

JUDGEMENT
of 30 October 2001
Ref. No. K. 33/00*

The Constitutional Tribunal, in a bench composed of:

Biruta Lewaszkiewicz-Petrykowska – Presiding Judge
Zdzisław Czeszejko-Sochacki
Stefan J. Jaworski
Andrzej Mączyński – Judge Rapporteur
Janusz Trzcíński,

Joanna Szymczak – Recording Clerk,

having considered, at the hearing on 30 October 2001, the joint applications submitted by the Commissioner for Citizens' Rights and the City Council of Zduńska Wola, in the presence of duly authorised representatives of the parties to the case at hand: the applicants and the Public Prosecutor-General:

- 1) the application of the Commissioner for Citizens' Rights to determine the non-conformity of Article 3 of the Act of 14 April 2000 amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises (Journal of Laws – Dz.U. No. 39, item 442), in so far as the said Article does not provide for a short time limit for the enforcement of the claims referred to in that provision and contains no mechanism to adjust the price of purchase of an apartment, to Article 64 paragraph 1 and 2 in connection with Article 31 paragraph 3 of the Constitution of the Republic of Poland;
- 2) the application of the City Council of Zduńska Wola to determine the non-conformity of Article 3 of the Act of 14 April 2000 amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises (Journal of Laws – Dz.U. No. 39, item 442) to Article 2, Article 20, Article 21 paragraph 1, Article 64 paragraph 1 and 2 and Article 165 paragraph 1 of the Constitution of the Republic of Poland,

adjudicates as follows:

Article 3 of the Act of 14 April 2000 amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises (Journal of Laws – Dz.U. No. 39, item 442) does not conform to Article 2, Article 21 paragraph 1, Article 31 paragraph 3, Article 64 paragraph 1 and 2 and Article 165 paragraph 1 of the Constitution of the Republic of Poland and is not in non-conformity to Article 20 of the Constitution of the Republic of Poland.

Statement of Reasons:

I

1. The Commissioner for Citizens' Rights, in his application of 31 October 2000, requested the Constitutional Tribunal to determine the non-conformity of Article 3 of the Act of 14 April 2000 amending the Act on the Rules of Transference of Company-owned

* The sentencing part of this Judgement was published in the Journal of Laws – [Dziennik Ustaw] - Dz.U. No 129, item 1448.

Residential Buildings by State Enterprises (Journal of Laws – Dz.U. No. 39, item 442, referred to hereinafter ‘the Amending Act of 14 April 2000’), in so far as it does not provide for a short time limit for the enforcement of the claims referred to in that provision and contains no mechanism to adjust the price of purchase of an apartment, to Article 64 paragraph 1 and 2 in connection with Article 31 paragraph 3 of the Constitution.

The Commissioner for Citizens’ Rights used the following arguments to substantiate his application:

The challenged provision was inserted in the Act Amending the Act of 12 October 1994 on the Rules for Transference of Company-owned Residential Buildings by State Enterprises (Journal of Laws – Dz.U. No. 119, item 567, as amended, hereinafter referred to as ‘the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises’). However, the relationship of that Article with the subject matter regulated by that Act is questionable. The Act regulates the transfer of land built over with residential buildings by State enterprises and companies with a State Treasury share to municipalities and housing co-operatives (Article 1 paragraph 1 of the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises), whereby that Transference has been gratuitous. On the other hand, Article 3 of the Amending Act of 14 April 2000 directly applies to cases where apartments are acquired against payment, and obliges the owner of the apartments to transfer his property to the tenant ‘at the price of purchase’.

Another questionable element is the fact that the legislator uses the term of ‘company-owned apartment’ in Article 3 of the Amending Act of 14 April 2000. That concept, known in the Housing Act of 10 April 1974 (Journal of Laws – Dz.U. of 1987, No. 30, item 165, as amended; referred to hereinafter as ‘the Housing Act’) lost its legal content upon the entry into force of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances (Journal of Laws – Dz.U. of 1998, No. 120, item 787, as amended; hereinafter referred to as ‘the Act on Renting Lodgings and Housing Allowances’). The problem at stake is not only the lack of legislating diligence, but also the impossibility to define the actual scope of application of Article 3 of the Amending Act of 14 April 2000. It seems that that provision should be applied to situations where a State enterprise or a company with a State Treasury share sold a residential building (or an apartment) to another person than the tenant, prior to 1st June 2000. In such a situation, pursuant to Article 3 of the Amending Act of 14 April 2000, the tenant entitled to the apartment and living in it at the day of its purchase by a third party becomes entitled to claim from the current owner the transfer to him of the ownership of the apartment at the price of purchase increased exclusively with the cost of expenses incurred.

Article 3 of the Amending Act of 14 April 2000 is an ‘unusually deep’ interference in the right of ownership, which is a citizen’s right protected by the Constitution (Article 64 of the Constitution). That provision has practically excluded the freedom of the owner of the apartment to dispose of the object of his right. This amounts to a restriction of one of the fundamental rights which make up the content of the right of ownership, namely the right to dispose of a thing.

The above-mentioned restrictions of the right of ownership are supposed to serve the implementation of other values protected by the Constitution, namely above all the implementation of the principle of social justice (Article 2 of the Constitution), which is expressed in granting a right to claim the acquisition of an apartment to persons who had contributed in the past to the creation of the State property which is now being privatised. The Commissioner for Citizens’ Rights does not question the very circumstances under which that claim was granted. However, the legislator ought to have created legal guarantees that that claim will be enforced on terms that will be as little onerous as possible to the current owner of an apartment. First of all, the enforcement of the tenant’s claim should be limited to a short and rigorously respected time limit. Secondly, the enforcement of the claim should not make

the apartment's owner lose money. However, what actually happens is that, due to the ongoing inflation process, the challenged provision forces the owner to alienate his right for a price that will be, as a rule, much lower in real terms than the price of purchase. That is because the legal norm challenged by the applications does not provide for any time limits for the notifying by the tenants of their claims to the purchase of an apartment. Thus, in meeting the obligation imposed upon him, the owner must necessarily incur a loss.

The right of property may be restricted, but only when the prerequisites listed in Article 31 paragraph 3 of the Constitution are met. The regulation in question meets the formal prerequisite, i.e., the restriction has been imposed by an act of parliament. There is also a close relation between the restriction and the rights and freedoms of other persons, in this case the tenants. Besides, the restriction is to serve other values protected by the Constitution (social justice). One should therefore consider, by referring to the principle of proportionality, whether the legal instruments used to implement those aims are not excessively onerous and whether they are proportionate to the intended results. The analysis of Article 3 of the Amending Act of 14 April 2000 invites the conclusion that the goal intended by the legislator could have been reached without the need to recur to such drastic measures. There was nothing to prevent the imposing of a short time limit for the enforcement of the tenants' claims set forth in the challenged provision. Also the price should have been set with regard to the owner's legal interest, so that he does not incur a loss by alienating an apartment. In consideration of that, the obligations imposed upon the owner are disproportionate to the intended result, i.e., to guaranteeing the property of the apartments to those tenants who had contributed their work to the creation of that housing stock in the past.

