

MACIEJ PISZ¹

Standard of protection of property rights of owners of residential premises in a democratic country – selected problems considered in the light of Polish constitutional law

Abstract: The article focuses on presenting key issues revealed in the context of the standard of protection of property rights of owners of residential premises in a contemporary democratic state governed by the rule of law. The considerations presented take into account the perspective of Polish constitutional law and the guarantees of protection of ownership and other property rights as regulated in the Constitution of the Republic of Poland of April 2, 1997 (with particular emphasis on Article 21 and Article 64). The issue addressed in this paper of particular importance from the Polish perspective because, on the one hand, Polish constitutional law formulates relatively broad guarantees for the protection of ownership and other property rights (including those rights of owners of residential premises and tenants – as outlined in Article 21 and Article 64 of the Polish Constitution). On the other hand, there are several practical problems in Poland in this context, including a very significant systemic issue related to the lack of any systemic solutions in the regulation of the short-term rental market by the Polish legislator.

Keywords: property rights, ownership, residential premises, Constitution of the Republic of Poland of April 2, 1997, short-term rental

1 Maciej Pisz, University of Warsaw, Faculty of Law and Administration, Warsaw, Poland. e-mail: m.pisz@wpia.uw.edu.pl, <https://orcid.org/0000-0001-7516-7786>.

Introduction

The general aim of this paper is to present key issues revealed in the context of the standard of protection of property rights of owners of residential premises in a contemporary democratic state ruled by law. The presented considerations will take into account the perspective of Polish constitutional law and the guarantees of protection of ownership and other property rights as regulated in the Constitution of the Republic of Poland of April 2, 1997.

In particular, this paper will address the following problems: (1) the scope of legal protection of owners of residential premises; (2) the issue of legal protection of tenants in the context of protecting the rights of owners of residential premises; (3) the challenge of legal protection of a housing community and owners of neighbouring premises in a situation where the owner uses the premises in a way that violates the interests of neighbours (4) the matter of permissible limitations of the ownership right of the owner of residential premises concerning the possibility of organizing short-term rentals, which may interfere with the use of neighboring properties.

The Main Assumptions Associated with the Scope of Legal Protection of Owners of Residential Premises in a Democratic State

At the outset, we can posit the thesis that in a modern democratic state, there generally exists legal protection for owners of residential premises. Additionally, it is worth noting that legal protection of owners of residential premises is usually derived in legal systems from the guarantee of protection of ownership and other property rights. This guarantee is often directly outlined in the constitutional provisions of many countries. This generally stems from the regulation of human and citizen rights and freedoms outlined in the constitutions of modern countries.

At the same time, it should be emphasized that in a modern democratic state governed by the rule of law, the protection of the ownership of residen-

tial premises is, of course, extensive and unquestionable. However, it is not absolute and may be limited for, among others, tenants of residential premises (in Poland the legislator introduced in this respect, among others, provisions in acts on the protection of tenants' rights²). Moreover, the scope of legal protection of the owner of residential premises may also be limited in favour of the entity managing a multi-unit building (e.g. a housing community) and owners of neighbouring premises. Additionally, one can argue in this context that potentially the scope of permissible restrictions on the ownership of the owner of a residential premise extends also to the possibility of arranging short-term rentals, which could interfere with the use of neighbouring properties. These issues will be explored in more detail later in the article.

The Scope of Legal Protection of Owners of Residential Premises in Polish Constitutional Law

This legal issue discussed in this paper is particularly important from the perspective of Poland, as Polish constitutional law formulates *expressis verbis* guarantees for the protection of ownership and other property rights, including the rights of owners of residential premises. Moreover, the abovementioned guarantees are relatively broad.

Referring to the standard of ownership protection in the Constitution of the Republic of Poland, it is crucial to emphasize that under this Constitution, the constitution-framer regulated ownership in various sections (from the point of view of the structure of the Constitution), presenting at the same time different approaches in its individual provisions.³ In this context, the following provisions should be noted in particular:

² Act of 21 June 2001 on the protection of tenants' rights.

