COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF HUTTEN-CZAPSKA v. POLAND

(Application no. 35014/97)

JUDGMENT

STRASBOURG

22 February 2005

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENTS IN THE CASE ON
19 June 2006 (merits)
and
28 April 2008 (struck out of the list – friendly settlement)

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hutten-Czapska v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ, *appointed to sit in respect of Poland*,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 27 January 2004 and on 25 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 35014/97) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mrs Maria Hutten-Czapska, who is a French national of Polish origin ("the applicant"), on 6 December 1994.

2. The applicant was represented by Mr B. Sochański, a lawyer practising in Szczecin, Poland. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the situation created by the implementation of the laws imposing on landlords restrictions in respect of increasing rent and terminating leases that originated in administrative decisions amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. Mr L. Garlicki, the judge elected in respect of Poland, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mrs V. Strážnicka, the judge elected in respect of the Slovak Republic, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

8. By a decision of 16 September 2003, the Court declared the application partly admissible.

9. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

10. On 16 January 2004 the French Government informed the Court that they did not wish to exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

11. A hearing on the merits of the case took place in public in the Human Rights Building, Strasbourg, on 27 January 2004 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr J. WOŁĄSIEWICZ, *Agent,*
Mr L. ŁUKASIK,
Mr A. BOJAŃCZYK, *Advisers;*

(b) *for the applicant*
Mr B. SOCHAŃSKI, *Counsel,*
Mr P. PASZKOWSKI, *Adviser.*

The Court heard addresses by them.

12. At the hearing, the parties were invited to submit further observations in writing. The Government filed their observations on 19 February and 31 March 2004. The applicant lodged her pleadings on 19 February, 11 March and 20 April 2004.

13. On 30 September 2004 the Polish Association of Tenants (*Polskie Zrzeszenie Lokatorów*) filed with the Registry an application for leave to submit written comments on the merits of the case in the context of the general situation in Poland (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The President of the Chamber rejected the request on 19 October 2004.

14. On 4 October 2004 the Section Registrar, acting on the President of the Fourth Section's instructions, drew the parties' attention to the fact that the case was considered a "pilot case" for the purposes of ruling whether the impugned rent-control scheme was compatible with the requirements of Article 1 of Protocol No. 1.

15. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section IV.

Subsequently, at the Government's request, the parties were invited to submit written comments on the merits of the case in the light of new developments at domestic level. The Government filed their observations on 4 November 2004 and the applicant on 5 November 2004.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

16. The applicant, who is a French national of Polish origin, was born in 1931 and lives in Andresy, France. She owns a house and a plot of land in Gdynia, Poland. The property previously belonged to her parents.

A. General situation

17. Polish legislation on rent control has been the result of many historical and recent circumstances. Legislative schemes restricting rights of landlords and regulating increases in rent were already in operation before the Second World War. The description below of the general situation was based on the findings of the Polish Constitutional Court (*Trybunał Konstytucyjny*), which, on 12 January 2000, in one of its judgments concerning the constitutionality of certain aspects of the legislation on rent control gave thorough consideration to the historical background of such legislation and the factors contributing to the preservation of restrictions dating back to an early stage of the communist regime in Poland.

18. The rent control scheme was the consequence of the introduction of the so-called "State management of housing matters" (*publiczna gospodarka lokalami*) by the former communist authorities (see paragraphs 71-74 below). It was accompanied by provisions drastically restricting the amount of rent chargeable. The applicable provisions originated in the exceptionally rigid distribution of housing resources which characterised the first 30 years of the communist regime in Poland.

19. The circumstances did not change significantly after the end of the communist rule in 1989; indeed, at the beginning of the 1990s the situation of housing in Poland was particularly difficult, as was demonstrated, on the one hand, by a shortage of dwellings and, on the other hand, by the high cost of acquiring a flat. The State-controlled rent, which also applied to

privately owned buildings, covered merely 30% of the actual cost of maintenance of buildings.

In 1994 those social and economic factors prompted the legislature not only to maintain elements of the so-called "special lease scheme" (*szczególny tryb najmu*) (see also paragraph 73 below) in respect of State-owned dwellings but also to continue to apply that scheme – temporarily, for a period of 10 years expiring on 31 December 2004 – to privately owned buildings and dwellings. In short, the system was a combination of restrictions on the amount of rent chargeable and of limitations on the termination of leases, even in respect of tenants who did not comply with the terms of the contract.

20. The material collected by the Constitutional Court in 2000 included a report prepared by the Office for Housing and Town Development (*Urząd Mieszkalnictwa i Rozwoju Miast*). According to that report, in 1998, after 4 years of the operation of the 1994 rent control scheme, the average rent as fixed under that scheme covered only 60% of the costs of maintenance of residential buildings. The shortfall was to be covered by landlords. The scale of the problem was considered to have been very large since at that time 2,960,000 dwellings (25.5% of the country's entire housing resources) were let under the rent-control scheme; that number comprised some 600,000 flats in buildings owned by private individuals. The total number of flats in Poland was estimated at about 11,600,000. Flats in privately owned buildings subject to the rent-control scheme constituted 5.2% of the country's housing resources.

The report stated, among other things:

> "Before ... [1994], statutory rent determined by the Cabinet covered about 30% of running maintenance costs. At present, after four years of the operation of the [1994] rent control scheme, municipalities set levels of rent covering on average 60% of maintenance costs. ...
>
> In respect of buildings owned by municipalities, the shortfall is covered by municipalities, which frequently use for that purpose surplus received by means of letting commercial premises.
>
> As regards privately owned buildings, where tenants pay controlled rent, the shortfall is covered by owners of buildings."

21. In 2003-2004 the Government, in the course of the preparation of their bill amending the legislation on rent control (see paragraphs 118 et seq. below) collected considerable material describing the present general situation of housing in Poland.

The situation is characterised by a serious shortage of residential dwellings. According to the 2002 National Population and Housing Census, the relevant deficit, defined as the difference between the number of households and the number of flats, amounts to 1,500,000 flats. There is a particularly acute shortage of flats for lease.

22. In the light of data collected by the Central Statistical Office (*Główny Urząd Statystyczny*) on the overall financial situation of households, in the years 1998-2003 household expenses such as rent and electricity bills amounted to 14.5%-15.4% of total expenses (18.6%-19.0% in pensioners' households). At the same time between 7% and 10% of Polish households were in rent arrears (1998: 7.5%; 1999: 7%; 2000: 7%; 2002: 10%; 2003: 9%).

In 2000 about 54% of the population lived below the poverty line, of which 8% were below the abject poverty line. In 2002 some 58% of the population lived below the poverty line, of which 11% were below the abject poverty line.

23. Various reports received by the Office for Housing and Town Development confirmed that the provisions relating to the protection of tenants as applicable until 31 December 2004 (see also paragraphs 89-93 below) limited the supply of flats available for lease. In the authorities' view, the introduction of the so-called "commercial lease" (*najem komercyjny*) – in other words a market-related lease – by removing restrictions on the increase of rent for privately owned buildings and freeing private landlords from their obligation to provide indigent tenants with an alternative accommodation upon the termination of their lease, should encourage private investors to build tenement houses designated solely to be let.

24. The Government gave various figures to indicate the number of persons potentially affected by the operation of the rent-control scheme. They stated that according to information supplied by the Office for Housing and Town Development, the operation of the relevant legislation affected about 100,000 landlords and 600,000 tenants. Other sources cited by the Government stated that the total number of persons concerned was about 100,000 landlords and 900,000 tenants.

B. The facts of the case

1. Events before 10 October 1994

25. The applicant's house was built in 1936 as a one-family house. It originally consisted of a duplex apartment, basement and attic.

26. During the Second World War, officers of the German Army lived in the house. In May 1945 the Red Army took it over and placed its officers there for some time.

27. On 19 May 1945 the Head of the Housing Department of the Gdynia City Council (*Kierownik Wydzialu Mieszkaniowego Magistratu Miasta Gdynia*) issued a decision assigning the first-floor part of the duplex apartment to a certain A.Z.

28. In June 1945 the Gdynia City Court (*Sąd Grodzki*) ordered the return of the house to the applicant's parents. They began renovation of the house but, shortly afterwards, were ordered to leave their property. In October 1945 A.Z. moved into the house.

29. On 13 February 1946 the Decree of 21 December 1945 on the State Management of Housing and Lease Control (*Dekret o publicznej gospodarce lokalami i kontroli najmu*) entered into force. Under its provisions, the house became subject to the so-called "State management of housing matters" (see also paragraph 18 above).

30. In 1948, at a public auction, the authorities unsuccessfully tried to sell the house to A.Z., who was at that time employed by the Gdynia City Council, an authority responsible for the State management of housing matters at the material time. At about the same time, the applicant's parents, likewise unsuccessfully, tried to recover their property.

31. On 1 August 1974 the Housing Act (*Prawo lokalowe*) ("the 1974 Housing Act") entered into force. It replaced the State management of housing matters with the so-called "special lease scheme" (see also paragraphs 19 above and 73 below).

32. On an unknown date in 1975 a certain W.P., who was at that time the Head of the Housing Department of the Gdynia City Council (*Kierownik Wydziału Spraw Lokalowych Urzędu Miejskiego*), tried to buy the house from the applicant's brother.

33. On 8 July 1975 the Mayor of Gdynia issued a decision allowing W.P. to exchange the flat he was leasing in another building under the special lease scheme for the ground-floor flat in the applicant's house. That decision was signed on behalf of the Mayor of Gdynia by a civil servant who was subordinate to W.P. On 28 January 1976 the Gdynia City Council issued a decision confirming that under the provisions governing the special lease scheme the flat had been let to W.P. for an indefinite time. Later, in the 1990s, the applicant tried to have that decision declared null and void but succeeded only in obtaining a decision declaring that it had been issued contrary to the law (see also paragraphs 49-54 below).

34. On 24 October 1975 the Head of the Local Management and Environment Office of the Gdynia City Council (*Kierownik Wydziału Gospodarki Terenowej i Ochrony Środowiska Urzędu Miejskiego w Gdyni*) ordered that the house became subject to State management (*przejęcie w zarząd państwowy*). That decision took effect on 2 January 1976.

35. On 3 August 1988 the Gdynia District Court (*Sąd Rejonowy*), ruling on an application by A.Z.'s relatives, gave judgment, declaring that, after the A.Z.'s death, her daughter (J.P.) and son-in-law (M.P.) had inherited the right to lease the first-floor flat in the applicant's house.

36. On 18 September 1990 the Gdynia District Court gave a decision declaring that the applicant had inherited her parents' property. On 25 October 1990 the Gdynia District Court entered her title in the relevant land register.

37. On 26 October 1990 the Mayor of Gdynia issued a decision restoring the management of the house to the applicant. On 31 July 1991, acting through her representative, she took over the management of the house from the Gdynia City Council. Shortly afterwards, she began to refurbish the house.

38. On an unknown date in the 1990s the applicant set up a private foundation called the Amber Trail Foundation (*Fundacja Bursztynowego Szlaku*). Since 1991 then, she has been making unsuccessful efforts to locate the seat of the Foundation in her house.

2. Events after 10 October 1994

39. After taking over the management of the house, the applicant initiated several sets of proceedings – civil and administrative – in order to annul the previous administrative decisions and regain possession of the flats in her house.

(a) Proceedings before the civil courts

(i) Eviction proceedings

40. On 16 June 1992 the applicant asked the Gdynia District Court to order the eviction of her tenants. In April 1993, on an application by the defendants, those proceedings were stayed. On 26 April 1996 her claim was dismissed.

(ii) Proceedings concerning the relocation of tenants and compensation

41. In April 1995 the applicant asked the Gdańsk Regional Court (*Sąd Wojewódzki*) to order the Gdynia City Council to relocate the tenants living in her house to dwellings owned by the municipality. She also asked the court to award her compensation, *inter alia*, for the fact that the authorities had deprived her parents and herself of any possibility of living in their own house, for damage to the property and arbitrary alteration of its use, and for mental suffering. On 5 July 1996 the Regional Court ruled that, under the Lease of Dwellings and Housing Allowances Act of 2 July 1994 (*Ustawa o najmie lokali mieszkalnych i dodatkach mieszkaniowych*), ("the 1994 Act") the defendant authority had no obligation to relocate the tenants to

accommodation owned by the municipality. It dismissed the remainder of the claims. The applicant appealed.

42. On 17 January 1997 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) heard, and dismissed, her appeal. It observed that no provision of the 1994 Act obliged the municipal authorities to relocate the applicant's tenants or, at her request, to provide them with alternative accommodation (*lokal zastępczy*). The relevant provisions of the 1994 Act, namely section 56(4) and (7) (see also paragraph 81 below), stipulated that a tenant had to vacate a dwelling only if the owner had offered him another flat owned by him or the municipality had agreed to provide the tenant with an alternative accommodation owned or administered by it. As regards the applicant's claim for damages for financial loss sustained as a result of the administrative decisions, the Court of Appeal observed that such claims could be determined by the courts of law only if a claimant had first applied for compensation to the administrative authorities and the outcome of the relevant administrative proceedings had been unfavourable. It referred the applicant to the Code of Administrative Procedure (*Kodeks postępowania administracyjnego*), which set out the rules governing the liability of public authorities for issuing wrongful decisions.

In so far as the applicant sought compensation for damage to the house and for the alteration of its use, the Court of Appeal considered that the defendant authority could not be held liable for the consequences of the laws which had previously been in force. In particular, it was not liable for the enactment of the post-war legislation which had introduced restrictive rules concerning the lease of dwellings in privately owned houses and the State management of housing matters. Nor was it liable for the implementation of the special lease scheme introduced by the 1974 Housing Act and the operation of the 1994 Act, which incorporated certain similar rules for the protection of tenants whose right to lease flats in privately owned houses had been conferred on them by administrative decisions (see also paragraphs 75-76 below). Lastly, the court noted that the defendant could not be liable for any damage caused by the applicant's tenants.

43. Subsequently, the applicant lodged a cassation appeal (*kasacja*) with the Supreme Court (*Sąd Najwyższy*). On 13 November 1997 the Supreme Court rejected that appeal on procedural grounds. The court held that the applicant had not complied with the relevant formal requirements; in particular, she had not specified the errors of substantive civil law allegedly committed by the lower courts.

(b) Administrative proceedings

(i) Proceedings concerning the annulment of the decision of 19 May 1945

44. In October 1995 the applicant asked the Gdańsk Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) to declare null and void the decision of the Head of the Housing Department of the Gdynia City Council of 19 May 1945. By virtue of that decision, the first-floor flat in the house had been assigned to A.Z. It had also formed a basis for granting the right to lease that flat in the applicant's house to A.Z.'s successors (see also paragraph 27 above).

45. On 26 June 1997 the Board rejected her application. It noted that the impugned decision had been taken pursuant to the provisions of the Decree on Housing Commissions issued by the Polish Committee of National Liberation on 7 September 1944 (*Dekret Polskiego Komitetu Wyzwolenia Narodowego o komisjach mieszkaniowych*), a law which had at the relevant time governed all housing matters. It found that the decision had not been issued by the competent public authority and, in consequence, had not been lawful. Yet the Board could not declare the decision null and void (*stwierdzić nieważność decyzji*) because, pursuant to Article 156 § 2 of the Code of Administrative Procedure, if more than 10 years had elapsed from the date on which the unlawful decision had been made, the Board could only declare that the decision "had been issued contrary to the law" (*została wydana z naruszeniem prawa*).

46. The applicant appealed to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). On 15 January 1998 the court dismissed her appeal because she had not exhausted an obligatory legal remedy in that she had not made an application to the Board for the matter to be reconsidered (*wniosek o ponowne rozpatrzenie sprawy*).

