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**THE PARTIES EMPOWERED TO LODGE
A CONSTITUTIONAL COMPLAINT IN POLAND
AND IN SELECTED EUROPEAN COUNTRIES –
LEGAL-COMPARATIVE STUDY**

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The parties empowered to lodge a constitutional complaint under the Polish model are defined in Article 79(1) of the Polish Constitution, stating that: “Everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal (...). The above quoted article is considered to have the fundamental significance in the process of identification of the parties entitled to lodge a constitutional complaint, so in other words, provides a clear answer to the question who can effectively lodge such a complaint in order for the adequate proceedings to be officially opened (however – which is explained in detail in this article – having fulfilled certain specified objective conditions).¹

Such interpretation of the parties authorized to lodge an effective constitutional complaints is – according to constitutional law scholars – above all the expression of:²

- 1) realisation of individualistic concept of the citizens’ rights and freedoms, in case of which opening of the discussed procedure depends on the individual concerned,
- 2) transfer of the responsibility for the rights and freedoms’ protection onto the parties directly concerned; the state may support the discussed protection for the sake of which it can make use of the competences of some of the

¹ See: Z. Czeszejko-Sochacki, *Skarga konstytucyjna w prawie polskim*, “Przegląd Sejmowy” 1998, No 1, p. 39.

² See: J. Oniszczyk, *Kompetencje Trybunału Konstytucyjnego w Konstytucji RP* [in:] *Konstytucja, Trybunał Konstytucyjny*, ed. C. Banasiński, J. Oniszczyk, Warsaw 1998, pp.177-178.

- organs entitling them to demand for abstract control and specific principle of the state aiding and abetting),
- 3) accepting, that the guarantee of the constitutional material rights must be specified directly in the Constitution itself (the guarantees are formulated among others as a result of the lack of certainty that the basic freedoms and human rights are observed),
 - 4) stating that it is possible to directly apply the provisions of the Constitution, as far as the basic rights of an individual are concerned, by “everyone” in a particular situation when his or her constitutional laws are violated,
 - 5) striving to realize a citizen’s constitutional rights by granting him the right to a constitutional hearing of his case.

According to Z. Czeszejko-Sochacki, the term “everyone” should be understood in a wide perspective. According to that scholar the term comprises both natural persons – the citizens of Poland, but also other people being under the authorities of the Polish State (with some exemptions concerning foreigners),³ stateless persons and legal persons. The justification for such an interpretation of the term “everyone” is the fact that the Constitution uses it both while referring to the issue of constitutional appeal and the provisions of Article. 45(1).⁴ Taking into account that both institutions have the character of procedural constitutional guarantees but also the authorisation to file a constitutional complaint with the Constitutional Tribunal can be considered as particular qualified form of the right to fair judgement, so in the light of the above, there are no obstacles to accept that the legislator understood the term “everyone” in the same way in both of the cases referred to above. There are some arguments supporting that point of view:⁵

- 1) such a definition of the class of objects results from the principle of equal treatment by the law and from the prohibition of discrimination “for any reason whatsoever” (Article 32 of the Constitution of the Republic of Poland),
- 2) similar point of view is shared by the International Pact of Civil and Political Rights – in Article 14 – in which the guarantee to the right of fair judgement is preceded by the declaration on the equality of all persons when it refers to the proceedings in courts and tribunals,⁶

³ Article 37(1): “Anyone, being under the authority of the Polish State, shall enjoy the freedoms and rights ensured by the Constitution” and (2): “Exemptions from this principle with respect to foreigners shall be specified by statute.”

⁴ “Each person has the right to a fair and public hearing of his case without undue delay before a competent, impartial and independent court.”

⁵ Z. Czeszejko-Sochacki, *Skarga konstytucyjna...*, pp. 40–41.