³ Cf. Leszek Garlicki, "Uwaga 4 do art. 21" in *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 3, ed. L. Garlicki. Warszawa, 2005, 4; Ewa Łętowska, "Własność i jej ochrona jako wzorzec kontroli konstytucyjności. Wybrane problemy", *Kwartalnik Prawa Prywatnego* 18, no. 4, 2009: 889 et seq; Maciej Pisz, *Ograniczenia własności i gwarancje jej ochrony w polskim prawie konstytucyjnym*. Warszawa, 2016, 11 et seq; Maciej Pisz, "Formy własności

- 1) Article 21, section 1 of the Constitution of the Republic of Poland, which defines ownership in a broad manner, encompassing all property rights (ownership and other property rights), and establishes the principle of ownership protection (constituting one of the basic political principles contained in Chapter I of the Constitution),⁴
- 2) Article 64, sections 1–3 of the Constitution of the Republic of Poland, which pertains to the subjective right to ownership and other property rights (understood as one of the freedoms and rights of humans and citizens contained in Chapter II of the Constitution).⁵

Article 21, section 1 of the Constitution of the Republic of Poland declares: “The Republic of Poland shall protect ownership and the right of succession”. In turn, Article 64, section 1 Constitution of the Republic of Poland states: “Everyone shall have the right to ownership, other property rights and the right of succession”.

It is also noteworthy that the relatively broad guarantees of property protection for owners of residential premises, as stipulated in the Constitution of the Republic of Poland, establish a similar standard of protection in relation to the regulations of European law binding on Poland. This includes the regulations on property outlined in the European Convention on Human Rights (ECHR) – and, more specifically, in Additional Protocol No. 1 to the ECHR.⁶

w Konstytucji Rzeczypospolitej Polskiej”, *Państwo i Prawo*, no. 3. 2020: 119–129; Sylwia Jarosz-Żukowska, *Konstytucyjna zasada ochrony własności*. Kraków, 2003, 32; Paweł Sarniecki, “Referat wygłoszony na seminarium zorganizowanym 11.05.1997 r. przez Ośrodek Studiów Społeczno-Ekonomicznych w Krakowie. Prawo własności w Konstytucji”, *Zeszyty Fundacji Międzynarodowego Centrum Rozwoju Demokracji*, no. 18. 1997: 21.

4 Cf. Kamil Zaradkiewicz, *Instytucjonalizacja wolności majątkowej. Koncepcja prawa podstawowego własności i jej urzeczywistnienie w prawie prywatnym*. Warszawa, 2013, 176 et seq; Sylwia Jarosz-Żukowska, “Prawo do własności – własność jako prawo podmiotowe” in *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, and A. Preisner. Warszawa, 2002, 251; Maciej Pisz, “Formy własności w Konstytucji Rzeczypospolitej Polskiej”.

5 Cf. Leszek Garlicki, “Uwaga 6 do art. 64” in *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 3, ed. L. Garlicki. Warszawa, 2005, 5–6; Maciej Pisz, “Formy własności w Konstytucji Rzeczypospolitej Polskiej”.

6 Cf. Ewa Łętowska, “Konstrukcja gwarancji własności w europejskiej konwencji z 1950 r.” in *Rozprawy z prawa cywilnego i ochrony środowiska ofiarowane profesorowi Antoniemu Agopszowiczowi*, ed. E. Giszter. Katowice, 1992, 155 et seq; Cezary Mik, “Prawo własno-

The Problem of Legal Protection of Other Entities: Tenants, Housing Communities and Owners of Neighboring Premises

However, despite the relatively broad guarantees of protection for owners of residential premises in Polish constitutional law, it should be highlighted that protection of owners of residential premises – which is not absolute – faces some limitations due to the protection of the property rights of other entities. Specifically, these entities include: (1) tenants of residential premises, (2) owners of other neighbouring residential premises (in multi-family residential buildings), and (3) those managing a multi-unit residential building (e.g. housing communities). Such restrictions appear admissible, particularly when the owner uses the residential premises in a way that violates neighbourly interests.

In the light of the Constitution of the Republic of Poland, limitations on the ownership of owners of residential premises are determined by limitation clauses contained in Article 31 section 3 and in Article 64, section 3 of the Constitution of the Republic of Poland.

