

Judgment of 29th April 2003, [SK 24/02](#)
**NOTICE OF TERMINATION OF CONTRACT CONCLUDED
FOR A SPECIFIED PERIOD**

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
Limitation of possibility to give notice of termination of a lease contract concluded for a specified period to the cases defined in this contract [Civil Code 1964: Article 673 § 3]	Freedom of economic activity Principle of proportionality [Constitution: Articles 22 and 31(3)]

Article 673 § 3 of the Civil Code states that, where a lease contract has been concluded for a specified period of time, both the lessor and the lessee may give notice of termination of the lease “in cases specified in the contract”. The same refers to tenancy contracts, to which lease provisions are applied as appropriate.

The applicant lodging the constitutional complaint wished to give notice terminating a tenancy contract concluded for a specified period of time. The contract allowed for such a possibility, but the court ruled that the clause permitting notice to be given was legally ineffective where the parties to the contract were not required to give specific reasons for their decision to terminate. The applicant challenged the statutory rules limiting the possibility to give notice of termination, alleging that these provisions were incompatible with the constitutional guarantee of economic freedom (Article 22 of the Constitution) and the principle of proportionality (Article 31(3) of the Constitution).

RULING

Article 673 § 3 of the Civil Code is not inconsistent with Article 22 and Article 31(3) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The constitutional review of statutes should be undertaken pursuant to the assumption that, where the relevant area of law is governed by more detailed constitutional norms that are closer to that relevant legal issue, these constitutional norms represent the correct basis for reviewing the constitutionality of statutes regulating this legal area. In such circumstances, reference should not be made to the fundamental principles of the system of government which, although touching on the relevant legal area, do so in a more abstract and imprecise manner. By analogy with the rule of *lex specialis derogat legi generali* rule it may be stated that the existence of a more specific constitutional

norm excludes the application of a more general constitutional norm as the basis of review.

2. The status of the person and the citizen of the Republic of Poland is determined, first and foremost, by norms contained in Chapter II of the Constitution, through the rights and freedoms which stem from the inherent and inalienable dignity of the person (Article 30). The principles of the system of government, especially those expressed in Chapter I of the Constitution, may also impact on an individual's legal situation, in particular by expanding the sphere of these freedoms, influencing the scope of defined rights or the admissibility of any restrictions thereon. Nevertheless, the source of the binding nature of these principles is the constitutional legislator's assumption that these are norms which primarily contribute to the realisation of the common good of all citizens, as referred to in Article 1 of the Constitution. The constitutional provisions contained in Chapter I may only constitute complementary grounds for defining the rights and freedoms of the individual: they are applicable only to the extent that such matters are not regulated in Chapter II or where they provide more detail of a particular right's scope or any limitations thereon (e.g. Article 21(2)).
3. In principle, the mechanism of "constitutional complaint" in Polish law (Article 79(1) of the Constitution) serves to protect constitutional rights and freedoms which are regulated in the provisions of Chapter II of the Constitution. This does not, however, exclude the possibility of basing a complaint on a provision of the Constitution other than those contained in Chapter II, provided that such a provision constitutes the legal basis for the right or freedom which the applicant claims has been infringed.
4. Article 31(3) of the Constitution cannot constitute an independent (exclusive) basis for a "constitutional complaint", despite its location in Chapter II of the Constitution. It does not express rights or freedoms in a comprehensive and independent manner, but rather in a manner which is partial and complementary in respect of other constitutional provisions. In accordance with the Title of the Sub-Chapter in which Article 31(3) is located, this provision expresses a general principle referring to "limitations upon the exercise of constitutional rights and freedoms". A breach of Article 31(3) will only arise in situations involving an interference with any of the persons' and citizens' rights and freedoms contained in other provisions of the Constitution.
5. In Article 20 and Article 22 of the Constitution, the constitutional legislator used the term "freedom of economic activity", which proves that these provisions also constitute the basis of a constitutional right, and not solely a legal norm in the objective meaning and the principle of the system of government.
6. Article 22 of the Constitution does not create the freedom of economic activity. This is done predominantly by Article 20, complemented by other constitutional norms including Article 64(1) and Article 65(1). Article 22 solely concerns the legality of limitations imposed on the freedom of economic activity.
7. In Article 22 of the Constitution, the constitutional legislator regulates, in a direct, exhaustive and comprehensive manner, both the formal and substantive prerequisites for the legality of limitations on the freedom of economic activity. Since the freedom of economic activity is merely one of many rights and freedoms guaranteed by the Constitution, Article 22 constitutes *lex specialis* in relation to Article 31(3). This conclusion is also supported by the location of both provisions within the Constitution: the former is located in Chapter I, containing the most general and fundamental

former is located in Chapter I, containing the most general and fundamental principles of the system of government of the Republic of Poland, whereas the latter is located in the part of Chapter II (governing rights and freedoms) containing general principles governing the rights and freedoms expressed in that Chapter. Each of the interests listed in Article 31(3) as justifying the limitation of rights and freedoms are inherent in the scope of the “important public reasons” mentioned in Article 22, whereas the scope of the “important public reasons” in the latter is wider than the interests listed in Article 31(3). The substantive grounds (prerequisites) for the legality of limitations imposed on the freedom of economic activity are, therefore, much broader in Article 22 than the scope of permissible limitations of rights and freedoms allowed under Article 31(3).

