

Decision
of 20 April 1993 (P. 6/92)

The Constitutional Tribunal sitting with the bench composed of the Chairman Tomasz Dybowski, and Judges: Henryk Groszyk, Maria Łabor-Soroka, Wojciech Łączkowski; and Remigiusz Orzechowski (Reporting Judge)

(...)

held

article 85 of Act dated 29 April 1985 on Land Management and Expropriation of Realty (Journal of Laws, 1991, Number 30, Item 127, as amended in 1991, Journal of Laws, Number 83, Item 373; Number 103, Item 446; Number 107; Item 464; 1992, Number 91, Item 455) contravenes articles 7, 1, and 67, section 2 of the Constitution of the Republic of Poland, which were upheld by article 77 of the Constitutional Act dated 17 October 1992.

At the same time, the Constitutional Tribunal states that this Decision is not final. Pursuant to article 7, section 2 of the Constitutional Tribunal Act dated 29 April 1985, this Decision is subject to review by the Sejm within six months from its submission together with the Constitutional Tribunal's reasoning.

(...)

Reasoning

(...)

V

a) In presenting its position on the question of the constitutionality of article 85 of the Act dated 29 April 1985, the Constitutional Tribunal first dealt with the essence (nature) of the right to property, as in the case in question the main problem concerns the permissibility to establish rules of law under common statutes having the effect of restricting to a specific extent the rights of the owner following from the right to property and, as a result, the scope of protection of this right. The Constitutional Tribunal presented its position by referring to an earlier decision on this question (i.e., the decision dated 28 May 1991 in case Number K. 1 /91).

In the opinion of the Constitutional Tribunal, article 7 of the Constitution of the Republic of Poland undoubtedly expresses the lawmaker's aspiration to strengthen the right to property and to protect this right in our legal system. This is reflected in the solutions adopted both in the Constitution and in the common statutes concerning the right to property drawing on the Constitution. An evaluation of these solutions leads to the conclusion that in our legal system the right to property is treated as a right with the broadest content and, compared with other rights, with the greatest strength with respect to things. At the same time, however, it is not an absolute right (*ius infinitum*), that is a right whose content is not restricted in any way: To the contrary, the essence of the right lies, on the one hand, in the freedom to use one's own thing (collect the fruits and dispose of the thing: See article 140 of the Civil Code) and, on the other hand, it lies in certain restrictions imposed on this freedom, constituting a kind of limit to for the essence of the right to property and, as a result, a limit to the protection of this right.

This is so because the treatment of the right to property as an absolute right to things would in many cases lead to the violation of the interests of other parties. Thus, the existence of some limitations in the use of one's own thing has been accepted in legal science and reflected in the rules of law, including the provisions of the Constitution.

When it comes to fundamental solutions concerning the essence (nature) of the right to property and the scope of protection of this right, they can be found first of all in articles 7 and 1 of the Constitution of the Republic of Poland. The former proclaims full protection of the right to property, hence the freedom to use one's thing (collect the fruits and dispose of the thing). The latter, on the other hand, proclaiming the rule of law putting into effect the principles of social justice (entailing, among other things, public welfare (public interest) serves as the basis for restrictions of this freedom from the point of view of public interest.

Given the above, in proclaiming in article 7 the full protection of the right to property reflected in the freedom to use one's one thing, the Constitution of the Republic of Poland does not exclude the possibility to establish specific restrictions on this freedom if warranted by public interest. At the same time, by virtue of being the basic law, the Constitution does not have to regulate nor should it regulate these matters in detail. In agreement with a well-established legislative practice, the Constitution regulates such matters only in general terms, while the details are regulated under ordinary statutes, which are based on the Constitution.