2. In its application of 23 July 2000, the City Council of Zduńska Wola requested the Constitutional Tribunal to determine the non-conformity of Article 3 of the Amending Act of 14 April 2000 to Article 2, Article 20, Article 21 paragraph 1, and Article 64 paragraph 1 and 2 of the Constitution.

The City Council also requested the Tribunal to determine the non-conformity of Article 3 of the Amending Act of 14 April 2000 to the provisions of other acts of parliament, in particular to Article 82 and Article 140 of the Civil Code. By its decision of 27 November 2000, the Constitutional Tribunal did not make the application take its course in that range, having found that it was not competent to examine the consistence of legal instruments of the same order (horizontal control).

The applicant used the following arguments to substantiate his application:

Article 3 of the Amending Act of 14 April 2000 infringes the principle of the protection of acquired rights (Article 2 of the Constitution), because it concerns situations where a natural or legal person acquired residential buildings with company-owned apartments before the amendment entered into force.

The challenged provision infringes the protection of the right of ownership (Article 20, Article 21 paragraph 1, and Article 64 paragraph 1 of the Constitution). The fact that the tenant is entitled to inhabit a former company-owned apartment does not substantiate his claim to acquire the right of ownership of that apartment. Article 3 of the Amending Act of 14 April 2000 forces the owner to sell the apartment, be it against his own will, while the municipalities had most often acquired the ownership of the apartments from State enterprises gratuitously. The challenged provision deprives the municipalities of any proceeds from the sale of municipal property, which proceeds are allocated to satisfying the most immediate needs of the local community.

Article 3 of the Amending Act of 14 April 2000 also infringes the principle of equal treatment of holders of rights. That provision undermines the principle of social justice, because 'some tenant of a company-owned building may have acquired his apartment from

the municipality earlier against payment, because the provision in question was not yet in force, while another one may require the municipality to make him the owner of the apartment free of charge’.

3. The President of the Constitutional Tribunal, in his ordinance of 14 December 2001, decided on joint cognisance of the applications of the Commissioner for Citizens’ Rights and the City Council of Zduńska Wola.

4. The Public Prosecutor-General, in his letter of 13 December 2000, submitted his position on the application of the Commissioner for Citizens’ Rights. He stated that Article 3 of the Amending Act of 14 April 2000, within the scope of the application, did not conform to Article 64 paragraph 1 and 2, in connection with Article 31 paragraph 3, of the Constitution of the Republic of Poland.

The Public Prosecutor-General used the following arguments to substantiate his position:

Article 3 of the Amending Act of 14 April 2000 was adopted as a result of an amendment by the Senate, which recognised that that provision was aimed at ‘removing the unjust results of pathological occurrences of sale of company-owned apartments’ (*Shorthand records from the 52nd sitting of the Senate*, p. 125). The supporters of the rejection of the amendment, rather than questioning the very idea lying at the basis of the proposed amendment, voiced their doubts on the conformity of that provision to the Constitution.

According to the jurisdiction of the Constitutional Tribunal, the legislator complies with the principle of proportionality when from among the possible measures he selects those possibly least onerous for the persons to whom those measures are to apply, or no more onerous than necessary in the light of the intended goal. The content of Article 3 of the Amending Act of 14 April 2000 does not conform to the principle of proportionality thus defined. The infringement of the principle of proportionality is especially obvious in the way the price for an apartment is set by the challenged provision, which does not take into account the ongoing inflation process. Due to the absence of a regulation to adjust the value of an apartment at the moment of its sale to the tenant, the owner may receive an amount that will be lower in real terms than the price of purchase. The loss of property by the owner will grow depending on when the tenant requests that the property of the apartment be transferred to him. That circumstance relates to the absence of a time limit for the enforcement of the tenant’s claim in the challenged provision. Regardless of the fact that the absence of the said time limit may have an unfavourable influence upon the owner's current financial situation, it creates moreover, for an indefinite period, a sense of uncertainty on his part as to the actualisation of the obligation contained in Article 3 of the Act.

The goal of enabling tenants of company-owned apartments to purchase them has been implemented by the simple fact of obliging the owners to transfer the right of ownership to them. On the other hand, the conditions imposed by the Act, under which the owner must alienate his rights, amount to imposing excessive (disproportionate) restrictions upon the exercise of the owner’s right. In that manner, the legislator has transferred the burden of the protection of tenants of company-owned apartments upon the owners.

According to its content, Article 3 of the Amending Act of 14 April 2000 is addressed to those owners who have acquired company-owned apartments. Now, property can be bought not only by way of sale, but also in other ways, such as barter or donation. Therefore that provision should be applicable to each and every owner of a company-owned apartment, regardless of the form of its acquisition. The fact that the provision was included in the Act Amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises clearly indicates that it applies also to the gratuitous acquisition of company-

owned apartments by municipalities and housing co-operatives. The application of the Commissioner for Citizens' Rights – in view of the interpretation it gives to Article 3 of the Amending Act of 14 April 2000 – does not apply to the legal situation of those entities.

5. In another letter, of 23 February 2001, the Public Prosecutor-General submitted his position on the application of the City Council of Zduńska Wola. He stated that Article 3 of the Amending Act of 14 April 2000 did not conform to Article 2, Article 20, Article 21 paragraph 1 and Article 64 paragraph 1 and 2, of the Constitution of the Republic of Poland, in so far as it applied to territorial self-government units (municipalities) which have acquired the ownership of company-owned residential buildings under the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises.

The Public Prosecutor-General used the following arguments to substantiate his position:

In view of the fact that the application was submitted by the decision-making body of a territorial self-government unit, the scope of the review of the constitutionality of the provision in question may apply exclusively to infringements of the ownership rights of those units (i.e., the municipalities), taking no account of the legal situation of other owners of company-owned apartments. That is because pursuant to Article 191 paragraph 2 of the Constitution, decision-making bodies of territorial self-government units may submit an application to the Constitutional Tribunal if the regulation in question applies to issues within the scope of their competence.

