

JUDGEMENT
of 31 January 2001
Ref. No. P. 4/99*

The Constitutional Tribunal, in a bench composed of:

Marek Safjan – Presiding Judge
Jerzy Ciemniowski
Zdzisław Czeszejko-Sochacki
Teresa Dębowska-Romanowska
Lech Garlicki
Stefan J. Jaworski
Krzysztof Kolasiński
Biruta Lewaszkiewicz-Petrykowska
Andrzej Mączyński – Judge Rapporteur
Ferdynand Rymarz
Jadwiga Skórzewska-Łosiak
Jerzy Stępień
Janusz Trzeciński
Marian Zdyb,

Joanna Szymczak – Recording Clerk,

having considered, at the hearing on 31 January 2001 attended by duly authorised representatives of the parties to the proceedings: The District Court in Olsztyn, the District Court in Kędzierzyn-Koźle, the District Court in Włocławek, the Commissioner for Citizens' Rights, the Sejm of the Republic of Poland, the Chairman of the Council of Ministers and the Public Prosecutor-General:

- 1) a legal question from the District Court in Olsztyn: whether Article 1058, 1059 § 1 subparagraphs 1 and 3 and Article 1066 of the Act of 23 April 1964 – the Civil Code (Journal of Laws – Dz.U. No. 16, item 93, subsequently amended), applicable to a case to determine the acquisition of an estate opened on 4 August 1976, conform to Article 21 paragraph 1, Article 64 paragraph 1 and Article 32 paragraphs 1 and 2 of the Constitution of the Republic of Poland.
- 2) a legal question from the District Court in Kędzierzyn-Koźle, Circuit Court in Głubczyce: 1) whether Article 1058, 1059, 1086, and 1087 of the Act of 23 April 1964 – the Civil Code (Journal of Laws – Dz.U. No. 16, item 93, subsequently amended), applicable to a case to determine the acquisition of an estate opened on 14 August 1980, conform to Article 64 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland; 2) if the Constitutional Tribunal finds that the provisions referred to in subparagraph 1 do conform to the Constitution of the Republic of Poland: whether Article 1063 of the Act of 23 April 1964 – the Civil Code (Journal of Laws – Dz.U. No. 16, item 93, subsequently amended), in the version in force prior to the change brought by the Act of 26 March 1982 on an amendment to the Act -Civil Code and on a repeal of the Act on a regulation of farm property (Journal of Laws – Dz.U. No. 11, item 81), applicable to estates opened before 6 April 1982, in

connection with Article 2 of this Act, conforms to Article 64 paragraph 1 and 3 in connection with Article 21 and Article 31 paragraph 3 of the Constitution of the Republic of Poland;

3) An application from the Commissioner for Citizens' Rights on determining the nonconformity of Article 1058, 1059, 1060, 1062, 1063, 1064, 1066, 1079, 1081, 1082, 1086 and 1087 of the Act of 23 April 1964 – the Civil Code (Journal of Laws – Dz.U. No. 16, item 93, subsequently amended) to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland;

4) A legal question from the District Court in Włocławek: whether Article 1058, 1059, 1060 and 1064 of the Act of 23 April 1964 – the Civil Code (Journal of Laws – Dz.U. No. 16, item 93, subsequently amended) and the provisions of the Ordinance of the Council of Ministers dated 12 December 1990 on the Conditions Governing the Statutory Inheritance of Farms (Journal of Laws – Dz.U. No. 89, item 519), applicable to a case to determine the acquisition of an estate opened on 5 February 1999, conform to Article 21 paragraph 1 and Article 64 paragraph 1, 2 and 3, Article 31 paragraph 3, Article 32 paragraph 1 and Article 37 of the Constitution of the Republic of Poland and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995, No. 36, item 175; amended in 1998. No. 147, item 962)

adjudicates as follows:

1. Article 1058 of the Civil Code:

a) in the text promulgated on 18 May 1964 (Journal of Laws – Dz.U. No. 16, item 93) and in the text imparted by the Act of 28 July 1990 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

– is not in non-conformity to Article 32 paragraph 1 and 2 and Article 64 paragraph 3 of the Constitution of the Republic of Poland,

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland;

b) in the text imparted by the Act of 28 July 1990 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

is not in non-conformity to Article 37 of Constitution of the Republic of Poland and Article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995 No. 36, item 175; amended in.: 1998 No. 147, item 962).

2. Article 1059 of the Civil Code:

a) in the text imparted by the Act of 26 October 1971 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 27, item 252) and in the text imparted by the Act of 28 July 1990 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws,

– does not conform to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day;

b) in the text imparted by the Act of 26 October 1971 on an amendment to the Act -Civil Code (Journal of Laws – Dz.U. No. 27, item 252) is not in non-conformity to Article 32 paragraph 1 and 2 and Article 64 paragraph 3 of the Constitution of the Republic of Poland;

c) in the text imparted by the Act of 28 July 1990 on an amendment to the Act -Civil Code (Journal of Laws – Dz.U. No. 55, item 321) is not in non-conformity to Article 32 paragraph 1, Article 37 and Article 64 paragraph 3 of the Constitution of the Republic of Poland and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995 No. 36, item 175; amended in 1998, No. 147, item 962).

3. Article 1060 of the Civil Code in the text imparted by the Act of 28 July 1990 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

– is not in non-conformity to Article 32 paragraph 1, Article 37 and Article 64 paragraph 3 of the Constitution of the Republic of Poland and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995 No. 36, item 175; amended in 1998, No. 147, item 962),

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws,

– does not conform to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day.

4. Article 1062 of the Civil Code in the text imparted by the Act of 28 July 1990 on an amendment to the Act – Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws – Dz.U.,

– does not conform to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day.

5. Article 1063 of the Civil Code:

a) in the text promulgated on 18 May 1964 (Journal of Laws – Dz.U. No. 16, item 93) and amended by the Act of 26 October 1971 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 27, item 252) does not conform to Article 21 paragraph 1 and 2 and Article 64 paragraph 1 and 3 in connection with Article 31 paragraph 3 of the Constitution of the Republic of Poland;

b) in the text imparted by the Act of 26 March 1982 on amendment to the Act – the Civil Code and on a repeal of the Act on the regulation of farm property (Journal of Laws – Dz.U. No. 11, item 81) conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31

paragraph 3 of the Constitution of the Republic of Poland.

6. Article 1064 of the Civil Code in the text imparted by the Act of 28 July 1990 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 55, item 321):

– is not in non-conformity to Article 32 paragraph 1, Article 37 and Article 64 paragraph 3 of the Constitution of the Republic of Poland and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995 No. 36, item 175; amended in 1998 No. 147, item 962),

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws – Dz.U.,

– does not conform to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day.

7. Article 1066 of the Civil Code:

– conforms to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland,

– is not in non-conformity to Article 32 paragraph 1 i 2 of the Constitution of the Republic of Poland.

8. Article 1079 of the Civil Code conforms to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland.

9. Article 1081 of the Civil Code conforms to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland.

10. Article 1082 of the Civil Code in the text imparted by the Act of 28 July 1990 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 55, item 321) conforms to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland.

11. Article 1086 of the Civil Code:

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland,

– is not in non-conformity to Article 64 paragraph 3 of the Constitution of the Republic of Poland.

12. Article 1087 of the Civil Code

– conforms to Article 64 paragraph 1 i 2 in connection with Article 21 paragraph 1 i Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws,

– does not conform to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day,
– is not in non-conformity to Article 64 paragraph 3 of the Constitution of the Republic of Poland.

13. The Ordinance of the Council of Ministers of 12 December 1990 on the Conditions Governing the Statutory Inheritance of Farms (Journal of Laws – Dz.U. No. 89, item 519):

– is not in non-conformity to Article 32 paragraph 1, Article 37 and Article 64 paragraph 3 of the Constitution of the Republic of Poland and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (Journal of Laws – Dz.U. 1995 No. 36, item 175; amended in 1998, No. 147, item 962);

– conforms to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to the publication of this judgement in the Journal of Laws,

– does not conform to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution of the Republic of Poland insofar as it refers to estates opened prior to that day.

Statement of Reasons:

I

1. The Regional Court in Olsztyn (Department I, Civil Cases), considering a case on determining the acquisition of an estate (*Ref. No. I Ns 868/98*) from a testator deceased on 4 August 1976, decided on the basis of Article 193 of the Constitution, to submit to the Constitutional Tribunal a legal question on the conformity of the provisions of the Civil Code with the detailed provisions of inheriting farms set forth in Article 1058-1087 in connection with Article 21 paragraph 1, Article 64 paragraph 1 and Article 32 paragraph 1 and 2 of the Constitution.