47. The applicant subsequently made such an application. On 23 June 1998 the Board upheld its decision of 26 June 1997. The applicant appealed to the Supreme Administrative Court. The Gdańsk Regional Prosecutor (*Prokurator Wojewódzki*) joined the proceedings and lodged an appeal on the applicant's behalf.

48. On 8 June 1999 the Supreme Administrative Court rejected both appeals. It confirmed that the impugned decision had been unlawful. It added that there had been several procedural shortcomings (for instance, the applicant's parents had not been notified of the proceedings and had never had any opportunity to challenge the decision; in addition, no legal basis had been given for it); however, in accordance with Article 156 § 2 of the Code of Administrative Procedure, the court could not annul the decision but could only declare that it had been issued contrary to the law. In passing, the court observed that the above-mentioned procedural shortcomings could be rectified by means of reopening the proceedings.

(ii) Proceedings concerning the annulment of the decision of 8 July 1975

49. In 1992 the applicant asked the Gdańsk Self-Government Board of Appeal to declare null and void the decision of the Mayor of Gdynia of 8 July 1975. By virtue of that decision, W.P. had been granted the right to lease the ground-floor flat in the applicant's house (see also paragraph 33 above)

50. On 27 January 1994 the Board rejected her application. The applicant appealed to the Supreme Administrative Court.

51. On 14 June 1995 the court dismissed her appeal. It found that the flats in the applicant's house had been let under the special lease scheme introduced by the 1974 Housing Law and that, accordingly, the mayor had been competent to issue the decision in question. It further observed that, despite some procedural errors committed by the Mayor of Gdynia (which could be rectified by means of reopening the proceedings), the decision had had a legal basis and could not, therefore, be declared null and void.

52. On 17 September 1994 the applicant asked the Mayor of Gdynia to reopen the relevant proceedings and to declare the impugned decision null and void. The mayor rejected her application as being lodged out of time.

53. On 29 December 1995 the Gdańsk Self-Government Board of Appeal, of its own motion, reopened the proceedings. It found that the contested decision had been made on behalf of the Mayor of Gdynia by a civil servant who had been W.P.'s subordinate and that that fact had in itself constituted a sufficient ground for reopening the proceedings, pursuant to Article 145 § 1 (3) of the Code of Administrative Procedure. That fact had also rendered the decision unlawful. However, since more than 5 years had elapsed from the date on which the decision had been given, the Board could not annul it. It could merely declare that it had been issued contrary to the law, as laid down in Article 146 § 1 of the Code of Administrative Procedure.

54. The applicant appealed to the Supreme Administrative Court, alleging that the decision had never been served on the owners of the house and that it should have been declared null and void. On 28 November 1996 her appeal was dismissed.

(iii) Proceedings concerning the annulment of the decision of 24 October 1975

55. On 4 October 1994 the applicant asked the Gdynia City Council to reopen the administrative proceedings that had been terminated on 24 October 1975 by the decision of the Head of the Local Management and Environment Department of the Gdynia Municipality. By virtue of that decision, the applicant's house had become subject to the State management (see also paragraph 34 above). She further asked to have the decision declared null and void, submitting that it had lacked any legal basis. In particular, the house had incorrectly been classified as a "tenement house" (*dom wielorodzinny*), whereas in reality it was, and always had been, a one-

family house and, as such, should not have become subject to the State management. The decision, the applicant added, had been made solely for the personal benefit and gain of W.P., who had at that time been the Head of the Housing Department of the Gdynia City Council. In her view, it had been made to sanction the prior – and likewise unlawful – decision of 8 July 1975 whereby W.P. had acquired the right to lease the flat in her house.

56. On 7 December 1994 the Mayor of Gdynia rejected her application, finding that she had lodged it outside the prescribed time-limit. On 12 June 1995 the Gdańsk Self-Government Board of Appeal upheld the mayor's decision. Subsequently, the applicant appealed to the Supreme Administrative Court. On 14 November 1996 the court quashed both decisions because the Mayor of Gdynia had not been competent to rule on the application.

57. On 27 February 1997 the Gdańsk Self-Government Board of Appeal reopened the proceedings terminated by the decision of 24 October 1975. On 28 April 1997 the Board declared that that decision had been issued contrary to the law because the owners of the house had not been notified of the proceedings. It found that the Gdynia City Council had not acted with due diligence. In particular, it had made no efforts to establish who had been the rightful successors to the owners of the house. Indeed, at the material time the applicant and her brother had - on a regular basis - paid the relevant taxes on the property to the City Council. Relying on Article 146 § 1 of the Code of Administrative Procedure, the Board refused to annul the decision because more than 5 years had elapsed from the date on which it had been given.

58. On an unspecified date in 2002 the applicant asked the Governor of Pomerania (*Wojewoda Pomorski)* to declare the decision of 24 October 1997 null and void. The application was referred to the Gdańsk Self-Government Board of Appeal, a body competent to deal with the matter. The Board refused the application on 13 May 2002. It held that the matter was *res judicata*.

3. The situation of the applicant's tenants

(a) The surface area of the flats

59. The parties gave differing information on what was the actual usable surface area of the flats in the applicant's house, a factor relevant for the determination of the chargeable rent.

(i) The Government

60. The Government submitted that the usable surface area of the applicant's house was 196 square metres. They produced an inventory made on 1 August 1991 in connection with the transfer of management of the

house from the Gdynia City Council to the applicant (see also paragraph 37 above). The usable surface area of the house was estimated at 196 square metres; no net living area was indicated. There were four flats and no commercial premises. The number of habitable rooms in the flats was 12. The surface area of those flats was estimated at 148 square metres. The total surface area of the house was indicated as 255 square metres.

(ii) The applicant

61. The applicant stated that the total surface area of the house occupied by the tenants and for which they paid rent was about 250 square metres. In that connection, she supplied a declaration of 28 May 2001, issued by the Gdynia Association of Landlords and Managing Agents (*Zrzeszenie Właścicieli i Zarządców Domów*), an agency that apparently administered her property. According to the declaration, since at least the 1950s the applicant's house had been divided into three flats leased by means of the agreements originating in the administrative decisions described above.

62. The usable surface areas of those flats for the purposes of fixing rent were as follows: flat no. 1 = 127.38 sq. m; flat no. 3 = 67.90 sq. m; and flat no. 4 = 54.25 sq. m. Accordingly, the total usable surface area occupied by the tenants was 249.53 sq. m.

(b) Documentary evidence relating to rent paid by the applicant's tenants

63. On an unspecified date in 1995 W.P. asked the Gdynia District Court for a judgment determining the amount of the rent to be paid by him. On 20 March 1996 the District Court gave judgment and determined the amount of rent at 33.66 Polish zlotys (PLN) per month. It ordered the applicant to pay costs in the amount of PLN 528.90.

64. According to the Gdynia Association of Landlords and Managing Agents' declaration of 28 May 2001 (see paragraph 61 above), the amounts of rent to be paid by the applicant's tenants were as follows: for flat no. 1 (usable surface area of 127.38 sq. m), occupied by J.P. and M.P., PLN 500.60; for flat no. 3 (usable surface area of 67.90 sq. m.), occupied by W.P., PLN 322.65; for flat no. 4 (former attic; usable surface area 54.25 sq. m.), occupied by J.W., PLN 188.25. Dwelling no. 2 (apparently originally the bedroom of the applicant's parents, which was later used as a drying room), which had previously been used by W.P. without any legal title or authorisation and for the use of which he had paid no fee, was at that time locked and sealed by the managing agent. W.P. was served with a notice ordering him to pay PLN 2,982.46 for the unauthorised use of the flat on pain of being evicted.

At the oral hearing the Government informed the Court that the rent paid by J.P. and M.P. on that date (27 January 2004) was PLN 531.63.

(c) The tenants' financial situation

65. At the Court's request to produce evidence demonstrating the situation of the applicant's tenants, the Government supplied a certificate issued by the Gdynia District Centre for Social Services (*Dzielnicowy Ośrodek Pomocy Społecznej*) on 19 February 1993. The certificate stated that W.P. had received assistance from the centre as from January 1993. He was to obtain a periodical social welfare benefit for March and May 1993. In 1992 he had received assistance for housing purposes. The certificate further stated that W.P. had earlier been assessed as having the "second degree of disability", the disability and its degree being subject to a medical verification in May 1993.

66. On 12 February 2004, in reply to an enquiry by the Polish Government in connection with the present case, the Gdynia City Centre for Social Services (*Miejski Ośrodek Pomocy Społecznej*) stated that the applicant's tenants, W.P., J.P, M.P. and J.W., were not receiving any assistance from the Centre and they had not received any assistance from social services for the past few years, i.e. from 1995.

4. Amounts of controlled rent per 1 square metre in Gdynia in 1994-2004, as supplied by the Government

67. In reply to the Court's question as to the amount of controlled rent received by the applicant from 10 October 1994 to date, the Government stated that they had no details of the rent received by the applicant at the relevant time. However, they supplied indicators relevant for the fixing of a controlled rent, as determined by the Gdynia City Council for similar houses.

68. According to this information, in December 1994 the rent per square metre was 9,817 old Polish zlotys (PLZ); from January to November 1995 PLN 1.04; from December 1995 to October 1996 PLN 2.11; from November 1996 to December 1997 PLN 2.63; from January 1998 to January 1999 PLN 3.37; from February 1999 to January 2000 PLN 4.01; from February 2000 to February 2001 PLN 4.37, and from April 2002 to October 2002 PLN 4.61.

69. On 10 October 2002, following the entry into force of the Constitutional Court's judgment of 2 October 2002, it became possible for landlords to increase the rent up to 3% of the reconstruction value of the dwelling (see also paragraphs 90, 106-108 and 117 below).

From December 2002 to 30 June 2003 the relevant conversion index of the reconstruction value of the dwelling (see also paragraphs 79 and 89 below) was PLN 2,525.30. From 1 July to 31 December 2003 it amounted to PLN 2,471.86.

In 2004, the conversion index was fixed at PLN 2,061.21. The Government submitted that the reconstruction value of the dwellings in the

applicant's house was calculated on the basis of the following 3 elements: 3% as above, the usable surface area of the flats and the relevant conversion index (PLN 2,061.21). The monthly rent per square metre in the applicant's house corresponded to 3% of the conversion index of the reconstruction value of square metre divided by 12 months (3% x PLN 2,061.21 = PLN 61.83/12). It accordingly amounted to approximately PLN 5.15 per square metre. Having regard to the usable surface of the house as indicated by the Government, the maximum monthly chargeable rent was PLN 1,009.40 (PLN 5.15 x 196 square metres). Taking into account the surface as indicated by the applicant, the relevant amount was PLN 1,285.08 (PLN 5.15 x 249.53 square metres).

5. Levels of free-market rent in Gdynia in 1994-2004 as supplied by the applicant

70. According to the applicant, in the years 1994-1999 the free-market rent for the 3 flats in her house would have amounted to 1,700 United States dollars (USD) per month (USD 800 + USD 500 + USD 400 respectively, depending on the size of the flat). In the years 2000-2002 the rent would have decreased to USD 1,250 per month (USD 600 + USD 350 + USD 300). In 2003 it would have further been reduced to USD 900 per month (USD 450 + USD 250+ USD 200). She stated that her prognosis as to the decrease in rent was based on such factors as the devaluation of the house due to its age and the decreasing demand and increasing supply of flats available for rent on the market.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. "State management of housing matters" and the "special lease scheme"

71. The Cabinet Decree of 21 December 1945 on the State Management of Housing and Lease Control (*Dekret z 21 grudnia 1945 r. o publicznej gospodarce lokalami i kontroli najmu*), which came into force on 13 February 1946, introduced "State management of housing matters", which also applied to dwellings or commercial premises in privately owned buildings (see also paragraph 18 above).

72. Later, on 1 September 1948, the Decree of 28 July 1948 on the Lease of Dwellings (*Dekret o najmie lokali*) entered into force. Under its provisions, the State authorities administered all housing matters in the State and private sector alike. The public authorities were given power to issue a decision assigning to a tenant a particular flat in a privately owned building. Those provisions also laid down rules concerning rent control.

73. The 1974 Housing Act introduced the "special lease scheme", which replaced "State management of housing matters", although it did not significantly change the principles on which the right to lease was based. For instance, the right to lease a flat in a building subject to "State management" did not originate in a civil contract but was conferred on a tenant by an administrative decision. The owner of such a building had no say as to who could live in his or her house and for how long. The special lease scheme applied to residential and commercial premises.

74. Decisions on "allocation to a dwelling" (*przydział lokalu*) were, for all practical purposes, tantamount to "granting" a right to lease a dwelling (or commercial premises) under the special lease scheme. They were issued by the relevant departments of the local council (depending on which of the many reforms of the system of public administration was being carried out, those departments were called variously "housing departments", "departments of local management and environment", "dwelling departments", etc.).

B. The 1994 Act

1. *Abolition of the "special lease scheme" and introduction of a new rent control scheme*

75. This Act entered into force on 12 November 1994. It was intended to bring about a reform of the law governing the relationship between landlords and tenants. Although it abolished the "special lease scheme" and relaxed the control of rent by, for instance, allowing rents of commercial premises to be market-related and determined freely, as well as allowing rents for residential dwellings to be fixed freely in civil contracts between landlords and tenants, it maintained the control of rent of residential dwellings in which the right to lease a flat had earlier been conferred on a tenant by an administrative decision.

76. The 1994 Act introduced the system of "controlled rent" (*czynsz regulowany*) and set out detailed regulations on the calculation of rent for residential dwellings which had so far been subject to the "special lease scheme". The provisions concerning controlled rent, the *ratio legis* of which was to protect tenants in a difficult financial situation during the transition from a State-controlled to a free-market housing system, were to remain in force until 31 December 2004.

The 1994 Act maintained, albeit with slightly modified wording, the rules concerning the protection of tenants against the termination of leases continued on the basis of previous administrative decisions and the right of succession to a lease.

2. Succession to the right to lease a flat

77. Section 8(1) of the Act read:

> "1. In the event of a tenant's death, his or her descendants, ascendants, adult siblings, adoptive parents or adopted children or a person who has lived with a tenant in *de facto* marital cohabitation, shall, on condition that they lived in the tenant's household until his or her death, succeed to the tenancy agreement and acquire the tenant's rights and obligations connected with [the lease of] the flat, unless they relinquish that right to the landlord. This provision shall not apply to persons who, when the [original] tenant died, had title to another residential dwelling.
>
> 2. In cases where there is no successor to the tenancy agreement, or where the successors have relinquished their right, the lease shall expire."

3. Controlled rent

78. Section 20 set out the following:

> "1. Under the lease agreement the tenant is obliged to pay the rent.
>
> 2. In the cases provided for by the present statute, the rent shall be determined in a manner specified in this Act (controlled rent). In other cases the rent shall be determined freely.
>
> 3. The rent shall be determined with reference to the physical state of the building in question, its surface area and the condition of the flat and other factors which increase or reduce the flat's value.
>
> 4. The parties shall specify the rent in their agreement."

79. Section 25, which, pursuant to section 56(2) (see paragraph 81 below), also applied to privately owned flats subject to the previous special lease scheme, provided:

> "1. Subject to the reservation set forth in section 66, controlled rent shall be paid by tenants of dwellings belonging to municipalities, the State Treasury, State legal entities or legal entities administering dwellings for non-profit-making purposes, except for housing cooperatives.
>
> 2. The maximum controlled rent must not exceed 3% of the reconstruction value of the dwelling (*wartość odtworzeniowa lokalu*) per annum.
>
> 3. The reconstruction value of the flat shall be the product of its usable area and the conversion index of 1 square metre of the usable area of the building.
>
> 4. The [relevant] Governor shall, by means of an ordinance issued quarterly, determine the conversion index of 1 square metre of the usable surface area of the residential building."

