

Judgment of 20th July 2004, [SK 11/02](#)
**POSTPONEMENT OF COMPENSATION FOR EXPROPRIATION
 OF REAL ESTATE FOR USE AS PUBLIC ROADS**

Type of proceedings: Constitutional complaint Initiators: A legal person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Postponement, for over two years from the date on which real estate was expropriated and occupied for public roads, of the previous owner's right to compensation [Introductory Provisions to the Acts Reforming Public Administration Act 1998: Article 73(4) (in the wording introduced in 2000)]	Requirement of "just compensation" for expropriation [Constitution: Article 21(2)]

On 1st January 1999, alongside the introduction of reforms to public administration and sub-State territorial divisions, the legislator regulated the ownership of real estate which had been occupied *de facto* (i.e. in the absence of having acquired appropriate legal title) by the State or local self-government organisational units and used for public roads. Article 73(1) of the Introductory Provisions to the Acts Reforming Public Administration Act 1998 granted the State Treasury or relevant local self-government legal person (e.g. communes) legal title to such real estate as of 1st January 1999, based on the factual occupation thereof, whilst at the same time stipulating that the prior owner(s) acquired the right to compensation.

Article 73(4) of the 1998 Act stipulated that the earliest date for submission of applications claiming such compensation was 1st January 2001 (i.e. two years following the transfer of legal title) and that the final deadline for submissions was 31st December 2005. The original wording of this provision stated that a "separate Act" would regulate the principles and procedures for determining the appropriate levels of compensation. This original wording was amended in 2000 and the reference to a "separate Act" was replaced by reference to "provisions concerning compensation for expropriated real estates" (this relates to the provisions of the Real Estate Management Act 1997). The remainder of Article 73(4) remained unchanged.

Reference to the general rules governing expropriation of real estates is subsidiary in this case, since the aforementioned provision represents a significant departure from these general rules, which require an individual expropriation decision to be adopted on each occasion of expropriation (no transfer of legal title occurs prior to such a decision), and for the appropriate level of compensation to be determined *ex officio*. Such compensation should be paid within 14 days following the date on which the expropriation decision became final and any person(s) entitled to compensation may sue for interest in the event of late payment (cf. Articles 112-132 of the Real Estate Management Act 1997).

In its judgment of 14th March 2000 ([P 5/99](#)), the Constitutional Tribunal ruled that certain principles of enfranchisement and compensation contained in Article 73(1) and (5) of the 1998 Act conformed to the Constitution. At the same time, on the basis of Article 39(1) point 3 of the Constitutional Tribunal Act,

the Tribunal discontinued proceedings in respect of Article 73(4) of the reviewed Act, declaring that, since the provision was amended to such an extent during the time the case was being considered by the Tribunal (cf. above), it was equivalent to the loss of binding force of the provision, which had been cited by the initiator of those proceedings.

In the current case, company B. challenged Article 73(4) of the 1998 Act in its amended wording. The complainant alleged that the legislator's decision to postpone, for two years following the date of expropriation, the earliest moment at which submission of an application for compensation was possible, amounted to an infringement of the constitutional guarantee of "just compensation" (Article 21(2) of the Constitution).

RULING

The challenged provision conforms to Article 21(2) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The rights protected by the Constitution, and in particular the right of ownership, are not absolute in nature. To construe the right of ownership as absolute or "infinite" (*ius infinitum*) would, in many cases, lead to infringement of other entities' rights and could also work to the disadvantage of owners. Statutory provisions stipulating limitations upon the right of ownership, representing an inevitable component of the legal order, should balance the interests of owners and the public interest in an appropriate manner.
2. The "just compensation" referred to in Article 21(2) of the Constitution is compensation linked to the value of the expropriated real estate. It is significant that the constitutional legislator did not employ the term "full compensation" but instead used the adjective "just", thereby giving this provision a more flexible nature. Accordingly, it should be assumed that particular situations may exist where other important constitutional values justify the conclusion that compensation is "just" even where not amounting to "full" compensation. It is impermissible, however, to limit the amount of compensation in an arbitrary manner.
3. When regulating the issues of compensation payable in the event of expropriation, the legislator is entitled to take into account the Roman law principle *ius civile vigilantibus scriptum est*, which is entirely approved in democratic States governed by the rule of law and requires concerned entities to be vigilant in protecting their own civil rights.
4. Article 73(4) of the 1998 Act regulates compensation for expropriation of real estates previously occupied for public roads – having taken place *ex lege* on 1st January 1999 – in such a way that certain limitations are introduced on the equivalency of compensation. Such limitations are represented by the following: postponement (until 2001) of the possibility to submit an application concerning the payment of compensation; limitation of the period within which such applications may be made (until 31st December 2005); failure to specify the moment at which payment of compensation will occur; and failure to take account of changes to the value of the real estate during the period

from the day that ownership was transferred until the day on which the amount of payable compensation is calculated.

5. When assessing the aforementioned legal solutions from the perspective of the constitutional guarantee of “just compensation” (Article 21(2)), the particular nature of the expropriation regulated by Article 73 of the 1998 Act must be taken into account. In adjusting the legal situation so as to correspond with the factual realities, the legislator attempted to bring order to an area of ownership relations which has remained unregulated for many years (as a rule with no attempt by owners to enforce their right of ownership), whilst at the same time attempting to strengthen existing relations and secure their irreversibility. The enfranchisement of the State Treasury and units of local self-government is a single act whose effects are limited in time. It concerns particular real estates – grounds used for public roads – and this requires the application of solutions departing from those envisaged by the Real Estate Management Act 1997. An *ex officio* calculation, based on these general principles, of the compensation payable – under the threat of the obligation to pay interest – within 14 days from the date on which the expropriation became legally effective (cf. Article 132 of the Real Estate Management Act 1997) would have to be preceded by a determination of the legal status of the real estate which, in many cases, is not possible to perform within a reasonable time period.
6. The binding nature of the limits of constitutional complaints placed on the Constitutional Tribunal (Article 66 of the Constitutional Tribunal Act) means that the Tribunal may not consider any submissions made by the complainant that were not included in the constitutional complaint but were subsequently made during the proceedings, following expiry of the time period specified in Article 46(1) of the Constitutional Tribunal Act for lodging complaints (in this case: the complainant’s submissions that the challenged provision does not conform to Articles 2, 32 and 77(1) of the Constitution).

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. 21. 1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

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. 77. 1. Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law.

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 useless 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.

Art. 46. 1. Constitutional claim, further referred to as the "claim" can be submitted after trying all legal means, if such means is allowed, within 3 months from delivering the legally valid decision to the plaintiff, the final decision or other final judgment.

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