The Constitutional Tribunal asked the submitting court to expound its legal question by indicating which of the challenged provisions possess significance in considering the case before the District Court in Olsztyn regarding determination of the acquisition of the estate.

In response, the District Court said that the provisions of Article 1058, 1059 § 1 subparagraph 1 and subparagraph 3 and Article 1066 of the Civil Code in the version in force on the date of the opening of the estate possess significance in considering this case.

The District Court provided the following statement of reasons for the submitting of the legal question:

Successive amendments of the provisions of the Civil Code concerning the inheritance of farms suggest a departure from state interference into the inheritance of farms which was commenced by the Act of 29 June 1963 on Restricting the Division of Farms (Journal of Laws – Dz.U. No. 28, item 168). This Act introduced an original concept which „upset the centuries-old principle of a uniformity of inheritance, i.e. simultaneous consideration of all the property rights and obligations of the testator.” This Act introduced regulations which interfered with the mechanism of inheritance, eliminating already in its preamble those heirs who did not fulfil the criteria set forth

in the Act. The actual purpose of this Act was the acquisition of as many private farms as possible by the State Treasury.

Despite successive amendments, the current provisions of the Civil Code have not dispensed with this concept. They distinguish between two parts of an estate: one part comprising a collection of rights and obligations which together make up the concept of farm in the law on succession, and a second part which includes the remaining rights and obligations of the deceased. The possibility of legally inheriting a farm was made conditional on the fulfilment of specific conditions by the heirs. Consequently, the circle of heirs entitled to inheritance according to general principles may not be identical to the circle of heirs who are inheriting a farm.

In the Act of 28 July 1990 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 55, item 321), the legislator abolished the restrictions governing the purchase and sale of agricultural property *inter vivos* and in the testamentary inheritance of farms, and retained the general principles of the statutory inheritance of farms. Such a differentiation leads to a lack of cohesion of the system of civil law and is not justified under conditions of a market economy.

Restrictions to the inheritance of farms are also not necessary to „prevent the parcellation of these farms and prevent the onerous burden of repayments upon those who decide to operate a farm.” These purposes are attained by the provisions abolishing co-ownership of farms (Article 213 of the Civil Code *et seq.*), which are applicable to the part dealing with estates as appropriate (Article 1070 of the Civil Code). Therefore, interference in the order of estate is unnecessary.

2. The Regional Court in Kędzierzyn-Koźle (Circuit Court in Głubczyce), considering a case on determining the acquisition of an estate (*Ref. No I Ns 55/99G*) from a testator who died on 14 August 1980, decided on the basis of Article 193 of the Constitution to submit the following legal question to the Constitutional Tribunal: whether Article 1058, 1059, 1086, and 1087 of the Civil Code conform to Article 64 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution, and whether Article 1063 of the Civil Code in the text prior to the change imparted by the Act of 26 March 1982 on an amendment to the Act – Civil Code and on a repeal of the Act Regulating Ownership of Farms (Journal of Laws – Dz.U. No. 11, item 81), and applicable to estates opened prior to 6 April 1982, in connection with Article 2 of this Act, conforms to Article 64 paragraph 1 and 3 in connection with Article 21 and Article 31 paragraph 3 of the Constitution.

The District Court provided the following statement of reasons for the submitting of the legal question:

Article 21 paragraph 1 of the Constitution professes the principle of the protection of ownership and succession. This is a „mandate for the state authorities to formulate legal rules which do not encumber but, on the contrary, protect the implementation of ownership and a succession of rights and duties in inheritance.” As far as the protection of ownership and the right of succession are concerned, a particular norm is Article 64 of the Constitution which, in paragraph 2, establishes the substantive equality of this protection.

As part of the systemic changes in Poland in 1990, a considerable reform was made to the provisions of the Civil Code, which included the abolition of the division of property into social, individual and personal. The legislator also abolished all restrictions on requirements vis-a-vis persons who acquire agricultural property (such as the possession of farming qualifications), the size of property and the requirement whereby a farm created out a seller's previous farm should be capable of agricultural output. A free testamentary disposal by a testator of a farm belonging to an estate was

also reintroduced. However, the legislator retained the restrictions regarding the inheritance of a farm and land contributions by statute. These rules are a leftover from the „previous political era.”

Restrictions regarding the inheritance of farms and land contributions have no justification on the basis of Article 31 paragraph 3 of the Constitution. After all, they cannot be justified by the need to protect state security and the public order, the environment, health and public morals. Neither can they be justified by the need to protect the rights of third parties. In particular, one cannot refer here to the protection of the rights of third parties who maintain the inherited farm and for whom this farm is the primary source of income. This purpose has not been attained by the detailed provisions governing the inheritance of farms, for the legislator failed to introduce the principle whereby priority in the inheritance of a farm goes to those persons for whom employment at this farm is their primary source of income. It suffices to show that one has vocational qualifications to engage in agricultural production, or is engaged in agricultural output at any farm, or engaged in vocational education even if such education diverges widely from the farming profession, or that one is a minor or permanently incapable of work. The circle of persons entitled to inherit a farm turns out to be a group of privileged persons „selected on the basis of rather arbitrary criteria”.

In turn, restrictions on the inheritance of land contribution are an anachronism from the days when cooperative ownership ruled. These regulations are merely intended to protect the interests of agricultural production cooperatives by making sure that land contributions are inherited solely by persons who wish to keep this land in the cooperative. Such a construction goes against the principle of equal legal protection for all heirs. The interests of cooperatives cannot come before the rights of heirs.

An assessment of the specific regulations governing the inheritance of a farm require an examination of Article 23 of the Constitution, from which it emerges that by protecting the family farm, the legislator cannot infringe the rights of ownership, inheritance and freedom of economic activity.

According to Article 1063 § 1 of the Civil Code, in the text in force prior to the change imparted by the Act of 26 March 1982 on an amendment to the Act – the Civil Code and on a repeal of the Act on regulating the ownership of farms: „If neither the testator’s spouse nor any of his relatives nominated to inherit a farm do not satisfy the criteria for inheriting the farm, the farm shall go to the State Treasury as the statutory heir.” In no way can these rules be reconciled with the democratic order of a state ruled by law which affords absolute protection of the right of ownership and succession and realises the principles of social justice. Such an assessment is not altered by the fact that in Article 15 of the Act of 28 July 1990 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 55, item 321) the legislator introduced a clause entitling the sole owner of component farm land which, prior to 6 April 1982 the State Treasury acquired by statute from his testator or his ascendant, to demand a gratuitous transfer of the ownership of this property, for this entitlement is restricted to a certain circle of people.

3. The District Court in Włocławek (Department I for Civil Cases), considering a case on determining the acquisition of an estate from a testator who died on 5 February 1999, decided on the basis of Article 193 of the Constitution to submit the following legal question to the Constitutional Tribunal: whether Article 1058, 1059, 1060 and 1064 of the Civil Code and of the Ordinance of the Council of Ministers of 12 December 1990 on the Conditions Governing the Statutory Inheritance of Farms

(Journal of Laws – Dz.U. No. 89, item 519) conform to Article 21 paragraph 1 and Article 64 paragraph 1, 2 and 3, Article 31 paragraph 3, Article 32 paragraph 1 and Article 37 of the Constitution and Article 1 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms.

The District Court provided the following statement of reasons for the submitting of the legal question:

The challenged provisions of the Civil Code interfere into the law of succession. This interference consists in the addition of an extra condition which must be fulfilled by heirs in order to inherit a farm belonging to the estate. This restriction applies only to statutory succession, because in the case of testamentary succession the legislator did not introduce any additional conditions restricting the inheritance of farms. Such a division into statutory and testamentary inheritance is in breach of the principle professed in Article 32 paragraph 1 of the Constitution, and is also not justified by Article 31 paragraph 3 thereof.

The legislator's interference in individual rights and freedoms by means of this challenged regulation possesses a further two aspects. First, the right of succession is taken away without any compensation to offset the loss caused by the exclusion of a farm from the estate. Second, the current legal regulations (Article XXIII of the Act of 23 April 1964 – Regulations introducing the Civil Code; Journal of Laws – Dz.U. No. 16, item 94) discriminate Polish citizens vis-a-vis foreigners because only foreign heirs are entitled to compensation in the form of the pecuniary value of the amount of the estate they would have received. Such a regulation, discriminatory vis-a-vis Polish citizens, is in breach of Article 37 of the Constitution which sets forth equal legal status between foreigners and Polish citizens.

Article 64 paragraphs 1 and 2 of the Constitution list the rights that are subject to protection: the right of ownership, other property rights and the right of succession. However, Article 64 paragraph 3 of the Constitution provides that only the right of ownership may be restricted under law. This raises doubts whether the right of succession may be legally restricted at all.

