



**3<sup>rd</sup> Congress of the World Conference on Constitutional Justice  
'Constitutional Justice and Social Integration'  
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**Questionnaire**

**Reply by the Constitutional Tribunal of Poland**

**A. Court description**

**Introduction**

In Poland, according to Article 1 of the Constitutional Tribunal Act, the Constitutional Tribunal is an organ of court authority, appointed to examine the conformity of normative acts and international agreements to the Constitution and implement other objectives specified in the Constitution. The seat of the Tribunal is in Warsaw.

No constitutional judiciary in Poland was organized in the first half of the 20<sup>th</sup> century nor after the World War II. After 1945, soviet political models were imposed consisting particularly on rejection of the separation of power strictly controlled by the communist party. The sovereign position in the unique system of the state's organs was occupied by the unicameral Parliament. It was not until the breakthrough of 1980, enabled by the Solidarity social movement, that could possibly turn into reality some claims regarding the democratization of the political system. Among many others, a necessity to establish a constitutional judiciary was expressed at that time by some representatives of the Polish legal doctrine.

In 1982, an amendment to the Constitution introduced such organs like Constitutional Tribunal into the Polish legal system. However, the Constitutional Tribunal Act was adopted in 1985 as a result of a compromise reached with difficulty, containing a number of limitations upon the Tribunal's position and competences controlled by the communist party. Under the Constitutional Tribunal Act the first composition of judges was assembled in 1985 and the first judgment was pronounced in 1986.

Substantial organic changes were not possible until the transformation of the political system in 1989. Amendments to the Constitutional Tribunal Act were adopted in November 1989. The Tribunal got a truly independent position as a judicial organ of constitutional review. The next breakthrough came with the Constitution of 2 April 1997 presently in force, followed by the new Constitutional Tribunal Act of 1 August 1997 adjusting the new constitutional regime and settling the present position of the Constitutional Tribunal in Poland.

**I. Basic texts**

As of 1997, the Constitutional Tribunal of Poland exercise its functions on the basis of the Constitution of the Republic of Poland of 2 April 1997, which entered into force on 17

October 1997, and on the basis of the Constitutional Tribunal Act of 1 August 1997 (Official Journal of the Republic of Poland No. 102, item 643, as subsequently amended).

## **II. Composition, procedure and organisation**

### **Composition of the Constitutional Tribunal**

According to the Article 194 of the Polish Constitution, the Constitutional Tribunal is composed of fifteen (15) judges appointed individually by the Sejm (lower chamber of the Polish Parliament) amongst candidates distinguished by their knowledge of the law. According to the Article 5 of the Constitutional Tribunal Act, a judge of the Tribunal shall possess necessary qualifications to hold the office of a judge of the Supreme Court or the Chief Administrative Court.

Candidates for the office of a judge of the Tribunal are nominated by at least fifty (50) deputies or by the Presidium of the Sejm. A resolution of the Sejm concerning the election of a judge of the Tribunal requires an absolute majority of votes expressed in the presence of at least half of the total number of deputies.

Every judge of the Constitutional Tribunal is appointed for a nine-years-term of office and he/she cannot be reappointed. The President and Vice-President of the Constitutional Tribunal are appointed till the end of his/her judicial term by the President of the Republic from amongst two candidates proposed by the General Assembly of the Judges of the Constitutional Tribunal.

A person elected to the office of a judge of the Tribunal takes the oath in the presence of the President of the Republic of Poland. The refusal to take the oath is equivalent to a resignation from the office of a judge of the Tribunal.

While exercising their office, judges of the Constitutional Tribunal are independent and subject only to the Constitution. Being provided with appropriate conditions for work and granted decent remuneration during their term of office, judges of the Constitutional Tribunal cannot belong to a political party, a trade union or perform public activities incompatible with the principles of the independence of the courts and judges.

Judge of the Constitutional Tribunal cannot be held criminally responsible or deprived of liberty without prior consent granted by the Constitutional Tribunal. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Being notified of such detention, the President of the Constitutional Tribunal may order an immediate release of the detained judge.

A judge of the Tribunal may be subjected to disciplinary punishment (warning, reprimand, removal from the office), pronounced by the Tribunal, for an infringement of provisions of the law, acts inconsistent with the dignity of his/her office or unethical conduct which might undermine confidence in his/her person.

### **Procedure**

The procedure before the Tribunal, principles and procedure of adjudication and enforcement of judicial decisions is organised on the basis of the Constitutional Tribunal Act. 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.

According to Article 19 of The Constitutional Tribunal Act, in the course of proceedings, The Tribunal examines all relevant circumstances in order to comprehend the case in every

respect. Hearings of the Tribunal shall be public unless particular provisions provide otherwise. The President of the Tribunal designates the judges to the bench of the Tribunal, including the presiding judge and the judge rapporteur. The presiding judge of the bench in a given case may dispense with its public nature for reasons of security of the State or protection of classified information at the "secret" or "top secret" level of security classification. By the time the hearing has commenced, an applicant may withdraw the application, question of law or complaint.

The Tribunal pronounces judgments sitting in full bench, requiring participation of at least nine judges (cases enumerated in Article 25 of the Act, most often upon the application of the President of the Republic of Poland for the confirmation of conformity to the Constitution of a statute prior to its signing or an international agreement prior to its ratification; upon the initiative of the President of the Tribunal in cases of a particularly complicated nature); sitting in a bench of five judges of the Tribunal (basically in cases of the conformity of statutes or ratified international agreements to the Constitution); sitting in a bench of three judges of the Tribunal (in cases of the conformity of regulations of ministers to the Constitution).

Basically, the participants in the proceedings before the Tribunal are a subject who submitted an application or complaint concerning constitutional infringement, an organ which issued an act included in the application or complaint concerning constitutional infringement, the court, which has presented a question of law to the Constitutional Tribunal, the Public Prosecutor-General and the Commissioner for Civil Rights Protection.

Courts and other organs of public authority are obliged to render assistance to the Tribunal and, at its request, present records of proceedings related to the proceedings before the Tribunal. The Tribunal is not bounded by motions as to evidence submitted by participants in the proceedings and may, ex officio, admit evidence which it considers relevant to the examination of the case. The costs of proceedings before the Tribunal are borne by the State Treasury.