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**INTERNATIONAL CONFERENCE**  
**“INDIVIDUAL CONSTITUTIONAL COMPLAINT  
TO THE CONSTITUTIONAL COURT OF UKRAINE”**

**Kiev, Ukraine**

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**REPORT**

**“CONSTITUTIONAL COMPLAINT  
IN POLAND AND UKRAINE”**  
**(Powerpoint slides)**

**By**  
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# Constitutional Complaint in Poland and Ukraine

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# Origins of the Constitutional Complaint

- it is an original Polish legal structure,
- it does not duplicate the German or Austrian complaint,
- the discussion on constitutional complaint started in early 1990s,
- the model of complaint was widely discussed in the Constitutional Committee of the National Assembly (1992-1997).

# The Legal Essence

- a special legal remedy,
- gives an individual a direct access to the Constitutional Tribunal,
- separate procedure in which an individual who has lost in all possible instances refers the case to the Constitutional Tribunal independently,
- an individual (a citizen or another legal entity) must raise a charge of violation of freedoms and rights set out in Chapter II of the Constitution.

It is **a subsidiary means** of protecting human rights with regard to the right to court.

**CT is not yet another extraordinary instance** of common courts.

# Narrow or Broad Model? (1/3)

The Constitution of 1997 adopted a **narrow model** of constitutional complaint:

- the object of the review is a **legal provision** on the basis of which a particular judgement or a decision has been made.
- the complainant claims that this provision (a norm of law) violates the Constitution.
- **not court rulings or decisions of administrative bodies.**

Complaint may be used only in the case of violation of constitutional rights and freedoms **by a public authority** and not in the case of any violation of constitutional rights and freedoms.

It cannot be, e.g., violation of the complainant's rights by any other private entity.

## Narrow Model (2/3)

- can be submitted to the CT only after all other available legal means have been exhausted,
- the complainant must have the final judgement of a court or the final administrative decision,
- the complainant must exhaust all available legal means.

## Narrow Model (3/3)

- the subject matter of a complaint can only be the normative basis on which a given ruling (decision) was issued,
- the complainant must indicate which of his/her freedoms or rights (set out in the Constitution) have been violated,
- the complainant must act in defence of the freedom or right that he/she is entitled to. It is not possible to file a complaint on behalf of another person.
- **A complaint is direct.**
- **it is not *actio popularis*.** **The complaint is incidental** (specific): it appears in connection with a specific legal dispute.

# Submission of a Constitutional Complaint

## **Substantive conditions:**

- it is a legal act on the basis of which a court or an administrative body has issued a judicial or an administrative decision
- **content of the complaint:** concerns unconstitutionality of a legal provision (a legal norm).

## **Who can lodge a constitutional complaint?**

Everyone whose constitutional freedoms or rights have been infringed (Article 79 of the Constitution).

- a natural person (a Polish citizen or a foreigner),
- other legal entities (insofar as they can enjoy human rights):
  - a) political parties,
  - b) associations,
  - c) trade unions,
  - d) companies,
  - e) businesses,
  - f) and so on...



# Formal Conditions

- the complainant has **3 months** to lodge a complaint (from the date when the final judgment was delivered),
- a final court decision in the complainant's case,
- all ordinary instances of the proceedings are exhausted,
- not required to file a cassation complaint to the Supreme Court (*cassation* and *cassation complaint* are extraordinary legal remedies),
- the complaint **is free** of charge,
- prepared by a lawyer or a legal adviser (to eliminate cases which are not suitable for a complaint in advance) **'compulsory representation by a lawyer'**.

# Proceedings before the Tribunal

## TWO STAGES

- I. preliminary review,
- II. review of merits.

# I. Preliminary Review. Admissibility of a Complaint (1/5)

- whether the conditions necessary to submit a complaint have been met:

A) meets the requirements of a pleading

e.g. submitted within the 3 months deadline

e.g. the complaint is signed

B) indicates which of complainant's subjective rights have been violated,

e.g. the general principle of equality before law (Article 32 of the Constitution) cannot be the benchmark of review

C) specifies **the manner** in which his/her subjective right has been violated,

D) whether the complaint is not “**manifestly unfounded**” (e.g. because it concerns the:

- gap in the law,
- application of law,

## I. Preliminary Review. Admissibility of a Complaint (2/5)

- The CT may summon the complainant to provide additional explanations (e.g. to clarify the allegations, to supplement the documents etc.) within **7 days**.
- The CT sitting as a single judge may reject the complaint as inadmissible.
- If the complainant appeals, within **7 days**, then the CT decides sitting as 3 judges.
- The decision of CT is then final: the sitting as 3 judges changes the previous decision of 1 judge (and admits the complaint to be reviewed by the Tribunal) or the complaint is rejected.