The challenged provisions do not conform to Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms because the more stringent requirements vis-a-vis heirs due to inherit a farm by statute are not justified by any public interests. The jurisdiction of the European Court of Human Rights includes the right of succession in broadly-conceived rights of ownership, which is why the abovementioned provision of Protocol No. 1 also protects the right of succession.

A verification of the norm introduced in Article 1058 and 1059 of the Civil Code and the provisions of the Ordinance of the Council of Ministers of 12 December 1990 should be made through considering whether the legislator has adhered to the requirement of preserving the statutory form (formal requirement stemming from Article 31 paragraph 3 of the Constitution) and the requirement of necessity (substantive requirement stemming from Article 31 paragraph 3 of the Constitution) of the introduced restrictions.

The fulfilment of the aforementioned formal requirement raises doubts in the case of the provisions contained in the Ordinance of the Council of Ministers of 12 December 1990. This Ordinance was issued on the basis of Article 1064 of the Civil Code in a text regulated by Article 116 of the Act of 28 July 1990. The fact that the legislator resorts to sub-statutory material restricting human rights and freedoms cannot be considered in conformity with Article 31 paragraph 3 of the Constitution. Although the formal criteria restricting the inheritance of farms are set forth in Article 1059 of the Civil Code, it is the provisions of the Ordinance of the Council of

Ministers of 12 December 1990 which enable the court making a proper assessment of whether or not an heir has fulfilled the conditions for inheriting a farm which forms part of an estate. Thus, the burden of the regulations which restrict individual rights rests on the executive principles in this case.

The criterion of „necessity in a democratic state” (Article 31 paragraph 3 of the Constitution) possesses fundamental importance for an assessment of the constitutional conformity of the challenged regulations. The point of departure is to determine the purpose of the challenged regulation. The current rules governing the inheritance of farms stem from the Act of 29 June 1963 on a Restriction of the Division of Farms (Journal of Laws – Dz.U. No. 28, item 168) and the Ordinance of the Council of Ministers of 19 July 1963 on a Restriction of the Division of Farms (Journal of Laws – Dz.U. No. 36, item 208), issued on the basis of this Act. The reasons for introducing such a system of succession were political, and were basically intended to eliminate private ownership. The official motive for introducing such rules governing the inheritance of farms was to counteract the parcellation of farms and protect farmers’ jobs. This latter objective is obvious and merits approval, because farms that are too small are unable to meet the requirements of a competitive market economy. However, the aforementioned motives have no strict functional connection with the values set forth in Article 31 paragraph 3 of the Constitution. Rather, these motives are connected with an aim to fulfil a certain social and economic vision.

The challenged principles also lead to an infringement of the essence of the law of succession because the legislator decided to deprive some heirs of their right to receive a part of an estate inherited under general principles.

4. In a letter of 27 September 1999, the Commissioner for Citizens’ Rights submitted an application to determine the nonconformity of Article 1058, 1059, 1060, 1062, 1063, 1064, 1066, 1079, 1081, 1082, 1086 and 1087 of the Civil Code to Article 64 paragraph 1 and 2 in connection with Article 21 paragraph 1 and Article 31 paragraph 3 of the Constitution.

He provided the following statement of reasons:

Title X of book IV of the Civil Code contains specific provisions dealing with the statutory inheritance of farms and land contributions to agricultural production cooperatives. These rules do not treat succession as a uniform estate which is transferred to heirs by way of universal succession, for a farm (land contribution) constitutes separate property whose order of succession may be, but need not be, identical to that of the remainder of the estate. This principle is expressed in Article 1058 and 1066 of the Civil Code.

The reason for introducing different principles governing the inheritance of farms was a desire to realise the postulate whereby land should remain in the hands of working farmers who possess specified qualifications to operate a farm, regarded as a farmer’s workshop. The specific order of succession governing farms was designed to protect such a workshop (compare for example. A. Stelmachowski, B. Zdziennicki, *Prawo rolne* [Agricultural Law], Warszawa 1987, p. 235). Already in the Act Restricting the Division of Farms, it was decided to dispense with the equality of the property rights of all heirs in order to pursue specific agricultural policy objectives. One of these objectives was also – as far as the inheritance of land contributions in agricultural production cooperatives is concerned – to afford increased protection for cooperative ownership at the expense of private ownership.

As justification for the above adopted solutions, the legislator referred to the Constitution of the Polish People’s Republic of 22 July 1952 which, in Article 15

subparagraph 3 (in the text imparted by Article 1 subparagraph 3 of the Act of 20 July 1983 on an amendment to the Constitution of the Polish People's Republic (Journal of Laws – Dz.U. No. 39, item 175) said that the state, „anxious to feed the nation, affords particular care to the private family farms of working peasants, guarantees the permanence of these farms ” and „renders support and assistance (...) to agricultural production cooperatives ” (Article 15 subparagraph 4), whereas Article 17 said: „The Polish People's Republic acknowledges and protects, on the basis of the laws in force, private ownership and the right to inherit land, buildings and other factors of production belonging to the peasants.”

A restriction on the right to the statutory inheritance of farms and land contributions to agricultural production cooperatives cannot be reconciled with Article 21 paragraph 1 and Article 64 paragraph 1 and 2 of the Constitution. Article 21 paragraph 1 of the Constitution professes the principle of the legal protection of the right of succession. This principle is confirmed in Article 64 paragraph 2 of the Constitution, which assures everyone equal protection of the right of succession. Therefore this protection cannot differ according to the addressee of a given law. One cannot agree to such rules which restrict the right to succession according to the specific features of heir, as well as according to theoretical and practical qualifications for operating a farm, membership of a co-operative, age and work capability.

The law on succession is not absolute. It may be restricted, but only in the cases mentioned in Article 31 paragraph 3 of the Constitution. But none of the cases indicated in this article justify restricting the inheritance of a farm or land contribution to an agricultural production cooperative vis-a-vis the persons mentioned in Article 1059 and 1087 of the Civil Code, for no significant elements of the public good discussed in Article 31 paragraph 3 of the Constitution would be jeopardised if the statutory inheritance of farms (land contributions) occurred according to general principles.

In extreme cases, when a farm (land contribution) takes up the entire estate and the heir is not qualified to inherit this farm (land contribution) by statute, he is deprived of the right to inherit the entire estate. Such a state of affairs violates the essence of the law, which remains in contradiction to Article 31 paragraph 3 of the Constitution.

Also, Article 1066 of the Civil Code infringes the aforementioned constitutional principles because when the acquisition of an estate is determined, it provides that those heirs inheriting by statute under general principles be mentioned separately from those inheriting a farm (land contribution) by statute.

Article 1058 and 1086 of the Civil Code are also contrary to the Constitution because they envisage different forms of protection of the right of succession.

The constitutional non-conformity of the remaining provisions of the Civil Code, i.e. Article 1060, 1062, 1063, 1064, 1079, 1081 and 1082, is merely the result of the non-conformity of Article 1058, 1059, 1066, 1086 and 1087 of the Civil Code.

5.A. In a letter of 13 September 1999, the Public Prosecutor-General related to legal question from the District Courts in Olsztyn and Kędzierzyn-Koźle. He said that: 1) Article 1058-1060, 1062-1064, 1066-1067, 1070, 1079, 1081-1082, 1086-1087 of the Civil Code do not conform to Article 21 paragraph 1, Article 31 paragraph 3, Article 32 and Article 64 paragraph 1 and 2 of the Constitution, 2) Article 1063 of the Civil Code in the text in force prior to the change imparted by the Act of 1982, which applies to estates opened prior to 6 April 1982 on the basis of Article 2 § 1 of this Act, does not conform to Article 21 paragraph 1, Article 64 paragraph 1 and 2 and Article 31 paragraph 3 of the Constitution.

The Public Prosecutor-General based his statement of reasons on the following arguments:

The constitutional regulation of the right of succession is contained in Article 21 paragraph 1 and Article 64 paragraph 1 and 2, which clearly show that the legislator combines the right of succession closely with the right of ownership. Disposal in the event of death is one of the attributes of the right of ownership. One should search for the designation of the concept „right of succession” in this context. This concept should be understood not only as the very fact of succession on the basis of a will or act, but also the duty on the part of the state authorities to protect all the rights inseparably connected with succession (bequests, compulsory portion of an estate) and the duty to establish and secure appropriate procedures intended to determine the acquisition of an estate and protect the heir and the division of the estate. Furthermore, Article 21 paragraph 1 of the Constitution enforces the application of a right which complies with the wish of the heir. When establishing the instruments of the law of succession, the legislator should aim to strengthen family bonds (*judgement by the Constitutional Tribunal of 25 February 1999, Ref. No. K. 23/98, Official collection of Constitutional Tribunal’s Decisions – OTK ZU No. 2/1999, item 25*), whereby succession cannot be restricted to ownership within the meaning of Article 140 of the Civil Code. The subject of succession according to Article 922 of the Civil Code are the property rights and duties of the testator, which is closer to the definition of property set forth in Article 44 of the Civil Code.

