The constitutional and state tribunals

Executive responsibility in Poland can now take both parliamentary and constitutional forms. The former is largely covered by the government’s responsibility for its political decisions and policies to the Sejm. Infringement of the law can, however – although the process is initiated politically – take the form of what in Poland is defined as constitutional responsibility to legal bodies. In Poland’s Third Republic, this function is not fulfilled by the Supreme Court, as in the USA or India, but by the State Tribunal (TS) while constitutional verification is carried out by the Constitutional Tribunal (TK). The western political tradition has a variety of forms of dual responsibility; but one can generalize that parliamentary responsibility has been overwhelmingly dominant in twentieth-century cabinet-parliamentary systems. Constitutional responsibility assumes greater importance in presidential systems where the president is not answerable politically to parliament, especially where there is full separation of powers as in America. Unlike Westminster, however, democratic Poland now falls more into a particular continental tradition. The prime minister, ministers and a variety of state officials, and even deputies and senators in one respect, are vulnerable to stronger forms of constitutional responsibility. The process and charges are judicial in form but they are initiated and motivated politically. The two dimensions are usually blurred, except for extreme cases of administrative maladministration, corruption or arbitrariness.¹

The TK was unknown in Poland before Jaruzelski since the Second Republic followed French practice in excluding judicial review and control of legislation. The PRL, likewise, rejected judicial review by establishing the constitutional fiction of Sejm dominance to mask PZPR control.² The TK was introduced in 1982, actually established in 1985, and gained increased powers from 1989 onwards.³ The TK was originally modelled on the Constitutional Courts of Austria and Czechoslovakia, and to a lesser extent
that of Germany. The independent judiciary has developed, since then, within a framework of full separation of the powers which has produced effective checks upon the executive. Skrzydło and Garlicki distinguish, although not entirely convincingly, between ‘concentrated’ European (a single central body with a capacity for abstract theorizing) and ‘fragmented’ American (general courts at all levels dealing solely with specific cases) models of judicial control; but despite the TK’s growing activism during the 1990s, and the superficial resemblance of many of its functions to the US Supreme Court’s role, it still has a very long way to go before meriting close comparison. Its direct capacity to arbitrate between government and parliament, for example, still has to be demonstrated. The more passive European tradition of acting as the Guardian of the Constitution by checking on the conformity of laws, regulations, political parties and international agreements to the constitution, dominates in Poland, despite ambitious additional claims by TK advocates. Polish constitutional lawyers normally offer a fourfold definition of TK functions:

1. To review and declare on the constitutionality of laws. This involves examining the conformity of laws as well as orders and regulations issued by state bodies with the constitution and ratified international agreements. The TK also considers whether laws and pre-ratified international agreements specifically referred by the president are in conformity with the constitution.
2. To examine constitutional complaints, a right which although given stricter constitutional definition in 1997, has proved difficult to operate.
3. As discussed in Chapter 7, to examine whether the statutes and activities of political parties accord with the constitution.
4. Article 189 of the 1997 constitution extended the TK’s right of arbitrating competency disputes between state institutions; this is usually done indirectly by interpreting specific powers and procedures in abstract rulings. As in the past, it can also declare a president incapable of fulfilling his duties.

The TK is fully independent and separate from the system of the general courts. It is part of the judicial system although not a court strictly speaking since it does not exercise justice. By 1997, it reduced the Polish Supreme Court almost entirely to its appellate law function. The overwhelming consensus on the need for a fully autonomous TK emerged with the first unified constitutional draft of early 1996 when the left dominated. This resolved that particular ‘turf war’ with the more conservative favoured Supreme Court, to its benefit in the 1997 constitution. The TK, however, lost its right of enunciating universally binding interpretations of law, having by then interpreted 75 bills. The 1997 constitutional compromise