⁶ Article 14(1): “All the people are equal for courts and tribunals. Each person has the right to a fair and public hearing of his case before a competent, impartial and independent court (...), (2);

- 3) in Article 6 EKPC (European Commission of Human Rights) assures that “everyone” has the right to court proceedings; while according to international public law scholars the term “everyone” is understood with respect to the natural and legal persons (similar position has been presented in the statement issued by the European Tribunal of Human Rights ETPC),⁷
- 4) Polish Constitutional Tribunal uses a similar interpretation in its reasons for the decision dated on 25th February 1992.⁸

Wider interpretation of the term “everyone” is possible also when based on slightly different reasons. J. Trzciński claims that for the purpose of proper interpretation of the scope of this term the aims which can be reached while served by the institution of constitutional appeal should be pointed out and also the types of infringed rights and freedoms should be determined as the point of reference.⁹ The

“Anyone accused of committing a crime has the right to be treated as innocent until his or her guilt is proved in conformity with the statute; (5): “Each person sentenced for an offence has the right to appeal to the court of higher instance for further adjudication of the verdict on his or her guilt and punishment in conformity with the statute,” E. Osmańczyk, *Encyklopedia ONZ i stosunków międzynarodowych*, Warsaw 1986, p. 380.

⁷ For further information see: M.A. Nowicki, *Kamienie milowe. Orzecznictwo Europejskiego Trybunału Praw Człowieka*, Warsaw 1996, p. 180 and.

⁸ For further information see: OTK 1992, part. I, pos. 2, p. 56; In another case concerning a legal person the decision-making bench of the Constitutional Tribunal presented the following reasons for the decision: “The constitutional complaint has been lodged by a commercial company, which means that it was lodged by a legal person. Therefore, a question occurs whether the right to lodge a complaint is vested in a legal person. Some doubts emerge when it comes to the interpretation of the system as an adequate provision specifying the status of the institution of a complaint was provided in the Constitution in chapter II: *Wolności, prawa i obowiązki człowieka i obywatela* [*Personal Freedoms and Rights*]. However, the interpretation of the assigned function of a complaint could serve the opposite understanding and interpretation of this institution which could be proved by the solution adopted in Article 43 of the Civil Code, according to which the provisions regulating the issue of protection of personal properties are adequately applied in case of legal persons (Article 23 and 24 CC). Therefore, some doubts concerning this issue shall still remain unsolved, as it can be claimed that in those cases in which the legislator aims at stressing the existence of certain rights he should point at them directly. The institution of a constitutional complaint, as shaped in Europe, admits any party – not only a natural person – to lodge a complaint related to the violation of the fundamental right guaranteed by the Constitution, on condition that the party lodging a complaint remains the object (carrier) of such right. Only when the legal persons can be considered to be the object of particular fundamental rights they can be entitled to lodge constitutional complaints. (...) However, it has to be stressed here that a constitutional complaint is vested in legal persons only when they can be treated as objects (carriers) of the fundamental right pointed at in the Constitution,” see: file number: Ts 9/98 – unpublished provisions, see: *Skarga konstytucyjna w orzecznictwie Trybunału Konstytucyjnego i w doktrynie* [*Constitutional complaint in the Constitutional Tribunal jurisdiction and opinions of legal scholars*], ed. D. Hajduk, Warsaw 1999, pp. 7–8.

⁹ J. Trzciński, *Podmiotowy zakres skargi konstytucyjnej* [in:] *Konstytucja, Wybory, Parlament*, ed. L. Garlicki, Warsaw 2000, p. 207; A. Łabno, *Skarga konstytucyjna w Konstytucji III RP* [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, ed. B. Banaszak, A. Preisner, Warsaw 2002, p. 773.

fact that Article 79(1) constitutes a part of the chapter of the Constitution devoted to the rights and freedoms may mean that the legislator understands the term “everyone” above of all as referring to the natural person while a closer analysis of the provisions of chapter II of the Constitution allows for even wider interpretation of the subject notion.