If the CT accepts the complaint for review, it informs **the Ombudsman** and **the Children's Ombudsman**. These bodies may join the complainant. In practice, this is frequent.

## I. Preliminary Review. Characteristic Institutions (3/5)

The complaint is ‘manifestly unfounded’

At this stage it is possible to declare the complaint ‘**manifestly unfounded**’. The CT decides to dismiss the complaint at this stage,

- judge has a **margin of appreciation** in examining the premises of the complaint.  
e.g. the complainant requests a review of a ‘legislative failure’ (*zaniechanie ustawodawcze*) or ‘gap in the law’,

## I. Preliminary Review. Characteristic Institutions (4/5)

A kind of “**pilot judgment**” is issued, if:

- the CT receives a number of complaints concerning the same legal provision,
- these complaints are received by various panels of the CT,
- the case is decided by the panel which prepares the decision as the first one,
- other benches – referring to this decision – decide in the same way as the first panel.

## I. Preliminary Review. Consequences (5/5)

- Around 90% of complaints are rejected at the stage of preliminary review.
- Causes:
  - A. submission after the deadline,
  - B. non-exhaustion of judicial remedies,
  - C. the applicant treats the CT as ‘another instance’,
  - D. invalid benchmark of review (e.g. the principle of equality before law).

## II. Review of Merits (1/2)

- 1997 -2015, CT examined complaints at a **public hearing** (panel of 3, 5, 15 judges),

The decision as to which panel will examine the case depends on two factors:

- a) on the rank of a legal act that violates human rights,
- b) in addition, if the case is complicated, it is always examined by the full bench (at least nine judges).

- since 2015, the opposite principle: judgement issued at a **closed session** (without a public hearing)



## **II. Review of Merits. Suspension of the preliminary ruling or decision (2/2)**

The CT may issue a *preliminary ruling or decision to suspend* the enforcement of the judgement to which this complaint relates.

The premise for issuing such a decision is the fact that the execution of the judgement:

- a) could have irreversible effects,
- b) or if it is in important public interest,
- c) or if it is in important interest of the complainant.

In practice, such decisions are rare (eg. in 2006, suspension of the execution of imprisonment of a journalist).

Matters concerning the enforcement of law are beyond the CT's jurisdiction. The CT is a court of law, not a court of facts.

# The Effects of the Ruling of the CT Issued as a Result of a Constitutional Complaint

1. A given legal act (norm) **ceases to be binding**. This effect takes place *erga omnes*, not only with regard to the complainant (**macro effect**).

In contrast, the judgement of a court or the decision of a body is not abolished by the CT. The CT has no authority to review such a judgement or a decision.

2. Further consequences may result from the provisions of the relevant legal procedures. On the basis of each of the procedures (criminal, civil, administrative), the complainant may demand **the resumption** of the legal proceedings in his/her case (**micro effect**).

# Statistical Data

- 1997-2014 CT received 4674 complaints,
- in 2014 - 375 complaints (23 admitted to review),
- in 2015 - 408 complaints (48 admitted to review),
- in 2016 - 267 complaints (31 admitted to review).
- On average, the CT decides around 40 constitutional complaints per year and issued 20 judgement per year,
- Post-2015: 42% decrease in the number of cases received by the CT in 2016 (lowest number since 2004). However, constitutional complaints amounted to 74% of all cases before the CT.

# The Timeline of Review of Constitutional Complaints

- The preliminary review (review of admissibility) takes place on the rolling basis.
- In 2015, the review of merits (delivery of a judgment) took around 12 months.
- In 2015, the CT took on average 18 months to decide a case.

# What are the Subject-matters of Constitutional Complaints?

1. most frequent subject-matters: tax law, law on co-operations, social rights,

2. right to access to the court (Article 45 of the Constitution).

The complainants seek the most extensive interpretation of this right, e.g. that an administrative court can review the correctness of high school final exam in chemistry.

3. Sometimes, the constitutional complaint can be a basis for important cases concerning the state system (e.g. the assessor judgment).

# Conclusion

Constitutional complaint is a difficult tool of human rights protection. It is difficult both for complainants and for judges.

The constitutional complaint is **an effective** tool of human rights protection. This is the levers of the acces to the CT,

The “**narrow model**” of complaint introduced in Poland in 1997 has been positvely verified by practice.