

Judgment of 11th April 2006, [SK 57/04](#)
**THE MAINTENANCE OBLIGATION TOWARDS AN EX-SPOUSE
 FOLLOWING A DIVORCE**

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
Lack of time-limitation as regards the statutory duty to provide financial support to the other divorced spouse, in respect of a divorced spouse to whom a divorce judgment has assigned blame for the disintegration of matrimonial life <small>[Family and Guardianship Code 1964: Article 60 § 3 <i>a contrario</i>, read in conjunction with Article 60 § 1]</small>	Social justice Prerequisites for the admissibility of limitations on the exercise of constitutional freedoms and rights Protection of ownership <small>[Constitution: Articles 2, 31(3) and 64]</small>

Article 60 of the Family and Guardianship Code 1964 (hereinafter referred to as “the 1964 Code”) is one of the said Code’s provisions regulating the institution of divorce. That provision imposes a specific maintenance (alimony) obligation that is incumbent upon divorced spouses. The ex-spouse not found to be exclusively to blame for the disintegration of matrimonial life by the divorce judgment of a court may, if suffering privation, demand from the other ex-spouse the means of subsistence corresponding to justifiable needs on the part of the entitled spouse, as well as the financial capacity of the obliged spouse (Article 60 § 1 of the 1964 Code). Accordingly, the claim of a divorced spouse against the other ex-spouse, as so-defined – as along with the latter’s obligation as regards maintenance correlated therewith – may arise both where a court does not attribute blame within the divorce judgment and where the blame is ascribed to both parties or exclusively to one (in the last case, the claim under discussion only being vested in the ex-spouse not burdened with blame).

Where only one ex-spouse is found to blame, the alimony claim from the other is not conditional upon the suffering of privation; it is sufficient that the divorce results in a significant deterioration in the blameless spouse’s financial circumstances (Article 60 § 2 of the 1964 Code).

Article 60 § 3 of the 1964 Code in turn envisages two alternative prerequisites if the maintenance obligation following a divorce is to expire. The first entails the person entitled to such maintenance entering into a new marriage, the second entails the expiry of a period of 5 years following the divorce (possibly subject to extension by a court), but only where the obliged ex-spouse has not been found to blame for the disintegration of matrimonial life. *A contrario*, the aforementioned 5-year period shall neither apply where a court has found the obliged ex-spouse exclusively to blame for the disintegration of matrimonial life, nor where blame therefor has been attributed to both ex-spouses.

The constitutional complaint in the present case, lodged by Mr H., challenged the aforementioned legal regulation, insofar as it allows for an indefinite (virtually life-long) duration of the maintenance obli-

gation. The direct reason for his lodging of the complaint was a court decision awarding from the complainant (who had been found exclusively to blame for the disintegration of matrimonial life) cash-payment maintenance to the benefit of his ex-wife with no limitation as regards the time period.

The complainant alleged that the challenged legal construction regarding the maintenance obligation infringes the principles of social justice (Article 2 of the Constitution). In his opinion, the said obligation should exist solely between close relatives (those in direct line or siblings). While the case law of the Supreme Court holds that the maintenance obligation between spouses following a divorce is a continuation of the duty of mutual support that arose between them through the concluding of a marriage, the complainant expressed the view that this is incompatible with transformations taking place as regards everyday life and morality over the last 40 years. The complainant further alleged that the challenged legal provision denoted a limitation of the property rights of the spouse found to be to blame for the disintegration of matrimonial life (Article 64 of the Constitution), something that could not, in his view, be justified in the light of Article 31(3) of the Constitution (principle of proportionality).

RULING

The challenged provision conforms to Article 64, read in conjunction with Article 31(3), of the Constitution and to the principles of social justice (Article 2 of the Constitution).

PRINCIPAL REASONS FOR THE RULING

1. Unconstitutionality in respect of a legal norm lies not so much in the possibility that its application may give rise to violations of the Constitution, as in such an infringement in some sense representing inherent content of the said norm.
2. It is erroneous to infer from Article 60 § 3 of the 1964 Code that only by entering into a new marriage will an ex-spouse entitled to maintenance performances release the other ex-spouse, found to blame for the disintegration of matrimonial life, from the duty to make such payments. Rather, the jurisprudence of the Supreme Court also assumes the possibility of an action for maintenance being dismissed where the claim infringes good customs (Article 5 of the Civil Code, i.e. the abuse of a subjective right). Common courts examining suits filed under Article 60 of the 1964 Code are to take care to ensure that the pursuit of maintenance claims does not become harassment of the ex-spouse or a means of exploiting him/her.
3. While Articles 18 and 47 of the Constitution do not represent grounds for constitutional review in the present case, their contents are not without import in the assessment of the challenged legal regulation. In the light of the principles expressed in these constitutional provisions, marriage is a complex legal institution. On the one hand, a person's entering into and remaining in a marriage is the expression of a freedom vested in an individual. On the other, that situation gives rise to specific duties on the part of a spouse, these forming the basis of the other spouse's rights, in particular as regards financial claims. Such claims stem not only from statutes (albeit with stat-

utes defining them) but also from Article 18 of the Constitution.