Therefore, in the light of this latter assumption, it is possible to isolate the use of the term “everyone” in the interpretation of a natural person, e.g. Articles: 41, 42 and 47.¹⁰ (The context in which the term is used points at such an interpretation. So, the key freedoms and rights are those “the essence of which is that it is undoubtedly only a human being, a natural person who can make use of those freedoms and rights”).¹¹

Secondly, other parties entitled to use the vested rights and freedoms can be traced in the interpretation of the subject term. The provisions specified in Articles 45, 63, 77, 78 and 80 of the Polish Constitution constitute the proof to such an interpretation.¹² Therefore, those other parties can be identified as: social organisa-

¹⁰ Article 41(1): “Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute,” (2): “Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. (...)” (3): “Every detained person shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. (...)” (4): “Anyone deprived of liberty shall be treated in a humane manner,” (5): “Anyone who has been unlawfully deprived of liberty shall have a right to compensation.”

Article 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 responsible. (...)” item 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,” item 3: “Everyone shall be presumed innocent until his guilt is determined by the final judgement of a court.”

Article 47: “ Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.”

¹¹ Patrz: J. Trzeciński, *Podmiotowy zakres skargi konstytucyjnej* [in:] *Konstytucja...*, p. 209.

¹² Article 45(1): “Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.”

Article 63: “Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person – with his consent – to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration (...)”

Article 77(1): “ Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law,” (2): “Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.”

Article 78: “ Each party shall have the right to appeal against judgments and decisions made at first stage (...)”

(Continued on next page)

tions, associations, political parties or legal persons.¹³ Such an interpretation of the term “everyone” is imposed by the objectives a constitutional appeal is meant to serve, namely: eliminating from the legal system those statutes which are not in conformity with the Constitution but which protect the constitutionally guaranteed rights that legal persons can enjoy (e.g. the right to court proceedings, the right to compensation for a damage, the right to appeal to the Commissioner for Civil Rights Protection).

Finally, a wide interpretation of the term “everyone” is justified also by the will of the organ responsible for the establishment of the political system, as expressed in the voices of the members of the National Assembly Constitutional Commission (Komisja Konstytucyjna Zgromadzenia Narodowego). During its sessions it was decided that the right to lodge a constitutional complaint should be granted to “everyone” in the understanding of an object of rights, for the purpose of differentiating the term “everyone” from the term “citizen,” “any citizen”. In the course of discussion the term “person” was also used.¹⁴ Therefore, in the light of the above consideration the term “everyone” shall stand for a natural, person, a citizen or a legal person.

However, the final consensus concerning the issue of understanding of the scope in which the term “everyone” should be understood has not been reached in case of the organs of public authorities, including the territorial self-government bodies. The view that the above discussed term shall not be treated as referring to those organs prevails.¹⁵ The following issues should be considered as the most significant:¹⁶

- legal status of the public authorities has been specified beyond the provisions on the freedoms and rights of a human being and citizen (they are referred to in other articles of the Constitution);
- the organs of the public authorities execute certain types of competences and they do not make use of rights and freedoms;
- the sphere of freedoms and citizens’ rights does not penetrate into the sphere of competences of the organs of public authorities, whose essential aim is to apply the legal norms in clearly specified situations; the sphere of competences

Article 80: “In accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens’ Rights for assistance in protection of his freedoms or rights infringed by organs of public authority.”

¹³ For further information see: L. Garlicki, *Trybunał Konstytucyjny w projekcie Komisji Konstytucyjnej Zgromadzenia Narodowego*, PiP 1996, No. 2, p. 13.

¹⁴ J. Trzciński, *Podmiotowy zakres skargi konstytucyjnej* [in:] *Konstytucja...*, p. 212.

¹⁵ *Ibid.*, pp. 212-213; Z. Czeszejko-Sochacki, *Skarga konstytucyjna...*, pp.-p. 40-41; *Konstytucje Rzeczypospolitej oraz komentarz do Konstytucji RP z 1997 roku*, ed. J. Boć, Wrocław 1998, p. 143.

