitutional rights and freedoms, which precludes the lodging of any such complaint once the infringement is no longer current. Secondly, a constitutional complaint has a subsidiary character, related to the necessity of prior exhaustion of all other legal means vested in the complainant. The consequence of fulfilling this prerequisite is that, in most cases, a significant time lapse exists between the moment at which the complainant's rights or freedoms were infringed and the moment at which it becomes admissible to lodge a constitutional complaint. Such a time lapse may create situations where it will be difficult to substantiate an allegation that a current infringement of constitutional rights or freedoms exists.

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. 20. In relation to cases not regulated in the Act concerning the proceedings before the Tribunal, the provisions of the Code of Civil Procedure shall apply as appropriate.

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.