

Judgment of 15th March 2005, [K 9/04](#)
**RELINQUISHING OWNERSHIP OF REAL ESTATE
 AND INTEREST OF COMMUNES**

Type of proceedings: Abstract review Initiator: City Council of Knurów City Council of Jastrzębie City Council of Toruń	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Possibility for an owner to unilaterally relinquish ownership of real estate – resulting in a commune acquiring ownership thereof, together with any encumbrances over the real estate [Civil Code 1964: Article 179 (in the wording introduced in 2003)]	Rule of law Principles of social justice Constitutional position of local self-government Principle of proportionality Principle of equality Legal personality and self-governing nature of local self-government units Principle of connecting changes in duties and competences of these units with adequate changes in the distribution of public funds [Constitution: Articles 2, 16, 31 (3), 32, 165 and 167(4)]

The Polish Civil Code 1964, in the versions in force prior to 25th September 2003, permitted relinquishment of ownership of real estate, resulting in the State Treasury automatically acquiring ownership thereof, provided that consent for this was granted by the appropriate organ of public administration. An amendment of 14th February 2003 introduced substantial changes to the wording of Article 179 of the Civil Code, removing the requirement for relinquishment of ownership to be approved by an administrative organ (relinquishment of ownership thus became the owner’s autonomous decision). The amendment also stipulated that relinquishment of ownership of real estate would result in ownership thereof being acquired by a commune, as opposed to the State Treasury.

As a result of the aforementioned amendment, Article 179 of the Civil Code acquired the following wording:

“§ 1. An owner may renounce ownership of real estate by relinquishment thereof. Such relinquishment shall be in the form of a notarial deed.

§ 2. Ownership of real estate relinquished by the owner shall pass to the commune in which it is located, unless other statutory provisions provide otherwise. Where real estate is located in more than one commune, ownership shall pass to the commune in which the largest part of the real estate is located. The commune bears responsibility for any encumbrances over the real estate, limited to the value of the real estate at the moment of acquisition thereof and to market prices at the moment of satisfying a creditor’s claim”.

The prevailing view was that a commune's acquisition of ownership following relinquishment is primary in character, meaning that a commune is not the legal successor to the hitherto owner – in principle, a commune does not assume the owner's rights and duties. The last sentence of § 2 represents an exception to this principle.

The aforementioned provisions were challenged in their entirety, before the Constitutional Tribunal, by three city councils: Knurów, Jastrzębie Zdrój and Toruń. Each application expressed disapprobation at the obligation imposed upon communes to acquire ownership of real estate unwanted by the owner. It was pointed out that, in practice, this will commonly concern real estate which is worthless and ruined, often polluted and threatened by construction catastrophes, or sometimes consisting of internal roads or driveways whose maintenance is too costly for the owner. The former owner's relinquishment of ownership shifts onto the commune the responsibility for maintaining such real estate in a proper condition. It was also submitted that, by requiring communes to automatically acquire ownership of such real estate, the legislator imposed new tasks upon communes without granting them the funds necessary to ensure fulfilment thereof.

In alleging the unconstitutionality of the aforementioned provisions, the applicants referred to the following provisions of the Constitution: the rule of law principle (Article 2); proportionality (Article 31(3)); the principle of equality (Article 32); the constitutional status of local self-government units (Article 16); the legal personality and independence of local self-government units (Article 165); and the principle of the participation of such units in distribution of public funds, as appropriate to their tasks and duties (Article 167(4)).

The significant part of the judgment's reasoning, summarised briefly below, considers the construction and consequences of relinquishing ownership within the sphere of civil law.

RULING

I

Challenged provision:

- a) **conforms to Article 16 and Article 167(4) of the Constitution and is not inconsistent with Article 31(3) and Article 32 of the Constitution,**
- b) **does not conform to Article 2 and Article 165 of the Constitution.**

II

The Tribunal ruled that the loss of binding force of Article 179 of the Civil Code shall be delayed until 15th July 2006.

PRINCIPAL REASONS FOR THE RULING

1. Article 165 of the Constitution is the source of legal personality of local self-government units. It stems from this provision that a commune may be one of the parties to a civil-legal transaction. It is the essence of a commune's independence to autonomously decide whether to become involved in civil-legal transactions. This in-

dependence is also expressed by the fact that verification of communes' acts in the discussed sphere is governed by procedures characteristic to civil law and, accordingly, is vested primarily in the common courts.