¹⁶ J. Trzciński, *Zakres podmiotowy...*, p. 53.

of the organs of public authorities constitutes a border for the sphere of the citizens' freedoms and rights.

However, there may be situations in which the institution of a constitutional appeal shall refer also to the organs of public authorities, namely we have in mind those situations in which their constitutionally protected rights put those parties in the situation identical to that of the natural persons or other legal persons.¹⁷

Foreigners face significant limitations when it comes to the possibility to use the institution of a constitutional appeal. The restrictions are the result of the provisions of Article 79(2) as referred to Article 56 of the Constitution. The above mentioned constitutional limitations have already been analysed earlier in this article.

The parties entitled to file a constitutional complaint in the Federal Republic of Germany have been defined broadly, as both the Basic Act and the act on Federal Constitutional Tribunal FTK state that the right to lodge a constitutional complaint is vested in "everyone" whose rights have been violated by the public authorities.

In the light of the currently applied solutions it rather leaves no doubt that the objects (carriers) of rights entitled to lodge a constitutional complaint are first of all natural persons. The circle of persons entitled to make use of this right depends on the character of particular fundamental rights vested but also on those enumerated in § 90 of the act on Federal Constitutional Tribunal FTK. It can comprise all the persons including also foreigners and stateless persons, however it can be limited by their citizenship (see: Article 8, 9, 11, 12, 16(1) and (2) sent. 1, Article 33 and 38 of the Basic Act).¹⁸ Differently from the Polish legal regulations the situation of the foreigners willing to exercise the right of asylum has been based on the

¹⁷ Z. Czeszejko-Sochacki, *Skarga konstytucyjna...*, p.41; B. Banaszak, *Skarga konstytucyjna i jej znaczenie w zakresie ochrony praw podstawowych* [in:] *Podstawowe prawa jednostki i ich sądowa ochrona*, ed. L. Wiśniewski, Warsaw 1997, p. 178.

¹⁸ Article 8(1): "All the Germans have the right to peaceful and unarmed assembly, without a prior notification or permission," (2): "When it refers to the assembly in the open space this right can be limited by the statute or based on the statute."

Article 9(1): "All the Germans have the right to form associations and trade unions," (2): "Associations, the aims or activities of which are not in conformity with the criminal statute or those which are against the constitutional order or the idea of international understanding shall be banned."

Article 11(1): "All the Germans enjoy the freedom to choose their place of residence within the whole federal territory," item 2: "Limitations upon this freedom may only be imposed by a statute or based on a statute (...)."

Article 12(1): "Any German shall have the freedom to choose and pursue his occupation and to choose his place of work or education. An obligation to work may be imposed only by statute," (2): "No one shall be forced to perform a specified form of job, beyond the framework of traditional, universal and equal for anyone, public duty of performance for public benefits," (3): "Compulsory labor is permissible only in the case of the deprivation of freedom adjudged by the court."

Article 16(1): "No one can be deprived of the German citizenship. The loss of citizenship may only result from the statute and against the will of the person concerned it can be decided only in the

constitutional norms,¹⁹ thanks to which foreigners are included in the group of parties enjoying the right to file a constitutional complaint. Other rights vested in the non-citizens comprise rather classical catalogue of freedoms and rights, including first of all: the right to life, the right to petitions, freedom of speech, personal liberty, the right to marriage, marriage and family protection, freedom of worship and conscience, secrecy of correspondence, the right to a statutory judge, right to property, inviolability of one's home, equality to law, the right to make use of the freedom of arts and education.²⁰

Some doubts may occur as far as the right to lodge a constitutional complaint is concerned by legal persons and alike. The problem is clarified in art 19 item 3 of the Basic Act in which we read: "Fundamental rights are vested also in the legal persons running their activities in the country, on condition that they can be applied in case of those persons." Therefore, the Constitution should resolve any doubts related to this problem, including the legal persons running their economic activities within the territory of the country, in the group of parties enjoying the right to lodge a constitutional complaint. According to L. Garlicki a question "whether a given legal person may be treated as an object of a relevant fundamental right" may always be raised.²¹ In this respect the same applies to various collective groupings which are not vested with legal personality under civil law (associations, political parties). Assuming that the language of the Constitution is

situation in which as a result the person shall not become a stateless person," (2) sent. 1: "No German citizen can be expelled from the country (...)."