As stated in Article 31, section 3 of the Constitution of the Republic of Poland: “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”. In turn, Article 64, section 3 of the Constitution of the Republic of Poland states: “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”.

ści w Europejskiej Konwencji Praw Człowieka”, *Państwo i Prawo*, no. 5. 1993: 25 et seq; Michał Balcerzak, “Prawo do poszanowania mienia” in *Prawa człowieka i ich ochrona*, ed. T. Jasudowicz. Toruń, 2005, 373 et seq; Cezary Mik, “Ochrona prawa własności w prawie europejskim” in *O prawach człowieka w podwójną rocznicę Paktów. Księga pamiątkowa w hołdzie profesor Annie Michalskiej*, eds. T. Jasudowicz, and C. Mik. Toruń, 2006, 227 et seq; Roman Wieruszewski, “Prawo własności” in *Ochrona praw podstawowych w Unii Europejskiej*, ed. J. Barcz. Warszawa, 2008, 126 et seq; Łukasz Duda, and Jakub Kociubiński, “Realizacja ochrony własności w EKPC na podstawie orzeczenia *Lithgow i inni*”, *Wrocławskie Studia Erazmiańskie*, no. 3. 2009: 234 et seq.

As a consequence, restrictions on the rights of owners of residential premises must adhere to precisely defined conditions for the admissibility of restrictions on constitutional rights and freedoms, i.e. the requirement to comply with the form of a statute, at least one of the six substantive conditions (state security, public order, protection of the environment, health, public morals, and the rights and freedom of other persons), and two premises determining the scope of interference with property: the necessity for restrictions in a democratic state (which is related to the principle of proportionality) and the prohibition of violating the essence of ownership. From the perspective of these premises, each specific case of restricting the ownership of residential owners in the Polish legal system must be considered.

It should also be noted that there are several practical problems in Poland in this context, including, for example, the question of how far tenants should be protected at the expense of landlords and when evictions should perhaps be allowed.

Certainly, for the Polish legislator the initial consideration should be to uphold the statutory scope when restricting the rights of owners of residential premises (e.g. at the expense of tenants), as well as meeting other conditions for the admissibility of rights and freedoms, including the substantive premise and the requirement of proportionality. Regarding the limitation of the rights of owners of residential premises at the expense of tenants, housing communities or owners of neighbouring residential premises, such a material premise is the protection of the rights and freedoms of other persons.

Nevertheless, it is important to note that a distinct value protected under the Polish legal system is the safeguarding of tenants, perceived as one of the “other property rights” within the meaning of Article 64 of the Constitution of the Republic of Poland. This is determined by the perspectives of legal doctrine⁷ and the Constitutional Tribunal.⁸ In this context, the Constitutional Tri-

7 Cf. Sylwia Jarosz-Żukowska, “Gwarancja ochrony własności i innych praw majątkowych” in *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński. Wrocław, 2014, 531 et seq.

8 Cases file no. SK 34/07, P 11/98, K 48/01.

bunal has expressed, among other views, the following: “Article 64 of the Constitution protects both the right to property within the meaning of civil law and other property rights. These include in particular property rights arising from concluded civil law contracts”.

In this context, it should be emphasized that limiting the rights of owners of residential premises in each case necessitates public authorities to balance these two values. In such a situation, it seems reasonable to enact laws that, in specific cases, would temporarily restrict the possibility of terminating lease agreements between owners and tenants (e.g. in the winter and with tenants who deserve special state protection, such as single parents).

A similar balance of values in the Polish legal system is, of course, also required for other issues arising in the context of legal protection of owners of residential premises. In the case of multi-family residential buildings there is, among other considerations, a need to balance how far the scope of powers of housing communities and other entities managing real estate should extend, and how broad the powers of such entities should be towards owners of residential premises (and therefore how much they can interfere with the rights of owners). Additionally, there is a need to balance the extent to which the rights of owners of residential premises may be limited by the rights of owners of other premises – neighbouring premises (which can be perceived from the point of view of the grounds for material constitutional restrictions on the rights and freedoms of owners of residential premises, as a protection of the rights and freedoms of other persons). This poses a huge challenge for the public authorities, which shape the rights of owners of residential premises through legislation.

