

Judgment of 21st May 2001, [SK 15/00](#)
**EXPIRY OF AN INHERITED COOPERATIVE OWNERSHIP RIGHT
 IN AN APARTMENT**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Requirement for those inheriting a cooperative ownership right in a residential unit to pursue actions necessary to regulate the legal state of affairs within statutorily-defined time periods [Cooperative Law Act 1982: Article 228 § 1]	Principle of proportionality Protection of ownership and succession [Constitution: Articles 21(1), 31(3) and 64]

During Communist times in Poland, housing cooperatives performed a particular role in satisfying housing needs, by investing and managing a significant part of city housing resources. Post-war legislation on cooperatives created two basic types of right to use an apartment obtained within a housing cooperative, both of which were conditional upon membership in the cooperative: a cooperative occupancy right (non-disposable and non-inheritable, similar to tenancy) and a cooperative ownership right (a limited right *in rem* with the cooperative remaining the legal owner of the property unit, whilst permitting the member's right to a property unit to be disposed of and inherited in a manner similar to the right of ownership).

The legislator shaped the cooperative ownership right in a residential unit as a type of a limited right *in rem*, being similar to ownership of such a unit as regards the ability to dispose of or inherit this right. Nevertheless, the essential difference involved the strict link between the right in question and membership of the housing cooperative: the possibility to acquire this right originally (i.e. as a first-time acquirer) was vested solely in members of the cooperative; the effectiveness of any disposition thereof for the benefit of a third party was conditioned upon the acquirer of such a right becoming a member of the cooperative. Consequently, the legislator adopted the principle of "one-subject" character of the cooperative ownership right in a residential unit, according to which the aforementioned right was only capable of being vested in one member of the cooperative; the member's spouse was entitled to be co-holder of the right. The principle of linking the right in question with membership of the cooperative, as well as the "one-subject" principle (cf. above), formed the basis of the regulation concerning inheritance of this right.

A Constitutional Tribunal judgment of 25th February 1999 (reference number [K 23/98](#)) represented the first exception to the aforementioned rules. According to the Tribunal, statutory regulation envisaging the expiry of the right in a property unit following the death of the entitled person – where the successors of such a person had, within the defined period, not fulfilled the statutory requirements necessary to regulate the legal state of affairs in accordance with the aforementioned principles – was inconsistent with constitutional and international guarantees relating to ownership and inheritance.

The aforementioned judgment of 25th February 1999 resulted in the loss of binding force of a

sanction consisting in the expiry of a cooperative ownership right in the event of failure to fulfil the actions required by Article 228 § 1 of the Cooperative Law Act 1982, although the judgment did not *per se* concern this requirement. In its original wording, Article 228 § 1 required the heir of a deceased cooperative member to present, within a year of the latter's death, a court confirmation of their acquisition of the inheritance or, at least, proof that court proceedings had been initiated in this matter. Where several heirs existed, they were required – within defined time periods – to indicate which one of them should inherit the cooperative ownership right in the property unit, upon division of the estate or, at least, present proof that proceedings had been initiated in this matter.

Following pronouncement of the Tribunal's judgment in case K 23/98, the Cooperative Law Amendment Act 1999 was adopted, amending the wording of Article 228 § 1 of the Cooperative Law Act 1982 so as to comply with this judgment. However, in the case summarised herein, the Tribunal reviewed the original wording of this provision (as presented above).

Proceedings before the Constitutional Tribunal, in the case summarised herein, were initiated, within the constitutional complaint procedure, by Anna W., to whom the aforementioned provision had been applied in its original wording. Upon the death of her father, the complainant inherited an apartment within a housing cooperative. Almost two years later, the complainant applied to become a member of the housing cooperative, but her application was dismissed because it was lodged following expiry of the one-year deadline laid down by the challenged provision. Given the link which existed at that time between a cooperative ownership right in a property unit and membership of the cooperative (cf. summary of the Tribunal's later judgment – [K 32/03](#)), the right inherited by the complainant expired. This result was not altered following the complainant's initiation of court proceedings.

The constitutional complaint alleged that the challenged provision did not conform to Article 64(1) and (3), read in conjunction with Articles 21(1) and 31(3), of the Constitution, since expiry of the time period laid down by this provision could be the sole reason for an heir losing their inherited right.