Article 33(1): "Any German citizen enjoys equal civil rights and duties in any country," (2): "Any German citizen shall have equal access to any public office accordingly to his usefulness, his qualifications and professional achievements (...)."

Article 38(1): "Members of the German Federal Parliament are elected in the free, equal and secret universal suffrage. They shall be the representatives of the whole nation and shall not be bound by any orders or instructions and are responsible only to their own conscience," (2): "Anyone over 18 is entitled to vote in the elections and only the person of age can be elected," (3): "Details are specified by the federal statute."

¹⁹ Article 16(2) sent 2: "(...) Persons oppressed for political reasons shall enjoy the right of asylum."

²⁰ J. Olejniczak, *Notatka w sprawie skargi konstytucyjnej w Republice Federalnej Niemiec*, dated on 30th January 1993, No. ZO-07-19/93, Biblioteka Trybunału Konstytucyjnego, p. 4.

²¹ See: L. Garlicki, *Skarga konstytucyjna...*, p. 9; This question was answered by the Federal Constitutional Tribunal – FTK with reference to the rights provided in Article 2(1) (the right to free personality development) Article 3(1) (equal treatment by the law), Article 4(1) (freedom of worship and conscience), Article 5(1) (freedom of speech), Article 9 (see note 18), Article 12 (see note 18), Article 13 (inviolability of one's home), Article 14 (the right to ownership and inheriting), Article 101(1) sent. 3 (the right to have a statutory judge) and Article 103(1) (the right for hearing before the court in conformity with the law); *ibid.*

broader than the language of civil law, it is surmised that they are also covered by the protection afforded under Article 19(3) (while foreign legal persons are not).

In its decision of 21st March, 2000, file no. Sk 6/99, the Constitutional Tribunal addressed the powers of a legal person to lodge a constitutional complaint, pointing out that the complaint is required to relate to the rights and freedoms of such person. The Tribunal relied on a model of complaint developed in Europe, where a complaint of each and every person against a violation of a fundamental right laid down under the Constitution is allowed, as long as such person is the object (carrier) of such right. In other words, legal persons have the right to lodge a constitutional complaint against a violation of the rights vested in them under the Constitution only if they are “beneficiaries of specific basic rights.”²² The Constitutional Tribunal relies here on the views expressed by legal scholars asserting that the right to lodge a constitutional complaint is vested in a legal person when “there is a correspondence between the nature of the object and the nature of the right such object invokes. The right violated must therefore belong to the category of rights expressed in the Constitution which have as their object the legal person filing the complaint.”²³

On the other hand, it is easier to point out what carriers of rights are not covered by the provisions of Article 19(3) of the Basic Act. As in the case of Poland, it is assumed that legal persons governed under public law (universities and colleges, state enterprises, territorial division units, public law foundations) have no right to lodge a complaint. “They are constituents of the state in the broad sense of the word or of official authority, and the constitutional complaint by definition seeks to afford protection against the acts of such authority, rather than provide a procedure for resolution of disputes that may arise between its various agencies. Thus, no entity engaging in the provision of public services entrusted to it by statute can be an object [carrier] of basic rights. This however, does not apply to the other constitutional rights.”²⁴

In the case of Austria, the right to lodge a constitutional complaint is vested above all in natural persons. As far as its substance is concerned, Article 144(1) of the Constitution does not differentiate carriers of the rights into *citizens* and *non-citizens*.²⁵ Evidently, as in every country, some of the rights are vested exclusively in citizens. These rights in Austria include political rights, rights of holding a public office, rights to set up educational organisations and schools, electoral rights in

²² See *Studia i Materiały*, vol. XIII, *Zgromadzenia Ogólne Sędziów TK 14.03.2001r.*, Warsaw 2001, p. 102.

