

Procedural decision of 16th August 2004, [Tw 43/03](#)
**INADMISSIBILITY OF AN EVIDENTLY GROUNDLESS APPLICATION
OR CONSTITUTIONAL COMPLAINT. PRINCIPLE OF TRUST
IN THE STATE AS THE BASIS OF A DISTRICT COUNCIL APPLICATION**

Type of proceedings: Preliminary consideration of an application Initiator: District Council of Wieliczka	Composition of Tribunal: 3-judge panel	Dissenting opinions: 0
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Constitutive organs of local self-government units may refer applications to the Constitutional Tribunal, initiating the [abstract review of norms](#). Such applications are, however, only admissible on the condition that the challenged normative act concerns matters related to the scope of that unit's 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 District Council of Wieliczka, raising doubts as to the conformity of a certain legal provision contained in the Council of Ministers Regulation, concerning modifications to State administrative divisions, with certain provisions of the Constitution and the European Charter of Local Self-Government.

In a [procedural decision of 29th March 2004](#) (reference number as above), the Tribunal, sitting as a one-judge panel, refused to proceed further (i.e. to refer the application for review to its merits by the Tribunal, appropriately composed) with the application, insofar as the applicant requested that the challenged provision be reviewed as regards its conformity with: the principle of protecting the citizen's trust in the

State and its laws (as stemming from Article 2 of the Constitution); Articles 15(1) and 170 of the Constitution; and Articles 3 and 5 of the European Charter of Local Self-Government. The remaining aspects of the application were found to be admissible.

The applicant challenged the aforementioned procedural decision by lodging a so-called complaint (cf. Article 36(4) of the Constitutional Tribunal Act). The Tribunal, sitting as a three-judge panel, considered the aforementioned challenge (complaint) and issued the present procedural decision. The Tribunal's interpretation of the notion of "evident groundlessness" (as contained in Article 36(3) of the CT Act) deserves special attention.

RULING

The Tribunal admitted the complaint insofar as it concerned reviewing the conformity of the challenged provision with Article 2 and Article 15(1) of the Constitution and with Article 3 of the European Charter of Local Self-Government.

The Tribunal refused to admit the complaint insofar as it concerned reviewing the conformity of the challenged provision with Article 170 of the Constitution and Article 5 of the European Charter of Local Self-Government.

PRINCIPAL REASONS FOR THE RULING

1. The notion of "evident groundlessness", within the meaning of Article 36(3) of the CT Act, has a specific and qualified character. "Evident groundlessness" exists where the provisions referred to in the application, as bases of review, have no connection with the challenged norms.
2. Pursuant to Article 4a of the Commune Self-government Act 1990, the Minister responsible for administrative matters shall, prior to issuing a regulation which would alter the borders of a commune, obtain the opinion of a constitutive organ of the relevant local self-government unit. Such opinion is delivered following consultation with local residents. The duty to consult rests with the constitutive organ of the local self-government unit, which retains the competence to choose the scope and form of such consultation; no legal provision imposes the obligation to hold a referendum. Since neither the Council of Ministers nor the appropriate Minister are under a duty to consult, the failure to conduct a referendum may not form the basis of a challenge against the procedure for issuing a regulation altering the borders of units of territorial self-government. For this reason the application is evidently groundless insofar as the applicant indicates Article 170 of the Constitution and Article 5 of European Charter of Local Self-Government as bases of review.
3. A local self-government unit, acting as applicant within proceedings before the Constitutional Tribunal, does not possess the *locus standi* to challenge legal provisions from the perspective of constitutional guarantees of citizens' rights. Neither may it indicate, as the basis of review, the principle of protecting citizens' trust in the State and its laws (as stemming from Article 2 of the Constitution).

4. In the present case, the applicant alleges that the legislator infringed the principle of trust as regards the local self-government unit, rather than as regards citizens. Thus formulated, the basis of review falls within the district council's scope of activity, within the meaning of Article 191(2) of the Constitution.

**Provisions of the Constitution, the Constitutional Tribunal Act
and the European Charter of Local Self-Government**

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. 15. 1. The territorial system of the Republic of Poland shall ensure the decentralization of public power.

Art. 170. Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local self-government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute.

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.

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.

European Charter of Local Self-Government

Art. 3. 1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Art. 5. Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.