

Judgment of 6th October 2004, [SK 23/02](#)
**CONDITIONING THE ADMISSIBILITY OF CASSATION
 UPON THE VALUE OF THE DISPUTED RIGHT**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: Plenary session	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Inadmissibility of cassation in litigation concerning rights worth less than 10,000 Polish Zloty [Civil Procedure Code 1964: Article 392 ¹ § 1 (inserted in 1996)]	Right to equal treatment Right to equal protection of property rights [Constitution: Article 32(1) and Article 64(2)]

Polish civil procedure is, in principle, a two-instance system. The parties to a case have the right to appeal against any first instance court judgment deciding that case on its merits. As of 1st July 1996, the parties may also challenge certain judicial decisions issued by second instance courts, upon fulfilment of the conditions specified in the amended Civil Procedure Code. In such cases, the means of appeal is known as cassation and the Supreme Court is the third instance court.

Article 392¹ § 1 of the Civil Procedure Code, inserted by the Amendment Act 1996 and challenged in the present case, constitutes one of the restrictions on the admissibility of cassation. This provision states, inter alia, that in cases concerning property rights, the parties are not vested with the right to bring a cassation where the disputed right is worth less than 10,000 Polish Zloty. In economic cases (i.e. where both parties to the proceedings are entrepreneurs), the applicable minimum amount is 20,000 Polish Zloty.

The person lodging the constitutional complaint (the complainant) had initiated a court action claiming the right to succeed their deceased grandmother as a party to a lease relation. The complainant lost the case in both instances and the aforementioned limitation prevented the effective lodging of a cassation since, in court proceedings regarding the existence of a lease agreement, the value of such a right is assumed to be the annual rent amount (Article 23 of the Civil Procedure Code).

The constitutional complaint alleged that Article 392¹ § 1 of the Civil Procedure Code does not conform to Article 64(2) of the Constitution (the right to equal protection of property rights), read in conjunction with Article 32(1) (the general right to equal treatment). The complainant argued that, in litigation regarding a lease, the challenged provision favours lessees of more expensive property, since the admissibility of cassation is dependent upon the level of rent payable.

Prior to examining the challenged provision on its merits, the Constitutional Tribunal ruled on the formal admissibility of the complaint, with a positive decision (cf. points 1 and 2 below). In accordance with the line of jurisprudence epitomised in the Tribunal's judgment (delivered in a plenary session) of 24th October 2001, [SK 10/01](#) (summarised separately), Article 32(1) of the Constitution – guaranteeing the right to equal treatment and located amongst the Constitution's "General Principles" in the Chapter containing

guarantees of human and civil rights and freedoms – is considered incapable of constituting a free-standing basis for a constitutional complaint; the Tribunal requires that authors of constitutional complaints regarding the right to equal treatment must simultaneously indicate a specific constitutionally guaranteed right or freedom, in reference to which they allege that unequal treatment has occurred. Doubts arose as to the admissibility of the constitutional complaint in the case summarised herein given that the complainant, alongside Article 32(1), referred to the constitutional guarantee of equal protection of ownership, other property rights and succession (Article 64(2)), which is sometimes interpreted as a specification of the contents of the former provision.

RULING

The challenged provision conforms to Article 64(2), read in conjunction with Article 32(1), of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The particular nature of the right to equal treatment, as expressed in Article 32(1) of the Constitution, consists in the fact that this right may not be regarded as “free-standing” but must be dealt with jointly with legal norms or actions of public authority organs determining an individual’s legal situation. Where such norms or actions do not refer to specific rights or freedoms of individuals, specified in the Constitution, the right to equal treatment may not constitute the basis for a constitutional complaint (cf. Article 79(1) of the Constitution).
2. Article 64(2) of the Constitution, however, may constitute a free-standing basis for a constitutional complaint. The close relationship between the guarantee of “legal protection on an equal basis” and the constitutional right of ownership and other property rights results in the former equality becoming an inseparable aspect of the latter right, defining its essence. Accordingly, Article 64(2) is not merely a detailed confirmation of the principle of equality expressed in Article 32(1).
3. Whilst the constitutional guarantee of equal protection of property rights (Article 64(2)) precludes differentiation based on characteristics of the subjects of these rights (i.e. *personae* criterion), it does not preclude differentiation clearly related to dissimilarities in their factual or legal situations (i.e. *materiae* criterion). On civil procedural grounds, such differentiation may, in particular, be based on the criterion of different values of the subject of the litigation.
4. Cassation in civil cases is a statutorily-envisaged means to appeal against judicial decisions issued by second instance courts, allowing them to be considered by the Supreme Court. The fundamental objective of cassation is to protect the public interest by ensuring a uniform interpretation of law applied by the courts. It does not stem from the Constitution that the legislator is obliged to guarantee the availability of cassation in every category of court cases. Whilst Article 176(1) of the Constitution (the two-instance system of proceedings) is connected with the right to appeal against judicial decisions issued at first instance (Article 78), it does not prevent conditioning the right to appeal against judicial decisions of a second instance court (cassation) upon

additional criteria. Furthermore, it is within the standards of international law to deny the admissibility of cassation complaints in cases of lesser importance.

5. For the reasons indicated in points 3 and 4 above, conditioning the admissibility of cassation upon the value of the disputed right (Article 392¹ § 1 of the Civil Procedure Code) does not amount to an unconstitutional differentiation of the protection of property rights. Selection of the criterion for differentiating the level of protection falls within the scope of the legislator's regulatory discretion and corresponds to the nature of cassation as an extraordinary appellate measure.

Provisions of the Constitution

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. [...] 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

Art. 78. Each party shall have the right to appeal against judgments and decisions made at first instance. Exceptions to this principle and the procedure for such appeals shall be specified 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. 176. 1. Court proceedings shall have at least two instances.