²³ See: *ibid.*

²⁴ See: *ibid.*, p. 10; for more details see: Ch. Pestalozza, *Verfassungsprozessrecht*, München 1982, p. 97.

²⁵ The Federal Constitutional Act uses in Article 144(1) the term *applicant*.

respect of all bodies of representation and the presidential office.²⁶ The regulation of Article 7(1) of the Constitution, whereby the application of equal rights is restricted to the domestic citizens only („Alle Bundesbürger sind vor dem Gesetz gleich”), seems to be a very original idea.²⁷

Yet, non-citizens are granted a number of other universal rights and freedoms, including *inter alia* the right to marry, right to protect the marriage and family, right to live, freedom to choose occupational training, freedom of religion and conscience, right to exercise the freedom of art and education and those rights and freedoms that are included among the basic rights of an individual under the ratified international conventions.²⁸

The issue of the fundamental rights with reference to legal persons has not been fully resolved in Austria, although from time to time the Constitutional Tribunal allows that on a case-by-case basis, if the nature of the specific case so permits.

The status of legal persons governed under public law in terms of lodging constitutional complaints has been determined as part of civil law. Legal persons enjoy inviolability of premises, right to a statutory judge and the principle of equal rights in law.²⁹

The persons vested with active rights under the Spanish *amparo* proceedings include under Article 162(1)(b) of the Spanish Constitution each and every natural or legal person which invokes a legal interest plus the Defender of the People and public prosecutor. In the case of Spanish constitutional complaint the term *legal interest* has a special sense, covering not only the individual interest but also the social interest, and Spanish legal scholars recognise that duality of meaning. On the one hand, it refers to a violation of the interests of a specific person, and consequently its right to file a complaint, and on the other facilitates the protection of the social interest, empowering specific public entities to take part in the *amparo* proceedings.³⁰

In the case of natural persons, it is asserted that they include Spanish citizens as well as foreigners. The determination of the type of public entities, particularly as far as some types of associations and state administration bodies are concerned, poses more problems. In the end, no serious counterarguments have been proposed “and while the above entities should be considered public, and so vested with a pas-

²⁶ J. Olejniczak, *Notatka w sprawie skargi konstytucyjnej w Związkowej Republice Austrii*, dated on 22nd February, 1993, No. ZO-07-123/93, *Biblioteka Trybunału Konstytucyjnego*, pp. 1–2.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ A. Łabno-Jabłońska, *Skarga konstytucyjna w Hiszpanii* [in:] *Konstytucja, Trybunał Konstytucyjny*, ed. C. Banasiński, J. Oniszczyk, Warsaw 1998, pp. 143–144.

sive capacity to become a party to a lawsuit, there is a view among legal scholars that recognises their right to lodge a constitutional complaint.”³¹

Finally, it needs adding that by espousing the idea of the legal interest as the grounds for the right to lodge a constitutional complaint, the Spanish drafters provided special regulation for the position of the public prosecutor. As a body that protects legality, the prosecutor participates in all the *amparo* proceedings (this does not apply to the Defender of the People).³²

A constitutional complaint to the Hungarian Constitutional Tribunal “can be lodged by anyone whose right has been violated as a result of the application of a legal regulation contravening the Constitution, who has exhausted the other ways of enforcing its rights or if there are no other ways for doing so” (§ 48(1) of the Constitutional Tribunal Act). One can confidently say that such a construction of the constitutional complaint which does not require the holder of rights to prove an individual interest deserves to be referred to as *actio popularis*.³³

It is plain to see that in Russia a wide range of persons have been vested with the right to lodge a constitutional complaint. These include citizens or groups of citizens, the term *citizen* here meaning everyone, including foreigners and stateless persons,³⁴ providing they have a legal interest in the case before the court.³⁵ What is original about the Russian approach is that apart from the interested parties – pursuant to Article 96 of the Constitutional Tribunal Act – the right to lodge a constitutional complaint is vested “also in other bodies and persons nominated in the federal statute” which effectively means the Attorney-General and the Parliamentary Representative for Human Rights.³⁶

³¹ Ibid., p. 145.