The law of succession, just like the law of ownership, is not absolute. The basis for restricting the right of ownership is Article 64 paragraph 3 of the Constitution. Furthermore, restrictions on the use of constitutional rights and freedoms have been imposed by Article 31 paragraph 3 of the Constitution. There is no doubt that the questioned provisions of the Civil Code fulfil one of the formal prerequisites in Article 31 paragraph 3 of the Constitution, namely the requirement to preserve a statutory form. What needs to be considered is whether these provisions fulfil the substantive criteria of the permissibility of restrictions.

The preservation of restrictions on the inheritance of farms by statute, with a simultaneous freedom of the disposal of agricultural property *inter vivos* and the freedom of testamentary disposal of agricultural property (see the Act of 1990 Amending the Act – the Civil Code) illustrates a lack of consistency on the part of the legislator and makes the legal system in this sphere incohesive. Only if such a system is cohesive and functional can the objectives of the legislator, aimed at restricting the statutory inheritance of farms, be attained. The existing disharmony of the legal system makes the purpose of these restrictions hard to define. If the intention of the legislator when Amending Civil Code in 1990 was to introduce the freedom of trade in agricultural property, the continuation of restrictions on the inheritance of farms is contrary to this intention. But if the objectives set by the legislator were meant to protect the integrity of farms, they could be frustrated by drawing up a will or by legally disposing of a farm *inter vivos*, which is not subject to restrictions on account of the agricultural qualifications of the heir (buyer). The remaining prerequisites for the inheritance of farms mentioned in Article 1059 subparagraphs 3 and 4 possess social nature, therefore they do not remain in connection with the aforementioned objective. For these reasons, one cannot talk of a „necessity” of restrictions (resulting from the principle of proportionality referred to in Article 31 paragraph 3 of the Constitution) on the inheritance of farms. Apart from that, even if we assume that the purpose of the challenged regulation is to protect the integrity of farms, the premises of the restrictions on the inheritance of these farms set forth in Article 1059 of the Civil Code remain in disproportion to this purpose.

The nature of the premises governing the restrictions on the right to a statutory inheritance of a land contribution in an agricultural production cooperative (Article 1087 § 1 subparagraph 1 and § 2 of the Civil Code) clearly shows that these restrictions were created to protect the interests of the cooperatives (their members). Such a purpose does not conform to the catalogue of purposes listed in Article 31 paragraph 3 of the Constitution. It has no social or economic justification. The object of an agricultural production cooperative is not just the operation of a common farm, but also activity for the sake of private farms, the cooperative's members, and other business activity, which not only does not have to be connected with running a farm, but does not have to be connected with agriculture at all (Article 138 of the Act of 16 September 1982 – the Cooperative Law; consolidated text of 1995, Journal of Laws – Dz.U. No. 54, item 288, subsequently amended). Apart from that, in practice the criteria set forth in Article 1087 of the Civil Code compel a cooperative's successors to join an agricultural production cooperative, which contradicts the principle of voluntary membership (Article 1 § 1 of the Cooperative Law).

The aforementioned arguments illustrate non-conformity of Article 1058, 1059, 1086 and 1087 of the Civil Code to Article 21 paragraph 1, Article 64 paragraph 1 and Article 31 paragraph 1 of the Constitution.

These provisions also infringe the constitutional principle of an equal protection of the right of succession for everyone. The group of heirs distinguished by virtue of a significant common characteristic applies to all heirs entitled to receive an estate comprising a farm (contribution to an agricultural production cooperative). The principle of equality compels the legislator „when establishing particular terms governing succession and in order to protect the subject of the succession (regardless of the premises), to afford equal treatment to all entities in this category, whether the basis of succession is a will or a statute.” In the current legal situation, heirs who are in the same situation, i.e. do not satisfy the conditions set forth in Article 1059 and 1087 of the Civil Code, inherit a farm (land contribution to an agricultural production cooperative) only when the basis of inheritance is a will. Such a differentiation between heirs has no objective or rational justification, is unfair and therefore does not conform to Article 64 paragraph 2 and Article 32 of the Constitution.

If the Constitutional Tribunal decides that Article 1058, 1059, 1086 i 1087 of the Civil Code do not conform to the Constitution, the remaining detailed provisions governing the inheritance of farms lose their *raison d'être*. These remaining provisions do not stand alone, but merely regulate detailed issues. This assessment is not altered by the fact that Article 1067 and 1070 of the Civil Code refer not only to statutory inheritance, but also to testamentary inheritance. If a farm (land contribution to an agricultural production cooperative) ceases to be a separate part of an estate, these provisions become superfluous.

Article 1063 of the Civil Code in the version in force prior to 6 April 1982 envisaged the possibility of the State Treasury inheriting a farm in certain cases. This possibility was eliminated by the Act of 1982 on an amendment to the Act – the Civil Code. In order to remove the effects of this legal provision, the legislator introduced, in the Act of 1990 on an amendment to the Act – the Civil Code, detailed provisions which defined the basis on which the persons listed in these provisions may demand from the State Treasury a gratuitous transfer to them of property which forms part of a farm (land contribution to an agricultural production cooperative); Article 15 of the Act of 1990 on an amendment to the Act – the Civil Code). However, this entitlement was limited to a certain group of people; independent owners and people who satisfy the conditions to inherit a farm in force on the date on which the Act of 1990 on an amendment to the Act – the Civil Code took effect. Such a formulation of the law is

an expression of the inconsistency of the legislator and does not conform to Article 21 paragraph 1, Article 64 and Article 31 paragraph 3 of the Constitution for the same reasons which were cited to explain the unconstitutional nature of Article 1058, 1059, 1086 and 1087 of the Civil Code.

B. In a letter of 19 October 1999, the Public Prosecutor-General related to an application from the Commissioner for Citizens' Rights saying that Article 1058, 1059, 1060, 1062, 1063, 1064, 1066, 1079, 1081, 1082, 1086 and 1087 do not conform to Article 21 paragraph 1, Article 64 paragraph 1 and 2 and Article 31 paragraph 3 of the Constitution. Furthermore, the Public Prosecutor-General modified his stance expressed in a letter of 13 September 1999 by moving for a discontinuation of that part of the proceedings linked to Article 1067 i 1070 of the Civil Code on the basis of Article 39 paragraph 1 subparagraph 1 of the Constitutional Tribunal Act.

As to the charge whereby Article 1058, 1059, 1060, 1062, 1063, 1064, 1066, 1079, 1081, 1082, 1086 and 1087 of the Civil Code are unconstitutional, the Public Prosecutor-General upheld the statement of reasons that he provided in his letter of 13 September 1999.

The Public Prosecutor-General explained his motion to discontinue that part of the proceedings linked to Article 1067 and 1070 thus: Article 1067 and 1070 of the Civil Code were challenged in a legal question submitted by the District Court in Olsztyn, which was placed before the Constitutional Tribunal in connection with a case on determining the acquisition of an estate. Under the terms of Article 193 of the Constitution, the subject of a legal question can only be „the kind of doubt as to the conformity of the law with the Constitution” which has raised itself during specific proceedings and which is „important for the further course of these proceedings.” However, the subject of the legal regulation contained in Article 1067 and 1070 of the Civil Code does not concern the proceedings taking place before the District Court in Olsztyn – therefore they exceed the bounds of the legal question.

6. In a letter of 23 December 1999, the Chairman of the Council of Ministers related to the charges contained in a legal question submitted by the District Court in Włocławek, in particular those referring to Article 1064 of the Civil Code and the Ordinance of the Council of Ministers of 12 December 1990. The Chairman of the Council of Ministers said that these charges are justified.

The Chairman of the Council of Ministers provided the following statement of reasons:

The contents of Article 1064 of the Civil Code clearly indicate that the Council of Ministers was empowered to add substance to the general premises contained in the purport of Article 1059 of the Civil Code regarding the general ability to inherit farms (save for the premises contained in subparagraph 5). This adding of substance is crucial in determining the inheritance or exclusion from the right to inherit a farm. In this way, the statutory authority restricting the right of succession is not absolute. The legislator conveyed the rights of individuals to be regulated in a legal instrument of a lower standing. For this reason, both the empowerment contained in Article 1064 of the Civil Code and the Ordinance issued on its basis do not conform to Article 31 paragraph 3 of the Constitution.