According to the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises, a State enterprise (or company) may be entitled – once it has met conditions set out in Article 3 paragraph 1 – to require the municipality to conclude a contract of transfer of real estate (Article 5 paragraph 1). Under that contract, concluded in the form of a notarial deed, the municipality acquires the ownership of a building and various facilities erected on the land (Article 4 and Article 6 paragraph 1). The transfer shall be gratuitous, and upon the conclusion of the contract all the financial claims related to the transferred real estate shall pass to the municipality, including those related with overdue rent payments (Article 7 paragraph 1 and 2). Upon the date of transfer of the buildings containing apartments, any existing lease contracts are transformed *ex lege* into contracts concluded for an unspecified time, regulated by the provisions of the Act on Renting Lodgings and Housing Allowances.

The legal context presented above makes it possible to assess the legal situation of the municipalities after the entry into force of Article 3 of the Amending Act of 14 April 2000. If one assumes that there is reasonable ground for interpreting the provision in question to the effect that the duty to transfer the ownership of company-owned apartments also applies to municipalities which have taken over those apartments free of charge, one cannot find that provision conform to the Constitution.

It is pointless to refer here to the principle of protection of acquired rights with respect to property rights, since that provision is confirmed by Article 64 paragraph 2 of the Constitution, which makes it possible to prove that legally acquired property is protected by the Constitution. Nor is there any well-founded need to investigate the conformity of the challenged provision to standards expressing such constitutional principles as those contained in Article 20 and Article 21 paragraph 1 of the Constitution, since the applicant has also indicated more detailed standards, namely Article 64 paragraph 1 and 2 of the Constitution.

The applicant finds Article 3 of the Amending Act of 14 April 2000 unconstitutional in that that provision 'excessively interferes in the right of ownership'. Any assessment of the adequacy of that charge must appeal to the principle of proportionality. In the context of property rights, an infringement of that principle must be seen first of all in that the

challenged provision 'deprives the municipalities of proceeds from the sale of municipal property, which receipts are allocated in whole to satisfying the most immediate needs of the local community'. Thereby, the legislator has shifted all the burden of the protection of the tenants to the municipalities. This is far from indispensable to the protection of the interests of tenants; on the contrary, it tends to privilege that group of leaseholders. The legislator, without any reasonable grounds, has differentiated the legal situation of leaseholders of apartments belonging to the municipal housing stock. Prior to the entry of the challenged provision into force, the disposal of company-owned apartments was made according to the same procedure as for the remaining apartments in the municipal housing stock, first under the Act of 29 April 1985 on Land Management and Expropriation of Real Estate (Journal of Laws – Dz.U. of 1991, No. 30, item 127, as amended) and then under the Act of 21 August 1997 on Real Estate Management (Journal of Laws – Dz.U. of 2000, No. 46, item 543). The terms on which tenants of company-owned apartments have purchased the ownership thereof under those two acts of parliament are very different from those set forth by the challenged provision.

One should also note that on 15 December 2000 an Act of Parliament on Rules for Disposal of Lodgings Owned by State Enterprises, Certain Commercial Companies with a State Treasury Share, Public Legal Persons, and Certain Lodgings Owned by the State Treasury was adopted (Journal of Laws – Dz.U. of 2001, No. 4, item 24), which established special (preferential) rules for the acquisition of apartments by tenants who occupy apartments belonging to the entities listed in the Act. The Act allows the purchase of company-owned apartments on terms different yet from those set out in the provision which is being assessed in this case.

Should one assume that Article 3 of the Amending Act of 14 April 2000 ought to be read as having no application to municipalities owning company-owned apartments, then the proceedings would be subject to discontinuance under Article 39 paragraph 1 subparagraph 1 of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws – Dz.U. No. 102, item 643, as amended; referred to hereinafter as "the Constitutional Tribunal Act"), since a municipality would not be entitled to submit an application in the present case.

II

No representative of the Sejm of the Republic of Poland attended the hearing on 30 October 2001, despite correct delivery of the notice. The participation of the body which issued the legal act challenged by the application in the hearing before the Constitutional Tribunal is obligatory (Article 41 paragraph 1 of the Constitutional Tribunal Act); however the default on that duty does not prevent the case from being heard (Article 60 paragraph 3 of the Constitutional Tribunal Act). In the case at hand, the Constitutional Tribunal did not find any grounds to adjourn the hearing.

At the hearing, the remaining parties to the proceedings maintained the positions they had taken in their written statements. The representative of the City Council of Zduńska Wola stated in addition that the challenged provision infringed Article 165 paragraph 1 of the Constitution. He recognised that that standard of judicial review was appropriate for the assessment of the constitutionality of the challenged provision in the case of an infringement of a municipality's right of ownership.

III

The Constitutional Tribunal established the following:

1. An initial question which must be solved before looking into the admissibility of the applications filed in the case at hand is to define the scope in which the Constitutional Tribunal should consider the case. Two separate problems must be decided here, with regard to the scope of each of the two applications.

In his position on the application of the City Council of Zduńska Wola, the Public Prosecutor-General recognised that it ought to be examined only in so far ‘as it concerns those territorial self-government units (municipalities) which have acquired the ownership of company-owned residential buildings under the Act of 12 October 1994 on the Rules for Transference of Company-owned Residential Buildings...’ Regardless of the confusion surrounding the question whether the Public Prosecutor-General considers that the judgement ought to apply only to municipal property or also to the property of other territorial self-government units, that position cannot be upheld. Indeed, Article 191 paragraph 2 of the Constitution, referred to in support of that argument, does restrict the right (the ability, the capacity) of decision-making bodies of territorial self-government units to submit applications to the Constitutional Tribunal exclusively to applications challenging legal provisions concerning issues within the scope of competence of the given authority; however, that restriction must not be seen as limiting the scope *ratione materiae* in which the Constitutional Tribunal may review the application. The condition set forth in Article 191 paragraph 2 of the Constitution for the admissibility of an application submitted by a decision-making body of a territorial self-government unit consists in that there must exist a relation between the challenged provision and the issues within the scope of competence of those units. The meaning of that circumstance has already been explained by the Constitutional Tribunal (see: *Constitutional Tribunal’s Decisions of 22 August 2001 and 3 October 2001, T. 25/01*, and the earlier judgements referred to in the statement of reasons to the first of these decisions). If that condition is met (and convincing proof to that effect has been provided by the applicant in the case at hand), then there is nothing to prevent the hearing of the case in the full scope indicated in the application, since neither the Constitution nor the Constitutional Tribunal Act restrict the catalogue of allegations of unconstitutionality which may be pleaded by a decision-making body of a territorial self-government unit. In particular, that scope is not restricted exclusively to the provisions that define the constitutional status of territorial self-government (as it is the case, for instance, in Germany). This means that – as long as a challenged provision applies to the scope of activity of territorial self-government units – it ought to be comprehensively reviewed in proceedings initiated upon an application, the only restriction applicable being the directive of Article 66 of the Constitutional Tribunal Act. One should emphasise here that proceedings initiated upon an application by the Constitutional Tribunal have essentially an objective function, namely to help eliminate from the legal system those provisions that do not conform to provisions of higher rank (Article 188 subparagraphs 1-3 of the Constitution) rather than exclusively protecting the rights and interests of some particular persons or particular categories (groups) of persons (which would be the subjective function). But acceptance of the position of the Public Prosecutor-General would amount, in essence, to inverting that postulate. Besides, it would also entail adverse practical consequences, since in consequence of that a provision recognised by the Constitutional Tribunal as in non-conformity to such fundamental constitutional principles of the Republic of Poland as the principle of the state ruled by law or the principle of social market economy – which are also generally applicable *ratione personae* – would lose its binding power only with respect to some given category of persons (e.g., the municipalities). Such a situation would be very disadvantageous for the cohesion of Poland’s legal system and would entail detrimental social consequences and, moreover, undermine trust in the state and its laws. The potential need of another proceeding concerning the same provision would also do not conform to the requirement of procedural efficiency, in view of the fact that its result

would be largely conditioned by the judgement issued in the case heard upon the application of the unit of the territorial self-government.

However, this does not change the fact that certain exceptional situations, and in particular those when constitutional provisions on the legal status of territorial self-government units have been indicated as the model for judicial review, one may not entirely exclude the possibility for the Constitutional Tribunal to restrict the scope of the review as suggested by the Public Prosecutor-General; nevertheless, this does not apply to the case at hand.

As far as the application submitted by the Commissioner for Citizens' Rights is concerned, the *petitum* of the application itself indicates that the applicant demands the declaration of the unconstitutionality of the challenged provision in respect of certain elements of purport which are absent from that provision (namely, a time limit for the enforcement of the claim and a price adjustment mechanism). Thus, in its purely verbal aspect, the Commissioner's application concerns, in essence, the alleged unconstitutionality of the legislator's failure to regulate certain issues. One may understand that the applicant's aim is not so much to cancel the binding power of the challenged provision as to amend its purport. However, the Constitutional Tribunal is not empowered to supplement the purport of the challenged provision with any new elements that would remove the unconstitutionality of the norm contained in that provision. Nor is it competent to assess exclusively the constitutionality of the failure to regulate; on the other hand, in view of the purport of the provision challenged in the case at hand, it is impossible to have recourse to a concept based upon a distinction between such failure and the omission of regulation of certain issues (as it had been in the case Ref. No. *SK 22/01, Judgement of 24 October 2001*). The Constitutional Tribunal may indeed declare the partial unconstitutionality of the challenged provision, but only in so far as the challenged provision (or related provisions) contains some sort of norm. In consideration of the foregoing, and with reference of its earlier jurisdictions, the Constitutional Tribunal has acknowledged that the application of the Commissioner for Citizens' Rights should be examined as an application to determine the unconstitutionality of Article 3 of the Amending Act of 14 April 2000. In doing so, the Constitutional Tribunal has treated the circumstances referred to in the *petitum* and fully developed in the statement of reasons as a definition of the basis (and thereby also the scope) of the application, concerning 'the norms in the absence of which the constitutionality of a legal act raises doubts in view of the matter it regulates' (see: *Judgement of the Constitutional Tribunal of 6 May 1998, Ref. No. K. 37/97, Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 3/1998, item 33*).

Besides, one must note that the issuance by the Constitutional Tribunal of a judgement whose wording would entirely agree with the *petitum* of the application of the Commissioner for Citizens' Rights would raise serious doubts as to the legal system in force following its promulgation, as it would be impossible to determine which elements of the content of the challenged provision have lost their binding power and which have maintained it.

2. The provision challenged by both applications was inserted in an act of parliament of a specific nature, namely the Act Amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises. The latter Act regulates, generally speaking, the gratuitous transfer of land owned by State enterprises and built over with residential buildings to municipalities and, in certain circumstances, to housing co-operatives. The transfer of such land and buildings to other purchasers, in particular to natural persons, remains beyond the scope of that Act. The statement of reasons of the self-government's bill justified the need for such an Act by the losses suffered by state enterprises

on the management of their housing stock and the absence of investors willing to purchase the apartments composing it.

According to the challenged provision, which is in force since 1 June 2000, ‘the owner of a company-owned apartment acquired before the entry into force of the present Act is obliged, upon the application of a tenant entitled to reside and residing in the apartment on the day of its purchase, to transfer the ownership of the apartment to that tenant at the price of purchase increased with the costs of the expenses incurred’.

The Constitutional Tribunal decided that this provision is unconstitutional for three reasons of principle. Firstly, because the defective, inaccurate, highly imprecise and unclear wording of that provision makes it impossible to precisely define the content of the regulation it contains, which constitutes an infringement of the rules of correct legislation. Secondly, because the restrictions of the right of ownership introduced by that provision may not be seen as necessary to the attainment of constitutionally legitimated goals. Thirdly, because that provision imposes an excessive interference in the right of ownership, which results in infringing the very essence of that right.

3. The written statements of the parties to the proceeding, the statements they made at the hearing, as well as jurisprudence, stress the serious difficulties related to the interpretation of the challenged provision. Those difficulties result not only from its wording, but also from the fact that it has been inserted in an act of parliament amending another act; and also, difficulties arise when one tries to confront the text of that provision with the objective referred to in the legislative process in order to justify its issuance.

When analysing the content of the challenged provision, one may first note that the very concept of ‘company-owned apartment’ as used by the legislator lost its legal meaning as a result of the entry into force of the Act on Renting Lodgings and Housing Allowances (which was at the same time as entry into force of the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises). That notion had been defined in Article 55 of the Housing Act of 1974 (as amended by the Act of 16 July 1987, Journal of Laws – Dz.U. No. 21, item 124). A fundamental question arises here, namely which apartments the challenged provision applies to, since at the moment of its entry into force the category of company-owned apartments was a void set from the viewpoint of formal law. Secondly, language and systemic interpretation yield contradictory results with respect to the decision whether the regulation of Article 3 of the Amending Act of 14 April 2000 extends to apartments transferred to municipalities (and other legal persons) under the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises. In Article 3 of the Amending Act of 14 April 2000, the legislator used the term of ‘price of purchase’, while under the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises the transfer of property was gratuitous. Moreover, since that provision has been inserted in the Act Amending the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises, one must assume that it also applies to those apartments which make part of real estate transferred under the amended Act. Thirdly, the time frame of the legal transactions referred to in Article 3 of the Amending Act of 14 April 2000 is ambiguous, namely it is unclear whether it only applies to apartments whose ownership had been acquired prior to 12 November 1994, which means before the entry into force of the Act on Renting Lodgings and Housing Allowances which formally removed the category of company-owned apartments, or also after that date, but prior to 1st June 2000. Fourthly, the question may be asked whether the legislator targeted only those apartments which constitute a separate real estate – and should the answer here be positive, then another question appears whether their constitution as separate real estate ought to have been effected prior to their purchase by the current owners or it could also have taken place after that fact.