4. Transformation of "administrative lease" into "contractual lease"

80. Under the transitional provisions of the Act the right to lease a flat conferred on a tenant by an administrative decision was to be treated as a lease originating in a lease agreement, concluded under the relevant provisions of the Civil Code. Tenants of such flats were to pay controlled rent until 31 December 2004.

Under section 55 of the Act the lease of a flat on the basis of an administrative decision issued under the 1974 Housing Act was to remain in force.

81. Section 56 laid down further regulations in respect of such "administrative leases". It provided, in so far as relevant:

> "1. Under this law, a lease which originated in an administrative decision on the allocation of a flat, or had another legal basis [that existed] before State management of housing or special lease scheme was introduced in a given locality, shall be treated as a contractual lease signed for an indeterminate time under the provisions of this law.
>
> 2. Until 31 December 2004 inclusive, the rent for flats let in the manner specified in paragraph 1 in dwellings owned by natural persons shall be determined in accordance with the provisions concerning controlled rent.
>
> ...
>
> 4. If an owner referred to in paragraph 2 intends to dwell in his flat and with that intention has vacated the flat which he has hitherto let ... from the municipality, the tenant shall be obliged to vacate the owner's flat and to move into the flat [offered to him], provided that the [condition of] the flat in question complies with the requirements laid down by this law in respect of alternative accommodation. If such is the case, the owner may terminate the lease under section 32(2).
>
> ...
>
> 6. If the owner's adult child or parents are to dwell in his flat, subsection 4 ... shall apply by analogy.
>
> 7. If the landlord has offered the tenant alternative accommodation which he or she owns himself or if, at the owner's request, such alternative accommodation has been provided by the municipality, subsection 4 shall apply by analogy."

5. Landlords' duties in respect of property maintenance

82. Section 9 of the Act set out a detailed list of landlords' duties under a tenancy. It applied both to landlords letting flats for a freely determined, market-related rent and to landlords receiving controlled rent. It also listed the types of maintenance work to be carried out by landlords under lease agreements. That section provided, in so far as relevant:

> "1. The landlord shall ensure that the existing technical facilities in the building are in working order; shall enable the tenant to use lighting and heating in the dwelling;

shall ensure that the dwelling is supplied with cold and hot water and shall ensure the use of lifts, collective aerial, and other facilities in the building;

...

3. The landlord shall, in particular:

(1) maintain in working order and keep clean any shared premises and facilities in the building; the same should apply to the vicinity of the building;

(2) carry out repairs in the building and its dwellings and facilities, and restore any building which has been damaged, regardless of the cause of such damage; however, the tenant shall bear the costs of restoring damage for which he is liable;

(3) carry out repairs in the dwellings, repair or replace installations and technical facilities and, especially, carry out such repairs for which the tenant is not responsible; in particular, he shall:

a) repair and replace the water supply installation in the building and the gas and hot water supply installations, and repair and replace the sewage, central-heating (together with radiators), electricity, telephone and collective aerial installations – the latter, however, without fittings;

(b) replace or repair furnaces, window and door woodwork, floors, floor linings and plasterwork.

..."

6. Termination of a lease in respect of tenants paying controlled rent

83. In practice, if such a tenant had not fallen into more than 2 months' arrears of controlled rent, the lease could not be terminated unless he or she had used the flat "in a manner inconsistent with its function", damaged the flat or the building, repeatedly and flagrantly disturbed the peace and upset order or had sublet the flat without obtaining the prior consent of the landlord (sections 31 and 32 of the 1994 Act).

However, even if a tenant had fallen into rent arrears exceeding 2 months, a landlord was obliged to notify him in writing of his intention to terminate the lease agreement and to allow him a one month time-limit to pay off both the arrears and the current month's rent.

C. The Constitutional Court's judgments declaring certain provisions of the 1994 Act incompatible with the Constitution

1. Judgment of 12 January 2000

84. On 12 January 2000 the Constitutional Court, ruling on a legal question referred to it by the Supreme Court, declared unconstitutional

section 56(2) read in conjunction with, *inter alia,* section 25 of the 1994 Act (see paragraphs 79 and 81 above). It found that those provisions were in breach of Article 64 § 3 of the Constitution (protection of property rights) read in conjunction with Article 2 (rule of law and social justice) and Article 31 § 3 (principle of proportionality) of the Constitution (see also paragraphs 111 and 113-114 below) and Article 1 of Protocol No. 1 to the Convention because they had placed a disproportionately heavy and, from the point of view of the permitted restrictions on the right of property, unnecessary financial burden on the exercise of property rights by landlords owning flats subject to rent control.

The court ruled that the unconstitutional provisions should be repealed on 11 July 2001. That in practice meant that by that date Parliament had to enact new, constitutional legislation dealing with the matter.

85. Before giving its judgment, the Constitutional Court asked the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) for information concerning the implementation of the 1994 Act and, more particularly, the manner of determining the "conversion index of 1 square metre of the usable surface area of the residential building" as referred to in section 25 of the Act. According to the information received, levels of controlled rent had never reached the statutory 3% of the reconstruction value referred to in section 25(2) but were determined by the municipalities at 1.3% of that figure. As a result, the levels of controlled rent covered merely 60% of the maintenance costs of residential dwellings. The rest had to be covered by landlords from their own resources. That did not allow them to put aside any sums for repairs.

86. In the judgment the Constitutional Court attached much importance to the fact that the relevant regulations concerning controlled rent had brought about a situation whereby the expenses incurred by owners of dwellings were much higher than the rent paid by tenants and that the former "had no influence on how the rates of controlled rent were determined". In its view, that shortfall of the rent actually received had resulted in the progressive reduction of the value of tenement houses and this, with the passage of time, entailed consequences similar to expropriation.

The judgment contains extensive reasoning, the gist of which can be summarised as follows.

> "One of the essential elements of the right of property is the possibility of deriving profit from the object of ownership, which is of particular importance in a market economy. The legislature may regulate and limit this right in view of, among other things, the social context of enjoyment of property and duties towards the community that are inherent in ownership. In exceptional cases, ... it is even [acceptable] to exclude temporarily the possibility of ... deriving an income from goods that are the subject of ownership. However, if the limitations on a property right go even further and the legislature places an owner in a situation in which his property necessarily

inflicts losses on him, while, at the same time imposing on him a duty to maintain property in a specific condition, it can be said that there is a limitation which impairs the very essence of that right. ...

The Constitutional Court observes that the applicable provisions very seriously limit the possibility for a landlord to use and dispose of his dwellings, as referred to in section 56(1) of the 1994 Act. In particular, under this section all earlier tenancy relationships, in so far as they originated in administrative decisions on the allocation of a dwelling ... were transformed into contractual leases for an indefinite period. ...

The Constitutional Court will not assess the compatibility of those regulations with the Constitution, as this is not the object of its ruling. It merely observes that, against that background, the owner of a building is practically deprived of any influence on the choice of tenants in his building and on whether the lease relationships with those persons should continue. ...

Thus, the possibility [for a landlord] to enjoy and dispose of property is very considerably limited. While it is not totally extinguished, as he may still sell his building (dwelling) or take out a mortgage on it and there are no restrictions on succession rights, the exclusion of the owner's right to dispose of dwellings subject to the provisions of the 1994 Act results in the depreciation of the market value of the building. By the same token, other attributes which have so far not been taken away from the owner, such as the possibility of enjoying and disposing [of his property], are substantially reduced and his property right becomes illusory.

At the same time, the legal provisions impose on the owner of the building a number of onerous duties... Not only do most of the applicable laws impose specific duties on the owner but they also provide for specific penalties for failure to comply with those duties or to discharge them properly. ...

The Constitutional Court considers that the 1994 Act and, especially, its practical application have not secured a sufficient mechanism for balancing the costs of maintaining a building, its equipment and surroundings and the income from controlled rent. ...

The Constitutional Court considers it necessary to draw attention to two further points which are relevant for the situation of the landlord.

First, the inadequacy of controlled rent *vis à vis* real expenses for maintenance of a building does not allow ... [landlords] to put aside savings for repairs and for keeping the building in a good condition. As a result, the tenement houses are gradually losing value. In terms of property rights, this should be perceived as a process of gradual deprivation of this right, leading, with the passage of time, to results similar to expropriation. Also, it has a general impact on the community because many tenement houses are approaching the time of their 'technical death' and, in consequence, not only will the owner lose his property but tenants will also lose the possibility of housing, which will hardly be compatible with Article 75 § 1 of the Constitution.

Secondly, the inadequacy of controlled rent *vis à vis* real expenses for maintenance of a building has not been duly recognised by the tax laws... [Under those laws], landlords are treated in the same way as businessmen or a person letting dwellings for a profit and must bear the financial consequences of all losses caused by the lease of their dwellings. ...

[As regards the principle of proportionality laid down in Article 31 § 3 of the Constitution]

... it may be justified to fix rent in such a way that it will not be disproportionate to the financial standing of tenants, so that it will be possible for them to maintain a decent standard of living (or at least a minimum standard) after paying the rent. Thus, it is in conformity with the contemporary perception of a "social state" to demand some sacrifice from all members of society for the benefit of those who cannot provide subsistence for themselves and their families. By the nature of things, the extent of that sacrifice depends on the level of income and imposes a heavier burden on those who are better off. By the nature of things, the owners of property may be required to make sacrifices, according to the general principle that 'ownership entails obligations'. However, the distribution of burdens among specific members of society cannot be arbitrary and must maintain rational proportions.

In the circumstances obtaining in Poland, pursuant to Article 31 § 3, it may be justified to maintain the provisions limiting landlords' property rights and, more particularly, excluding unrestricted freedom in fixing rates of rent and other charges collected from tenants. ... It may still – in any event in the transitional period – be justified to impose further-reaching restrictions on property rights, precluding the freedom to derive profit by fixing levels of rent in such a way as to cover only the costs of maintenance and upkeep of the building.

However, an assessment of the 1994 Act leads to the conclusion that the applicable restrictions do not stop there. The present regulations deliberately set the levels of controlled rents below the costs and expenses actually incurred by owners. That, in itself, would not necessarily have had to be considered unconstitutional had there been any parallel legal mechanism compensating for incurred losses. No such mechanisms have been set up. In consequence, the applicable provisions are based on the premise that property must – until the end of 2004 – entail losses for the owner and that, at the same time, the owner has a duty to incur expenses to maintain his property in a particular condition.

That means that the 1994 Act placed the main burden of the sacrifices that society had to make for tenants, or at least for tenants in a difficult financial position, on the owners of property. Besides, other remedies – such as, for instance, subsidising from the public funds the costs of maintaining and repairing buildings referred to in section 56(1), ensuring full recognition in the tax regulations for losses and expenses incurred by landlords and making the level of rent dependent on the tenant's income – have not been employed. Instead, the simplest means (being apparently the cheapest in social terms) have been applied, namely setting a low maximum level of rent and allowing the municipalities to make exceptions to that level. Consequently, it has been assumed that owners will cover the remaining costs of maintaining their property out of their own pockets. No proportionality whatsoever has been maintained in respect of the distribution of burdens (sacrifices) among the owners and the other members of society.

The Constitutional Court would stress once again that in the present context there is a constitutionally acknowledged necessity to protect the rights of tenants ... and this may be reflected in, among other things, provisions fixing a maximum level of rent. However, there is no constitutional necessity to afford them such protection mostly at the expense of private individuals – the owners of dwellings – because the duty to help the underprivileged and [the duties inherent in] social solidarity are incumbent not

only upon those persons. It is possible to adopt other legal solutions so as to secure at the same time the necessary protection to tenants and the minimum financial means needed to cover the requisite costs to the landlords. ... It is not for the Constitutional Court to indicate concrete solutions and to determine the ratio of costs to be incurred by tenants, landlords and the community as a whole. However, this court considers that there are no constitutional considerations to justify imposing the greater part of those costs on the landlords. ...

Consequently, section 56(2) is incompatible with the Constitution. A limitation on the right of property ... which is not 'necessary' does not satisfy the constitutional requirements of proportionality.

[Other considerations]

The finding that section 56(2) infringes the principle of proportionality makes it unnecessary for the Constitutional Court to determine whether that provision also infringes the very essence of the right of property since [a further finding to that effect] will not affect the merits of the ruling. It should merely be noted in passing that the question whether the "essence" of the right of property has been preserved must also be assessed ... against the background of the combination of existing limitations on this right. ... The manner in which [rent control] has been effected by section 56(2), taken together with other provisions regarding privately owned buildings has [resulted] in the owners being deprived even of the slightest substance of their property rights.

It is the Constitutional Court's opinion that, in consequence, the right to derive profit from property, which is an important element of the right of property, has been destroyed and, at the same time, the second element, the right to dispose of one's property, has been stripped of its substance. In consequence, the right of property has become illusory and unable to fulfil its purpose in the legal order based on the principles listed in Article 20 of the Constitution [principles of social market economy, economic activity, private ownership, solidarity, dialogue and cooperation].

[As regards the constitutional aspects of the situation of tenants]

A kind of obligation has been placed on the legislature to ensure that up to 31 December 2004 tenancy relationships concerning municipal dwellings and [privately owned] dwellings should retain their present form, including the level of rent [3% of the reconstruction value of the dwelling] ... The Constitutional Court considers that, having regard to the principle of maintaining citizens' confidence in the State and the law made by it and the principle of legal security, which ensue from the rule of law laid down in Article 2 of the Constitution and are binding on the legislature, renouncing that obligation will be admissible only in case of exceptional public necessity. At present, there is no such necessity ... It should be noted in passing that setting a time-limit for the operation of the rent-control scheme in buildings owned by natural persons also places an obligation on the legislature – for the benefit of landlords – to repeal the scheme in its present form by the end of 2004. This obligation should also be seen from the perspective of the principle of maintaining citizens' confidence in the State.

[Final considerations]

The constitutional inadmissibility of setting the income received by landlords below a certain minimum does not automatically mean that the rent chargeable to tenants has to be increased, because that problem can be resolved by allocating public financial resources."

2. Judgment of 10 October 2000

87. In its judgment of 10 October 2000 the Constitutional Court held that section 9 of the 1994 Act (see paragraph 82 above), laying down landlords' obligations, was incompatible with the constitutional principles of the protection of property rights and social justice because, in particular, it placed a heavy financial burden on them, a burden which was in no way proportionate to the income from controlled rent. The Constitutional Court ruled that that provision should be repealed by 11 July 2001.

3. Resultant amendments to legislation

88. Following the Constitutional Court's rulings of 12 January and 10 October 2000, Parliament adopted a new law governing housing matters and relations between landlords and tenants. The relevant statute – that is to say, the Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and amendments to the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*) ("the 2001 Act") entered into force on 10 July 2001. It repealed the 1994 Act and replaced the previous scheme of controlled rent with another statutory rent-control mechanism that restricted the possibility for landlords to increase levels of rent.

The 2001 Act was then successively amended. The most important amendments, adopted by Parliament on 17 and 22 December 2004, entered into force on 1 January 2005 (see paragraphs 128-136 below).