The challenged regulations also do not conform to Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms. According to this provision, state infringement upon the right of ownership is permissible, but it must be justified by public interests. Succession remains closely linked to the right of ownership. In Polish law, the public interests referred to in Article 1 of Protocol No. 1

are substantiated by the criteria which govern the permissibility of restrictions to rights and freedoms, including the right of inheritance, discussed in Article 31 paragraph 3 of the Constitution. Therefore the nonconformity of the challenged regulation under Article 31 paragraph 3 of the Constitution also causes nonconformity with the aforementioned provision of international law.

On the other hand, the charge that the challenged regulations do not conform to Article 37 is unjustified. This article is not a suitable model of control. The principle expressed in Article 37 of the Constitution is associated with the state's primacy over its citizens and over foreigners abiding on Polish territory. What is meant here is territorial and personal primacy (*Komentarz do Konstytucji RP* [Commentary to the Constitution of the Republic of Poland], ed. by J. Boć, Wrocław 1998, p. 77). The statement of reasons for the charge submitted by the District Court in Włocławek regarding this model of control suggests a discrimination of Polish citizens vis-a-vis foreigners. This charge has no substantive connection with the principle of primacy, all the more so because Article XXIII of the regulations introducing the Civil Code apply to foreigners wherever they live, in other words also those do not subject to the primacy of the Polish state, and its application depends on the existence of reciprocity with the country of which the foreigner-heir is a citizen.

7. In a letter of 12 April 2000, the Marshal of the Sejm provided explanations for the legal questions submitted by the District Courts in Olsztyn, Kędzierzyn-Koźle and Włocławek and in the application by the Commissioner for Citizens' Rights, stating that the charges expressed in all the legal questions and in the application are justified.

The Marshal of the Sejm stated that the detailed provisions of the Civil Code on the inheritance of farms do not conform to the principles of social justice, equality before the law, the protection of the right of inheritance and the principle whereby „everyone has the right to inherit.”

In the opinion of the Marshal of the Sejm, the challenged provisions interfere in the mechanism of succession, eliminating already at the outset those heirs who do not satisfy specific criteria. In concrete cases, they deprive direct statutory heirs of the most important components of the estate. According to the Marshal of the Sejm, these restrictions have lost their practical significance. Preserving them under conditions of a market economy is unjustified. Apart from that, the current legal situation gives rise to situations that are unfair.

8. By means of ordinances dated 21 July 1999, 1 October 1999 and 28 October 1999, the President of the Constitutional Tribunal merged the above legal questions and the application from the Commissioner for Citizens' Rights for the purpose of joint consideration.

II

At a hearing, the representatives of the parties to the proceedings upheld their positions expressed in the case letters.

The representatives of the District Courts in Kędzierzyn-Koźle and Olsztyn said that the subject of the submitted legal questions are provisions formulated according to the text that was in force before the Act of 1982 Amending the Act – the Civil Code came into force and, on account of the date of the opening of the inheritance, were applicable to the cases on determining the acquisition of an estate considered by these courts. The representative of the District Court in Włocławek admitted that the

jurisdiction of the European Court of Human Rights provides no basis on which to apply Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms to the protection of the right of succession. The representative of the District Court in Kędzierzyn-Koźle stressed that in cases to determine the acquisition of an estate in which a decision would be glaringly unfair, the court, referring to Article 8 paragraph 2 of the Constitution, did not apply the challenged provisions of the Civil Code, but adjudicated on the inheritance of a farm on the basis of the general provisions of the law of succession.

The representative of the Public Prosecutor-General said that the court is not empowered to refuse to apply an act which it considers to be not in conformity to the Constitution. He pointed out the legal and social consequences of considering the application and the legal questions. In particular, he indicated situations where an estate had been acquired prior to the promulgation of a judgement by the Constitutional Tribunal in this case, and where a decision on the acquisition of an estate had already been issued. A judgement on the unconstitutional nature of the questioned provisions will make it necessary to determine whether Article 190 paragraph 4 of the Constitution and, hypothetically, Article 679 of the Code of Civil Procedure, may provide the basis on which to renew proceedings in inheritance cases that have already been legally concluded.

III

The Constitutional Tribunal adjudicated as follows:

1. Before considering the questioned provisions of the Civil Code raised in the legal questions and in the application by the Commissioner for Citizens' Rights, it is expedient to present a concise development of the Polish law of succession regarding the inheritance of farms.

Successive stages of this development were marked by:

– the Act of 29 June 1963 on a Restriction of the Division of Farms (Journal of Laws – Dz.U. No. 28, item 168; hereinafter: Act of 1963),

– the Act – the Civil Code of 23 April 1964 (Journal of Laws – Dz.U. No. 16, item 93; hereinafter the „Civil Code”) together with the regulations introducing this Code (Act of 23 April 1964; Journal of Laws – Dz.U. No. 16, item 94; hereinafter: „Introductory Regulations”),

– the Act of 26 October 1971 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 27, item 252; hereinafter: „Amending Act of 1971”),

– the Act of 26 March 1982 on an amendment to the Act – the Civil Code and on a repeal of the Act on Regulating the Ownership of Farms (Journal of Laws – Dz.U. No. 11, item 81; hereinafter: „Amending Act of 1982”),

– the Act of 28 July 1990 on an amendment to the Act – the Civil Code (Journal of Laws – Dz.U. No. 55, item 321; hereinafter: „Amending Act of 1990”).

The Decree of 8 October 1946 on the Law of Succession (Journal of Laws – Dz.U. No. 60, item 328) did not contain any specific provisions regarding inheritance from someone who operated a farm. Perhaps the legislator shared the view expressed during the codification work in a period between the wars whereby the codification of the law of succession should include only the general provisions, and not those pertaining to a given social stratum, whereas the provisions regarding the inheritance of farms should be combined with the provisions that regulate the statutory transfer of such farms *inter vivos*. However, on the basis of Article 60 § 2 of this Decree, the division of property was banned if such a division conflicted with socio-economic

interests, expressed in Article 95 § 2 of the Decree on Substantive Law, also applied to the division of an estate. The Decree of 8 November 1946 on Inheritance Proceedings (Journal of Laws – Dz.U. No. 63, item 346) announced a separate Act containing „detailed regulations on the division of land.” Article 147 § 1 and Article 152 § 3 of this Decree made the division of land dependent on its compliance with socio-economic interests, whereas Article 162 § 1 and 2 stated to which heirs the land should be granted if its division was legally prohibited or undesirable for socio-economic reasons. While these provisions were still in force, guidelines regarding justice administration and court practice were released (*uchwała SN z 22 lutego 1960 r* [Supreme Court Resolution of 22 February 1960], *Ref. No. 1 Co 34/59*, Supreme Court’s Decisions – OSN CK 2/1960/31). Assuming that the interests of the people’s state, involving an increase in agricultural output, required a prevention of the division of small farms, the Supreme Court defined the minimum size of such farms which should be borne in mind when dividing an estate, and ruled that an estate should be granted to that heir who guaranteed a proper agricultural production of such a farm.

The Codification Commission, active from autumn 1956, also considered the problem of regulating the inheritance of farms. In the draft of 1961, special provisions were proposed regarding the division of estates which included farms. These proposals were incorporated in the draft Civil Code of 1962, with minor modifications.

However, different political decisions were reached during this time (by the XII Plenum of the Central Committee of the Polish United Workers’ Party). As a result of these decisions, the Act of 29 June 1963 on Restricting the Division of Farms was formulated beyond the Codification Commission’s control. This Act came into force on 5 July 1963. Its provisions were meant to encourage the spread of collective farms, and thus enable land to come into state ownership as a result of the action of the law of inheritance (see: *System prawa cywilnego. Prawo spadkowe* [The civil law system. The law of inheritance] Vol. IV, ed. J. St. Piątowski, Ossolineum 1986, p. 31 and 32, also A. Lichorowicz, *Nowy etap rozwoju polskiego modelu dziedziczenia gospodarstw rolnych* [A new stage of development of The Polish model of inheritance of farms] PiP 1991, vol. 11, p. 39; St. Piątowski, B. Kordasiewicz, *Dziedziczenie gospodarstw rolnych de lege ferenda* (The inheritance of state farms de lege ferenda) PiP 1981, vol. 8, p. 59). This Act made inheritance itself dependent on detailed (and even casuistically) formulated conditions regarding the heir (Article 5 of the Act of 1963). An heir who did not fulfil these conditions did not inherit the estate, even though he was entitled to do so on the basis of the general provisions of the Act on succession of 1946 which was then in force. The fulfilment of certain criteria was also the condition for receiving a farm as a result of the division of an estate (Article 7 of the Act of 1963). If there were no heirs entitled to inherit a farm, it went to the state as the statutory heir (Article 6 of the Act). The severity of these provisions „was not dictated by the legislator’s concern for the protection of farms, but by political motives” (A. Lichorowicz, A new stage... p. 39).