2. The concept of the democratic State governed by the rule of law (Article 2 of the Constitution) encompasses, *inter alia*, the principle of equality of parties to civil-legal transactions. This principle is fundamental for democratic society and free market economy. Consequently, when shaping its ownership rights by way of civil-legal transactions, a commune must also be treated equally to other subjects that are parties to such transactions; a commune's position should at least be comparable to that of other public law bodies.
3. The legal rule expressed in Article 179 of the Civil Code, on which basis a commune acquires ownership of real estate having been relinquished by the hitherto owner, is not a rule of public law imposing new duties and competences on communes but is, rather, a rule interfering with a commune's proprietary independence within the sphere of private law. Whilst the duty to maintain real estate, acquired on the basis of Article 179, in a condition fulfilling relevant safety, construction and environmental provisions involves expenses on the side of a commune, such expenses are also borne by all owners of real estate, including subjects of private law. Accordingly, Article 16 and Article 167(4) of the Constitution do not constitute adequate bases upon which to assess the constitutionality of the challenged provision. Nevertheless, Article 165 of the Constitution may represent an adequate basis in that matter (*cf.* point 1 above).
4. Since one real estate frequently constitutes the object of numerous legal relationships, statutory regulation of relinquishing ownership of real estate may not limit itself to merely indicating who shall acquire ownership following such relinquishment. It is necessary to regulate all rights – proprietary and contractual – connected with the real estate. The wording of Article 179 § 2 third sentence, which is imprecise and open to various interpretations, fails to meet this requirement.
5. The currently binding mechanism for relinquishing ownership of real estate clearly deviates from the principles on which other civil law rules are based. On the basis of Article 179 of the Civil Code, a legal entity (whether private or public) undertakes an autonomous and unilateral legal act, entirely unrelated to economic grounds, resulting in acquisition of ownership of real estate by a commune, even against its will. The contents of this provision do not permit an unequivocal delineation of the scope of a commune's liability for obligations entered into, in respect of the real estate, by the hitherto owner. In introducing such regulation, the legislator disregarded constitutional guarantees concerning communes' legal personality and equality between parties to civil-legal transactions (Article 165 and Article 2 of the Constitution; *cf.* points 1 and 2 above).
6. Considerable differences exist between regulations of a systemic nature, serving to realise the legislator's general vision and to attain certain constitutional or social goals (such as within the sphere of ownership structures or protection of tenants) and the norm contained in Article 179 of the Civil Code which serves no public interest, is incidental to some degree and, as regards its effects, represents the basis for the transfer of ownership of real estate from any entity to a commune. Guaranteeing owners complete freedom to renounce their rights in real estate is not a constitutionally protected

value whose realisation may justify the infringement of other constitutionally protected values. It is not possible to indicate an interest whose protection would justify such extensive interference by the legislator with the autonomy of communes as subjects of private-legal relationships.

7. Contemporary legal thinking has rejected the idea of ownership, especially ownership of real estate, as a right governed solely by the individual interests of an owner: the social aspect of ownership is now unanimously recognised. Accordingly, ownership is not absolute in character and may be subject to limitations. In Polish law, such thinking was expressed in the definition of the right of ownership: within the meaning of Article 140 of the Civil Code, all owners' rights and privileges are limited by statute, principles of morality and the socio-economic purpose of this right. The constitutional basis for limiting the right of ownership is Article 64(3) of the Constitution.
8. The limitations mentioned in point 7 (above) apply in particular to an owner's right to relinquish ownership. Accordingly, it is not convincing to claim the unconstitutionality of conditioning the relinquishment of ownership upon approval by an organ of public authority, as envisaged by Article 179 § 1 of the Civil Code prior to the 2003 amendment. The requirement of approval by an organ of local authority may be justified by the need to protect constitutional values, other than ownership, listed in Article 31(3) of the Constitution.
9. Furthermore, the ambiguousness and failure to regulate a commune's liability as regards encumbrances on the acquired real estate, such as exist in the current Article 179 § 2 third sentence of the Civil Code, indicate an infringement of the principles of correct legislation, being an element of the rule of law principle (Article 2 of the Constitution).
10. The allegation may not be upheld that disregard of a commune's legal position, and unfavourable treatment thereof in comparison with other public law bodies, indicates a violation of the principles of social justice, mentioned in Article 2 of the Constitution. An infringement of these principles may, nevertheless, be identified from the fact that, in consequence of the commune's acquisition of unwanted real estate – together with the right of ownership – there also pass any of the hitherto owner's encumbrances in respect of the real estate. A legal solution permitting an individual's unrestrained freedom to transfer their liability, as regards encumbrances, to the entire local community must give rise to considerable reservations for the perspective of the principle of social justice.
11. It is a tradition of Polish legal thought that the State Treasury acquires real estate, ownership of which has been relinquished by their owners. Nevertheless, the amendment introduced in 2003 does not conform to this hitherto tradition. One of the reasons for indicating a commune as the subject acquiring ownership of real estate following relinquishment by the hitherto owner was that, within the context of amendments to the Civil Code, including a new (challenged in this case) mechanism for relinquishing ownership of real estate, amendments were also made concerning regulation of statutory heirs where none of the deceased's family members were entitled to inherit the deceased's estate by operation of law; hitherto, the State Treasury inherited the estate whereas, following the amendment, the estate shall pass – in principle – to the commune in which the deceased last resided. (cf. Article 935 § 3, as amended, of the Civil

Code). Nevertheless, important differences exist between the aforementioned legal institutions, negating the need for an analogous formulation of the consequences thereof.

12. It is justified to delay the entry into force of the present judgment, on the basis of Article 190(3) of the Constitution (cf. part II of the ruling, above), given the importance in Polish law of the legal institution of relinquishing real estate ownership and the necessity of deciding upon one of the various possible conceptions of this institution.

Provisions of the Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

Art. 16. 1. The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law.
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. 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. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 64 [...] 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. 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. 167. [...] 4. Alterations to the scope of duties and competences of units of local self-government shall be made in conjunction with appropriate alterations to their share of public revenues.

Art. 190. [...] 3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.