Specifically, there is an issue of interference by the housing community and the owners of neighbouring properties in how owners exercise their ownership rights to the premises in a way that causes burdens for the residents of neighbouring premises. Certainly, such statutory regulations – adopted by public authorities in the Polish legal system, determining the scope of interference with the property rights of owners of residential premises – are the norms outlined in the Polish legal system defining the limits of property rights and pertaining to the institution

of immission (Articles 140 and 144 of the Civil Code). Pursuant to Article 144 of the Civil Code (which regulates the institution of immission): “When exercising his right, the property owner should refrain from actions that would disturb the use of neighbouring properties beyond the average limit resulting from the socio-economic purpose of the property and local relations”.

I assert that this satisfies the conditions for limiting the property rights of owners of residential premises and, consequently, should be deemed an acceptable limitation of the property rights of such owners.

The Issue of Short-Term Rental in the Context of Legal Protection of Owners of Residential Premises

Simultaneously, it can be argued in this context that potentially the scope of permissible restrictions on the ownership of the owner of a residential premise also extends to the possibility of arranging short-term rental, which could interfere with the use of neighbouring properties.

It is important to emphasize that short-term rental offers the owner of a residential premises above-average profitability compared to the to the rental of residential premises used as a permanent residence. On the other hand, it may be associated with above-average use of common ownership. It is also important that in recent years in Poland the issue of the widespread use of residential premises for short-term rental via internet platforms has gained significant importance.

This issue – as noticed by Polish courts in their jurisprudence – has led to tensions in the real estate market, especially in large cities and regions that are intensively used for tourists. This is due to the unavailability of residential premises for long-term rental, an increase in housing prices, and significant inconvenience for permanent residents of such areas, generating numerous neighbour disputes (explicitly mentioned in one of the judgments of the Polish Supreme Court⁹).

9 Cf. the judgment of the Polish Supreme Court of 12 January 2021, case file no. IV CSKP 20/21.

It is also worth emphasizing that concerns related to short-term rental have already led to prohibition regulations in several European Union countries, for example France and Spain. Moreover, concerns have already captured the attention of the Court of Justice of the European Union, particularly concerning the compliance of administrative restrictions on both professional and non-professional activities. This includes the repeated, short-term, paid rental of furnished residential premises to customers who are passing through (in accordance with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market) in connection with counteracting the problem of shortage of apartments for long-term rental.

From the perspective of the standard of protection for owners of residential premises in Polish constitutional law, a very significant systemic problem becomes apparent in this context. This problem is linked to the absence of any systemic solutions in the regulation of the short-term rental market by the Polish legislator.

Certainly, the lack of systemic regulations should be considered undesirable and as a *de lege ferenda* postulate it should be recommended that the Polish legislator engage in legislative work to comprehensively regulate the institution of short-term rental. This is, of course, a substantial challenge for the Polish public authorities, as it requires balancing the interests of the owners of residential premises, who benefit from short-term rentals, and the interests of inhabitants of neighbouring properties (who may experience great inconvenience related to such a lease and suffer significant damages as a result, e.g. related to a decrease in the value of real estate).

The above is confirmed in the judgment of Supreme Court in case file no. IV CSKP 20/21: “The popularization of the use of apartments on a rental basis short-term via online platforms causes tensions on the real estate market – especially in large cities and regions intensively used for tourism – related to the unavailability of premises satisfying long-term rental needs, increase in housing prices, and significant nuisance for permanent residents of such towns, generating numerous neighbourhood disputes. These conflicting interests, re-

quiring compromises in the sphere of neighbourly relations cannot be resolved by resolutions of housing communities, due to their lack of competence. The use of regulations on general principles of neighbourhood law (...) as well as the implementation of supervision by the relevant administrative authorities in the scope of monitoring rental services offered by online portals may not be a possible, adequate instrument for solving such often escalated social problems. They require – as aptly exposed by the Courts of both instances – systemic solutions in the regulation of the short-term rental market, which can only be introduced by the legislator”.