Taking into account a motion from the government, the Sejm decided to include the solutions adopted in the Act of 1963 into the Civil Code. (J. Wasilkowski, *Uchwalenie Kodeksu Cywilnego* [Adoption of the Act – Civil Code] NP 1964, No. 6, p. 567). The terms of that Act were included in the Civil Code in a gentler and, from the point of view of legislative technique, much improved form. They were contained in title X book IV of the Civil Code, headed „Detailed regulations regarding the inheritance of farms”. This heading is misleading because title X deals not only with inheritance, but also with other problems of the law of succession, including farms

and land contributions to agricultural production cooperatives. The modifications to the provisions adopted in the Act of 1963 concerned cases where the successors first in line cannot inherit a farm by statute because they do not satisfy the necessary conditions. In such cases, successors further in line could inherit the farm, provided that they satisfied, usually more stringent, conditions (Article 1060 § 2 and Article 1062 § 2 of the Civil Code, see also Article 1061 of the Civil Code). On the other hand, the group of heirs entitled to inherit a farm by statute was limited by excluding descendants of the testator further removed than his grandsons (Article 1060 § 1 of the Civil Code) and descendants of his brothers and sisters (Article 1062 § 3 of the Civil Code) – which made it more possible for the State to inherit. Apart from that, the Civil Code was furnished with detailed regulations on the inheritance of land contributions made to agricultural production cooperatives (Articles 1086-1088 of the Civil Code).

The Supreme Court realised that the norms expounded in these provisions were „obviously connected with the agricultural restructuring of the countries belonging to the socialist block” and stressed that „there is no doubt that the Polish provisions on the inheritance of farms are part of the rules and regulations that are geared towards a socialist restructuring of the agricultural system, and therefore an establishment of a socio-economic order that corresponds to the aims and tasks of the People’s State ” (*Supreme Court judgement of 28 May 1969, III CZP 23/69*, Supreme Court’s Decisions – OSN 1970, vol. 1, item 3).

Successive amendments of the Civil Code, carried out after „political meandering” in the history of the Polish People’s Republic, brought a gradual liberalisation of the rules on inheriting farms.

The Amending Act of 1971 modified some rules governing the inheritance of farms by a testator’s children (Article 1059 § 1 subparagraph 1 of the Civil Code in the text imparted by the Amending Act of 1971), grandchildren (Article 1060 § 2 of the Civil Code in the text imparted by the Amending Act of 1971) and brothers and sisters (Article 1062 § 2 of the Civil Code in the text imparted by the Amending Act of 1971). Furthermore, it expanded the group of people entitled to inherit a farm by statute by including children of the testator’s brothers and sisters (Article 1062 § 3 of the Civil Code). The Amending Act of 1971, unlike the original text of the Civil Code, also permitted the inheritance of a farm by an heir who was permanently incapable of work but who was capable of running it with the help of a relative (Article 1063 § 3 of the Civil Code in the text imparted by the Amending Act of 1971). To a certain extent, this limited the state’s possibilities of inheriting a farm (*System...*, p. 35).

Significant changes were brought by the Amending Act of 1982. Firstly, the legislator permitted the inheritance of a farm by all persons belonging, under the general principles, to the group of statutory heirs provided that they fulfilled the necessary conditions (Article 1059, 1060, 1062 of the Civil Code in the text imparted by the Amending Act of 1982). Secondly, the conditions for inheriting a farm were formulated generally, without the hitherto casuistics, in principle uniformly for all heirs. Apart from that, the Amending Act of 1982 dispensed with the objective of nationalising agriculture. Under the terms of Article 1063 of the Civil Code in the version established by the Amending Act of 1982, if no heir satisfied the conditions for inheriting a farm or if the only entitled heirs were persons permanently incapable of work at the time of the opening of the inheritance, the farm was passed to the heirs under the general principles.

The amendment of the Civil Code carried out by the Amending Act of 1990 made the order of inheriting a farm even less stringent. By abolishing Article 1071-

1073 of the Civil Code in the version hitherto in force (Article 1 subparagraph 121 of the Amending Act of 1990) abolished the requirement of fulfilling certain conditions for the inheritance of a farm also at the stage of division of the estate (see A. Lichorowicz, *A new stage...*, p. 40). It also restricted the application of detailed rules on inheriting a farm only to those farms with a surface area of more than 1 ha (Article 1058 of the Civil Code in the text imparted by the Amending Act of 1990). The Amending Act of 1990 abolished the rules restricting the testamentary inheritance of farms (Article 1 subparagraph 117 of the Amending Act of 1990), as well as the general rules relating to a transfer of agricultural property *inter vivos* (Article 1 subparagraph 29 of the Amending Act of 1990). Legal literature agrees that this amendment has revealed the lack of cohesion that characterises the current regulations concerning trade in agricultural property (see for instance. A. Lichorowicz, *Uwagi w kwestii reformy aktualnego modelu dziedziczenia gospodarstw rolnych* [Remarks on the reform to the current model of inheriting farms] [in] *Prace z prawa prywatnego. Księga pamiątkowa ku czci Sędziego Jana Pietrzykowskiego*, [Treatises on private law, Book in memory of Judge Jan Pietrzykowski] Warszawa 2000, p. 149 and 151; *O nowy kształt obrotu nieruchomościami rolnymi w kodeksie cywilnym* [For a new shape to trade in agricultural property in the Civil Code] *Rejent* 1997, No. 6, p. 47 and 48; E. Skowrońska, *Kilka uwag o nowelizacji prawa spadkowego*, [A few remarks on Amending the law on inheritance] *Palestra* 1991, vols. 1-2, p 18 and 19).

Summing up, it should be noticed that despite numerous changes, the legislator has not abandoned a separate (detailed) regulation of the subject matter of the law on succession governing estates which consist of a farm or a land contribution to an agricultural production cooperative. The rules governing such estates retain criteria which deprive some statutory heirs of the possibility of acquiring a farm (or land contribution to an agricultural production cooperative) not only at the stage of the division of the estate, but already at the stage of nomination to inherit the estate. Although these regulations do not narrow down the circle of a testator's heirs entitled to inherit a farm by statute, but due to the provisions of Article 1059, 1060 and 1062 of the Civil Code (and also Article 1087 of the Civil Code) the circle of statutory heirs entitled to inherit this estate may differ from the circle of heirs inheriting it on the basis of the general principles governing the statutory inheritance of the „entire” estate. For not every heir nominated to inherit in a given situation qualifies for the statutory inheritance of a farm (or land contribution to an agricultural production cooperative) that forms part of the estate.

2. Parallel to the development of detailed regulations governing the inheritance of an estate comprising a farm (or land contribution to an agricultural production cooperative), changes have also occurred to the accompanying regulations which set forth the period of their application.

The Act of 1963 came into force on 5 July 1993. Its provisions were largely made retroactive. Under the terms of Article 24 paragraph 1 of this Act, its provisions also apply to estates opened before the Act came into force, unless successive provisions state otherwise (Article 24 paragraphs 2-8).

The Civil Code came into force on 1 January 1965, but Articles 1058-1088 (detailed regulations governing the inheritance of farms, including land contributions to agricultural production cooperatives) came into force on the date of promulgation, i.e. 18 May 1964 (Article I of the Introductory Regulations). Articles 1058-1088 were given retroactive force (to the extent discussed in Article LV – Article LXIII of the Introductory Regulations).

According to Article LV § 1 of the Introductory Regulations, the provisions of the Civil Code applied to the inheritance of a farm belonging to an estate that was opened before the Code came into force, unless further provisions of the Introductory Regulations state otherwise. The situations excluded from the retroactive force of the detailed regulations governing the inheritance of farms have been set forth in Article LVI and LVII of the Introductory Regulations. But if the inheritance was opened after 4 July 1963, the provisions of the Civil Code (including the detailed regulations governing the inheritance of farms) were applied without modification (Article LI of the Introductory Regulations).

In connection with the retroactive effect of the detailed regulations governing the inheritance of farms, in Article LVIII of the Introductory Regulations the legal force of the provisions determining the acquisition of a farm forming part of the estate had been eliminated (save for situations where a testator had died before these provisions took effect) and the mandate had been abolished, and they had to be adapted to the new regulations.

One can add that court practice, referring to the provisions, non-conformant to statutory instructions, of the Civil Code regarding legal turnover with foreign countries, introduced by means of an Ordinance of the Minister of Justice dated 10 December 1966 and 25 January 1970, made the detailed provisions regarding the inheritance of farms also applicable to the estates of foreign citizens.