The limits of the freedom to use one's own thing, and consequently the limits of the protection of the right to property, undoubtedly constitute a kind of restriction on the owner. They cannot, however, be identified with actual restrictions imposed for the benefit of specific third parties, such as servitude, the right of usage, or lease. The purpose and sense of such restrictions is to determine for the sake of public interest the limits of the freedom to use one's own thing. An example of such restrictions include the provisions of the Civil Code requiring allowance to be made for the socio-economic purpose of the law and the principles of community life in exercising the right to property, the provisions of the Civil Code referred to as neighborhood law, some environmental regulations and land planning regulations, some provisions of construction and water law, some regulations concerning the protection of cultural heritage, etc.

The determination of the limits of the freedom to use one's own thing and, consequently, the limits of the protection of the right to property is in opposition to treating the right to property as an absolute right.

b) Regarding the constitutionality of article 85 of the Act dated 29 April 1985, one must first of all agree with the Commissioner for Citizens' Rights and the Prosecutor General that the provision introduces significant restrictions on the rights of owners of building plots referred to in the said provision, both in terms of administrative and civil law.

The restrictions in terms of administrative law follow from the fact that in the case of an administrative body failing to observe the deadline for building on the plot, the consequences under article 85, section 2 apply. In terms of civil law, the restrictions, on the other hand, exclude the freedom to use one's own thing, especially if one accepts the assumption made by the Commissioner for Citizens' Rights that the will to divide realty into building plots is not always accompanied by the will of the owner to develop or sell the newly created plots directly following the division of that realty.

It is in connection with these restrictions on the rights of the owner of building plots following from the right to property that the Commissioner for Citizens' Rights and the Prosecutor General find article 85 of the Act dated 29 April 1985 in contravention of article 7 of the Constitution of the Republic of Poland. In sharing this view, in the opinion of the Constitutional Tribunal, the unconstitutionality of this provision also follows from other considerations.

First of all, it follows from article 85 of the said Act that the obligation to develop the newly created building plots follows directly from the Act, and only the deadline for building

on the plots is subject to determination under an administrative decision to divide the realty. Article 85 of the Act dated 29 April 1985 does not simultaneously specify any material or legal premises that prejudice as to the obligation to develop and the deadline for developing such plots. In particular, this provision offers no suggestion that the question of developing newly-created plots and the deadline for developing such plots are connected with any public interest justifying the interference of a state body in the right to property, considered at length in the earlier discussion on the essence and nature of the right to property. The reference in article 85 to the land development plan as a premise permitting the division of realty into building plots makes no difference here as no obligation to develop such plots follows from such plans in their present shape although, broadly speaking, solutions under such plans allow for public interest. (...)

Consequently, it must be conceded that article 85 of the Act dated 29 April 1985 contravenes article 7 of the Constitution of the Republic of Poland due to the restrictions it entails on the rights of owners of building plots created as a result of a division of realty following from the right to property.

Article 85 of the Act dated 29 April 1985 contravenes article 7 of the Constitution of the Republic of Poland also due to the fact that, in allowing for the possibility to set the commencement and completion dates for developing newly-established building plots without specifying any material and legal premises that would prejudice such dates, the said provision causes a state of uncertainty on the part of the owners of such plots as to their rights to their own thing and restricts the possibility to defend their rights under the right to property. (...)

Especially in terms of the legal state arising from the above provision, it is misleading for this provision to be included in the chapter of the Act covering interim and final provisions, despite the fact that given its content, the provision cannot be classified as belonging to this category. The said provision provides for the obligation to develop the building plots specified therein by the deadline set by a state body in a decision concerning the division of given realty into building plots, while the provisions concerning the division of realty (article 10 of the said Act) ignore this issue.

This manner of settling the question concerning the developing of building plots (fairly clouded in terms of legislative methods) in article 85 of the Act dated 29 April 1985 justifies the objection of the Commissioner for Citizens' Rights claiming this provision contravenes article 1 of the Constitution of the Republic of Poland.

The Constitutional Tribunal also shared the opinion of the Commissioner for Citizens' Rights and the Prosecutor General claiming that article 85 of the said Act contravenes article 67, section 2 of the Constitution of the Republic of Poland by virtue of clearly putting at a disadvantage owners of building plots established as a result of the division of realty in court proceedings. (...)