4. Entry into marriage constitutes, in essence, a basis for the limitation of property rights vested individually in each spouse. This is true not only of the institution of marital community of property but also – and even principally – of financial duties in relation to the other spouse and other members of a family started. The duty of mutual support, including financial support, remains one of the essential elements of marriage.
5. The constitutional aspect of one spouse's obligations towards the other exerts an influence upon the temporal scope thereof. By its very nature, marriage is taken to be a legal relationship of unspecified duration. Notwithstanding the existence of the institutions of divorce and separation, changes in morality and concomitant changes in social consciousness, the principal reason for the termination of a state of marriage remains the death of one of the spouses. Hence, certain forms by which an ex-spouse's financial claims in relation to the other ex-spouse are protected may continue to exist in spite of divorce and even be of a "life-long" nature. Where no divorce occurs, spouses have the right to expect support from each other, including financial support in satisfying justifiable needs. The statutory regulation of the situations of divorced spouses ought therefore to protect expectations of this kind, since, as property rights, these are also subject to protection under Article 64 of the Constitution.
6. The general obligation of solidarity with others, as referred to in the last sentence of the constitutional Preamble, is a principle binding upon all entities that apply the Constitution. The nature of the aforementioned duty is dependent upon the character of the relationship between the relevant persons. Relations between spouses should also be based upon solidarity conceptualised in a specific way. Consequently, the legislator may impose upon ex-spouses certain obligations as regards each other that operate to the benefit of the ex-spouse whose situation deteriorates on account of a divorce.
7. Assessments of the challenged provision from the perspective of Article 31(3) of the Constitution need first to bear in mind that the limitations upon individuals' constitutional rights have been introduced by way of a statute. This signifies fulfilment of the formal requirement regarding admissibility where limitations upon individuals' rights are concerned. The issues of the precision and specificity of such limitations, including the statutory notions of "privation" and "justifiable needs", remain beyond the scope of the present proceedings.
8. As regards the Article 31(3) material and legal prerequisites permitting limitations on individuals' rights, the challenged regulation was, above all, dictated by the need to protect the rights of others (in this case: the ex-spouse of a person obliged to provide the means of subsistence). Also of some significance is the prerequisite that public morality be protected, this being, in essence, an inherent part of the constitutional basis for differentiating between the statuses of the spouse held to be to blame for the disintegration of matrimonial life and the other one to whom blame therefor has not been assigned. The moral and legal principle *nemo turpitudinem suam allegans audiatur*, deriving even from Roman Law, remains relevant to this day. The assignment of blame for the disintegration of matrimonial life constitutes the basis upon which a divorce is assumed to have come about through such behaviour of the blamed spouse as may be deemed unlawful or, at least, incompatible with moral principles.
9. The principle of proportionality, expressed in Article 31(3) of the Constitution, de-

notes the permissible scope of limitations on constitutional rights or freedoms, requiring that a challenged provision be examined as regards the fulfilment of conditions of relevance, necessity and proportionality *sensu stricto*.

10. In the present case, the requirement that the limitation be relevant is fulfilled: alimony paid by the ex-spouse meets material needs that would have been satisfied within the family, had a divorce not occurred. The issue of necessity likewise raises no significant doubts, since the only way to secure a certain standard of living for divorced spouses is through the imposition of a duty of maintenance thereupon. It would be hard to envisage such an obligation being imposed upon either the public authorities or relatives of the entitled spouse. From an analysis of the overall content of Article 60 of 1964 Code, in the context of Article 5 of the Civil Code 1964 (cf. point 2 above), it may also be concluded that the legislator respects the requirements of proportionality *sensu stricto*.
11. The principles expressed in Article 2 of the Constitution do not represent autonomous bases for freedoms or rights subject to protection by virtue of a constitutional complaint. The said provision may not, therefore, constitute an autonomous basis for this type of constitutional review. However, the complainant's allegation that the discussed provision is infringed may be examined by the Constitutional Tribunal, where the allegation of unconstitutionality refers at the same time to a constitutional provision providing a basis for constitutional freedoms or rights.
12. In the present case, the complainant's invoking of the part of Article 2 of the Constitution expressing the imperative that the principles of social justice be embodied has had the primary purpose of strengthening his argumentation. The circumstances indicated by the complainant, i.e. the greater degree of social acceptance for the institution of divorce and the increase in rates of marital breakdown, do not directly influence assessment of the situation faced by the spouse whose culpable conduct caused matrimonial life to disintegrate. A person's culpable contribution to the breakdown of their own marriage is an act that has to be assessed negatively, from the points of view of both the other spouse and society as a whole, since the influence on a public life in which marriage and the family are crucial elements is unfavourable. Accordingly, a more rigorous treatment of this category of spouse may not be deemed unjust socially.

Provisions of the Constitution

[Preamble] [...] We, the Polish Nation – all citizens of the Republic [...] Hereby establish this Constitution of the Republic of Poland [...]. We call upon all those who will apply this Constitution for the good of the Third Republic to do so paying respect to [...] the obligation of solidarity with others [...].

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. 18. Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

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. 47. Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life.

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 suc-

cession.

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 essence of such right.