³² Ibid.

³³ M. Granat, *Sądowa kontrola konstytucyjności prawa w państwach Europy Środkowej i Wschodniej (na tle niektórych zasad ustrojowych)*, Warsaw 2003, p. 185.

³⁴ See Article 62(1) of the Russian Constitution: “A citizen of the Russian Federation may hold the citizenship of another state (dual citizenship) pursuant to the federal statute or an international agreement concluded by the Russian Federation,”

2. “The holding by a citizen of the Russian Federation of the citizenship of another state does not prejudice his right to freedom and does not release him from the obligations arising by virtue of his Russian citizenship, unless an international agreement concluded by the Russian Federation provides otherwise,”

3. “In the Russian Federation foreigners and stateless persons shall enjoy the same rights and have the same obligations as citizens of the Russian Federation, with the exception of the cases provided for under the federal statute or an international agreement concluded by the Russian Federation.”

³⁵ For more details see: *Kommentarij k Konstitucii Rossijskoj Federacii*, ed. Ju.W. Kudrjawcew, Moscow 1996, p. 505.

³⁶ “In practice, the accusatorial procedure is sometimes combined with inspection procedure initiated on the initiative of other authorised persons – e.g. president of the Russian Federation or a group of MPs – if they relate to the same object,” see: W. Sokolewicz, *Sąd Konstytucyjny Federacji*

It needs bearing in mind at this point that the institution of a constitutional complaint is closely linked with that of a question on a point of law which while complementary to it is not restricted solely to the issues of civil rights and liberties. “A question on a point of law may be filed – and under specific circumstances should be filed – by any court and at any stage of pending proceedings.”³⁷

In the Czech Republic, pursuant to § 72(1)(a) of the Constitutional Tribunal Act, a constitutional complaint may be lodged by any natural or legal person, contending that rights and basic freedoms vested in it have been violated. As the Czech drafters did not incorporate any limitations as to the object into the provisions, a constitutional complaint can be filed even by a minor or legally incapacitated person.³⁸ On the other hand, it is a necessary precondition for the applicant to be an object [carrier] of rights the violation of which it alleges. Hence, a constitutional complaint cannot be lodged in another’s stead.³⁹

As far as the persons entitled to lodge a constitutional complaint, the fact that two legal acts, namely the Constitution of the Czech Republic and the Bill of Fundamental Rights and Liberties, are concurrently in force may lead to a number of problems. The Bill has broadly defined the range of entitled persons, granting the fundamental rights and liberties to everyone who is subject to the jurisdiction of the Czech law (unless these are strictly reserved to citizens)⁴⁰ – and so including foreigners, foreign legal persons – providing that a Czech public authority has violated the rights vested in them by the Constitution.

According to the earlier assumptions, the rights and freedoms contained in the Bill were to apply to everybody, while those laid down under the Constitution solely to Czech citizens. As things stand at the moment, it is difficult to put into practice the earlier intentions of the legislative drafters. Based on a broad interpretation of

Rosyjskiej [in:] *Sądy konstytucyjne w Europie. Białoruś, Litwa, Łotwa, Rosja*, ed. J. Trzciński, vol. 4, Warsaw 2000, p. 326; for more details see: *Kommentarij k Konstitucii Rossijskoj Federacii...*, p. 506.

³⁷ See W. Sokolewicz, *Sąd Konstytucyjny Federacji Rosyjskiej* [in:] *Sądy Konstytucyjne w Europie. Białoruś...*, pp. 326–327.

