

Procedural decision of 12<sup>th</sup> August 2005, Tw 23/05  
**INADMISSIBILITY OF AN APPLICATION LACKING A RELATION  
WITH THE APPLICANT’S SCOPE OF ACTIVITY  
AND EVIDENTLY GROUNDLESS**

<b>Type of proceedings:</b> Preliminary consideration of an application <b>Initiator:</b> National Council of Notaries	<b>Composition of Tribunal:</b> 1 judge
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National authorities of occupational organisations, including professional self-regulatory societies acting pursuant to Article 17(1) of the Constitution, may refer applications to the Constitutional Tribunal, initiating the [abstract review](#) of norms. However, such applications are only admissible provided that the challenged normative act concerns matters related to the scope of their activity (Article 191(2), read in conjunction with Article 191(1) point 3, of the Constitution). The aforementioned restriction also applies as regards the subjects mentioned in Article 191(1) points 4 and 5 of the Constitution.

Since the competence of all entities indicated in Article 191(1) points 3–5 of the Constitution to initiate applications is restricted (the so-called “special *locus standi*”, as opposed to the “general *locus standi*” of organs mentioned in Article 191(1) point 1), such applications are not immediately referred for review on their merits but are first made subject to the procedure of “preliminary consideration”, governed by Article 36 of the Constitutional Tribunal Act 1997. The preliminary consideration of such applications is carried out by a judge of the Tribunal. Whenever the application corresponds to the requirements of the Constitution and the Constitutional Tribunal Act, the judge directs the application for further consideration. Whenever the application is either formally defective and the defects therein have not been eliminated by the applicant, or else is “evidently groundless”, this leads to the issuance of a procedural decision on the refusal to proceed further with the application (cf. Article 36(3) of the Constitutional Tribunal Act). The applicant may lodge a challenge against such a procedural decision, this challenge being considered by the Tribunal composed of a 3-judge panel or, in exceptional cases, at a plenary session (Article 36(4), read in conjunction with Article 25(1) letter e and Article 25(1) point 3 letter b, of the Constitutional Tribunal Act).

An analogous procedure of preliminary consideration is applied with respect to [constitutional complaints](#) (Article 49 of the Constitutional Tribunal Act).

In the present case, the preliminary consideration proceedings concerned an application referred by the National Council of Notaries, representing the professional self-regulatory society of notaries, regarding the review of the constitutionality of several provisions of the Counteracting the Introduction of Material Values Stemming from Illegal or Unrevealed Sources within Financial Transactions and Counteracting the Financing of Terrorism Act 2000. The application raised the Tribunal judge’s doubts – from the point of view of the scope of the National Council of Notaries’ *locus standi* or else due to evidently groundless allegations – in the part thereof challenging Articles 8, 11, 12 and 16 of the aforementioned 2000 Act. These provisions regulate:

- the obligation of an institution receiving a client's command or commission concerning a transaction whose value exceeds the equivalent of a specified amount (usually 15,000 Euro) to register such a transaction, as well as the obligation that a transaction be registered regardless of its value whenever the circumstances indicate that material values may originate from illegal or unrevealed sources (Article 8);

- the obligation that such an institution pass on information regarding registered transactions to the General Inspector of Financial Information (Article 11);

- the scope of the information referred to above and the time frames for its forwarding to the General Inspector (Article 12);

- particular obligations of the institution, whenever it is suspected that a transaction may be linked to perpetration of the crime of money laundering (Article 12).

The National Council of Notaries indicated the following provisions of the Constitution as bases for reviewing the constitutionality of the aforementioned provisions of the 2000 Act: Article 2 (the rule of law clause), Article 17 (the status of professional self-regulatory societies and other kinds of self-government), Article 22, read in conjunction with Article 31(3) (conditions permitting limitation of the freedom of economic activity and conditions permitting the limitation of constitutional rights and freedoms in general), Article 42 (limits on the imposition of criminal liability), Article 51 (informational autonomy of an individual), as well as Article 146(4) point 7 (ensuring the internal security of the State and public order as a task of the Council of Ministers).

The National Council of Notaries challenged the discussed procedural decision (by lodging a so-called complaint – see Article 36(4) of the Constitutional Tribunal Act). The Constitutional Tribunal, composed of a 3-judge panel, did not uphold the complaint ([procedural decision of 8<sup>th</sup> February 2006](#), reference number as above).

The refusal to proceed further does not concern the application insofar as the latter challenges the criminal sanctions for the failure to fulfil the obligations specified within the aforementioned 2000 Act, envisaged in Articles 35–37 of this Act. The discussed sanctions may apply, in particular, with respect to notaries. Within this scope, the application of the National Council of Notaries has been directed for consideration on its merits (in the case numbered K 9/06).