D. The 2001 Act

1. Restrictions on rent increases

89. Section 9 of the 2001 Act listed situations where a landlord could increase rent. That provision, in the version applicable until 10 October 2002 (see paragraph 106 below), read, in so far as relevant:

"1. Increases in rent or other charges for the use of a dwelling, apart from charges that do not depend on the landlord [e.g. those for electricity, water, central heating, etc.] may not be made more often than once every six months;

2. If a landlord increases other charges that do not depend on him, he shall be obliged to provide the tenant with a table of charges and the reasons for the increase;

3. In a given year the increase in rent or other charges, except for charges that do not depend on a landlord, shall not exceed the average general yearly increase in prices for consumer goods and services in the previous year in relation to the year preceding that year by:

(1) 50% - if the annual rent does not exceed 1% of the reconstruction value of the dwelling;

(2) 25% - if the annual rent is higher than 1% but not more than 2% of the reconstruction value of the dwelling;

(3) 15% - if the annual rent is higher than 2% of the reconstruction value of the dwelling.

Information on the increase in prices referred to in the first sentence [of this paragraph] shall be communicated in official bulletins of the President of the Central Statistical Office;

...

8. The reconstruction value of a dwelling shall be the product of its usable area and the conversion index of the reconstruction cost of 1 square metre of the usable area of the residential building. ...”

90. A further restriction on rent increases by landlords followed from section 28(2) of the 2001 Act, which provided that controlled rent could not exceed 3% of the reconstruction value of the flat. That provision was in force until 31 December 2004, the deadline that had already been set under the 1994 Act (see also paragraph 81 above).

Section 28(2) read:

“Until 31 December 2004 in all tenancy relations subsisting before the date of entry into force of this law, the level of rent in respect of dwellings that were subject to the controlled rent scheme on the date of the entry into force of this law, may not exceed 3% of the reconstruction value of the dwelling per year.”

2. Termination of leases

91. Section 11 of the 2001 Act listed situations in which a landlord could terminate a lease agreement that originated in an administrative decision.

Section 11(1)-(2) read, in so far as relevant:

“1. If a tenant is entitled to use a dwelling for rent, the landlord may give notice only for reasons listed in this provision ... Notice should, on pain of being null and void, be given in writing.

2. The landlord may give one month’s notice effective at the end of a calendar month, if:

(1) the tenant, despite a reminder in writing, still uses the dwelling in a manner contrary to the terms of the agreement or in a manner inconsistent with its function, thus causing damage; or if he or she has damaged equipment designed for common

use of residents; or if he or she he has flagrantly or repeatedly disturbed order, thus severely upsetting (*czyniąc uciążliwym*) the use of other dwellings; or

(2) the tenant has fallen into more than three months' arrears of rent or other charges for the use of the dwelling and, despite being informed in writing of the landlord's intention to terminate the agreement and given one month to pay off both the arrears and the current month's rent, has not paid those amounts, or

(3) the tenant has sublet the flat or part of it, or allowed it , or part of it, to be used fee of charge by another without the landlord's authorisation; or

(4) the tenant uses the flat which has to be vacated in view of the impending demolition or substantial renovation of the building...

92. Pursuant to section 11(3), a landlord who received rent which was lower than 3% of the reconstruction value of the dwelling could terminate the agreement if a tenant had not lived in the flat for more than 12 months or if he had title to another flat situated in the same town.

Section 11(4) provided that a landlord could terminate the agreement with 6 months' notice if he intended to dwell in his own flat and had provided the tenant with "substitute accommodation" (*lokal zastępczy*) or the tenant was entitled to a dwelling which met conditions for "substitute accommodation".

Under section 11(5), a landlord could terminate the agreement upon 3 years notice if he intended to dwell in his flat but had not provided the tenant with any "substitute accommodation".

93. However, section 12(1) further limited the possibility of terminating leases. It stated that if a landlord intended to terminate a lease on the grounds mentioned in section 11(2)(2) (rent arrears unpaid despite the fact that a warning notice had been served and an extra time-limit had been set for payment) and if the tenant's income would entitle him to obtain a lease on "social accommodation" (*lokal socjalny*) belonging to the municipality, no notice could be given unless the landlord had proposed a settlement to the tenant concerning the arrears and running charges.

3. Duties in respect of maintenance and repairs

94. The 2001 Act, in the version applicable up to 1 January 2005, did not contain any specific provisions setting out the duties of landlords and tenants with regard to maintenance and repairs of dwellings and residential buildings. Those issues were governed partly by the relevant provisions of the Civil Code (which applied in so far as a given matter had not been addressed by the 2001 Act) and partly by the Construction Act of 7 July 1994 on (*Prawo budowlane*) ("the Construction Act"), which lays down the general duties of owners of buildings.

95. Article 662 of the Civil Code, which lays down a general rule, reads, in so far as relevant:

"1. The landlord should give the object [of a lease] to the tenant in a usable state and should keep it in such a state for the duration of the lease.

2. Minor repairs related to the normal use of the object [of the lease] are incumbent on the tenant."

96. Article 675 of the Civil Code reads, in so far as relevant;

"1. After the termination of a lease, the tenant shall be obliged to return the object [of the lease] in a condition not worse [than when he took possession of it]; however, he or she shall not be responsible for any deterioration of the object caused by reasonable wear and tear."

97. Article 681 lists minor repairs for which a tenant is responsible. It reads as follows:

"Minor repairs for which the tenant is responsible are, in particular: minor repairs of floors, doors and windows, painting of walls and floors and the inner side of the flat's entrance door, as well as minor repairs of installations and technical equipment that enable the use of lighting, heating, the water supply and the sewage system."

98. Section 61 of the Construction Act provides:

"The owner or manager of a building shall be obliged to maintain and use the building in accordance with the rules set out in section 5(2)."

Section 5(2) states:

"The conditions for use of a building shall be secured in accordance with its purpose, in particular in respect of:

(a) the water and electricity supply and, if need be, the supply of heating and fuel, regard being had to their effective use;

(b) sewage, waste disposal and rainwater drainage."

4. Succession to leases

99. Article 691 of the Civil Code provides, in so far as relevant:

"In the event of a tenant's death, the following persons shall succeed to the tenancy agreement: his or her spouse if the latter has not been a party to that agreement, his or her children, his or her spouse's children, any other persons to whom he was obliged to pay maintenance, and a person living with the tenant in *de facto* marital cohabitation.

2. The persons referred to in paragraph 1 shall succeed to the tenancy agreement if they lived in the tenant's household until his or her death.

3. If there are no persons in the categories referred to in paragraph 1, the lease agreement shall expire."

E. The Constitutional Court's judgment of 2 October 2002

100. On 11 December 2001 the Ombudsman (*Rzecznik Praw Obywatelskich)* made an application to the Constitutional Court and asked, *inter alia*, that section 9(3) of the 2001 Act (see paragraph 89 above) be declared incompatible with the constitutional principle of the protection of property rights. The Ombudsman referred to numerous complaints that he had received from landlords, who claimed that levels of rent as determined under that section did not cover the basic maintenance costs of residential buildings. He also submitted that the recent rules for the determination of rent put landlords at a bigger disadvantage than the rules which had been laid down in the 1994 Act and which had already been repealed as being unconstitutional.

He criticised the legislation on the ground that it was exceptionally inconsistent. He referred, in particular, to the – in his view erroneous – statutory correlation between rent increases and the increase of prices for consumer goods and services, which were not related in reality to the costs of maintaining a building. He added that there were still no provisions to allow the landlords to recover losses incurred in connection with expenses for maintenance of property.

101. The representatives of Parliament and Prosecutor General (*Prokurator Generalny*) asked the Constitutional Court to reject the application.

102. The court invited organisations of landlords and tenants to take part in the proceedings and submit their observations in writing. The Polish Association of Tenants, the Polish Union of Property Owners (*Polska Unia Właścicieli Nieruchomości*) and the All-Polish Association of Property Owners (*Ogólnopolskie Stowarzyszenie Właścicieli Nieruchomości*) filed their pleadings on 16, 17 and 18 September 2002 respectively.

103. The Polish Union of Property Owners supplied considerable statistical material, showing that the level of controlled rent represented on average around 1.5% of the reconstruction value of the building, which in turn amounted to some 40% of the costs of maintenance of residential buildings. They presented a sample calculation of monthly rent based on the average reconstruction value, the average size of a flat and the average gross income.

Assuming that the average reconstruction value was PLN 2,200, that 1.5% of that value was the average maximum reached by controlled rent and that the average flat had a surface area of 40 square metres, the average monthly rent amounted to PLN 110. That amount, they stressed, represented 5% of the average gross income, whereas, according to them, in the European Union countries rent accounted for 25-30% of the average gross income.

104. The All-Polish Association of Property Owners submitted, among other things, that the impugned legislation was in breach of the constitutional principle of proportionality because a group of some 100,000 landlords had to bear the main burden of social protection afforded by the Polish State to about 900,000 tenants, without any financial support from some 15,000,000 Polish taxpayers.

105. The Polish Association of Tenants considered that the contested provisions were compatible with the Constitution. It drew attention to the fact that a large group of tenants, especially those who had been granted the right to a lease by means of administrative decisions, were in a poor financial position. It stressed that during the period of State management of housing matters those tenants had made investments and had thereby contributed to the maintenance costs of buildings, even though they had not been legally obliged to do so. At the hearing, in reply to the questions from the judges, the President of the Association admitted that tenants paying controlled rent also included well-off persons, in respect of whom an increase in rent would be justified.

106. On 2 October 2002 the Constitutional Court, sitting as a full court, declared section 9(3) of the 2001 Act unconstitutional as being incompatible with Article 64 §§ 1 and 2 and Article 31 § 3 of the Constitution (see also paragraphs 113 and 114 below). The provision was, accordingly, repealed. The repeal took effect on 10 October 2002, the date of the publication of the judgment in the Journal of Laws (*Dziennik Ustaw*).

107. In the reasoning for its judgment, the Constitutional Court extensively cited its judgment of 12 January 2000 (see paragraphs 84-86 above).

In conclusion, it held that the fact that the 2001 Act had abolished the scheme of rent control had not improved the situation of landlords because, instead, it had introduced a defective mechanism for controlling increases in rent. In its opinion, section 9(3) had not only "frozen" the disadvantageous position of landlords, a situation which had already been found to be incompatible with the Constitution, but had also, owing to the changing economic circumstances, significantly reduced any possibility of increasing rent to cover expenses incurred by them in connection with the maintenance of property.

The court repeated what it had already stated in its judgment of 12 January 2000, namely that the relevant provisions placed the main burden of the sacrifices that society had to make for the benefit of tenants in a difficult financial position on the owners of property. It went on to find that section 9(3) perpetuated the state of a violation of property rights that had subsisted under the 1994 Act, especially as landlords had not been relieved of any of their previous duties in respect of maintenance of property.

108. The main thrust of the Constitutional Court's reasoning was as follows:

> "During the transition from controlled rent to contractual rent it is necessary to control the increase in rent. ... In most European countries legislative bodies exercise control over rent increases. The introduction of such a mechanism into Polish law seems to be particularly justified and the need for it follows quite evidently from the shortage of flats and the absence of a lease market which would influence rates of rent. This very low supply of flats for rent has caused a situation in which tenants are exposed to undue demands from landlords. Hence there is a need to regulate rent increases.
>
> While recognising this necessity, the Constitutional Court is convinced that the mechanism introduced by the impugned provision is defective and is objectively inappropriate for accomplishing the aims pursued by the legislature. ...
>
> To begin with, the Constitutional Court will examine the impact of the operation of section 9(3) of the 2001 Act on landlords who were subject to controlled rent under the 1994 Act. In this court's view, the contested provision has not only "frozen" the disadvantageous position of landlords subsisting under the 1994 Act, a situation which was already found to have been incompatible with the Constitution, but has also actually aggravated that situation on account of changing economic circumstances. ...
>
> At the time when the present legislation entered into force, tenants paid rent determined by the municipalities. [The rent paid], according to the information supplied by the Office for Housing and Town Development, covered merely 60% of the costs of maintenance of residential buildings. The 2001 Act did not increase rent to the level that could have been established according to the principles set out by the Constitutional Court in [the judgment of 12 January 2000]. Nor did the legislature give landlords an opportunity to increase rent to a level ensuring recovery of their expenses. The 2001 Act has frozen rates of rent and fixed them as a reference level for the calculation of future increases. ...
>
> In the Constitutional Court's opinion, in order to arrive at reasonable level of rent it is necessary to take one of the following two measures: either a one-off increase in deflated rates of controlled rent, accompanied by a restrictive protection of tenants against further increases or, while freezing the applicable rates, permitting considerable increases in relatively rapid succession until an acceptable level has been reached. However, the legislature fixed an unreasonably low basic rent and allowed only strictly regulated increases, correlated with the inflation rate. The legislature did not take into account the fact that the rate of inflation was constantly declining, which means that permissible increases have been insignificant, amounting merely to a few percentage points of the basic rent and giving no opportunity, for purely mathematical reasons, to reach levels that would ensure profitability, or at least recovery of maintenance costs. The decrease in the inflation rate, although a generally positive sign of economic stability, has resulted in the stagnation of rent at low levels.
>
> The deterioration of the situation of the landlords receiving controlled rent is also shown by a comparison of rent increases under the 1994 Act with increases permissible under the 2001 Act. As transpires from information supplied by the Office for Housing and Town Development [in respect of the operation of the 1994 Act], at the relevant time municipalities raised controlled rent annually to a significant extent: in 1996, when the inflation rate was about 20%, by 30% on average, but in 1997,

when the inflation rate was 13%, by 31%. The pace of transition to a reasonable level of rent was faster than at present, if only because municipalities, themselves owning residential buildings, had a strong interest in securing genuine increases in rent. Finally, the previous regulations gave landlords the hope of relaxing rent policy. Irrespective of the rates of controlled rent imposed on them by municipalities, they knew that from 2005 they would be able to negotiate rent freely. However, that encouraging prospect was wiped out by section 9(3) of the 2001 Act. Even though the ceiling of 3% will no longer apply after [31 December] 2004, given the provision of section 9(3), this ceiling will not be reached in reality.

In the Constitutional Court's view, the above circumstances give sufficient grounds to find that the situation of landlords who formerly received controlled rent is now unquestionably less favourable than it used to be under the 1994 Act. ... [O]n the contrary, section 9(3) has perpetuated the violation of the right of property. At this point, it is necessary to determine how the landlords' situation looks in other respects, apart from the restrictions on rent increases. If, following the ... judgment of 12 January 2000, the legislature had significantly changed any aspect of the legal position of landlords, thereby compensating for losses resulting from reduced rent, the evaluation of levels of rent in the present case would have had to be based on other criteria than those referred to by this court in 2000.

Since 12 January 2000 there have been no changes to legislation, apart from the enactment of the 2001 Act, which seriously aggravated the situation of landlords. They still bear the burden of obligations imposed by the Construction Act, whose non-fulfilment, as stressed by the Ombudsman, is subject to penalties. There have been no changes to regulations on income tax, at least in respect of deductions from tax (or from taxable income) of amounts spent on maintenance of buildings in which flats are let to tenants. Nor has the legislature introduced preferential loans for repairs. ... The Constitutional Court also points out that the 2001 Act has not materially improved the situation of landlords in respect of termination of leases. ...

Accordingly, it is fully justified to rely on this court's findings in respect of section 56(2) of the 1994 Act. Even though the provisions under consideration have changed, and the Court is now considering completely different legal instruments (control of rent increase as opposed to the scheme of rent control under the 1994 Act), the core of the dispute and the issues under consideration remain essentially the same, namely the situation of landlords on whom the legislature has imposed reduced levels of rent. In addition, section 9(3) leads to a difference in the treatment of landlords, depending on whether they are parties to lease relationships formerly governed by the rent control scheme, or to lease contracts based on freely determined rent. As shown above, in practice the rent increase mechanism adversely affects the first group of landlords and, and the same time, unjustifiably and at the tenant's expense, favours the second group.