³⁸ In the opinion of P. Tuleja and W. Wróbel, under Article 6 of the Bill of Fundamental Rights and Liberties one can conclude that the active right is vested also in a conceived child (Article 6(1): “Everybody has a right to live. The life of man is worth protecting even before birth.”), P. Tuleja, W. Wróbel, *Skarga konstytucyjna przed czeskim Sądem Konstytucyjnym*, “Przegląd Sejmowy” 1997, No. 3, p. 13.

³⁹ *Ibid.*

⁴⁰ See Article 42(1): “Whenever the Bill uses the terms *citizen*, it shall mean a citizen of the state of the Czech and Slovak Federative Republic,” (2): “In the Czech and Slovak Federative Republic, foreigners shall enjoy human rights and the fundamental liberties warranted under the Bill, unless it is expressly stated that the same are vested in the citizens,” (3): “Whenever the hitherto effective provisions use the term *citizen*, it shall mean everybody, as far as the fundamental rights and liberties which the Bill grants regardless of state citizenship are concerned.”

the right to lodge a constitutional complaint, only those rights and freedoms are granted to citizens which are clearly targeted at them⁴¹ (they are required to enclose with a complaint filed a certificate confirming their Czech citizenship), with the others available for exercise to the other entitled persons.⁴²

Among persons entitled to file a constitutional complaint, the Constitutional Tribunal Act lists also legal persons (§ 72(1)(a)), as long as the rights vested in them are afforded constitutional protection. The practice of the Constitutional Tribunal proves that the active right to lodge a complaint is vested under the law in public authorities (In 1994, the Constitutional Tribunal recognised the right of the Ministry of Culture to file a constitutional complaint against a decision of the Higher Court in Prague),⁴³ and pursuant to § 72(1)(b), the Constitutional Tribunal Act empowered also local authorities to file a complaint if a state authority violates the rights vested in them by the Constitution.

In addition, the right of political parties to lodge a constitutional complaint (Article 87(1)(j) of the Constitution in connection with § 73 of the Constitutional Tribunal Act) against a decision on disbanding a political party or other decisions pertaining to its operations is also significant. “It needs stressing that the stipulation does not prevent a political party from filing a constitutional complaint under provisions of general application in the event of a violation of the fundamental rights vested in it as a legal person (e.g. the right of ownership). In this last case, its status is exactly the same as with the other legal persons lodging complaints to the Constitutional Tribunal.”⁴⁴

Pursuant to § 72(1)(a), the right of filing a constitutional complaint is restricted to a person who “has participated” in the proceedings in which a valid decision, act or other transgression of a public authority was made or occurred that violated its right. As rightly observed by Tuleja and Wróbel, that “participation” is not understood in the factual but in the normative sense. And so it is not the point who personally took part in the proceedings in which the decision challenged was issued, but who should be a party to or participant of such proceedings, i.e. the person whose legal interests the decision challenged addresses.⁴⁵

The situation is slightly different in the case of the Slovak constitutional complaint. Here, a complaint to the Constitutional Tribunal can be lodged by *anyone*,

⁴¹ This in particular applies to the political and social rights.

⁴² P. Tuleja, W. Wróbel, *Skarga konstytucyjna przed czeskim Sądem...*

⁴³ *Ibid.*, p. 14.

⁴⁴ See *ibid.*

⁴⁵ *Ibid.*

i.e. both a natural and a legal person contending that a valid decision of a state authority has violated its basic civic rights or liberties and where no other court is adjudicating on the protection of such rights and liberties. The right to file extends also to non-citizens which nowadays has become something of a standard arrangement.⁴⁶

⁴⁶ K. Skotnicki, *Sąd Konstytucyjny w Republice Słowackiej* [in:] *Sądy konstytucyjne w Europie. Bułgaria...*, p. 234; for more details see J. Mazak, *Podania v konani pred Ustavnym sudom Slovenskej republiky (Vzory, poznamky a judikatura)*, Košice 1994.