The amendments of the provisions of the Civil Code on an inheritance of farms made by the Act of 1971 were also given retroactive force. The Amending Act came into force on the date of its promulgation, i.e. 4 November 1971. But the provisions of the Civil Code in the text imparted by this Act were applied to the inheritance of a farm belonging to an estate opened prior to the date on which the Amending Act of 1971 came into force, unless the estate has already been divided prior to that day (Article 2 § 1 of the Amending Act of 1971), whereas as far as estates opened prior to 5 July 1963 are concerned, modifications resulting from the regulations introducing the Civil Code are also taken into consideration.

Under the terms of Article 2 § 1 of the Amending Act of 1982, the provisions of the Civil Code in the version imparted by this Act were applied to estates opened before this Act came into force, i.e. 6 April 1982 (the date of promulgation). This time, the legislator adopted a regulation that conforms to international regulations governing inheritance issues, expressed in Article LI of the Introductory Regulations. This regulation called for the application of the law that was in force at the moment of the testator's death.

The Amending Act of 1990 came into force on 1 October 1990. According to Article 14 paragraph 1, the provisions of the Civil Code in the version imparted by this Act apply to estates opened from the date on which this Act came into force. The division of estates which include a farm or land contribution to an agricultural production cooperative is governed by the rules in force on the date of the event (Article 14 paragraph 2 of the Amending Act of 1990).

As a result of the above changes, several versions of regulations on the inheritance of farms are currently applied, depending on when the estate has been opened. Thus, as far as the inheritance of farms is concerned:

- the rules imparted by the Amending Act of 1971 apply to estates opened prior to 4 November 1971, unless the estate was already divided prior to that day (taking into account the modifications contained in Article LVI et seq. of the Introductory Regulations), as well as to estates opened between 4 November 1971 and 5 April 1982,
- the rules imparted by the Amending Act of 1982 apply to estates opened

between 6 April 1982 and 30 September 1990,

– the rules imparted by the Amending Act of 1990 apply to estates opened after 30 September 1990.

3. The legal questions submitted by the District Courts in Olsztyn and Kedzierzyn-Koźle concern the rules that apply to the cases, considered by these courts, to determine the acquisition of an estate. The point here is the text which these regulations were given by the Amending Act of 1971. As was shown above – the amendments of 1982 and 1990 have changed the text of these regulations, while retaining their previous numbering. This makes it necessary to determine if the previous texts of these regulations can be checked to see if they conform to the Constitution, because, according to Article 39 paragraph 1 subparagraph 3 of the Constitutional Tribunal Act, when a normative Act in the sphere in question has become void prior to the issue of a judgement by the Constitutional Tribunal, proceedings are discontinued. The problem consists in answering the question whether the challenged regulations can be included among the regulations that remain „in force” on the date of issue of this judgement by the Constitutional Tribunal.

In this question, the Constitutional Tribunal, adjudicating in a full bench, upholds the stance it has expressed in numerous earlier judgements whereby a regulation possesses the force of law as long as individual deeds of application of the law are or may be performed on its basis, and loses its force of law, as a condition for the discontinuation of proceedings before the Constitutional Tribunal, only when it cannot be applied to any factual situation.

When considering whether this provision may still be applied and still retains its legal force, one should guide oneself by the substantive purport of the transitional norm. Such norms – demarcating the period of application of successively valid provisions by indicating which of them should be applied in a given situation – are usually set forth in the transitional (temporary and adjusting) regulations that accompany legal instruments which repeal earlier ones. Such norms should also be taken into account when a new provision alters the text of a previous one completely or partly, resulting in a new text of the legal principle expressed therein.

Taking into account the purport of intertemporal norms which are important for the matters regulated by the provisions challenged in the legal questions we are examining, we must accept that the basis for resolving cases on determining the acquisition of an estate during which these questions were raised is provided by the rules that were in force on the day on which the estate was opened, in other words the day on which the testator died. For this reason, we must accept that these provisions have not lost their legal force within the meaning of Article 39 paragraph 1 subparagraph 3 of the Constitutional Tribunal Act. The text of these provisions at the time of the opening of the estate is the factor determining the text of the decisions contained in the judgement determining the acquisition of an estate, even if such a judgement is issued after a legislative change. Therefore there are no circumstances which justify a discontinuation of proceedings commenced as a result of the submission of a legal question on the subject thereof.

4. The above findings do not prejudice a decision concerning a further matter, which applies to the questioned regulations both in the text imparted to them by the Amending Act of 1971 and the current text imparted by the Amending Act of 1990. This matter concerns the fact that the questioned provisions have already caused the material-legal result envisaged in their contents, i.e. the acquisition of an estate by the heirs indicated therein. The application of these regulations during the current

proceedings to determine the acquisition of an estate is the result of the fact that these regulations form the basis for determining the presence of legal results which occurred on their basis at a certain point in time preceding the judgement. These results also occurred vis-a-vis estates opened prior to the date on which the current Constitution of the Republic of Poland came into force, i.e. prior to 17 October 1997. In this connection, the question arises whether the regulations whose text brought about the legal result envisaged in them may be assessed from the angle of their conformity to the Constitution, which was not in force on the date on which the legal results occurred. In the Constitutional Tribunal's opinion, such an assessment is admissible because the provisions which are claimed to violate the Constitution may also be applied during the period of the Constitution's validity by the authorities appointed to do so, and, in particular, may provide the legal basis for court judgements.

Against this background, a further problem emerges, whether a decision by the Constitutional Tribunal on the constitutional non-conformity of challenged provisions may result in the abolition of the material-legal results of the provisions. An answer to this problem is practically significant only if the Constitutional Tribunal decides that the challenged provision does not conform to the Constitution, therefore an answer is expedient only after the constitutional conformity of all the regulations challenged in this case has been considered.

The presented precepts provide a point of departure for assessing the conformity of the challenged regulations to the articles of the Constitution cited in the application and in the legal questions.

5. Such an assessment should be preceded by an expose of those articles of the Constitution which deal with the right of succession and by an examination, in the light of these articles, of the admissibility of the specific legal procedures for inheriting some objects.

The right of succession is dealt with in several regulations of a constitutional status, which refer to various aspects thereof.

Article 64 paragraph 1 of the Constitution, contained in chapter II setting forth the „Freedoms, rights and obligations of persons and citizens”, confirms everyone's „right of succession”, combining this with a guarantee of the „right of ownership” and „other property rights.” Paragraph 2 of this article provides equal legal protection regarding ownership, other property rights and the right of succession. Therefore without a doubt the right of succession is one of the constitutional common subjective rights. In turn, Article 21 paragraph 1 of the Constitution – contained in Chapter I bearing the title „The Republic” and containing provisions expressing the basic systemic principles, states that „The Republic of Poland shall protect ownership and the right of succession”. This provision clearly refers to the preceding Article 20, which recognises private ownership as one of the „pillars” on which the social market economy, the basis of Poland's economic system, rests.

The term „right of succession” appears in the Constitution always in conjunction with ownership (the right of ownership, the right to ownership). The Constitution contains provisions which talk of ownership but say nothing of succession (Article 165 paragraph 1, second sentence of the Constitution), but there is no provision that talks of succession but says nothing of ownership. This observation illustrates the close link between succession and ownership.

Article 64 paragraph 1 of the Constitution, read in the context of other provisions on the subject of succession (Article 64 paragraph 2 and Article 21 paragraph 1 of the Constitution) form the basis of public subjective law whose

content is the constitutionally guaranteed freedom to acquire, maintain and alienate the property. The disposal of property involves in particular the alienation thereof (in whole or in part) by means of actions *inter vivos* and *mortis causa* performed by a qualified person. The mention in Article 64 paragraph 1 and 2 of the Constitution of not only ownership, but also property rights and the right of succession, serves to underline the broad extent of the constitutional rights guaranteed by this article – by listing those features which, in the opinion of the authors of the Constitution, deserve emphasis. The constitutional subjective law based on this provision is one of those whose realisation requires a statutory regulation dealing not just with any restrictions thereto (as discussed in Article 31 paragraph 3 of the Constitution on the subject of general rights and freedoms and Article 64 paragraph 3 of the Constitution on the subject of ownership), but also – and even above all – its purport (comp. Article 14 paragraph 1 second sentence of the German Basic Law). A juxtaposition of Article 64 paragraph 1 and 2 on the one hand and Article 21 paragraph 1 on the other hand justifies the conclusion that the Constitution excludes the possibility of depriving ownership, the fullest property right, of the qualities of succession. However other property rights apart from ownership may, but need not be, formulated as hereditary rights, i.e. rights that do not expire at the moment of death of the natural person who is the subject of a given right. The wording of Article 64 paragraph 1 and 2 of the Constitution cannot provide the basis for claiming that the right of succession is not an ownership right.