In view of the foregoing, the Constitutional Court finds that the [operation of] the contested provision is tantamount to the continued violation of the right of property vested in a specific group of landlords, namely those who entered into a lease relationship by virtue of administrative decisions on the allocation to a dwelling, or on another basis, prior to the introduction of State management of housing matters in a given municipality. Not only did the legislature fail to adjust rates of controlled rent, despite their having been found to be unconstitutional, but in fact, through the introduction of restrictive provisions on rent increases, practically froze such rents at

levels that cannot be regarded as consistent with constitutional guarantees of the right of property. ...

It is worth reiterating, having regard to the [judgment of 12 January 2000], that the restrictions in question are undoubtedly guided by the need to protect public order and the rights of other persons, namely tenants. However, according to the Constitutional Court's case-law, Article 31 § 3 of the Constitution implies that restrictions on the rights guaranteed therein are necessary. In respect of the rent [control scheme], the Constitutional Court qualified as "necessary" – at least during the transitional period – the restriction on the right of property "precluding the freedom to derive profit, by fixing levels of rent in such a way as to cover only the costs of maintenance and upkeep of the building". A reduction below that minimum was seen by this court as unconstitutional. Placing the financial burden of subsidising rent on a single social group, namely landlords, was also considered to have been unconstitutional since "the duty to help the underprivileged and [the duties inherent in] social solidarity are incumbent not only upon those persons". The Constitutional Court envisaged and still envisages the possibility of applying other legal solutions ... which would result in a more uniform social distribution of the burden linked to the necessity to satisfy housing needs. It is therefore unnecessary to place the entire burden on the single group of landlords. Consequently, the Constitutional Court considers that the restriction resulting from section 9(3) ... does not meet the criteria established by the principle of proportionality and goes beyond the tolerable extent of limitations on the right of property set out in Article 31 § 3 of the Constitution.

The Constitutional Court is not competent to fix minimum levels of rent... [However,] from the point of view of the protection of landlords' rights, [it] stresses again the crucial importance of the correct determination of the costs of maintenance and upkeep of residential buildings. This constitutes the absolute minimum rate. ...

As regards the implementation of the constitutional rights of tenants, the Constitutional Court stresses that, although in the present judgment section 9(3) of the 2001 Act has been found unconstitutional, the Act still imposes significant restrictions on the freedom to increase rent. The most important of them is definitely section 28(2), which remains in force and which provides that ... up to 31 December 2004 inclusive the annual rent may not exceed 3% of the reconstruction value of the dwelling."

F. The Constitutional Court's judgment of 12 May 2004

109. On 12 May 2004 the Constitutional Court heard a constitutional complaint lodged by a certain J.-M. O, challenging the constitutionality of section 9(3) and section 28(3) of the 2001 Act (see paragraphs 89 and 90 above). He submitted that those provisions were incompatible with Article 64 § 1 (protection of property rights) of the Constitution read in conjunction with Article 31 § 3 (principle of proportionality).

In their written pleadings, the Prosecutor General and representatives of Parliament asked the court to discontinue the proceedings in so far as they concerned the constitutionality of section 9(3) since it had already been

repealed by the judgment of 2 October 2002, and to hold that section 28(3) was compatible with the Constitution.

At the oral hearing, J.-M.O. stated that he intended to pursue his complaint only in so far as section 28(3) was concerned.

110. The Constitutional Court held that section 28(3) was compatible with the Constitution and found:

> "As emerges from [the Constitutional Court's judgments of 12 January 2000 and 2 October 2002], the question of maintaining the maximum ceiling on rent has already been examined by this court and the measure was considered to have been necessary from the point of view of public order – at least in the transitional period. The need to protect tenants against unduly high rent is justified by the situation of housing in Poland, which is the consequence of State management of housing and has resulted in a commonly experienced shortage of flats.
>
> A limitation on levels of rent – such as the one introduced by the contested provision – does not impair the essence of the right of property because it does not deprive owners of essential elements of that right. It has to be stressed that the right to a lease is one of the pecuniary rights protected by Article 64 §§ 1 and 2 of the Constitution and that restrictions on the right of property is inherent in many pecuniary rights, including the right to a lease. The contested section has set a maximum ceiling on rent with a clear time-frame – up to the end of 2004 – and this also may have an impact on whether a temporary restriction on the right of property may be regarded as not impairing its essence.
>
> It also has to be stressed that the setting of a clear time-frame in section 28(3) implies an obligation of the legislature towards landlords, which must be assessed from the point of view of the principle of citizens' confidence in the State and the law made by it."

G. Relevant constitutional provisions

111. Article 2 of the Constitution states:

> "The Republic of Poland shall be a democratic State ruled by law and implementing the principles of social justice."

112. Article 20 lays down the basic principles on which Poland's economic system is founded. It reads:

> "A social market economy, based on 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."

113. Article 31 § 3 reads:

> "Any limitation on the exercise of constitutional freedoms and rights may be imposed only by statute, and only when it is necessary in a democratic State for the protection of its security or public order, or for the protection of the natural environment, health or public morals, or the freedoms or rights of other persons. Such limitations shall not impair the essence of freedoms and rights."

114. Article 64 protects the right of property in the following terms:

"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 be limited only by means of a statute and only to the extent that this does not impair the substance of such right."

115. Article 75 refers to the protection of tenants. It reads as follows:

"1. The public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.

2. Protection of the rights of tenants shall be established by statute."

116. Article 76 provides:

"The public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute."

H. General effects of the repeal of section 9(3) of the 2001 Act

117. After 10 October 2002, as a result of the Constitutional Court's judgment, it became possible for landlords to increase rent to up to 3% of the reconstruction value of the dwelling. At the end of 2002 levels of rent generally increased. According to the Government, in the Warsaw District, where the previous rate was PLN 2.17 per square metre, the rent quadrupled, reaching around PLN 10.00 per 1 square metre in 2004. According to reports published in the Polish press, in most other towns 3% of the reconstruction value of the dwelling corresponded to PLN 5.00-6.00 for 1 square metre. Levels of freely determined contractual rent are still higher; sometimes and, especially, in large towns, the difference may reach even 200-300%.

I. The December 2004 Amendments

1. Preparatory work and adoption by Parliament

(a) The Government Bill

118. At the beginning of 2003 the Government started to prepare a bill amending the 2001 Act. The Government Bill was submitted to Parliament on 30 December 2003.

119. The explanatory memorandum on the bill stated that the aims of the proposed amendments were, among other things, "to specify rights and obligations of a landlord and tenant in order to strengthen the protection of the weaker party"; "to introduce new rules for the protection of tenants against the excessive increase in rent and other charges for the use of dwellings"; and " to reduce the disproportion between the constitutionally guaranteed protection of tenants and the constitutional rights of landlords".

120. The Government proposed a number of changes to the existing provisions. The most important and controversial provision was the proposed section 28, pursuant to which (subsection 2) the scheme of rent control, despite the fact that the deadline for its operation had been set by the legislature for 31 December 2004, was to be maintained until the end of 2008 in respect of all lease agreements in force before 10 July 2001 under which the tenants paid controlled rent. That in practice meant all leases originating in administrative decisions regarding privately owned buildings.

The provision was to be applied mostly to all individual landlords, its operation in relation to public housing entities and housing cooperatives being of a minimal effect. The explanatory memorandum stated that the repeal of the rent-control scheme in its entirety "could cause a dramatic increase in rent" after the end of 2004 and that the limitation "would allow a smooth transition from the levels of rent at the end of 2004 to levels fixed in accordance with general principles".

The Government therefore proposed that controlled rent be frozen at the maximum level of 3% of the reconstruction value of the dwelling up to 31 December 2004; 3.25% up to the end of 2005; 3.5% up to the end of 2006; 3.75% up to the end of 2007 and 4% up to the end of 2008.

121. The effects of the proposed rent freeze on the property rights of individual landlords have received considerable media attention and have given rise to heated public debate. The proposal was severely criticised by all organisations of landlords.

122. Eventually, on 5 October 2004, the Government submitted to Parliament an amendment to their bill. They withdrew their original proposal to freeze levels of rent after 31 December 2004. They still maintained the proposal to limit the increase in rent for leases originating in previous administrative decisions.

(b) The Deputies' Bill

123. On 22 June 2004 a group of deputies from the "Law and Justice (*"Prawo i Sprawiedliwość"*) party submitted a bill proposing amendments to the 2001 Act.

124. The general thrust of the proposed changes, as set out in the relevant explanatory memorandum, was:

> "to secure the effective protection of the rights of tenants, as guaranteed by Articles 75 § 1 and 76 of the Constitution, by:

(a) preventing the overuse by landlords of the right to terminate a lease agreement under section 11(5) of the 2001 Act;

b) preventing the dysfunction resulting from non-fulfilment by landlords of the duties incumbent on them in leasing dwellings (even in cases where the landlords are unknown and the municipality does not manage the property).”

(c) Parliamentary debate

125. Parliament decided to work on both bills simultaneously. The first reading took place on 6 October 2004. The second reading, following the report of the Parliamentary Committee on Infrastructure, the Committee for Family and Social Policy and the Committee on Self-Government and Regional Policy and the adoption of amendments, was on 17 November 2004. After the third reading, which took place on 19 November 2004, the bills were adopted by the *Sejm* and transmitted to the Senate and the President of Poland on the same day.

On 6 December 2004 the Senate proposed several amendments, the most significant being the amendment to section 9 of the 2001 Act, restricting the maximum increase in rent to a level of 10% per year in situations where the rent paid exceeded 3% of the reconstruction value of the dwelling.

126. On 17 December 2004 the *Sejm* accepted some of the Senate’s amendments, most notably the amendment to section 9. On the same day the Act of Parliament was transmitted for signature by the President of Poland. The President signed it on 23 December 2004.

127. On 22 December 2004, following, among other things, press reports stating that the new provision of section 9 of the 2001 Act did not exclude the possibility of a one-off increase in rent even where the rent was equal to, or less than, 3% of the reconstruction value of the dwelling, Parliament passed, in an accelerated procedure, another bill amending the 2001 Act. The bill was tabled by a group of deputies and contained only one proposal, namely to add another subsection to section 9 of the 2001 Act (see paragraph 136 below). On the same day the bill was transmitted to, and accepted by, the Senate. The President of Poland signed the Act of Parliament on 23 December 2004.

2. The 17 December 2004 Amendment

128. The 17 December 2004 Amendment entered into force on 1 January 2005.

(a) Restrictions on rent increases

129. New section 8a was drafted with a view to implementing both the Constitutional Court’s ruling of 2 October 2002 and the constitutional principle of the protection of tenants’ rights. It subjects the increase in rent to various restrictions. It reads, in so far as relevant:

"1. The landlord may increase rent or other charges for the use of the dwelling, giving [the tenant] notice of the rent increase, not later than by the end of a calendar month [and] in compliance with the terms for giving notice.

2. The term for giving notice of an increase in rent or in other charges for the use of the dwelling shall be 3 months, unless the parties have stipulated a longer term in their contract;

...

4. An increase in rent exceeding 3% of the reconstruction value of the dwelling within 1 year, may take place only in justified cases. At the tenant's written request, the landlord shall, within 7 days, give reasons for the increase and its calculation in writing.

5. The tenant may, within 2 months following the notice of the increase, challenge the increase referred to in subsection 4 by bringing a court action to have the increase declared unjustified or justified but in a different amount [; he or she may also] refuse to accept the increase, with the effect of the contract being terminated by the end of the term of notice. The burden of proof in respect of the justification of the increase shall rest with the landlord.

...

7. Provisions of subsections 1-6 shall not apply to increases:

(1) not exceeding 10% of the current rent or current charges for the use of the dwelling within a year;

...

(3) concerning charges that do not depend on the landlord."

130. In section 9 of the 2001 Act subsections 1 and 2 were reworded as follows:

"1. Increases in rent or other charges for the use of the dwelling, apart from charges that do not depend on the landlord [e.g. those for electricity, water, central heating, etc.] may not be made more often than every 6 months but, if the level of the annual rent or other charges for the use of the dwelling, apart from charges that do not depend on the landlord, exceeds 3% of the reconstruction value of the dwelling, a yearly increase cannot be higher than 10% of the current rent or current charges for the use of the dwelling [; such an increase] shall be calculated without charges that do not depend on the landlord.

2. If charges that do not depend on the landlord have been increased, he or she shall give a tenant a written statement listing charges and reasons for their increase. The tenant shall be obliged to pay the increased charges only up to such a level that is necessary for the landlord to cover costs of supply of utilities referred to in section 2(8) [e.g. electricity, water, heating]."

(b) Termination of leases

131. As regards the termination of leases by individual landlords, the new section 11 differs only slightly from the previous provision on termination of leases (see paragraph 91 above).

Section 11(1) now reads, in so far as relevant, as follows:

> "If a tenant is entitled to use a dwelling for rent, the landlord may give notice only for reasons listed in subsections 2-5 .... Notice should, on pain of being null and void, be given in writing.

Subsections (2), (4) and (5) of section 11 remain unchanged. Subsection (3) now reads:

> " The landlord of a dwelling for the lease of which the rent is lower than 3% of the reconstruction value of the dwelling in a given year may terminate the lease:
>
> (1) with six months' notice if the tenant has not lived in the flat for more than 12 months;
>
> 2) with one month's notice, expiring at the end of a calendar month, in respect of a person who has been entitled to another dwelling in the same or nearby locality and provided that dwelling meets the requirements for substitute accommodation."

132. As regards cases where the landlord, his adult descendants or a person in respect of whom he is obliged to pay maintenance intend to dwell in the landlord's flat (see also paragraph 93 above), the provision of the present section 11(7) is that the notice to quit given to the tenant should, on pain of being invalid, indicate the person who is to dwell in the flat. The terms for giving notice (6 months and 3 years respectively) remain unchanged).

133. Under section 11(12) the termination of a lease in respect of a tenant who on the date of giving notice is more than 75 years old and who, after the expiry of the applicable 3 years' notice will have no title to another dwelling and will have no persons obliged to maintain him or her will take effect upon his or her death.

(c) Duties in respect of maintenance and repairs

134. Section 6a sets out a list of the landlord's duties under the tenancy. In essence, it repeats the provision of section 9 of the 1994 Act (see paragraph 82 above).

135. Section 6b lays down the tenant's duties. It reads, in so far as relevant:

> "1. The tenant shall be obliged to keep the dwelling in a proper technical, sanitary and hygienic state as prescribed by other separate provisions and to comply with the rules of good conduct in the building. He or she shall also be obliged to take care, and ensure protection against damage or devastation, of parts of the building designed for common use, such as lifts, staircases, corridors, chutes, other [similar] premises and the surroundings of the building.

Subsection (2) sets out a detailed list of repairs and works involved in upkeep of a flat.

3. The 22 December 2004 Amendment

136. The 22 December 2004 Amendment entered into force on 1 January 2005. It reads, in so far as relevant:

> "In section 9(1) [of the 2001 Act] the following subsection 1(a) shall be included:
>
> 'The provisions of subsection 1 shall also apply in the event of an increase in rent or other charges for the use of a dwelling, except for charges that do not depend on the landlord if, after the increase, the level of the annual rent or other charges for the use of the dwelling, except for the charges that do not depend on the landlord, is to exceed 3% of the reconstruction value of the dwelling.' "

4. The challenge to the constitutionality of the December 2004 Amendments

137. On 4 January 2005 the Polish Union of Property Owners made an application to the Constitutional Court, challenging the constitutionality of the 17 December and 22 December 2004 Amendments ("the December 2004 Amendments"). The Union alleged, in particular, that the provisions extending State control over increases in rent for dwellings owned by private individuals were incompatible with the constitutional principles of protection of lawfully acquired rights and citizens' confidence in the State and the law made by it.

