

Judgment of 25th November 2003, [K 37/02](#)
RESTRICTIONS ON INHERITING REAL ESTATE IN THE HEL COMMUNE

Type of proceedings: Preliminary review of an Act Initiator: President of the Republic of Poland	Composition of Tribunal: Plenary session	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Conditioning testamentary inheritance of real estate located within the territory of the Hel commune upon the permission of a military organ [Recognition of Part of the Hel Peninsula as an Area having Particular Importance for National Security Act 2002 – submitted to the President of the Republic for signature: Article 15(2)]	Protection of ownership and succession Principle of proportionality [Constitution: Articles 21(1), 31(3), 64(1) and (2)]

The 2002 Act, mentioned in the table above and known as the “Hel Act”, recognises part of the Hel Peninsula, encompassing the City of Hel and harbour waters, as an area having particular importance for national security. Such importance justified the introduction of special legal regulations within this territory.

Article 15(2) of the 2002 Act was challenged by the President of the Republic of Poland, within proceedings for the [preliminary review of an Act](#) (governed by Article 122(3) of the Constitution). This Article conditioned testamentary inheritance of real estate located within the aforementioned territory upon the permission of a military organ – the Commander of the Navy. According to the applicant, this infringed constitutional guarantees concerning protection of ownership and succession (Articles 21(1), 64(1) and (2)), read in conjunction with the principle of proportionality (Article 31(3) of the Constitution).

The President further alleged that Article 3 of the 2002 Act infringed the constitutional status of a commune by requiring similar permission to be obtained prior to undertaking certain legal and factual actions in relation to Hel real estate, e.g. concluding contracts for the transfer of ownership (Articles 15(1), 16(2), 164(1) and (3), 165 and 166(1)).

The Constitutional Tribunal ruled that the first of the aforementioned provisions was unconstitutional and that it was inseparably connected with the whole Act (cf. Article 122(4) of the Constitution). That signified the disqualification of the entire Hel Act 2002 and it was therefore superfluous to adjudicate on the President's remaining allegations (cf. points 9 and 10 of the principal reasons for the ruling).

RULING

1. Article 15(2) of the Hel Act 2002 does not conform to Article 64(1) and (2), read in conjunction with Articles 21(1) and 31(3), of the Constitution.

2. The aforementioned provision of the 2002 Act is inseparably connected with the whole Act.

Furthermore, on the basis of Article 39(1) point 1, read in conjunction with Article 39(2), of the Constitutional Tribunal Act, the Tribunal discontinued proceedings within the remaining scope, given the superfluity of adjudication.

PRINCIPAL REASONS FOR THE RULING

1. In light of Article 31(3) of the Constitution, limitations on an individual's rights and freedoms must be specified by statute and are permissible only where they are necessary to realise the assumed goals. This signifies, in particular, a requirement to maintain an appropriate proportionality between the measures to be applied and the goal to be achieved. It concerns the application of measures that are indispensable in the sense that they protect the specified values in a manner, or to a degree, which could not be achieved via the use of alternative measures. Concomitantly, such measures should be as least burdensome as possible upon those entities whose rights or freedoms are limited.
2. Tasks concerning national security may justify interference within the sphere of an individual's constitutional rights and freedoms. Care for the common good of citizens (Article 1 of the Constitution) not only indicates the need for citizens to bear burdens necessary to safeguard State security when independence is threatened, but also during times of peace (cf. Article 85 of the Constitution). Safeguarding of the independence and integrity of the territory of the Republic of Poland (Article 5 of the Constitution) also constitutes a justification for limiting constitutional rights and freedoms.
3. The right of succession is an individual's constitutional right (Article 64(1) and (2), as well as Article 21(1)), closely connected with the right of ownership. The Constitution does not allow ownership to be shaped as a right that may not be the subject of succession. The right of ownership vested in a natural person may not expire at the moment of their death but should continue to exist, thereby implying transfer to other persons. Accordingly, when fulfilling the requirement to protect ownership, the legislator is obliged to shape the principles of succession appropriately.
4. Testamentary freedom is the most significant element of the right of succession. It is the testator's will, and not statutory rules regarding succession, which should primarily determine the fate of the testator's property. Statutory succession is supplementary in nature, applicable whenever the testator did not decide, *mortis causa*, on the fate of their property. Challenges against the testator's will should occur only exceptionally, in particularly justified cases.
5. The institution of succession also fulfils a regulatory function. Accordingly, the transfer of ownership from a deceased person to a public entity is not precluded. This may occur where it is not possible to determine the persons whose legal succession is more justified on the basis of the close relationship between them and the testator. Nevertheless, it is impermissible to shape rules of succession in such a manner as to arbitrarily exclude certain

- property components from the testamentary estate, thereby resulting in their acquisition by the State or other public entities.
6. Despite certain differences in construction, the essence of the right of succession is identical regardless of whether acquirement takes place via testamentary or statutory succession. It stems from Article 64(2) of the Constitution that it is prohibited to condition the scope of protection afforded to a specified property right upon whether it is inherited by virtue of testamentary or statutory succession.
 7. On the basis of the reviewed provision, those persons indicated by the testator obtain – from a purely formal perspective – the status of testamentary heirs. The final acquisition of inherited real estate is conditional upon permission of the Commander of the Navy. Ultimately, it is not the testator’s will but other factors which determine whether the former will be fully realised. Furthermore, no compensation mechanism exists in the event of a negative decision by the Commander of the Navy.
 8. On the basis of Article 31(3) of the Constitution, the aforementioned solution may not be recognised as necessary, nor as remaining in justified proportion to the assumed goal. Accordingly, it infringes the constitutional right of ownership, other property rights and succession, as well as the principle of equal protection of property rights (Article 64(1) and (2) of the Constitution).
 9. The consequence of eliminating Article 15(2) of the reviewed 2002 Act would be that testamentary heirs remained bound by the limitations introduced by this Act. In particular, the definitive acquisition of inherited property would continue to be conditional upon permission (Article 3(1) point 1, read in conjunction with Article 7). It is also unclear whether a loss of property arising from the absence of such permission would be compensated on the basis of Article 8 of the 2002 Act. This justifies the finding that the challenged provision is [inseparably connected with the whole Act](#).
 10. The finding of unconstitutionality of Article 15(2) of the reviewed Act, being a provision inseparably connected with the whole Act, renders it superfluous to adjudicate on the conformity of the remaining provisions indicated in the application of the President of the Republic of Poland, within the meaning of Article 39(1) point 1 of the Constitutional Tribunal Act.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens.

Art. 5. The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

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

Art. 16. [...] 2. Local self-government shall participate in the exercise of public power. The substantial part of public duties which local self-government is empowered to discharge by statute shall be done in its own name and under its own responsibility.

Art. 21. 1. The Republic of Poland shall protect ownership and the right of succession.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 64. 1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

Art. 85. 1. It shall be the duty of every Polish citizen to defend the Homeland.
2. The nature of substitute service shall be specified by statute.
3. Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute.

Art. 122. [...] 3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.

4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.

Art. 164. 1. The commune (*gmina*) shall be the basic unit of local self-government.
[...]

3. The commune shall perform all tasks of local self-government not reserved to other units of local self-government.

Art. 165. 1. Units of local self-government shall possess legal personality. They shall have rights of ownership and other property rights.

2. The self-governing nature of units of local self-government shall be protected by the courts.

Art. 166. 1. Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local self-government as their direct responsibility.

CT Act

Art. 39. 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

- 1) if the pronouncement of a judicial decision is superfluous or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;
- 3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.