The constitutional complaint was supported by the Commissioner for Citizens' Rights, who announced his participation in the proceedings.

Prior to considering the case on its merits, the Tribunal was required to consider two formal issues concerning the admissibility of the complaint. Primarily, it was inevitable to consider the possibility of applying Article 39(3) of the Constitutional Tribunal Act, since the challenged provision had definitely lost binding force following legislative amendment. The second issue concerned the fact that, during the course of proceedings before the Tribunal, the complainant died (her husband and daughter became the heirs). In respect of both issues, the Tribunal ruled in favour of the complaint's admissibility (cf. points 10 and 12-17 below).

RULING

1. Article 228 § 1 of the Cooperative Law Act 1982, in its wording operative prior to the entry into force of the Cooperative Law Amendment Act 1999, does not conform to Articles 21(1), 64(1) and (2) and 31(3) of the Constitution.

2. The aforementioned provision is not inconsistent with Article 64(3) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The institution of the right of succession (Articles 21(1) and 64(1) of the Constitution) is a correlate and a complement of the right of ownership, having the aim to preserve ownership.
2. Article 64(1) of the Constitution guarantees, in particular, the possibility to acquire and dispose of property; this also concerns actions undertaken in the event of death (*mortis causa*).
3. The introduction of formal statutory requirements, upon whose fulfilment the preservation of inherited property rights is made conditional, must be justified as regards the protection of rights and freedoms indicated in Article 31(3) of the Constitution and must adhere to the principle of proportionality expressed within this provision.
4. In principle, the legislator enjoys the discretion to create property rights other than the right of ownership – such discretion extends both to the legal nature of such rights and to the transferability thereof. This, however, does not justify arbitrary differentiation of the content and limits of property rights fulfilling identical functions and protecting similar interests.
5. The constitutional prohibition on violating the essence of the right of ownership (Article 64(3)) does not concern other property rights. Limitation of other rights should comply with the general formula laid down in Article 31(3) of the Constitution.
6. The cooperative ownership right in a residential unit, as a limited right *in rem*, has a narrower content and determines a narrower scope of entitlements than the right of ownership (cf. Article 223 of the Cooperative Law Act 1982 and Article 140 of the Civil Code). Nevertheless, this right is similar to the right of ownership and realises the same objectives (cf. Article 223 § 1, read in conjunction with Article 3 and the former Article 204, of the Cooperative Law Act 1982 and with Article 1(1) of the Housing Cooperatives Act 2000), which argues in favour of protecting this right in a manner similar to that envisaged for the right of ownership.
7. Article 3 of the Cooperative Law Act 1982 expresses a particular role for a cooperative, which does not act “for its own benefit” but in order to satisfy certain needs of its members and *ipso facto* should primarily take their interests into account. In particular, where a collision occurs between, on the one hand, the interests connected with protection of the cooperative’s property and, on the other hand, protection of the cooperative ownership right in a residential unit, there is no basis for according absolute priority to the former.
8. The requirement in Article 228 § 1 of the Cooperative Law Act 1982, (in the wording operative prior to the entry into force of the 1999 Amendment Act), that the actions specified therein must be fulfilled, within a statutory time-period, by the heir (or heirs) of a cooperative ownership right in a residential unit, as a potential condition for preserving the inherited right, and the requirement that, from amongst the heirs, only one heir may be chosen to definitively acquire this right (pursuant to the “one-subject”

principle) constitute an interference with the rights of the relevant persons as regards the constitutional principles of the protection of succession and equal protection of property rights (Articles 21 and 64(1) and (2) of the Constitution). The requirements for permitting such interference, as laid down by Article 31(3) of the Constitution, have not been fulfilled.