In that context, they stressed that the Polish authorities, in breach of their obligation to terminate the operation of the rent-control scheme by 31 December 2004 that they had taken upon themselves by virtue of two successive laws, namely the 1994 Act and the 2001 Act, had failed to abolish the impugned scheme and had simply replaced it by further restrictions on increases in rent.

138. On 6 January 2005 the Polish Government informed the Court that the Prime Minister of Poland intended to make an application to the Constitutional Court in order to contest the constitutionality of certain provisions of the December 2004 Amendments.

On 19 January 2005 the Prosecutor General made an application to the Constitutional Court, challenging the constitutionality of the December 2004 Amendments. In particular, he contested the provisions restricting increases in rent to 10% and submitted, *inter alia*, that those restrictions constituted an unjustified interference with landlords' property rights. He further alleged that Parliament was in breach of its duty to "legislate decently" (*zasada "przyzwoitej legislacji"*), especially the duty to formulate legal provisions in a correct and coherent manner.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

139. The applicant complained under Article 1 of Protocol No. 1 to the Convention that the situation created by the implementation of the laws imposing tenancy agreements on her and setting an inadequate level of rent amounted to a continuing violation of her right to the enjoyment of her possessions. In her submission, the very essence of her right of property had been impaired because she was not only unable to derive any income from her property but also, owing to restrictions on the termination of lease of flats subject to the rent-control scheme, she could not regain possession and use of her property.

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Scope of the case

1. Temporal dimension

140. In its decision on the admissibility of the application the Court found that, while it was competent to examine the facts of the case for their compatibility with the Convention only in so far as they occurred after 10 October 1994, the date of ratification of Protocol No. 1 by Poland, it could have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or could be relevant for the understanding of facts occurring after that date.

It went on to find that the applicant's complaint was not directed against a specific single measure or decision taken before, or even after, 10 October 1994 but concerned the continued impossibility of regaining possession of her property and of receiving adequate rent for the lease of her house. Indeed, it appeared to have been common ground that the situation complained of had arisen out of laws that had applied before and on the date

of the Protocol's entry into force in respect of Poland and were still effective (see *Hutten-Czapska v. Poland* (dec.), no. 35014/97).

That situation obtained on 16 September 2003, the date of the decision on admissibility, and has continued to date.

While the Court accepts that the origin of the Polish legislation on rent control and other historical elements of the factual and legal background to the case may be relevant for the understanding of the complex social, legal and economic issues involved in the introduction of that legislative scheme in Poland, it will not consider the possible effect on the applicant's property rights of the decisions taken, or the laws applicable, before 10 October 1994. More especially, the Court will not examine the authorities' decisions to subject her house to State management or to allocate the tenants to her flats. The issue before the Court is whether there has been a violation of Article 1 of Protocol No. 1 on account of the operation of the legal provisions as in force from 10 October 1994.

2. Individual and general dimension

141. However, the alleged continued violation of Article 1 of Protocol No. 1 concerns not only the individual applicant in the present case but also has significant – social, legal and economic – dimensions in terms of the effects of the contested legislation on the rights of numerous other persons. Thus, according to information supplied by the Government, the functioning of the rent-control scheme in Poland has already affected some 100,000 landlords whose property has been subject to the same restrictions as those complained of in the present case. Furthermore, between 600,000 and 900,000 tenants in Poland have taken advantage of the special rules governing the level of controlled rent and the termination of lease agreements under that scheme (see paragraphs 20 and 24 above).

The examination of the facts in the present case will therefore inevitably have consequences for the property rights of a large number of individuals. That will require the Court to assess Poland's compliance with Article 1 of Protocol No. 1 not only from the perspective of the impact of the combination of impugned restrictions on the applicant's right of property in the period under consideration but also in a wider context, going beyond the applicant's individual Convention claim and taking into account the consequences of the operation of the rent-control scheme for the Convention rights of the whole class of persons potentially affected (see *Broniowski v. Poland* [GC], 31443/96, §§ 189 et seq., ECHR 2004-...).

B. Compliance with Article 1 of Protocol No. 1

1. Applicable rules in Article 1 of Protocol No. 1

142. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, which reiterates in part the principles laid down by the Court in the case of *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also *Broniowski v. Poland*, cited above, § 134).

143. The applicant considered that the impugned restrictions had gone beyond what could be considered mere "control of the use of property" and that their continued application for many years had resulted in essential elements of her right of property being practically extinguished. In fact, she was an owner only "on paper". She did not have the possibility to decide who would live in her house and for how long. The lease of flats had been imposed on her by unlawful administrative decisions but, despite that fact, she could not terminate the lease agreements and regain possession of her house because the statutory conditions attached to the termination of leases, including the duty to provide a tenant with substitute accommodation, made it impossible in practice to do so. She had no influence whatsoever on the amount of rent paid by her tenants. Indeed, under the contested laws the levels of rent were fixed without any reasonable relationship to the costs of maintaining property in good condition, which had resulted in a significant depreciation in the value and condition of her house. In her submission, the cumulative effect of all those factors had brought about a situation similar to expropriation.

144. The Government disagreed. They stressed that the applicant had never lost her right to the "peaceful enjoyment" of her property. Since 25 October 1990, when the Gdynia District Court had entered her title in the relevant land register, she had enjoyed all the attributes of a property owner. She had a right to use, to dispose of, to pledge, to lend and even to destroy her property. The adopted measures, in particular the limitations on the level

of rent chargeable, had therefore only amounted to the control of the use of the applicant's property.

145. The Court notes that the applicant never lost her right to sell her property. Nor did the authorities apply any measures resulting in the transfer of her ownership. It is true that she could not exercise her right of use in terms of physical possession as the house was occupied by the tenants and that her rights in respect of letting the flats, including her right to receive rent and to terminate leases, were subject to a number of statutory limitations. However, these issues concern the degree of the State's interference, and not its nature. All the measures taken, whose aim was to subject the applicant's house to continued tenancy and not to take it away from her permanently, could not be considered a formal or even *de facto* expropriation but constituted a means of State control of the use of her property. The case should therefore be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 25, § 44; and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46, ECHR 1999-V).

2. General principles deriving from the Court's case-law

(a) Principle of lawfulness

146. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, *mutatis mutandis*, *Broniowski*, cited above, § 147, with further references).

(b) Principle of legitimate aim in the general interest

147. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Moreover, the various rules incorporated in Article 1 are not distinct, in the sense of being unconnected, and the second and third rules are concerned only with particular instances of interference with the right to the peaceful enjoyment of property (see *Broniowski*, cited above, § 148).

148. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. Under the system

of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation.

149. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues.

Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation. These principles apply equally, if not *a fortiori*, to the measures adopted in the course of the fundamental reform of the country's political, legal and economic system in the transition from a totalitarian regime to a democratic State (see *Mellacher and Others*, cited above, p. 27, § 48; *Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, p. 52, § 27; *Immobiliare Saffi*, cited above § 49; and, *mutatis mutandis*, *James and Others*, cited above, pp. 32-33, §§ 46-47, and *Broniowski*, cited above, § 149).

(c) Principle of a "fair balance"

150. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a

disproportionate and excessive burden (see *James and Others*, cited above, p. 27, § 50; *Mellacher and Others*, cited above, p. 34, § 48 and *Spadea and Scalabrino v. Italy*, judgment of 28 September 1995, Series A no. 315-B, p. 26, § 33).

151. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market but also the existence of procedural safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Immobiliare Saffi*, cited above, § 54; and *Broniowski*, cited above, § 151).

3. Application of the above principles to the present case

(a) Whether the Polish authorities respected the principle of lawfulness

(i) The applicant

152. The applicant considered that the authorities had acted unlawfully. To begin with, all the administrative decisions implementing the measures for controlling the use of her property, notably those allocating flats to A.Z. and W.P. and subjecting the house to State management, had in 1996-1997 been declared as having been issued contrary to Polish law. Under Article 1 of Protocol No. 1 an interference by the State with the peaceful enjoyment of possessions – be it an expropriation or control of the use of property – could not be regarded as lawful if the relevant decision had been made contrary to the existing legal provisions.

Furthermore, the 1994 Act and, more particularly, the provisions imposing on individual landlords rent control and onerous duties in respect of property maintenance could not be considered "enforcement of laws" since they had been found to have been contrary to the Constitution and the Convention in two successive judgments of the Constitutional Court, given on 12 January and 10 October 2000.

In its third judgment of 2 October 2002 the Constitutional Court had declared unconstitutional the restrictive provisions on levels of rent increases implemented of the 2001 Act.

In consequence, the measures taken by the State in the sphere of the applicant's property rights had continually lacked a sufficient legal basis.

(ii) The Government

153. The Government disputed this. They submitted that the control of the use of the applicant's property had a clear, firm and continued legal basis in the form of successive laws applicable during the entire period falling within the Court's temporal jurisdiction. First, the 1974 Housing Act had applied until 12 November 1994. Secondly, the 1994 Act, which had been in force from 12 November 1994 to 11 July 2001, had introduced provisions for controlled rent and other limitations on the rights of landlords. Finally, the rules governing tenancy relationships applicable from 11 July 2001 to date had been laid down in the 2001 Act.

154. The Government accepted that the legality of any measure taken by the State could not be reduced to the mere requirement that a legal measure had to be enacted properly by a legislature. It also comprised compliance with the principle of legal certainty. Undoubtedly, an important aspect of legal certainty was that a law should not be changed unexpectedly, so as not to interfere with important decisions taken by individuals upon a *bona fide* understanding that that law had been adopted for a certain period and would be in force for that period. In the Government's view, the rent-control scheme under the 1994 and 2001 Acts – remedial legislation introduced for a definite period of time with the aim of protecting tenants – was an example of the implementation of the principle of legal certainty.

(iii) The Court's assessment

155. As stated above, the control of the use of property by States is subject to the condition that it be exercised by enforcing "laws" (see paragraph 146 above). While in the present case there is no dispute over the fact that the restrictions on the applicant's right were imposed by the three successive housing laws, the applicant argued that the *ex post facto* rulings declaring the relevant administrative decisions contrary to the law and the legal provisions unconstitutional had retrospectively deprived those measures of any legal effect (see paragraph 152 above).

However, the Court considers that those rulings and their consequences for the assessment of Poland's compliance with Article 1 of Protocol No. 1 are relevant for determining whether the authorities struck a fair balance between the interests involved. For the purposes of ascertaining whether the impugned measures were provided for, and taken under, "laws" within the meaning of the second paragraph of that Article it thus suffices for the Court

to find that they were applied under the Polish legislation in force at the material time.

(b) Whether the Polish authorities pursued a "legitimate aim"

(i) The applicant

156. In the applicant's view, the laws in issue had no legitimate justification.

Even if after the Second World War there had clearly been a need to secure homes for displaced persons, a fact that justified State management of multi-family houses, there had been no justification for such a step being taken in respect of her house – which was, and had always been, a one-family house and not a tenement house. Placing the tenants in the house and making the owner homeless could hardly resolve the problem.

The same applied to the subsequent restrictions, to begin with the 1994 Act. Admittedly, they had been introduced to protect tenants in a poor financial position but no provision of the contested legislation had made the right to cheap rent subject to a tenant's individual situation. Since the applicable housing laws did not attach any conditions – such as the level of income, social or family situation and age of a tenant or the size or standard of the flat in question – to the entitlement to a low-rent dwelling, it was thus sufficient for a tenant to have the right to a lease granted pursuant to an administrative decision given under the communist regime in order to profit from the privileged situation under the rent-control scheme. Such a legal solution, which had moreover been adopted at the expense of private individuals who, like herself, were not necessarily in a better financial situation than their tenants, could hardly be seen as having pursued any legitimate aim in the "general" or public" interest.

(ii) The Government

157. In their written and oral pleadings, the Government consistently maintained that the principal aim of the contested legislation was, and had been, to protect tenants against unduly high levels of rent during the period of economic transformation in Poland. In the 1990s the authorities had had to deal with the extremely difficult housing situation, which was characterised by the serious shortage and high prices of dwellings. This situation had required the State to control increases in rent not only in the State sector but also in the private sector. The State had had to take those measures in order to prevent large-scale evictions which would have inevitably followed the introduction of completely uncontrolled increases in rent and would have caused serious social tensions, thus jeopardising public order.

158. The Government further submitted that the rent-control scheme was a purely temporary emergency measure designed to deal with the serious

problem of the housing shortage in Poland, which had been compounded by the deteriorating economic situation of households. In that context, they referred to the statistical data produced by them, which showed that in the years 2000-2002 between 54% and 58% of population had lived below the poverty line and that in the years 1998-2002 between 7% and 10% of households had been in rent arrears.

They also stressed that the need to limit increases in rent for a specified period had been declared by the Polish Constitutional Court to have been in the general interest, in particular in the interest of protecting tenants in a poor financial situation during the transition from the State-controlled to the free-market system.

159. Accordingly, the scheme of State-controlled increases in rent was a measure adopted with a view to securing important interests of tenants in a free-market system and, more particularly, of protecting tenants against the risk of being put on an unequal footing with economically stronger landlords. In the transition period, it was the State's concern to keep the rent chargeable at a socially acceptable level, a concern which in the light of the Court's judgment in the *Mellacher case* (§§ 53 and 54) should be considered legitimate.

(iii) The Court's assessment

160. As evidenced by the material produced by the parties and the relevant judgments of the Polish Constitutional Court, the rent-control scheme in Poland originated in the continued shortage of dwellings, the low supply of flats for rent on the lease market and the high costs of acquiring a flat. It was implemented with a view to securing the social protection of tenants and ensuring – especially in respect of tenants in a poor financial situation – the gradual transition from State-controlled rent to a fully negotiated contractual rent during the fundamental reform of the country following the collapse of the communist regime (see paragraphs 18-23, 86, 108 and 110 above).

The Court accepts that in the social and economic circumstances of the case the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1.

(c) Whether the Polish authorities struck a fair balance between the general interest of the community and the applicant's right to the peaceful enjoyment of her possessions

(i) The applicant

161. The applicant submitted that the Polish authorities had manifestly failed to maintain a fair balance between the demands of the general interest invoked by them and her fundamental right of property.

She agreed that, as the Court had stated in a number of its judgments, for instance *Spadea and Scalabrino v. Italy*, *Scollo v. Italy* or *Mellacher and Others v. Austria*, limitations on the rights of landlords were common in many countries facing housing shortages. In some of the cases cited they had even been found to have been justified and proportionate to the aims pursued by the State in the general interest. However, in none of those cases had the authorities restricted the applicants' rights to such a considerable extent as in the present case.

162. In the applicant's view, the combination of various restrictions imposed on the rights of landlords by the 1994 Act and, subsequently, by the 2001 Act had constituted an inadmissible and disproportionate interference with their property rights.

In that regard, she pointed out that the Polish Constitutional Court, in its three successive judgments of 12 January 2000, 10 October 2000 and 2 October 2002, had found that the rent-control scheme under the 1994 Act and the 2001 Act had been incompatible with the constitutional principle of the protection of property rights and that the implementation of that scheme by the authorities had placed a disproportionate and excessive burden on the landlords.

163. The tenancy under the 1994 Act had been imposed on her, as it had been on other private landlords, by a unilateral decision of the State. That decision had been accompanied by severe limitations on termination of leases. Further provisions of the 1994 Act, on the one hand, had set the rent chargeable at low levels, well below the average costs of maintenance of property and, on the other, had obliged the landlords to carry out costly maintenance works.

