

Judgment of 15th May 2006, P 32/05
**FORFEITURE OF WOOD IN THE EVENT OF ILLEGAL FELLING
IN ONE'S OWN FOREST**

Type of proceedings: Question of law referred by a court Initiator: District Court for Zamość	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
--	--	----------------------------------

Legal provisions under review	Basis of review
The obligatory ruling of forfeiture of acquired wood in the event of committing the petty offence of unlawful felling of trees in a forest owned by the perpetrator [Petty Offences Code 1971: Article 158 § 2 (inserted in 1994)]	Rule of law Protection of ownership [Constitution: Articles 2, 21(1) and 64]

The owner of a private forest does not have the right to engage in the arbitrary felling of trees. Restrictions in this respect may stem from forest management plans, or from the statutory requirement that permission be obtained from the appropriate organ of the forest administration. Arbitrary felling of trees in one's own forest constitutes a petty offence subject to the penalty of a fine of up to 5,000 Polish Zloty (Article 158 § 1, read in conjunction with Article 24 § 1, of the Petty Offences Code 1971); the court is concomitantly obliged to rule the forfeiture of illegally acquired wood (Article 158 § 2).

The District Court for Zamość, considering a case in which it was to rule the forfeiture of wood on the basis of Article 158 § 2 of the Petty Offences Code, decided to refer a question of law to the Constitutional Tribunal as to the conformity of the said provision with the Constitution. According to the District Court, the sanction constituted by the forfeiture of wood is disproportionate with respect to the perpetrator's guilt. The Court drew attention to the fact that, in the case under consideration, the perpetrator acquired the wood from their own forest in the absence of the permission required by law, albeit only in a limited quantity and with a view to meeting own needs.

RULING

The challenged provision is not inconsistent with Articles 2, 21(1) and 64 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. None of the property rights guaranteed in Article 64 of the Constitution is absolute in nature, their limiting by the legislator being permissible. Every such limitation may be subject to verification from the point of view of fulfilment of constitutional preconditions for its introduction. The prerequisites laid down in Article 31(3) of the Constitution are of fundamental significance in this respect.

2. The constitutional notion of “the essence of a right” (Articles 31(3) and 64(3)) is linked with the prohibition on imposing limitations that eliminate the identity of a given right or freedom, or deprive it of real content.
3. In Article 31(3), the Constitution allows for statutory limitations on the exercising of constitutional rights and freedoms, inter alia with a view to the “natural environment” being protected. The environment represents a constitutional value of particular importance, a fact that finds its expression not only in Article 31(3) of the Constitution but also in Articles 5, 74(1) and 86 thereof. This signifies that the imposition of limitations upon rights and freedoms for reasons of environmental protection is not only admissible but also necessary.
4. A particularly valuable component of the natural environment are forests. Regardless of their form of ownership, they have constituted a subject of concern for the Polish public authorities from the beginning of the inter-war period onwards. The history of legal sanctions for harmful forest activity connected with illegal felling of trees in one’s own forest indicates that the challenged provision forms part of a certain tradition in forest protection. Contrary to the previous Non-State-Owned Forests Management Act 1973, the Forests Act 1991 currently in force does not contain criminal provisions. Such an omission at the moment of adoption of the 1991 Act constituted the reaction to excessive penalisation in the Communist times, and an expression of the fact that absolute priority to the protection of ownership was being granted. Such a situation fostered uncontrolled felling activity in private forests, and it was in order to counteract this phenomenon that the legislator amended the Petty Offences Code in 1994, introducing the petty offence of unlawful felling of trees in a forest owned by the perpetrator, subject to the penalty of a fine and obligatory forfeiture of the acquired wood (Article 158 of the Petty Offences Code).
5. The limitations contained in Article 158 of the Petty Offences Code only concern the owners of forests who fail to observe the rules governing the use of forests, as reflecting a common good (protection of the natural environment). The attendant forfeiture of the acquired wood does not signify interference in the ownership of the forest, which remains intact. The imposition of a penalty upon a person found guilty under Article 158 of the Petty Offences Code is always connected with a diminishing of their possessions. The only difference between the penalty of a fine and forfeiture of wood relates to the fact that the former requires pecuniary performance, while the latter signifies a loss in kind. The limitation on ownership here is rather apparent (illusory) than real in nature – constituting a detrimental element of a sanction for infringement of the rules laid down in the Forests Act 1991. The aims of this sanction would not be achievable in the absence of a detriment involving the forfeiture of wood.
6. In the currently-operative 1997 Constitution, the principle of proportionality is regulated in Article 31(3). It is this provision, rather than Article 2 (the rule of law clause) that at present constitutes the appropriate basis for review when constitutional doubts arise as regards the legislator’s observance of the limits of proportionality.
7. The Constitutional Tribunal is strictly bound by the limits of a referred question of law (Article 66 of the Constitutional Tribunal Act 1997). It may not, therefore, substitute for the court referring such a question when it comes to specifying the constitutional bases adequate in respect of the challenged provision. It is not within its ruling, but

only within the reasoning for its judicial decision – offering broader analysis of challenged provisions – that the Tribunal may refer to provisions of the Constitution not clearly indicated within the question of law referred thereto.

Provisions of the Constitution and the Constitutional Tribunal Act

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. 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. 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 essence of such right.

Art. 74. 1. Public authorities shall pursue policies ensuring the ecological security of current and future generations.

Art. 86. Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

CT Act

Art. 66. The Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint.