

Judgment of 1<sup>st</sup> July 2003, P 31/02  
**EXCLUSION OF LESSEE'S GRANDCHILDREN FROM SUCCESSION  
 TO LEASE OF LIVING QUARTERS**

<b>Type of proceedings:</b> Question of law referred by a court <b>Initiator:</b> District Court in Środa Śląska	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Exclusion of lessee's grandchildren from the circle of persons entitled to succeed to a lease of living quarters relationship upon the original lessee's death  [Act on the Protection of Tenants' Rights and Housing Resources of Communes and on the Amendment of the Civil Code 2001: Article 26 point 12, read in conjunction with Article 39(1)]	Rule of law Principle of equality  [Constitution: Articles 2 and 32]

Polish legislation stipulates that right of lease of living quarters is excluded from the deceased lessee's estate. In the event of the lessee's death, such a right pass by virtue of law to the next of kin, specified in the Act, who lived with the lessee prior to his death (the Act itself speaks of the next of kin's "succession to the lease relationship"). In the event that no such person exists, the lease extinguishes upon the death of the lessee.

The Protection of Tenants' Rights Act 2001, of 21<sup>st</sup> June of that year (hereinafter referred to as "the 2001 Act"), included provisions on housing relations which limited the categories of next of kin entitled to succeed to a lease relationship upon the original lessee's death. From the moment the 2001 Act entered into force (i.e. 10<sup>th</sup> July 2001), it had the effect of amending the wording of Article 691 § 1 of the Civil Code, as regards the list of persons entitled to succeed to a lease relationship in this manner. The persons entitled to succeed to a lease relationship upon the death of the original lessee are: the deceased's spouse; the children of the deceased and his/her spouse; persons in respect of whom the deceased owed a duty of maintenance; and persons who "actually lived in cohabitation" with the deceased lessee. The legislator did not include the deceased's grandchildren in this list despite the fact that the hitherto statutory provisions allowed grandchildren to succeed to the lease relationship of their deceased grandparent.

The District Court in Środa Śląska, whilst considering a case involving a claimant who would, in the absence of these new provisions, have succeeded to the lease relationship of their deceased grandmother upon her death in October 2003, expressed concerns as to the constitutionality of the new provisions and the consequent exclusion of grandchildren from the list of next of kin entitled to succeed to the lease rights of a deceased person. The District Court, in the course of its evaluation, considered that the aforementioned amendment introduced an unjustified differentiation between the legal situations of the lessee's various next of kin, contrary to the constitutional principle of equality (Article 32). In the Court's opinion, the emotional bonds between a lessee and his direct descendants are similar, irrespective of whether such relatives happen to be the deceased's children or grandchildren. The Court also doubted the

conformity of these provisions with the principle of trust in the State and its laws (as derived from the rule of law principle, contained in Article 2 of the Constitution), since the new statute entered into force on the day of its promulgation and no transitional period was provided for by the legislator.

## RULING

**The challenged provision conforms to Article 2 and Article 32 of the Constitution, insofar as it limits the categories of persons who are entitled to succeed to the lease relationship of a deceased lessee.**

## PRINCIPAL REASONS FOR RULING

1. The fact that an amending Act fails to specify a transitional period for the entry into force of the new rules does not mean that there exists a legal lacuna. In such cases it should be assumed that an inherent feature of amending provisions is that they are applicable to existing or ongoing legal relationships, pursuant to the principle of the direct applicability of new statute (in this case: Article 26 point 12 of the Protection of Tenants' Rights Act 2001, which amended the wording of Article 691 of the Civil Code).
2. Article 75 of the Constitution is a "framework provision" which defines the State's policy in respect of "satisfying the housing needs of citizens". It neither indicates the standard for the realisation of this policy, nor does it constitute the basis for specific legal claims. The policy of protecting tenants' rights requires further clarification and exposition through statutory regulations.
3. Although Article 75 of the Constitution imposes a duty on the State to protect the permanency of an tenant's legal title to the occupied living quarters, this does not guarantee stability in every possible use of such living quarters.
4. The constitutional protection of the lessor, as the person entitled to dispose of living quarters, has its basis in Article 64 of the Constitution, whereas the protection of tenants is provided for by Article 75 of the Constitution and concerns all kinds of tenants. Tenants who are the lessees of property (i.e. those having a lease relationship) enjoy further protection, by virtue of the fact that a lease is treated as a property right for the purposes of Article 64 of the Constitution. This protection does not, however, include tenants who live with lessees (i.e. persons who would presumably be interested in succeeding to a lease relationship upon the lessee's death) and this avoids any conflict between the rights of the two groups of subjects deriving constitutional protection from Article 64. Lessors, as beneficiaries of "other property rights" within the meaning of Article 64(1) of the Constitution, may only have these rights limited by statute and in such a way as to avoid violating the essence of those rights (Article 64(3)). A tenant who is not also a lessee, however, enjoys only such protection as is afforded to him by statute (cf. Article 75(2) of the Constitution).
5. When assessing the constitutional mechanism by which certain persons, indicated in Article 691 of the Civil Code, succeed to a lease relationship upon the death of the original lessee, it should be noted that, from the lessor's perspective, this mechanism