That state of affairs had not improved under the 2001 Act, which had practically maintained all restrictions on termination of leases and obligations in respect of maintenance of property and which had aggravated the landlords' situation by freezing rents at unacceptably low levels.

164. The applicant concluded by stating that the fundamental question in this case was who, and to what extent, was to bear the burden of the housing policy – landlords or the State. In her view, even the poor state of the country's budget and the costs of political and economic transformation of the State could not justify placing the main burden of making sacrifices for society's benefit on a specific group of property owners.

(ii) The Government

165. The Government considered that the authorities had maintained a reasonable relationship of proportionality between the means employed and the aims they had sought to achieve.

They first of all stressed that the means for controlling rent under both the 1994 Act and the 2001 Act had been of an only temporary nature and

they would no longer be maintained after 31 December 2004, the deadline set by those statutes for the operation of the impugned scheme.

166. At the oral hearing, they also submitted that, as the Polish Constitutional Court had ruled in its judgments of 12 January 2000 and 2 October 2002, it had not been contrary to the principle of the protection of property rights to maintain the rent-control scheme until the end of 2004. They stated that after 1 January 2005 market forces would regulate rent and no rent control would be introduced through the "back door".

In their pleadings of 4 November 2004, the Government maintained that the legal situation of landlords and tenants would entirely change on 31 December 2004, when the rent-control scheme would cease to exist.

167. Furthermore, comparing the instant case to that of *Mellacher and Others v. Austria*, the Government maintained that if in the latter case the Court had found that "in remedial social legislation and in particular in the field of rent control ... it must be open to the legislature to take measures affecting the further execution of previously concluded contracts in order to attain the aim of the policy adopted", it *a fortiori* had to be open to the legislature not only to fix the level of rent below the market value but also to adopt measures affecting the implementation of leases arising from past administrative decisions, where a tenant had had no say at all on the level of rent or on the choice of the flat – private or State-owned – which he had been allocated.

168. The Government next referred to the Constitutional Court's judgments. In particular, they referred to the fact that that court had explicitly acknowledged that the need to protect tenants against unduly high levels of rent had been fully justified by the housing situation in Poland. Moreover, the Constitutional Court had also recognised the need for the continued protection of tenants who had entered into lease agreements pursuant to administrative decisions and to whom the 1994 Act guaranteed a specific, maximum level of rent for a fixed time.

Nevertheless, the Government considered that in relation to the applicant's individual situation, the Constitutional Court's findings as to the inadequacy of controlled rent could not be decisive. Thus, the court referred to the general situation in Poland, which had not necessarily applied to each landlord. They saw no reason why it should apply to the present case, in which the applicant had so far not proved that the rent that she had received had not covered the maintenance costs for her house.

169. Moreover, the impugned restrictions, the application of which was subject to a clearly set time-frame had not, as the Constitutional Court had declared in its judgment of 12 May 2004, impaired the essence of the right of property since they had not deprived the landlords of the essential elements of that right.

In sum, the Government submitted that there had been no violation of Article 1 of Protocol No. 1.

(iii) The Court's assessment

170. The assessment of the impact which the contested rent-control scheme had on the applicant's right of property during the period under consideration, that is to say from 10 October 1994 to the present day, involves three different laws: the 1994 Act, the 2001 Act and the December 2004 Amendments, the application of the "special lease scheme" under the 1974 Housing Act to the applicant (period from 10 October to 12 November 1994, the date of entry into force of the 1994 Act) having had a negligible effect on "the peaceful enjoyment" of her possessions (see paragraphs 18, 19, 39-58, 73, 75-83 and 89-136 above).

(α) The 1994 Act

171. The 1994 Act, which was the first of the remedial laws enacted with a view to reforming housing in Poland during the period of the country's transition to the free-market system, maintained a number of restrictions on the rights of landlords that had originated in previous housing legislation introduced under the communist regime. In comparison to the preceding statute, the "special lease scheme", which had in practice imposed full State control over the lease market and which, as in the applicant's case, excluded freedom of contract in respect of the lease of any – residential or commercial – premises previously subject to State management, the 1994 Act was an important step forward in that it limited the State control over leases to dwellings (see paragraphs 19 and 73-76 above). However, as shown by the subsequent events, especially the application of its provisions in practice, it hardly ameliorated the legal and economic position of the landlords owning rented flats.

172. To begin with, in the eyes of the law any lease that had originated in past administrative decisions allocating a dwelling was to be treated as a contractual lease signed for an indeterminate time. While that provision in effect created a kind of lease agreement between a landlord and a tenant – which, again, was a step forward in terms of re-establishing the rudiments of contractual relationships on the lease market – the landlord had no influence on the essential elements of such an agreement. This applied not only to the duration of the agreement but also to the conditions for its termination, which considerably restricted the landlord's right to terminate the lease even in respect of tenants who did not comply with its statutory terms and to fix the levels of rent chargeable, which could not exceed a ceiling determined by law (see paragraphs 76-83 above).

173. Moreover, as acknowledged by the Executive and confirmed by the Polish Constitutional Court's findings, the levels of rent never reached the statutory ceiling of 3% of the reconstruction value of the dwelling but were maintained by the authorities throughout the country at a level covering some 60% of maintenance costs. The shortfall was covered by the landlords (see paragraphs 20 and 85-86 above).

In addition, section 9 of the 1994 Act further adversely affected the landlords' financial position in that it obliged them to carry out costly maintenance works, despite the fact that in practice the rent chargeable was set below the average costs of maintenance of property, not to mention the costs of major repairs which were incumbent on the landlords (see paragraph 82 above).

174. The issue of whether the operation of the 1994 Act resulted in disproportionate limitations on the rights of landlords was examined twice by the Polish Constitutional Court. In its judgments of 12 January and 10 October 2000, resulting in the repeal of the 1994 Act, it found that the relevant provisions were unconstitutional as being incompatible with the principle of the protection of property rights, the principle of proportionality and the principle of the rule of law and social justice (see paragraphs 84-87 above). Furthermore, in the judgment of 12 January 2000, the Constitutional Court also assessed the situation in Convention terms and found that the impugned scheme of rent control amounted to a violation of Article 1 of Protocol No. 1 (see paragraph 84 above).

Considering that at the material time there was a "constitutionally acknowledged necessity to protect the rights of tenants" and that, in view of the difficult housing situation, it was necessary to restrict or even exclude freedom in fixing rates of rent, the Constitutional Court nevertheless stressed that there was no justification for affording the necessary protection to tenants mostly at the expense of private individuals – owners of rented flats. In that regard, it observed that the 1994 Act had "deliberately set the levels of controlled rent below the costs and expenses actually incurred by owners" and that, given their duty to incur expenses to maintain their property in a particular condition, it had been based "on the premise that property must – until the end of 2004 – entail losses for the owner" and that the 1994 Act had placed the main burden of the necessary sacrifices that society should make for poor tenants on the landlords. In that context, the Constitutional Court attached considerable importance to the fact that Polish legislation lacked any parallel solutions enabling landlords to offset losses and expenses incurred in maintaining property (see paragraph 86 above).

175. The Government argued that the Constitutional Court's findings as to the general inadequacy of the controlled rent could not be decisive in the applicant's individual case (see paragraph 168 *in fine* above) However, the Court does not share this point of view. It finds that not only did the Constitutional Court support its findings as to the detrimental effects of the 1994 Act on the property rights of landlords by comprehensive research into the general housing situation in Poland and documentary evidence produced by the State authorities (see paragraphs 20 and 85 above) but it also had the advantage of direct knowledge of the circumstances obtaining in the country (see paragraph 148 above). The Government, for their part, have failed to produce any evidence to show that those circumstances, although found to

have been prevailing throughout Poland, did not apply to the applicant or that her situation materially differed from that of other Polish landlords.

176. Relying on the Court's judgment in the case of *Mellacher and Others v. Austria*, the Government further argued that under Article 1 of Protocol No. 1 the States, when enacting remedial housing legislation, were entitled not only to reduce the rent chargeable to below the market value but even to take such radical measures as extinguishing validly concluded lease agreements (see paragraph 167 above).

The Court accepts that, given the exceptionally difficult housing situation in Poland, the inevitably serious social consequences involved in the reform of the lease market, as well as the impact that that reform had on economic and other rights of numerous persons, the decision to introduce laws restricting levels of rent in privately owned flats in order to protect tenants was justified, especially as it put a statutory time-limit on this measure (see paragraphs 19, 86 and 165-169 above). However, as the applicant rightly pointed out (see paragraph 161), although the relevant Austrian legislation provided for many restrictions on, or the possibility of reductions in, the amount of rent chargeable, it also provided for procedures enabling landlords to recover maintenance costs (see also *Mellacher and Others*, cited above, §§ 31-32 and 55-56). No such procedures were available under the 1994 Act and, as noted by the Constitutional Court, Polish legislation did not secure any mechanism for balancing the costs of maintaining the property and the income from the controlled rent (see paragraph 86).

Against that background and having regard to the consequences that the various restrictive provisions had on the applicant, the Court finds that the combination of restrictions under the 1994 Act impaired the very essence of her right of property. In that regard the Court would point out that the Constitutional Court, in its judgment of 12 January 2000, came to the same conclusion, holding that under the 1994 Act the individual landlords had been "deprived even of the slightest substance of their property rights" and that, "in consequence the[ir] right to derive profit from property, ... an important element of the right of property ha[d] been destroyed and ... the[ir] right to dispose of one's property ha[d] been stripped of its substance" (see paragraph 86 above).

(β) The 2001 Act

Period between 11 July 2001 and 10 October 2002

177. On 11 July 2001 the authorities repealed the 1994 Act and enacted the 2001 Act, a law designed to implement the Constitutional Court's judgments. Under its provisions the rent-control scheme was replaced by a procedure for controlling increases in levels of rent, laid down in section 9(3), which made such increases dependent on the inflation rate. However, it still maintained the maximum ceiling of 3% of the reconstruction value of

the dwelling on the rent chargeable. It did not contain detailed provisions for landlords' duties in respect of the maintenance of property but, in this respect, their situation did not change materially as other statutes laid down rules similar to those applicable under the 1994 Act. The provisions for termination of leases were more detailed but they nevertheless attached a number of restrictive conditions to giving notice to quit and in essence allowed repossession of the flat only if the landlord had provided the tenant with substitute accommodation (see paragraphs 88-99 and 108 above).

After only some four months of the operation of the new legislation the Ombudsman put the issue of the constitutionality of section 9(3) of the 2001 Act before the Constitutional Court, submitting that the levels of rent as determined under that section had not covered even the basic maintenance costs of residential buildings and that the new provision put landlords at a bigger disadvantage than the rules laid down in the 1994 Act, which had been found to have infringed their property rights (see paragraph 100 above).

178. Again, the Constitutional Court, basing its findings on comprehensive documentary evidence and assessment of the general situation throughout Poland, ruled that the applicable provisions for control of levels of rent were incompatible with the constitutional principles of the protection of property rights and the rule of law and social justice. It held, among other things, that the current situation was "unquestionably less favourable than it used to be under the 1994 Act", that the 2001 Act "seriously aggravated the situation of landlords" and that section 9(3) perpetuated the state of violation of property rights that had subsisted under the 1994 Act (see paragraphs 106-108 above). Still further, that court strongly criticised the legislature for its failure to introduce any statutory mechanism mitigating losses resulting from reduced rent and pointed out, in addition, that the new provisions on termination of leases had not materially improved the situation of landlords. It concluded that the operation of section 9(3) was tantamount to the continued violation of the right of property in respect of landlords and that the restrictions laid down in this section went beyond the tolerable extent of limitations on that right (see paragraph 108 above).

179. In its assessment of the applicant's situation obtaining under the 2001 Act the Court shares the opinion expressed by the Constitutional Court that its provisions unduly restricted her property rights and placed a disproportionate burden on her, which cannot be justified in terms of the legitimate aim pursued by the authorities in implementing the relevant remedial housing legislation.

Period between 10 October 2002 and 31 December 2004

180. From 10 October 2002, following the repeal of section 9(3) it became possible for the applicant to increase the levels of rent for her flats

up to 3% of the reconstruction value of the dwelling (see paragraphs 69, 108 and 117 above). However, having regard to the relevant indicators as supplied by the parties, the Court considers that it did not result in the applicant's situation being materially improved. According to the Government, in the period immediately preceding the repeal of section 9(3), i.e. October 2002, the maximum rent for similar flats in her town was PLN 4.61 per 1 square metre, whereas the amount actually available to the applicant throughout and at the end of 2004 reached PLN 5.15 (see paragraphs 67-69 above). That amount (approximately 1.27 euros), which was within the applicable rent rates (PLN 5.00-PLN 6.00) in most other towns in the country, represented merely some mere 10% increase in the previous indicative rent, which, as clearly established above, was totally insufficient to cover basic maintenance costs (see paragraphs 108 and 177-178 above). Consequently, the Court does not see how the possibility of increasing the rent up to the – apparently low and inadequate – statutory ceiling could ameliorate the situation found to have amounted to a continuing violation of the property rights of the applicant and of other landlords. Nor does it consider that it provided her and the whole class of affected persons with any relief for the past state of affairs.

(γ) The December 2004 Amendments

181. It remains for the Court to determine whether the recent changes to the Polish rent-control legislation have improved the applicant's situation in respect of the alleged violation of her right of property. However, it must be borne in mind that those amendments were not the subject of pleading by the parties in the present proceedings. Nor has their constitutionality been yet examined by the Constitutional Court (see paragraphs 137 and 138 above).

182. Indeed, as the Government stressed, the undertaking to maintain the rent-control scheme only temporarily has been kept since the provision setting the deadline for the application of that scheme based on the maximum ceiling of 3% of the reconstruction value of the dwelling expired on 31 December 2004 (see paragraphs 90, 128-129 and 165-166 above). The Government have also abandoned their original attempt to extend the rent freeze to 2008 (see paragraphs 120-122 above).

However, another proposal made by the Government – enunciated not only in the 1994 and the 2001 Acts but also made before this Court at the oral hearing, namely, that after 1 January 2005 market forces would regulate rent and no new rent control system would be introduced (see paragraphs 108, 110 and 165-166 above) – has not been implemented.

On 1 January 2005 new provisions entered into force. The constitutionality of those provisions was contested by landlords before the Constitutional Court after being in operation for merely three days. By virtue of the December 2004 Amendments, the Polish State introduced a

new procedure for controlling increases in rent, which in essence modifies the previous system only slightly. Firstly, all levels of rent may, on condition that the increase is effected with the appropriate notice and not more often than every six months, reach 3% of the reconstruction value of the dwelling. Secondly, levels of rent exceeding 3% of that value may not be increased by more than 10% annually (see paragraphs 129-130 and 136 above).

183. Given that the practical application of the new provisions remains a question for the future and depends on a number of factors, such as the relevant conversion index (see paragraph 69), the Court does not find it appropriate to draw conclusions as to the decisive or long-term effects of their operation on the applicant's and on other landlords' property rights. Yet it cannot but note that, given the recent amounts shown as the reconstruction value of the dwelling, the 10% increase in rent does not, for all practical purposes, entail any significant increase in rent. It can therefore hardly be seen as improving the applicant's situation in respect of covering the cost of maintenance works, which she is still obliged to carry out under section 6(a) of the 2001 Act.

184. Accordingly, it cannot be said that the December 2004 Amendments provided the applicant with any kind of relief that could compensate for the violation that has already occurred on account of the continued application of the rent control legislation in Poland. In contrast, the new provisions seem to perpetuate the status quo found to have been incompatible with the requirements of Article 1 of Protocol No. 1.