Additionally, one must raise the doubt concerning the possibility of applying valorisation by a court judgement to that sort of cases (Article 358.1 § 3 of the Civil Code).

In issuing the challenged provision, the legislator did not observe the principles of legal drafting, which prohibit the inserting in an amending Act of provisions whose purport is not within the scope of regulation of the amending Act (see: S. Wronkowska, M. Zieliński, *Zasady techniki prawodawczej. Komentarz [Rules of drafting of legal acts. Commentary]*, Warszawa 1997, s. 110, 115). Meanwhile, the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises concerns ‘the principles and procedure of transfer by State enterprises of land built over with residential buildings together with the accompanying technical and social facilities’ only to municipalities and to some housing co-operatives (Article 1 paragraph 1 of the Act); moreover that transfer is to be gratuitous (Article 7 paragraph 1 of the Act). As to the challenged provision – according to the wording quoted above – it concerns an entirely different situation, both *ratione personae* and *ratione materiae*, since it applies in principle to situations of transfer of ownership, against payment, of company-owned apartments to their tenants by their current owners, without any differentiation of their legal status. Regardless of the issue of the binding force of the rules of drafting of legal acts, the legislator should not show such an obvious disregard for the norms these principles formulate, especially when that may result in serious difficulties in the application of law, in view of the correlation between the principles of drafting of legal texts and the principles of interpretation thereof. It is also an infringement of the principles of legal drafting to use the term of ‘application’ where it refers to raising a claim against another person rather than an act initiating a proceeding before a public authority.

The above remarks only summarise the most important interpretative questions arising with respect to the challenged provision. Generally speaking, the Constitutional Tribunal fully agrees with the opinion expressed in the legal doctrine that the extremely unfortunate wording of the challenged provision makes it impossible to unambiguously define its scope of application (G. Bieniek *Problematyka prawna zakładowych budynków i lokali mieszkalnych [Legal problems with the company-owned residential buildings and apartments]* [in:] S. Rudnicki (ed.) *Prawo obrotu nieruchomościami [Law of trading in real estate]*, Warszawa 2001, pp. 787-882). The Constitutional Tribunal is not competent to adjudicate on those issues, as they concern the interpretation of an Act of Parliament which is to be applied by other bodies, such as ordinary courts and the Supreme Court. Those issues can probably be addressed one way or another by applying various methods of interpretation and more or less complex legal reasoning. Nevertheless, the recognising so important interpretative ambiguity has a significant constitutional meaning. The Constitutional Tribunal has consistently voiced the opinion that the principle of state ruled by law expressed in Article 2 of the Constitution entails the imperative for the legislator to observe the principles of correct legislation. That imperative remains in a functional relationship with the principle of legal certainty and security and the principle of protection of the citizens’ trust in the state and its laws. Those principles are of particular consequence in the domain of human and civil rights and freedoms. According to Article 31 paragraph 3 of the Constitution, any restrictions to the enjoyment of constitutional rights and freedoms may be introduced ‘only by an act of parliament’. This means more than just the necessity to indicate in an act of parliament the scope in which the constitutional freedoms or rights shall be restricted. For the same reasons or which it is inadmissible to delegate such matters to secondary legislation, such a vague and imprecise wording of a provision, which entails the uncertainty among its addressees as to their rights and duties, must be seen as infringing the requirements of the Constitution. This is because it creates a framework for the bodies in charge of its application that is too wide, as a result make these bodies in fact take the legislator’s role within the scope of issues which he has regulated in a vague and imprecise way. The legislator may not, by a vague formulation

of the text of provisions, leave the bodies in charge of its application excessive freedom in defining in practice the scope *ratione personae et ratione materiae* of the restrictions to the constitutional rights and freedoms of the individual. That assumption may be generally defined as the principle of definition of legislative interference in the domain of constitutional rights and freedoms of the individual. In following that principle, the Constitutional Tribunal is of the opinion that the vagueness of legal provisions exceeding a certain level may constitute by itself a sufficient precondition for the declaration of their non-conformity both to the provision requiring that a particular domain be regulated by an act of parliament (such as the restriction on the enjoyment of constitutional rights and freedoms, Article 31 paragraph 3 first sentence of the Constitution) and the principle of state ruled by law as expressed in Article 2 of the Constitution.

Three conditions are important for the assessment of the conformity of the wording of a particular provision of law to the requirements of correct legislation. Firstly – every provision restricting the constitutional rights or freedoms ought to be formulated so as to provide an unambiguous answer to the question who and in which situations may be subject to the restrictions. Secondly – the provision should be precise enough to ensure consistent interpretation and application. And thirdly – the provision should be conceived in such a manner that its scope of application may include only those situations which a reasonable legislator actually intended to regulate by restricting the enjoyment of constitutional rights and freedoms.

In the case at hand, the formulation of the challenged provision is vague and imprecise to such an extent that one may reasonably assume that all the three conditions pointed to above will be violated in practice. An important proportion of the potential addressees (e.g., the municipalities) may find it very difficult to decide whether the provision really applies to them. This in turn will make it difficult for them to exercise their lawful rights and force them to wait for precedential judgements, causing a sense of uncertainty in legal transactions until consistent jurisdiction is formed. Therefore, the challenged provision infringes the imperatives of correct legislation and of statutory restriction of constitutional rights and freedoms. The Constitutional Tribunal recognises that in such a situation there is no need to wait for judicial interpretation to confirm or remove the concern as to the inconsistent application of the provision in question, for it is a sufficient reason that doubts on interpretation concern essential issues and that they exceed a certain degree. In adjudicating, the Constitutional Tribunal considers the situation as it is at the date of closure of the hearing (Article 316 § 1 of the Code of Civil Procedure in relation with Article 20 of the Constitutional Tribunal Act) and therefore, in the absence of any judicial practice, it assesses on its own both the existence and the scope of vagueness in interpretation.

4. Proceeding to the grounds for the second reason of the unconstitutionality of the challenged provision, one must assert that there is no doubt that the provision in question sets forth a restriction of the use of property. It must therefore be examined whether the challenged regulation is necessary to protect the interests set out in Article 31 paragraph 3 first sentence of the Constitution in connection with other constitutional standards and values.