9. In light of Article 66 of the Constitutional Tribunal Act, the Tribunal may not adjudicate *ex officio* on whether or not a provision challenged within constitutional complaint proceedings conforms with constitutional norms other than those cited within the complaint.
10. A constitutional complaint concerns individual rights of the party lodging it but, concomitantly, leads to a determination by the Tribunal as to whether a normative act conforms to the Constitution; a finding of non-conformity results in the act being eliminated from the legal order and, accordingly, has consequences not only for the complainant but also for other participants in legal relations (cf. Article 190(1) and (4) of the Constitution). Such nature of the constitutional complaint must be taken into account, in particular, when interpreting the prerequisites for suspension or discontinuation of proceedings, as well as the authority of the Commissioner for Citizens' Rights as a potential participant in constitutional complaint proceedings.
11. The Commissioner for Citizens' Rights, having announced his participation in the constitutional complaint proceedings (cf. Article 27 point 8, read in conjunction with Article 51, of the Constitutional Tribunal Act), is entitled to cite grounds for the challenged provision's non-conformity with the Constitution, independently of the bases of review cited by the complainant. This conclusion stems from Article 208 of the Constitution and Article 1(2) of the Commissioner for Citizens' Rights Act, taking into account Article 191(1) point 1 of the Constitution, the aforementioned nature of a constitutional complaint and the requirements of the economy of proceedings.
12. The application of Civil Procedure Code provisions "as appropriate" to proceedings before the Constitutional Tribunal (Article 20 of the Constitutional Tribunal Act) implies, in particular, that some of these provisions will not apply, either because a given matter is regulated differently in the Constitutional Tribunal Act or because such provisions are inadequate (irrelevant) to the particular proceedings.
13. The prerequisites for discontinuing proceedings, enumerated in Article 39 of the Constitutional Tribunal Act, form an exhaustive list. The precondition regarding the inadmissibility of pronouncing judgment, mentioned among them (Article 39(1) point 1), is not identical to the reasons leading to the discontinuance of civil proceedings.
14. The death of the person lodging a constitutional complaint does not *per se* constitute a reason for suspending or discontinuing proceedings before the Constitutional Tribunal.
15. Article 39(3) of the Constitutional Tribunal Act does not concern the scope of the constitutional complaint, within the meaning of Article 66 of that Act; accordingly, it is not essential to refer to Article 39(3) in the text of a constitutional complaint in order to fulfil the formal requirements of a complaint.
16. Pursuant to Article 39(3) of the Constitutional Tribunal Act, the constitutional review of a provision which is no longer operative is conditional upon the fulfilment of three prerequisites: the reviewed provision must contain normative content relating to the

sphere of constitutionally guaranteed rights and freedoms; aside from declaring the provision unconstitutional, no alternative legal instrument may exist such as would cause a change in the complainant's legal situation, as definitively shaped prior to the provision's loss of binding force; the possible elimination of the provision from the legal system amounts to an effective means to protect the rights infringed by its operation. In the event of any doubt, a presumption operates in favour of considering the merits of a constitutional complaint.

17. Where the Constitutional Tribunal confirms that the aforementioned prerequisites are fulfilled, this does not determine the orientation of the judicial decision (the content of the Tribunal's forthcoming judgment) in any given case.
18. The scope of Article 39(3) of the Constitutional Tribunal Act does not encompass situations where, although the reviewed legal provisions are formally repealed, they may continue to apply to particular legal events (i.e. constitute the basis for decisions which apply the law), since such provisions maintain their binding force within the meaning of Article 39(1) point 3.

Provisions of the Constitution and the Constitutional Tribunal Act

Constitution

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. 190. 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.

[...]

4. A judgment of the Constitutional Tribunal on the non-conformity with the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

Art. 191. 1. The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:

- 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights,

[...]

Art. 208. 1. The Commissioner for Citizens' Rights shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts.

2. The scope and mode of work of the Commissioner for Citizens' Rights shall be specified by statute.

CT Act

Art. 20. In relation to cases not regulated in the Act concerning the proceedings before the Tribunal, the provisions of the Code of Civil Procedure shall apply as appropriate.

Art. 27. The participants in the proceedings before the Tribunal shall be:

[...]

- 8) the Commissioner for Citizens' Rights where he/she has given notice of his/her participation in the proceedings in relation to complaints concerning constitutional infringements.

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.
2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.
3. The regulation stated in item 1 point 3 is not applied if issuing a judgment on a normative act which lost its validity before issuing the judgment is necessary for protecting constitutional freedom and rights.
- Art. 51.** 1. The Tribunal shall inform the Commissioner for Citizens' Rights about the institution of proceedings. Provisions of Article 33 shall apply accordingly.
2. The Commissioner for Citizens' Rights may, within the period of 60 days from the receipt of information, give notice of his/her participation in the proceedings.
- Art. 66.** The Tribunal shall, while adjudicating, be bound by the limits of the application, question of law or complaint.