

Judgment of 6th April 2004, [SK 56/03](#)
**ABOLITION OF TELEPHONE ALLOWANCES
 FOR RETIRED POSTAL WORKERS**

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
Depriving current and retired employees of “Polish Post” of allowances and partial exemptions from telephone subscription fees [Telecommunication Act 2000: Article 131(29)]	Rule of law Principle of proportionality Protection of ownership and other property rights [Constitution: Articles 2, 31(3), 64(1)]

Mr. Jerzy K., lodging a constitutional complaint in the present case, was employed between 1981-1984 in one of the regional postal-delivery divisions constituting part of the State entity “Polish Post, Telegraph and Telephone” (*Polska Poczta, Telegraf i Telefon*, hereinafter referred to as “PPTT”). Such employment terminated upon the complainant’s entitlement to a disability pension. As a disabled pensioner (and, subsequently, retired), the complainant enjoyed certain benefits vested in current and retired PPTT employees, such as gratuitous telephone line rental and 100 free telephone call-units per month.

Enjoyment of the aforementioned telephone allowances was based on numerous, successively adopted, legal acts. The complainant’s entitlements continued in existence following 1st January 1992, the date on which two separate enterprises were formed from PPTT, i.e. “Polish Telecommunication Company” (a public joint-stock company; *Telekomunikacja Polska S.A.*) and “Polish Post” (public utility enterprise; *Poczta Polska*). Since then, allowance costs have been borne by the former enterprise (which was subsequently privatised).

The challenged provision of the Telecommunication Act 2000 introduced amendments into the Communication Act 1990, according to which “Articles 88 to 93 [of the 1990 Act] shall be repealed”. This signified, in particular, the loss of binding force of Article 91 of the 1990 Act, on which the complainant’s benefits were based.

In the constitutional complaint it was alleged that the aforementioned amendment fails to conform to the guarantees inferred by the complainant from Articles 2, 31(3) and 64(1) of the Constitution.

RULING

The challenged amendment conforms to Article 64(1), read in conjunction with Articles 2 and 31(3), of the Constitution.

PRINCIPLE REASONS FOR THE RULING

1. The principle of protecting acquired rights, derived from the rule of law clause (Article 2), does not preclude the adoption of legal provisions abolishing or restricting certain subjective rights. This principle only protects expectations which are sufficiently justified and rational, together with those which are justified by the need to protect constitutional values, whereby comparison thereof with other constitutional values awards them priority. This principle prohibits the arbitrary abolition or restriction of subjective rights vested in private entities. Nevertheless, the individual should be aware that a change in social or economic conditions may require amendment of legal provisions governing certain spheres of life or situations. Such amendments may, in particular, include the abolition or restriction of hitherto guaranteed rights, such as those guaranteeing an allowance.
2. It would be irrational and unjustified to expect that allowances vested by virtue of law in current and retired employees, reducing the assets of an autonomous economic entity (in this case: “Polish Telecommunication Company”), may not be statutorily abolished.
3. The telephone allowance, abolished in 2001 on the basis of the challenged provision, was vested by the legislator in current and retired employees of both the postal services and “Polish Telecommunication Company”. This is related to the fact that, in the past, telephone services were provided, according to the principle of exclusivity, by the State entity “Polish Post, Telegraph and Telephone”. As of 1st January 1992, following the establishment of two independent entities on the basis of PPTT: “Polish Telecommunication Company” and a public utility enterprise “Polish Post”, the provision of telecommunication services remained with the former and this enterprise assumed the financial burden of the discussed allowance. “Polish Telecommunication Company” is a joint-stock company functioning on the market in accordance with commercial principles. Accordingly, realisation of the telephone allowance reduced this company’s assets. This reduction did not stem from the company’s activity but as a result of the legislator’s decision. The latter decision interfered, in a particular manner, with the property of a joint-stock company being an independent subject of property rights. There were no grounds to assume that beneficiaries were vested with life-long allowances.
4. The abolition, on the basis of the challenged legislative amendment, of the discussed telephone allowance is not inconsistent with the principle of protecting acquired rights, stemming from Article 64, read in conjunction with Article 2, of the Constitution. On the one hand, the legislator had no constitutional grounds for burdening the assets of an autonomous joint-stock company, such as “Polish Telecommunication Company”, with the costs of this allowance. On the other hand, neither was the legislator constitutionally obliged to apply any form of “buyout” of this allowance as regards persons having acquired the right thereto on the basis of hitherto provisions. It is not without significance for the constitutional assessment of the challenged provision that abolition of the allowance was performed with the observance of a sufficient *vacatio legis* (16 weeks). Furthermore, practical application of the new provisions was also delayed since, in reality, “Polish Telecommunication Company”, whilst authorised to discontinue application of the discussed allowance from 1st January 2001, only withdrew the allowance at the beginning of May of that year.

5. The fact that the discussed types of allowance are vested in employees of “Polish Telecommunication Company” as a result of resolutions of the company’s management board, as opposed to statute, does not give rise to any constitutional concerns, since it is impermissible to statutorily prohibit a joint-stock company from providing privileges for its employees in such a manner.

Provisions of the 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. 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.