As shown by documentation of the legislative process, the motive for the issuance of the challenged provision was above all an endeavour to ‘remove the unjust results of pathological occurrences of sale of company-owned apartments’. Speaking about the legislator’s goals, one may generally say that motive was based on two premises: the aim was, on the one hand, to reverse the effects of earlier disposal by State enterprises of buildings with apartments leased to their staff, and on the other hand, to realise the social and affranchise interests of the tenants of former company-owned apartments.

The Constitutional Tribunal fully respects the legislator's right to his own evaluation of social developments and does not deny the legislator's authority to take legal measures to invalidate in a special and extraordinary way the legal effects caused by deeds which were an infringement of law or of the principles of fairness. Citing the desire to reverse the effects of speculative buy-out of company-owned apartments as the aim of the challenged provision may not be seen as inadmissible in view of the Constitution. The Constitutional Tribunal does reckon with the fact that broadly publicised pieces of news presented in the mass media concerning the above 'pathological' occurrences and the importance of their scale may have inclined the legislator to take extraordinary measures to reverse the effects of such occurrences. Besides, in the case at hand, no one of the parties to the proceedings has questioned that element of the justification for the challenged provision.

It must be pointed out, however, that the challenged provision does not correspond to the motive quoted above. As it may be supposed, the 'pathological' occurrences of sale of company-owned apartments involved losses to the State enterprises that sold them to the buyers at a price well below their real value. Therefore, if the aim is to reverse the effects of unfair practices, then the selling State enterprise – or its successor in right – should have a possibility to recover the 'unjustly' lost property. Now enabling other persons (the tenants) to purchase the apartments, also at a price well below the real value, is not a restoration of the proper situation, but only a source of benefits for other persons than the previous buyers. This simply means that the tenants will legally enjoy the product of another person's unfair practice.

As far as the 'social and affranchise' aspect mentioned above is concerned, one must review one more circumstance, namely the question whether it has any constitutional foundations and what those foundations possibly are. The challenged provision of the Act sets forth certain rights of the tenants with respect to the owners, and its intended justification was the argument that the tenants had been 'deprived' of the possibility to acquire the ownership of their apartments. It concerns therefore the relation between the rights of the owners of apartments and the rights of the tenants who inhabit those apartments. The constitutional basis for interference in the right of ownership, as introduced by the challenged provision, cannot be the necessity to protect third party rights, or more specifically the rights of the tenants inhabiting the former company-owned apartments, because the Constitution does not provide any basis for the assumption of a tenant's right to acquire the ownership of the apartment he lives in. By its very essence, neither a lease nor any other legal title to occupying an apartment that belongs to another person constitutes a basis for a claim to purchase its ownership. The conclusion of a lease contract does not restrict the owner's right to transfer the ownership of the leased thing to another person, all the more that following the transfer, the new owner becomes *ex lege* a party to the lease contract concluded by his predecessor (Article 678, 692 of the Civil Code and Article 12 of the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises).

Article 75 paragraph 1 of the Constitution, which imposes upon public authorities the duty to implement a policy facilitating the satisfaction of housing needs and to promote the citizens' efforts aiming at obtaining their own apartments, cannot create by itself a sufficient basis for a claim to acquire the ownership of an apartment, still less for imposing upon the owner of an apartment, being a natural persons or a non-public legal person, the obligation to transfer its ownership to the tenant. The said constitutional provision only announces the adoption by the legislator of solutions aimed at helping citizens obtain apartments to satisfy their housing needs. It does not imply that the only option here is the acquisition of the right of ownership of a house or an apartment, since the possibility of durable usage of an apartment can also be guaranteed by the acquisition of another legal title. The burden of the implementation of the imperative imposed upon public authorities to support the citizens'

activities aimed at obtaining apartments cannot be entirely shifted upon other persons, including above all the current owners of the houses and apartments; last but not least, the fundamental aim of those activities should be to extend the existing housing stock by building new residential buildings.

Neither can the imperative requiring an act of parliament to regulate the protection of tenants' rights (Article 75 paragraph 2 of the Constitution) provide a constitutional basis for the challenged provision. Without going into the details of interpretation of that provision, which has already been examined by the Constitutional Tribunal (see especially the *Judgements of: 12 January 2000, Ref. No. P. 11/98*, Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 1/2000, item 3; *10 October 2000, Ref. No. P. 8/99*, Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 6/2000, item 190), one must stress that the provision in question imposes upon the legislator the duty to protect every tenant (and not only the leaseholders) against the threat of becoming homeless by ensuring the stability (but not the absolute inviolability) of a legally acquired legal title to occupy an apartment. That provision cannot be treated as a basis for a claim to obtain the status of owner. Statutory protection of tenants' rights cannot go to the length of granting them the right to decide who is to own the apartment they inhabit, as it would clash with the constitutional principle of protection of property. One should also underline that the alienation of a property by State enterprises has not excluded the protection guaranteed to tenants inhabiting the apartments composing that property under acts of parliament in force at the time, and currently under the Act of 21 June 2001 on Protection of Rights of Tenants, Municipal Housing Stock and Amendment to the Civil Code (Journal of Laws – Dz.U. No. 71, item 733). Regardless of the controversy surrounding some of the solutions adopted in that Act, it must be stated that it ensures every tenant (in principle) identical protection not only against being illegally deprived of the legal title to occupy an apartment, but also against any increase in the rates for using that apartment that the legislator may see as excessive – which, by the way, exceeds the scope of Article 75 paragraph 2 of the Constitution.

The Constitutional Tribunal has also considered the question whether a constitutional basis for the challenged provision could be found in the right to protection against unfair market practices under Article 76 of the Constitution. In accordance with the wording of that provision, that right is vested not only in 'leaseholders', but also in 'consumers' and 'users', therefore one may justly conclude that it also extends to all persons having the status of a tenant. Should a purchase of apartments at prices well below real value and with speculative aims have actually taken place, the legislator would be simply obliged to protect those wronged persons by such behaviour. In its analysis of the problem, the Constitutional Tribunal found that Article 76 of the Constitution authorised the legislator above all to introduce preventive regulation, i.e., regulation preventing the occurrence of unfair market practice (e.g., charging exorbitant rates or an unfair distribution of the building's maintenance costs among the tenants by the owner). It also provides a constitutional basis for imposing sanctions upon those guilty of such practice (e.g., the duty to compensate for the damage caused); however, it cannot constitute a source of additional benefit for the wronged person. In consideration of the foregoing, it must be recognised that neither Article 76 of the Constitution can be seen as a basis for tenants' claim to acquire the ownership of the apartments they occupy pursuant to a specific and individual legal title (e.g., an initial agreement or a court judgement) – unless they were entitled to such a claim at the moment of its transfer to another person and it has been established that the transfer of ownership to the other person was illegal.