C. General conclusion

185. As the Court has already stated on many occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property but also to the choice of the measures and their implementation. The State control over levels of rent is one of such measures and its application may often cause significant reductions in the amount of rent chargeable (see, in particular, *Mellacher and Others*, cited above, § 45).

Also, in situations where, as in the present case, the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has significant economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise, even in the context of the

most complex reform of the State, cannot entail consequences at variance with the Convention standards (see *Broniowski*, cited above, § 182).

186. The Court once again acknowledges that the difficult housing situation in Poland, in particular an acute shortage of dwellings and the high cost of acquiring flats on the market, and the need to transform the extremely rigid system of distribution of dwellings inherited from the communist regime, justified not only the introduction of remedial legislation protecting tenants during the period of the fundamental reform of the country's political, economic and legal system but also the setting of a low rent, at a level beneath the market value (see paragraphs 68-70, 149, 160 and 176 above). Yet it finds no justification for the State's continued failure to secure to the applicant and other landlords throughout the entire period under consideration the sums necessary to cover maintenance costs, not to mention even a minimum profit from the lease of flats.

187. Some five years ago the Polish Constitutional Court found that the operation of the rent-control scheme based on the provisions necessarily and unavoidably entailing losses for landlords had resulted in a disproportionate, unjustified and arbitrary distribution of the social burden involved in the housing reform and that the reform had been effected mainly at the expense of landlords. It reiterated that statement in its subsequent judgments, clearly indicating that the failure to abolish the rent-control system by 31 December 2004 might result in a breach of the constitutional principle of the rule of law and undermine citizens' confidence in the State. It repeatedly held that the adopted measures amounted to a continuing violation of the property rights of landlords. It stressed that the manner in which the authorities calculated increases in rent made it impossible, for purely mathematical reasons, for landlords to receive an income from rent or at least recover their maintenance costs (see paragraphs 84-87, 108 and 110 above).

In the circumstances, it was incumbent on the Polish authorities to eliminate, or at least to remedy with the requisite promptness, the situation found to have been incompatible with the requirements of the applicant's fundamental right of property in line with the Constitutional Court's judgments. Furthermore, the principle of lawfulness in Article 1 of Protocol No. 1 and of the foreseeability of the law ensuing from that rule required the State to fulfil its legislative promise to repeal the rent-control scheme – which by no means excluded the adoption of procedures protecting the rights of tenants in a different manner (see paragraphs 146 and 151 above).

188. Having regard to all the foregoing circumstances and, more particularly, to the consequences which the operation of the rent-control scheme entailed for the exercise of the applicant's right to the peaceful enjoyment of her possessions, the Court holds that the authorities imposed a disproportionate and excessive burden on her, which cannot be justified by any legitimate interest of the community pursued by them.

There has accordingly been a violation of Article 1 of Protocol No. 1.

II. ARTICLE 46 OF THE CONVENTION

189. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

190. In the *Broniowski* case, which like the present case was chosen by the Court as a "pilot case" for determining the issue of the compatibility with the Convention of the relevant legislative scheme that affected a large number of persons (some 80,000), the Court found for the first time the existence of a systemic violation, which it defined as a situation where "the facts of the case disclose ... within the [domestic] legal order ... a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their Convention right or freedom] and where "the deficiencies in the national law and practice identified in the applicant's individual case may give rise to numerous subsequent well-founded applications".

The Court further found that the violation in that case had "originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which ha[d] affected and remain[ed] capable of affecting a large number of persons (see *Broniowski*, cited above, § 189).

Considering that, in the circumstances of the case, general measures at national level were called for in the execution of the judgment the Court indicated that such measures must "either remove any hindrance to the implementation of the right of the numerous persons affected by the situation found, in respect of the applicant, to have been in breach of the Convention, or provide equivalent redress in lieu" (see *Broniowski*, cited above, § 194). In the operative provisions of the judgment, the Court held that the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the relevant Convention right in respect of the remaining persons or provide them with equivalent redress in lieu.

Finally, pending the implementation of the relevant general measures, the Court adjourned its consideration of applications deriving from the same general cause (see *Broniowski*, cited above, § 198).

191. The Court considers that the principles established in the *Broniowski* case apply equally to the present case, the more so as the operation of the rent-control scheme may potentially affect even a larger number of individuals – some 100,000 landlords and from 600,000

to 900,000 tenants (see paragraphs 24 and 141 above). As in the former case, the facts of this case reveal the existence of an underlying systemic problem, which is connected with a serious shortcoming in the domestic legal order. That shortcoming consists in the malfunctioning of Polish housing legislation in that it imposed, and continues to impose, on individual landlords, restrictions on increases in rent for their dwellings, making it impossible for them to receive rent reasonably commensurate with the general costs of property maintenance.

192. As regards the general measures to be applied in order to put an end to the systemic violation identified in the present case, the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure a reasonable level of rent to the applicant and those similarly situated, or provide them with a mechanism mitigating the above-mentioned consequences of the State control of rent increases for their right of property.

It is not for the Court to indicate what would be the "reasonable" level of rent in the present case or in Poland in general, or in what way the mitigating procedures should be set up; thus, under Article 46 the State remains free to choose the means by which it will discharge its obligations arising from the execution of the Court's judgments (see *Broniowski*, cited above, §§ 186 and 192). In that context, the Court would, however, observe that many options are open to the Government, including taking into account the suggestions made by the Polish Constitutional Court in its judgments (see paragraphs 86 and 108 above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

193. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage claimed in the present case

194. Under the head of pecuniary damage the applicant claimed 78,750 euros (EUR) in compensation for loss of profits from rent and reduction in the value of her property arising from negligent maintenance, which was caused by the impossibility of receiving rent covering the necessary repairs that should have been done on the house.

The applicant further asked the Court to award her EUR 40,000 for the non-pecuniary damage suffered by her on account of frustration and stress involved in her futile efforts to regain her property and lack of any possibility of enjoying its possession. In that context, she stressed that the stress involved in vindicating her justified claims before the Polish courts and the fact all those procedures proved ineffective put on her – an elderly person – a severe strain. She also suffered serious distress resulting from the fact that she could not realise her plans to place the seat of her "Amber Trail Foundation" in her house.

By way of costs incurred before the Court and in connection with the domestic proceedings the applicant claimed EUR 15,000.

195. The Government considered that the claims were excessive and unsupported by any material evidence.

B. The Court's conclusion

1. Pecuniary and non-pecuniary damage

196. In the circumstances of the case, the Court considers that the question of compensation for pecuniary and/or non-pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent Government and the applicant (Rule 75 § 1of the Rules of Court) and in the light of such individual or general measures as may be taken by the respondent Government in execution of the present judgment. Pending the implementation of the relevant general measures, which should be adopted within a reasonable time, the Court will adjourn its consideration of applications deriving from the same general cause (see *Broniowski*, cited above, § 198).

2. Costs and expenses

197. As regards the costs and expenses already incurred by the applicant, the Court awards her EUR 13,000, to be converted into Polish zlotys at the rate applicable at the date of settlement, together with any tax that may chargeable on this amount.

3. Default interest

198. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1 of the Convention;

2. *Holds* unanimously that the above violation has originated in a systemic problem connected with the malfunctioning of domestic legislation in that it imposed, and continues to impose, on individual landlords restrictions on increases in rent for their dwellings, making it impossible for them to receive rent reasonably commensurate with the general costs of property maintenance;

3. *Holds* unanimously that, in order to put an end to the systemic violation identified in the present case, the respondent State must, through the appropriate legal or other measures, secure a reasonable level of rent to the applicant and other persons similarly situated, or provide them with a mechanism mitigating the above-mentioned consequences of the State control of rent increases for their right of property;

4. *Holds* by 6 votes to 1 that, as far as the financial award to the applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,
   (a) *reserves* the said question as a whole;
   (b) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 13,000 (thirteen thousand euros) in respect of costs and expenses incurred up to date, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and delivered in writing on 22 February 2005.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring and partly dissenting opinion of Mr Pavlovschi is annexed to this judgment.

N.B.
M.O.B.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

Unfortunately, and to my great regret, I am not able to share some of the conclusions reached by the majority in the present case.

I can easily agree with the majority's views concerning the finding of a violation of Article 1 of Protocol No. 1 of the Convention. Moreover, I agree that in this particular case the violation found arises from legal provisions generating a violation of property rights which could be regarded as structural in nature and having the potential to produce quite a considerable number of similar applications.

I generally agree with the majority on the above finding. Nevertheless, I find it difficult to accept a situation where not all of the applicant's complaints have been examined in the judgment. I am led to this conclusion by the following circumstances.

In paragraphs 38 and 39 of the judgment it is stated that in the 1990s the applicant set up a private entity called the Amber Trail Foundation. Since 1991 she has been making unsuccessful efforts to have her house registered as the seat of the Foundation. After taking over the management of the house, the applicant initiated several sets of proceedings – civil and administrative – in order to annul the previous administrative decisions and to regain possession of the flats in her house, but to no avail.

As emerges from the judgment, in her application to the Court the applicant complained of two elements:

1. She was not able to derive any income from her property.

2. Owing to restrictions on the termination of the lease of the flats she could not regain possession and use of her property (see paragraph 139 of the judgment).

The judgment provides answers only to the first part of the complaint. In the second point of the operative provisions the Court, while ruling on the substance of the complaints, mentions only "... restrictions on increases in rent for dwellings...", whereas in the third point the Court holds that "...the respondent State must, through the appropriate legal or other measures, secure a reasonable level of rent to the applicant and other persons similarly situated, or provide them with a mechanism mitigating the above-mentioned consequences of the State control of rent increases...".

It clearly follows from this ruling that the majority did not consider the second part of the applicant's complaint, namely that she was unable to regain her possessions or to use them.

I cannot subscribe to this particular approach and I sincerely consider that a court deciding a case should give answers to all the questions posed

by the applicant without leaving anything unexamined, because if a problem is not settled, it will not lose its structural character, will not cease to exist and, as a consequence, will arise time and time again, causing further suffering.

It is very difficult for me to accept the very structure and philosophy of the judgment, which I find to be excessively "apologetic".

With all due respect to the Constitutional Court of Poland, I do not think that it was really necessary to reproduce all those very lengthy quotations from the Constitutional Court's judgments, many of them being not quite relevant to the case before us and some of them, moreover, being very questionable, if not wrong, in substance. For instance, it is very difficult for me personally to agree that, and I quote:

> "... it is in conformity with the contemporary perception of a 'social state' to demand some sacrifice from all members of society for the benefit of those who cannot provide subsistence for themselves and their families. By the nature of things, the extent of that sacrifice depends on the level of income and imposes a heavier burden on those who are better off. By the nature of things, the owners of property may be required to make sacrifices, according to the general principle that 'ownership entails obligations'..." (see paragraph 86 of the judgment)

I am sorry to have to say this, but in my view this "forced charity" approach distorts the very nature of social theories that define a social State as a State based on the principles of a socially oriented market economy.

A socially oriented market economy by definition cannot be based on the logic of depriving tens of thousands of its members of generally recognised property rights or on the logic of restricting the peaceful enjoyment of legally recognised possessions. That is why I cannot agree, either, with the majority's finding that:

> "... the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also on the appropriate timing for the enforcement of the relevant laws..." (see second sub-paragraph of paragraph 185 of the judgment)

In my view this finding, allowing member States an excessively large margin of appreciation in deciding on the level of interference with the property rights of their citizens, presents a real danger for States governed by the rule of law, including "social States", and runs contrary to the very spirit and essence of Article 1 of Protocol No. 1. In a democratic society no "special circumstances" can or may justify interferences with the fundamental rights and freedoms of its members, unless they are strictly necessary and are based on the law. In this respect I prefer a restrictive approach which would limit the State's interference with property rights only to a very small number of clearly defined situations.

There is one more thing which I cannot agree with, namely that the existence of certain structural problems may deprive the applicant of effective international protection or may in itself serve as a legally

recognised ground for postponing the determination of questions concerning just satisfaction for the violation found.

Here I am referring to point 4 of the operative provisions of the judgment, where it is stated:

> "... as far as the financial award to the applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly, (a) reserves the said question as a whole..."

This ruling is based on the following finding contained in paragraph 196:

> "... In the circumstances of the case, the Court considers that the question of compensation for pecuniary and non- pecuniary damage is not ready for decision..."

In my view such an approach is essentially unjust, which is something I am not able to accept. Unfortunately the majority, having decided to proceed in this way, failed to produce any reason for doing so, making reference only to the above-mentioned "circumstances of the case". But what are these mysterious circumstances that have prevented the Court from ruling on the just satisfaction issue? The answer to this question remains an enigma for me. I am afraid that it will remain an enigma to the applicant and her lawyers also. I am deeply convinced that in a democratic society, by definition, no circumstances generating violations of the fundamental human rights of tens of thousands of people can be used, even theoretically speaking, as a basis for justifying the above delays in ruling on the Article 41 issue.

From whatever angle I try to look at this issue, I fail to find any legally relevant justification for such a decision, which in substance may be called an incremental one.

First of all, I should mention that our applicant is quite an aged person, who was born in 1931 and is therefore 74 years old (see paragraph 16 of the Judgment). This circumstance alone should have served as an argument against any adjournment of Article 41 issues.

But there are other relevant reasons which normally should have precluded the Court from delaying its ruling.

The applicant, in her submissions about the pecuniary damage she has incurred, refers mostly to the impossibility of receiving a reasonable level of rent payment. Her calculations are based on the multiplication of the average level of rent by the number of months that have elapsed. These calculations are made very carefully and are presented in a sufficiently clear manner, which in practical terms, at least in my view, excludes any doubt.

A similar method of calculation was put forward by the applicant and accepted by the Court in the case of *Prodan v. Moldova* (no. 49806/99, § 70, ECHR 2004-III), where it is stated:

> "... The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for

> its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 72). In the present case, reparation should be aimed at putting the applicant in the position in which she would have found herself had the violation not occurred..."

Continuing this line of reasoning the Court states (ibid., § 72):

> "... the applicant already had accommodation and therefore ... the Court considers it reasonable to consider that she would have attempted to rent out the apartments..."

Summing up, the Court concludes (ibid., § 73):

> "... The Court considers reasonable the general approach proposed by the applicant to assessing the loss suffered ... by reference to the monthly rent payable on the assumption that the apartments had been let out..."

All these arguments are perfectly applicable to the present case. I cannot see why the application of levels of rent as a ground for the calculation of pecuniary damage in the *Prodan* case was considered justified, but in the present case the same method of calculation, in the majority's view, means that this case is "not ready for decision".

As far as non-pecuniary damage is concerned, I recall that some time ago the same Fourth Section examined the case of *Popov v. Moldova*, where the problem of adjournment again appeared, because the applicant had lost his property entitlements as a result of judicial revision proceedings. In that case the Court, despite the fact that the national authorities had quashed the final judicial decision by which the applicant had previously been entitled to recover his confiscated property, decided to award Mr Popov just satisfaction for non-pecuniary damage and to adjourn only the issue of pecuniary damage (see *Popov v. Moldova*, no. 74153/01, operative provisions, 18 January 2005).

I cannot understand why in the present case, unlike in *Popov v. Moldova* – in other words, contrary to its own case-law – the Court has decided to postpone the question of awarding just satisfaction for non-pecuniary damage. The existence of such damage had not been questioned even by the respondent Government. Nor can I agree with this way of proceeding, which unreasonably prolongs the mental suffering experienced by the applicant by leaving her for a further period without any compensation. I really fail to see in the present case any particular "circumstances" which could explain and justify the need to cause the applicant all this additional suffering.

It has already become a commonplace that "justice delayed is justice denied", and we must never forget this fact.