leads to the continuation of the existing lease relationship. In general, lessors have no influence on the duration of this relationship, especially since it is only permissible for them to give notice terminating the lease of living quarters in limited circumstances defined by statute. From the perspective of the party having succeeded to a lease relationship, however, this succession leads to a more favourable legal title and the radical strengthening of their legal title in respect of the occupied living quarters: the legal status of such a person changes from being a mere tenant not being a lessee into a lessee, as a result of the special statutory regime for protecting the stability of leases. At the same time that succession to a lease relationship strengthens the tenant's legal position, by converting his position into that of a lessee, the owner's ability to dispose of the property is limited for a certain period of time.

6. The applicant's claim is unfounded in alleging that the principle of equality (Article 32 of the Constitution) was violated by the omission of a lessee's grandchildren from Article 691 of the Civil Code, whilst the lessee's children and persons to whom the lessee owed a duty of maintenance were included. Since 1994, Polish legislation has shown an evident tendency to gradually limit the categories of persons entitled to succeed to lease relationships. The intention here was to harmonise the rights of tenants (even non-lessees) and the rights of the lessors. It is also relevant to take account of the sociological phenomenon by which family bonds are increasingly being limited to a small circle of so-called close family, comprising spouses and descendants of the first degree. Other relatives, regardless of the degree of consanguinity, may succeed to a lease relationship as persons in respect of whom lessees have realised their duty of maintenance by offering them living accommodation (which, according to Article 688<sup>2</sup> of the Civil Code, does not even require the lessor's consent). Accordingly, the legal differentiation between the aforementioned categories of persons is not arbitrary.
7. Neither does the situation of the lessee's grandchildren raise constitutional concerns in relation to Article 691 of the Civil Code, in comparison with the situation of persons to whom Article 31 of the 2001 Act refers (persons who lived with and cared for the lessee in expectation of succeeding to the lease relationship following the lessee's death, on the basis of a contract concluded prior to 12<sup>th</sup> November 1994 and supervised by public administration organs). Reference is made here to the protection of "interests in due course" of such persons, who have undertaken long-term contractual obligations in order to succeed to a lease relationship in the future, assuming they have properly performed their contractual obligations. The position of these two groups is incomparable from the perspective of their expectations, which require protection on the basis of the rule of law principle (Article 2 of the Constitution). It should be especially emphasised that, where a grandchild lives with a lessee, no legitimate expectations arise in respect of the owner of the living quarters.
8. The constitutional review undertaken here, on the basis of a question of law referred to the Constitutional Tribunal by a court (Article 193 of the Constitution) demands that a link is established between the Tribunal's ruling on the constitutionality of the relevant provisions and the ruling of the case before the referring court. In this procedure, however, the relationship between the challenged provisions and the decision in an individual's case is less pronounced than in the case of a constitutional complaint (Article 79(1) of the Constitution). In the latter case, the Constitution demands that the applicant identify the normative act "upon which basis" a court or organ of public administration has made a final decision on his freedoms or rights, or on his obligations as

specified in the Constitution. In the case where a court refers a question of law to the Tribunal, however, the court may refer any legal provisions about which the court has doubts regarding their constitutionality, provided that the court is considering the application of such provisions to the case before it.

#### 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. 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.** 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. 75.** 1. Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.  
2. Protection of the rights of tenants shall be established by statute.

**Art. 79.** 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

**Art. 193.** Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.