The legislator may give a more concrete meaning to the constitutional notion of 'unfair market practice', but the assessment of whether such practice did occur in a concrete case should be based, in controversial or doubtful cases, on the essential circumstances of the

given case and be subject to the assessment of an independent court, whose work cannot be entirely done by the legislator. Moreover, the Constitutional Tribunal emphasises that by imposing upon the owner of a former company-owned apartment the duty to transfer it to the tenant, the legislator did not make in any way the reasons or the scope of that claim dependent either on the circumstances of the purchase of the property (e.g., on whether that purchase can be deemed unfair and incompatible with the principles of community life) or on circumstances related to the tenant (e.g., on how long he has inhabited a given apartment, whether he has contributed at least a part of the building costs, etc.).

The above-mentioned findings lead to the conclusion that the aim of the challenged provision can be seen as constitutionally legitimate only to a certain extent. It is the legislator's duty to counter the effects of unfair market practices, to support the citizens' activities aimed at acquiring their own apartments and to protect the right to an apartment once it has been acquired, but the legislator is not authorised to take the ownership of apartments away from their current owners by directly and unconditionally requiring them to transfer it to the tenants.

Besides, if the activity of the legislator is to conform to the Constitution, introduction of the restrictions to constitutionally guaranteed rights and freedoms should not only be legitimised by their aim, but should also be admissible only in so far as it is 'necessary' to implement them. The premise of the necessity of the restrictions set forth in Article 31 paragraph 3 first sentence (which, according to recorded jurisdiction of the Constitutional Tribunal, is composed of usefulness, indispensability and proportionality), means that any provisions interfering in the domain of rights and freedoms should be adequate in their scope to the implementation of constitutionally admissible goals and introduce only a minimum degree of inconvenience for the person whose right is being restricted.

In assessing the 'necessity' of the challenged restrictions, one must also make sure that the provisions in force did not allow the implementation of the intended goal (in so far as it was constitutionally legitimated) and that there was no possibility to introduce other efficient legal instruments with a lower degree of inconvenience. One must note here that the Polish civil law deems null and void any legal transaction not in conformity to an act of parliament, aimed at circumventing an act of parliament and conflicting with the principles of community life (Article 58 § 1 i 2 of the Civil Code). Therefore, as far as acquisitions of ownership contrary to the law or to the principles of community life are concerned, there was no need to introduce such a far-reaching interference in the right of ownership as set forth by the challenged provision. Of course, one cannot be entirely certain that contracts of transfer of ownership of land built over with company-owned residential buildings without an equivalent performance by the purchaser would be recognised in court as contrary to the principles of community life and therefore null and void; it is also difficult to foresee whether and to what extent Article 388 of the Civil Code would apply here. Nevertheless, the provisions pointed to above show that the legislator's interference reached farther than the civil law regulations on removing the effects of legal transactions contrary to law and to the system of values accepted by the society.

The comparison of the above-mentioned provisions of the Civil Code with the challenged provision indicates that the legal instrument used by the legislator was not necessary to reverse the results of legal transactions that the legislator has negatively assessed, because less inconvenient measures would have been quite sufficient, such as a duty to increase the performance or to introduce special conditions enabling the termination (or annulling) of a contract. Once an apartment became again the property of the State Treasury or another State agency with the status of a legal person (such as a State enterprise), the issue of the admissibility of ownership transfer to the leaseholders (or the tenants), or the implementation of the social and affranchise goal, would take on a different form. However,

the legislator, endeavouring to implement the two different aims together, has created a legal concept which ignored a range of possible effective and less inconvenient options, infringing thereby the principle of proportionality (ban on unnecessary restrictions).

Such an extensive formulation of a provision, which does not exclude the possibility of it being extended to company-owned residential buildings acquired by municipalities under the Act on the Rules of Transference of Company-owned Residential Buildings by State Enterprises, cannot be justified by the circumstances quoted in the course of the legislative process, as there can hardly be question at all, in this case, of excessively low prices or of a speculative aim. The transfer of ownership was gratuitous, and the municipality's statutory duty is to facilitate satisfying the housing needs of its inhabitants. Therefore, a municipality is much more naturally qualified to manage the housings stock than State enterprises and companies with a State Treasury share; moreover, the provisions in force lay down a possibility for the leaseholders to acquire the ownership of apartments belonging to the municipality. It would also be impossible to prove at this moment that all the contracts of sale of land built over with company-owned residential buildings had the character of acts related with the commission of a criminal offence or with the understating of the price paid by the buyer, and that therefore they were of an 'pathological' nature. Thus an interference concerning all the cases of purchase without any distinctions infringes the constitutional protection of the right of ownership by introducing a regulation with an excessively wide scope *ratione personae*.

In the opinion of the Constitutional Tribunal, no provision of the Constitution relating to the rights of tenants provided a basis for such a wide and far-reaching interference in the right of ownership as the one afforded by the challenged provision. Besides, as the City Council Zduńska Wola rightly pointed out – the challenged provision introduces one more legal procedure for purchasing apartments. That procedure is by no means in conformity to the remaining legal procedures, and its application may bring undesirable results, especially if it is assumed that it applies to apartments taken over free of charge by municipalities and housing co-operatives. In practice, the application of the challenged provision leads to the following consequence: the lower a selling price was in comparison with the real price (due to an unfair activity, as it may be supposed), the bigger the tenant's profit is. That circumstance, although it refers to the possible non-conformity of the challenged provision to Article 32 of the Constitution, which was not referred to in the applications, has a certain meaning in the case, because it undermines the argument that that provision was justified by the need to implement the principles of social justice.

5. Proceeding to review the reasons for the third group of circumstances causing the unconstitutionality of the challenged provision, the Constitutional Tribunal maintains the opinion, well-established in jurisdiction, that the ability to dispose of the object of ownership is one of the most important and fundamental elements of the right of ownership. The classical concept of property, derived from Roman law, assumes that the owner may freely transfer his right to another person (*ius disponendi*) and not only by an act *inter vivos*, but also *mortis causa* (this latter aspect is underlined by the reference to succession in Article 21 paragraph 1, and Article 64 paragraph 1 and 2 of the Constitution). The right to dispose of property also means the possibility for the owner to freely maintain the ownership of a thing until as long as this agrees with his will.