## RULING

**The Tribunal refused to proceed further with the application as regards the review of conformity of Articles 8, 11, 12 and 16 of the Counteracting the Introduction of Material Values Stemming from Illegal or Unrevealed Sources within Financial Transactions and Counteracting the Financing of Terrorism Act 2000 with Articles 2, 17, 22, read in conjunction with Article 31(3), as well as Articles 42, 51 and 146(4) point 7 of the Constitution.**

## PRINCIPAL REASONS FOR THE RULING

1. At the stage of preliminary consideration of an application (Article 36 of the Constitutional Tribunal Act), the Tribunal decides on two issues. The first of these is connected with the determination of an applicant's scope of activity within the meaning of Article 191(2) of the Constitution. The second issue, a corollary of the first, leads to a determination as to whether both the challenged normative act and the invoked bases of review are within the previously determined scope of activity of the applicant.
2. The interpretation of the terms "matter" and "scope of activity", as used in Article 191(2) of the Constitution, must be based upon provisions of the Constitution, where the latter constitutes the grounds for vesting a right to lodge an application regarding the review of norms. A provision of a statute or the entity's articles may only confirm that, in the given case, the challenged normative act, or a part thereof, is in fact among cases encompassed by the applicant's scope of activity.
3. It is not a coincidence that the right to lodge an application regarding the review of the hierarchical conformity of norms has been vested in national organs of trade unions and national authorities of employers' organisations and occupational organisations within a single provision of the Constitution (Article 191(1) point 4). The constitutional legislator's intention was to protect only such interests of these entities as have a certain common denominator – the interests of employers connected with hiring employees, employees' interests, or interests connected with the pursuit of a profession. *Ipsa facto*, the term "scope of activity" of occupational organisations, within the meaning of Article 191(2) of the Constitution, does not encompass all matters remaining with such entities, vested therein by virtue of the entity's articles, statutes or even certain provisions of the Constitution.
4. The norm expressed within Article 51 of the Constitution aims to protect the interests of all citizens, regardless of the profession they are engaged in. The referral by the National Council of Notaries to this provision (Article 51(2), in particular) as a basis of review in the present case is an effort to achieve general social aims – the protection of the interests of every citizen, including the notary's client, against the acquisition, collection and provisioning of information regarding them, other than that which is necessary in a democratic State governed by the rule of law and, accordingly, does not remain within the applicant's scope of activity.
5. The application for a review of the conformity of the provisions of the 2000 Act indicated in the ruling of the present procedural decision with Article 22, read in conjunction with Article 31(3), of the Constitution, falls outside the National Council of Notaries' scope of activity. In this part, the application attempts to achieve general social aims – the protection of interests of each entity engaging in economic activity against unconstitutional limitation of the freedom to do so.
6. The sole addressee of Article 146(4) point 7 of the Constitution, referred to within the application as one of the bases of review, is the Council of Ministers. Matters specified in such a manner also do not remain within the scope of activity of the National Council of Notaries.
7. Within the reasoning for the application, the National Council of Notaries fails to indicate even a single argument that would support the allegation that Article 17 of the

Constitution has been infringed by the provisions of the challenged 2000 Act enumerated in the ruling of the procedural decision (cf. Article 32(1) point 4 of the Constitutional Tribunal Act). This signifies evident groundlessness of the application in this regard, within the meaning of Article 36(3) of the Constitutional Tribunal Act.

8. Due to the absence of a substantial conjunction between the aforementioned provisions of the 2000 Act, which do not contain criminal-legal regulation, and Article 42 of the Constitution, indicated by the applicant as a basis upon which to review them, the Tribunal also found evident groundlessness of the application in this regard.
9. When challenging the non-conformity of the provisions indicated in the ruling of the procedural decision with Article 2 of the Constitution and, in particular, the “requirement of correct legislation” stemming from the said provision, the applicant contents itself with arguments according to which the provisions forming the core of the 2000 Act constitute an offence as regards the principle guaranteeing the existence of a “real right” and, additionally, infringe other constitutional rights and freedoms. The National Council of Notaries challenges the appropriateness of the operation of the challenged provisions, which, according to the Council, “infringe the legal order” by introducing contradictions within a statute and using expressions of highly ambiguous meaning. Such arguments may not be deemed evidence supportive of the allegation regarding non-conformity of the challenged provisions of the 2000 Act with Article 2 of the Constitution, and so lead to a finding of evident groundlessness of the application in this regard as well.

#### 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. 17.** 1. The inhabitants of the units of basic territorial division shall form, by virtue of the law, a self-governing community.  
2. Local self-government shall participate in the exercise of public power. The substantial part of public duties which local self-government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

**Art. 22.** Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

**Art. 31.** [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 42.** 1. Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally liable. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.

2. Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself - in accordance with principles specified by statute - of counsel appointed by the court.

3. Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court.

**Art. 51.** 1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.

2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state governed by the rule of law.

3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.

4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.

5. Principles and procedures for collection of and access to information shall be specified by statute.

**Art. 146.** [...] 4. To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of

Ministers, in particular, shall:

- [...]
- 7) ensure the internal security of the State and public order;
- [...]

**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 subparagraphs. 3-5, above, may make such application if the normative act relates to matters relevant to the scope of their activity.

#### CT Act

**Art. 25.** 1. The Tribunal shall pronounce judgments:

- 1) sitting in full bench - in cases:
  - [...]
  - e) of a particularly complicated nature - upon the initiative of the President of the Tribunal or where the application for consideration has been submitted by a bench adjudicating in a given case or in cases in which the particularly complicated aspect is related to financial outlays not provided for in the budgetary act, and, in particular, where the adjudicating bench intends to depart from the legal opinion expressed in the Tribunal's judicial decision given earlier in full bench;
  - [...]
- 3) sitting in a bench of three judges of the Tribunal - in cases:
  - [...]
  - b) complaints in relation to the refusal to proceed with the application for the confirmation of the conformity of other normative acts to the Constitution, ratified international agreements and statutes as well as complaints concerning constitutional infringements;
  - [...]

**Art. 32.** 1. The application or question of law shall comply with requirements referring to procedural letters and shall, in addition, include:

- [...]
- 4) reasons for the claim containing indication of supporting evidence.

**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.