8. The principle of freedom of contract, expressed at a statutory level by Article 353¹ of the Civil Code, is closely connected with the constitutional protection of freedom of the person (Article 31(1) of the Constitution) and the obligation to respect others’ freedoms, which is imposed on all parties to legal relationships, including those relating to the conduct of civil law transactions (as arising from Article 31(2)). The freedom of contract, as a principle of private law, may not, however, be considered as deriving from the “classic” fundamental rights having the nature of a “freedom” (e.g. freedom of the person and citizen), which govern relations between public authorities and individuals. In particular, the principle of freedom of contract is not derived from the freedom of economic activity, despite functional connections between them (a similar relationship arises in respect of the freedom of contract and the constitutional right to ownership, or the constitutional freedom to choose and pursue one’s profession).
9. The challenged provision, Article 673 § 3 of the Civil Code (stating that notice of termination of a lease concluded for a specified period may only be given in cases expressly specified in the contract), was introduced into the Civil Code in 2001. This provision was construed as an exception to the principle acknowledged by the Supreme Court and most civil law theorists, by virtue of which (prior to the entry into force of this provision) a lease or tenancy contract concluded for a specified period of time could not be unilaterally terminated by notice from either party. A finding that the challenged provision was unconstitutional would, thus, have an effect opposite to that which the applicant seeks to achieve, since he assumes that the freedom of contract should allow contractual parties to arrange its contents so as to express their will. This idea is realised by the introductory part of the reviewed provision, which has not been challenged by the complainant. The part of the provision challenged in the present proceedings is, in fact, the requirement contained in the provision *in fine*, stating that a lease or tenancy contract concluded for a specified period should state the circumstances in which notice of termination is permissible.
10. Article 673 § 3 of the Civil Code constitutes an interference with that aspect of the freedom of contract which allows the contractual parties to arrange contractual terms so as to reflect their will. Any provision contained in a lease or tenancy contract concluded for a specified period, stating that notice of termination may be given by one of the parties without defining the reasons for giving such notice, would contravene the challenged provision (read in conjunction with Article 694 of the Civil Code) and would thus be invalid, in accordance with Article 58 § 1 of the Civil Code. If circumstances indicated that a contract would not have been concluded without the inclusion

of such a clause, the contract would be invalid in its entirety (Article 58 § 3 of the Civil Code).

11. When reviewing the constitutionality of a statutory provision the “symmetry” of the provisions under review and the constitutional basis of review is of crucial importance. Both provisions should remain in such a relation that the scope of the subject and object of such provisions (i.e. *ratione personae* and *ratione materiae*) would allow an unequivocal ascertainment of the conformity or non-conformity of the reviewed statutory provision to the constitutional norm.
12. There is no such relationship between Article 673 § 3 of the Civil Code and Article 22 of the Constitution, the latter having been cited by the complainant as the appropriate basis of constitutional review. Lease and tenancy contracts may be concluded not only by entrepreneurs within the scope of their economic activities but also by all subjects of civil law relationships (cf. Article 659 and Article 693 of the Civil Code). Furthermore, *de facto* these contracts are not solely confined to cases involving economic relations. Accordingly, Article 22 of the Constitution is not an adequate basis of constitutional review of the challenged Civil Code provision.
13. This provision was introduced into the legal order over a year after the complainant had given notice to terminate the tenancy contract. Article 3 of the Civil Code states that statutes shall not apply retrospectively, unless such a result flows from the wording or purpose of the statute. Since neither the wording nor the purpose of the challenged provision justify the conclusion that it should apply retrospectively, it may be presumed that this provision ought not to have represented the basis of the rulings of the courts adjudicating this case, in which the complainant was sued. However, since courts of both instances referred to the challenged provision in the reasons for their judgments, it should be assumed that this provision constituted the basis of their decisions, within the meaning of Article 79(1) of the Constitution, regardless of whether its application in the specific circumstances was justified.

Provisions of the Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens.

Art. 20. A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

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. 22. Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

Art. 30. The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

Art. 31. 1. Freedom of the person shall receive legal protection.
2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.
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.

Art. 65. 1. Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute.

Art. 79. 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been in-

fringed, 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.