There are three ways in which the challenged provision restricts the owner's freedom to dispose of an apartment. Firstly, this provision obliges him unconditionally to transfer his right, if a tenant entitled to reside and residing in that apartment submits the appropriate 'application'. Just that amounts in essence to depriving the owner of his right to dispose of a thing. The challenged provision is more than just a restriction of the right of ownership; from

a subjective rather than institutional perspective, it is simply a dispossession of property. Secondly, the challenged provision defines the person to whom the owner shall transfer the ownership. That person is only the tenant entitled to reside and residing in the apartment at the day of its purchase. Thirdly, the legislator has rigidly defined the amount of remuneration due to the owner in return for the loss of the apartment. It must be 'the price of purchase increased with the cost of expenses incurred'. This means that the owner of the apartment subject to the challenged provision has been deprived not only of the freedom to decide on whether to dispose of his property or retain it, but also of the influence on who will be awarded the ownership of the apartment; still more important, his power to influence the amount of the remuneration he will receive in return for the loss of property has been limited.

The solution adopted in the challenged provision has two additional aspects, which are decisive for the 'depth' (scope) of interference in the right of ownership. Firstly, it makes the ownership of the apartment concerned by the challenged provision take on the character of a conditional right, as it obliges every owner – not only the one who has purchased on his own a former company-owned apartment – to transfer the ownership of the apartment and the claim for the execution of that obligation is without time limit (apart from the rather unclear question of limitation of liability). That regulation also has obvious consequences for the actual exercise of other owners' rights, since the use of a thing that may be at any moment subject to the obligation of alienation is radically affected by that circumstance. Secondly, the back transfer of ownership must take place 'at the price of purchase', and therefore, as it is assumed, without any valorisation, regardless of the date when the tenant demands the transfer of ownership. Setting aside the problem of the applicability of Article 358¹ § 3 of the Civil Code to that situation, one must come to the conclusion that with the current well-known rate of inflation in Poland this can cause a substantial material loss on the owner's side, especially if the claim for the transfer of ownership is raised several years after the purchase of the apartment. The challenged regulation goes way farther into interfering in the enjoyment of the right of ownership than such restrictions of the freedom to dispose of a thing well-known in Polish civil law as, e.g., the right to repurchase and the right of preemption.

In its hitherto jurisdiction, the Constitutional Tribunal has explained that 'the essence' of human and civil rights and freedoms (referred to in Article 31 paragraph 3 second sentence, and Article 64 paragraph 3 of the Constitution, the latter concerning solely ownership) must be understood as the 'inviolable core' of every freedom and every right. That inviolability consists in the fact that even restrictions which conform to all other constitutional norms may absolutely not infringe a certain sphere of constitutionally guaranteed human and civil rights. That sphere is defined by the function of a given freedom or right as defined with regard to the basic constitutional principles. When ownership is at stake, as the most important right protected under Article 64 of the Constitution, its essence would be infringed if the restriction concerned the fundamental rights composing the content of ownership and made it impossible to exercise those functions of that right that it must exercise in the legal system based on the underlying principles indicated in Article 20 of the Constitution (*Judgement of 12 January 1999, Ref. No. P. 2/98*, Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 1/1999, item 2, p. 221). The sense of the right of ownership doubtless consists in granting a particular person (or persons, in the case of joint ownership) the widest rights with respect to a thing. In the opinion of the Constitutional Tribunal, the order to transfer a definite thing does not in itself exceed the limit of the essence of the right of ownership and can be constitutionally admissible in certain specific conditions. However, taking into account the above-mentioned elements of the challenged provision, the opinion that that provision has exceeded those limits becomes justified. An owner upon whom the legislator imposes an unconditional obligation to transfer the ownership to other persons than the State Treasury or territorial self-government units may not be simultaneously entirely deprived of the possibility

to choose the buyer and of any influence upon the amount of the financial performance he shall obtain in exchange. Moreover, that obligation ought to have a strictly defined time frame. The legislator should not create a situation where a person having only an accessory right to use a particular thing (in this case the tenant) has more influence upon the legal status of that thing than its owner. The proper functioning of property presupposes the necessity to establish a specific sense of trust and security of that right as a basis. Thus the legislator should also take into account the fact that ownership is the most important property right and therefore its protection can in no circumstance be weaker than that of other property rights. In the case in hand, meanwhile, the legislator has gone very far to protect the interests to which he has granted protection as tenants' rights, without actually taking into consideration any interests of the owners. If a property acquired on the basis of a law established by a democratically legitimised legislator could be easily taken away from the owner, without his being able, moreover, to influence the terms of that loss of ownership, then the right of ownership could not fulfil its constitutional role. This applies both to private property, referred to in Article 20, 21 and 64 of the Constitution, and the property of territorial self-government units, protected under Article 165 paragraph 1 second sentence of the Constitution, whereas it must be stressed that the property rights granted to those units, beside the status of legal person granted to them under Article 165 paragraph 1 first sentence of the Constitution, constitute an essential guarantee of their independence, which in turn is the precondition of their proper execution of the public tasks assigned to them (Article 16 paragraph 2 and Article 163 of the Constitution).

6. A declaration of the non-conformity of the provision to Article 2, Article 31 paragraph 3, Article 64 paragraph 1 of the Constitution and Article 165 paragraph 1 of the Constitution, makes it lose its binding power (Article 190 paragraph 3 of the Constitution); as a result, any more detailed analysis of its conformity to other constitutional provisions indicated in the application of the City Council of Zduńska Wola as a standard of judicial review becomes superfluous.

In commenting the charge of non-conformity to Article 64 paragraph 2 of the Constitution, it is enough to state that the challenged provision, as an unfounded interference in ownership, has led to the creation of a 'second rate' group of owners, which infringes the principle of equal legal protection of property rights as expressed in that provision. The existence of that provision does not rule out differences between the roles played by private property, which constitutes the foundation of the economic system of the Republic of Poland, and the property of territorial self-government units. Article 21 paragraph 1 of the Constitution, in turn, as a declaration of systemic principles, is more general in its purport than Article 64 of the Constitution, which regulates the issues of constitutional protection of property rights in detail. An infringement of the more detailed standards contained in Article 64 of the Constitution, is tantamount to non-conformity to Article 21 paragraph 1 of the Constitution. As far as Article 20 of the Constitution is concerned, it is still more general in character. It states that the economic system of the Republic of Poland is social market economy, while the bases of that economy have been defined more specifically in further constitutional provisions, especially in Articles 21 to 24. Taking into account the special character of that provision, the Constitutional Tribunal found it did not express a norm capable of serving as a standard for the judicial review of the challenged provision, and therefore it included into the operative provisions of the judgement a formula excluding the existence of a relation of non-conformity between Article 3 of the Amending Act of 14 April 2000 and Article 20 of the Constitution.

In consideration of the foregoing, the Constitutional Tribunal adjudicated as in the sentencing part of the judgement.