Conclusion

In summary, it should be acknowledged Polish constitutional law has established a relatively extensive standard of protection of property rights of owners of residential premises. This is confirmed by the relatively broad protective guarantees outlined in the Constitution of the Republic of Poland concerning the safeguarding of property and other property rights.

However, this does not imply that there are not numerous problems with this standard. Undoubtedly, a huge challenge for Polish public authorities is to appropriately balance the property rights of owners of residential premises with other legally protected values and with the protection of the rights and freedoms of other people (such as owners of other neighbouring residential premises or housing communities). Moreover, in recent years, Polish public authorities have encountered another problem, as yet unresolved, related to the need for systemic legal regulations concerning short-term rentals.

References

- Balcerzak, Michał. "Prawo do poszanowania mienia." In *Prawa człowieka i ich ochrona*, edited by Tadeusz Jasudowicz. Toruń, 2005.
- Duda, Łukasz, and Jakub Kociubiński. "Realizacja ochrony własności w EKPC na podstawie orzeczenia *Lithgow i inni*." *Wrocławskie Studia Erazmiańskie*, no. 3. 2009: 234–252.
- Garlicki, Leszek. "Uwagi do art. 21." In *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 3, edited by Leszek Garlicki. Warszawa, 2005.
- Garlicki, Leszek. "Uwagi do art. 64." In *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 3, edited by Leszek Garlicki. Warszawa, 2005.
- Jarosz-Żukowska, Sylwia. "Gwarancja ochrony własności i innych praw majątkowych." In *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, edited by Mariusz Jabłoński. Wrocław, 2014: 531–559.
- Jarosz-Żukowska, Sylwia. *Konstytucyjna zasada ochrony własności*. Kraków, 2003.
- Jarosz-Żukowska, Sylwia. "Prawo do własności – własność jako prawo podmiotowe." In *Prawa i wolności obywatelskie w Konstytucji RP*, edited by Bogusław Banaszak, and Artur Preisner. Warszawa, 2002.
- Łętowska, Ewa. "Konstrukcja gwarancji własności w europejskiej konwencji z 1950 r." In *Rozprawy z prawa cywilnego i ochrony środowiska ofiarowane profesorowi Antoniemu Agopszowiczowi*, edited by Elżbieta Giszter. Katowice, 1992.
- Łętowska, Ewa. "Własność i jej ochrona jako wzorzec kontroli konstytucyjności. Wybrane problemy." *Kwartalnik Prawa Prywatnego* 18, no. 4. 2009: 889–919.
- Mik, Cezary. "Ochrona prawa własności w prawie europejskim." In *O prawach człowieka w podwójną rocznicę Paktów. Księga pamiątkowa w hołdzie profesor Annie Michalskiej*, edited by Tadeusz Jasudowicz, and Cezary Mik. Toruń, 2006.

Mik, Cezary. “Prawo własności w Europejskiej Konwencji Praw Człowieka.” *Państwo i Prawo*, no. 5. 1993: 25–34.

Pisz, Maciej. “Formy własności w Konstytucji Rzeczypospolitej Polskiej.” *Państwo i Prawo*, no. 3. 2020: 119–129.

Pisz, Maciej. *Ograniczenia własności i gwarancje jej ochrony w polskim prawie konstytucyjnym*. Warszawa, 2016.

Sarnecki, Paweł. “Referat wygłoszony na seminarium zorganizowanym 11.05.1997 r. przez Ośrodek Studiów Społeczno-Ekonomicznych w Krakowie. Prawo własności w Konstytucji.” *Zeszyty Fundacji Międzynarodowego Centrum Rozwoju Demokracji*, no. 18. 1997.

Wieruszewski, Roman. “Prawo własności.” In *Ochrona praw podstawowych w Unii Europejskiej*, edited by Jan Barcz. Warszawa, 2008.

Zaradkiewicz, Kamil. *Instytucjonalizacja wolności majątkowej. Koncepcja prawa podstawowego własności i jej urzeczywistnienie w prawie prywatnym*. Warszawa, 2013.