The term „right of succession” used in the aforementioned provisions of the Constitution has no equivalent in the Polish Civil Code, which dispenses with this construction (significant is the replacement of the term „determination of the right to an estate”, which appeared in the 1946 decree on the law of succession, by the term „determination of the acquisition of an estate” in the Civil Code). In legal pronouncements, this term is used sporadically as a concise description of one’s rights vis-a-vis the component parts of an estate. Thus, the „right of succession” is an autonomous concept of constitutional law. It is worth remembering that this right was not mentioned in the pre-war Constitution. The term „right of succession” as part of the expression „ownership and the right of succession” did not appear until the 1952 Constitution (Article 12 and 13). The earlier declaration by the Legislative Sejm of 22 February 1947 included the "inviolability of the property of citizens” among basic rights and freedoms. Also, international legal instruments usually talk only of ownership (e.g.. Article 17 of the Universal Declaration on Human Rights of 1948 talks of each person’s „right of ownership”) or property (Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms). However, one can point out other international instruments which talk separately of the right of succession (e.g. Article 5 of the UN Convention of 7 March 1966 on the Elimination of All Forms of Racial Discrimination).

The concept of succession against the background of the aforementioned provisions of the Constitution should be understood in a broader context than that presented in book four of the current Civil Code, where it means a specific manner of transferring the property right and duties held by a natural person until the moment of his death to another person or persons. The use of this term in the Constitution does not mean that the Constitution insists that the concept of an estate understood as the general rights and duties that are the subject of inheritance should be adopted in the statutory regulations. Nor does the Constitution say anything about the mechanism whereby a natural person’s legal successors should enter into his rights and duties after the testator’s death.

From the point of view of Article 20 and Article 21 of the Constitution, the right

of succession is mainly a guarantee that ownership shall remain in private hands. From these provisions, together with Article 64 paragraph 1 and 2 of the Constitution, stems a mandate, addressed to the legislator, to provide statutory coverage of a certain sphere of topics associated with the death of a natural person. Succession constitutes a continuation of the right of ownership in an institutional sense, and is associated with the fact that the right of ownership due to a natural person cannot expire when that person dies, but should continue, which means transferring it to another person or persons. The constitutional guarantee of the right of succession possesses most of all a „negative” meaning, i.e. it justifies a ban on an arbitrary take-over by the state (or other public law entities) of the property of deceased persons. In other words, the legislator has no possibility of introducing „covert” disenfranchisement by depriving parts of a deceased person’s estate of the status of private ownership. The right of succession makes private ownership a permanent institution, unlimited in time and independent of the lifespan of the person who holds ownership rights in a given moment. By virtue of the aforementioned order function of the institution of succession, the transfer of a deceased person’s property to the State Treasury or other public entity is not categorically excluded, but it may occur only when no natural persons can be found whose legal succession to the deceased person is more justified by the closeness of the relations joining them to the deceased person.

The bond, in the light of the above constitutional provisions, that joins the categories of ownership and succession justifies the requirement to acknowledge the wishes of the owner as the basic factor determining who is to receive components of his estate after his death (*Judgement by the Constitutional Tribunal of 25 February 1999, Ref. No. K. 23/98*, Official collection of Constitutional Tribunal’s Decisions – OTK ZU No. 2/1999, item 25, p. 167). Therefore, the legislator is obliged to assure natural persons of adequate legal instruments enabling them to regulate these matters. This aspect of ownership may be described as the freedom to make a will, bearing in mind, however, that the Constitution does not specify whether the owner’s wishes are to be expressed in the form of a will, or in the form of other legal actions after his death.

Because not all natural persons are able to arrange what should be done with their estate after their death and, as practice shows, not all persons do so, the legislator should introduce a subsidiary regulation relating to inheritance based on the testator’s wishes and permitting a precise definition of heirs in each given case. Although the Constitution provides the legislator with certain guidelines regarding statutory inheritance, it does not provide any strict uniform norms which permit the identification of statutory heirs, the order of their succession and their share of the estate. However, it should be stressed that the legislator’s choice of a particular model of succession (e.g. universal succession or separate inheritance of individual components of the estate, acquisition of the estate after the testator’s death or only following an judgement on this matter by a state authority) should be „consistent,” i.e. the legislator cannot create exceptional rules, this violating the principle of equality (equal protection) or other constitutional values. Therefore the Constitution provides a framework in which the legislator, regulating issues of the law of succession, has considerable manoeuvring space. Above all, he should respect the aforementioned ban on „covert” disenfranchisement and try to adapt the order of succession to the presumed wishes of the testator, which requires basing these regulations on a certain degree of typicality and rationality of the testator’s wishes. From this point of view, one can justify the inclusion of the deceased’s closest relatives and spouse in the group of statutory heirs. However, it should be stressed that that insofar as, in the case of a natural person effectively expressing his „last will and testament,” the legislator

should create mechanisms that permit the realisation thereof, and only challenge it in exceptional and particularly justified cases, in the case of statutory inheritance the legislator himself nominates (in a certain sense on the testator's behalf) a group of people due to acquire the estate, and, apart from this „discovery” of the testator's wishes, may implement other constitutionally justified principles. Therefore it is obvious that in this case, the extent of infringement upon the law of succession is broader because the legislator is not only protecting the interests of the heirs nominated by the deceased, but himself defines the basis for their nomination, for statutory inheritance, applicable if a testator has not satisfactorily defined the order of succession after his death, is impossible without a binding statutory regulation. In this case, the legislator not only specifies the manner of making use of a law stemming from the constitutional guaranteed right of ownership, but himself decides who is going to receive the property and other property rights of the deceased person. One can say that in this case, the statutory regulation acts not only as a protector of private ownership, but should also put ownership relations in order and prevent a situation where it is impossible to establish who has acquired title to a deceased person's property, in which case this property would effectively become nobody's property.

In the Constitutional Tribunal's opinion, the legislator's freedom in implementing the constitutional requirement of regulating statutory inheritance also permits infringement upon the legal order of individual components of the estate, much broader than in the case of inheritance based upon the testator's wishes. For one should remember that the freedom to formulate a last will and testament includes not only the right to decide what will happen to the estate as a whole, but also the right to determine the fate of its individual components. For this reason, the legislator, in this case acting on the testator's behalf in a certain sense, cannot be totally prohibited from applying such a solution.

From Article 64 paragraph 1 of the Constitution also stems a ban, addressed to the legislator, on depriving any category of people from their inheritance capacity, in other words their ability to inherit the property and other property rights of a deceased person who enjoyed these rights while alive. However, one should stress that this regulation guarantees only the right of succession in an abstract sense, and not in reference to the inheritance from a particular person. Therefore this regulation permits anyone to be the legal successor of a deceased person but does not determine the order of succession or guarantee anyone any specific property rights inherited from a particular deceased person. An assumption on the contrary would be contrary to the entitlement, expressed in the right of succession, to manage the estate, which right is exercised prior to the consideration of the claims of persons not nominated as heirs by the testator. Furthermore, it is obvious that constitutional protection is extended to the rights of persons who have acquired the status of heirs following the death of a specific person. The Constitution protects rights acquired by way of inheritance, but does not specify exactly who acquires these rights in a given situation. Neither the guarantee of inheritance formulated in Article 21 and 64 of the Constitution, nor the requirement to protect a spouse, parents and other relatives, based on Article 18 and 71, do not provide any unequivocal guidelines permitting a definition of persons due to inherit under statute.

Because the subject of the provisions challenged in this case is the inheritance of farms, it should be stressed that a farm may be the subject of a detailed regulation of the law of succession. The constitutional separateness of a farm as a component of an estate is confirmed in Article 23 of the Constitution (see A. Lichorowicz, *Konstytucyjne podstawy ustroju rolnego RP (w świetle Article 23 konstytucji)* [The constitutional basis of the Polish agricultural system – in the light of Article 23 of the

Constitution], *Studia Iuridica Agraria* 2000, vol. I, p. 25-45). This provision formulates the concept of a family farm as a guideline for state authorities. The regulations governing this concept cannot violate the terms of Article 21 of the Constitution, in other words they cannot violate the law of succession as well. That means that the family nature of the farm in question does not justify the introduction of a mechanism of transferring ownership other than inheritance in the event of the death of the owner (co-owner). Likewise, it should not be interpreted as a basis on which to eliminate the farmowner's rights and compulsorily create family ownership communities. In the Constitutional Tribunal's opinion, this does not exclude the possibility that the legislator – within the limits of his freedom to regulate inheritance – will refer to the concept of a family farm as a constitutional value and will treat a family farm as a particular subject of inheritance, and hence subject it to separate regulations to a certain extent. Article 23 second sentence of the Constitution forbids the elimination of the institution of succession or the introduction of solutions which eliminate the freedom to make bequests and eliminate equal protection of the rights of all heirs. But it does not exclude the introduction vis-a-vis estates comprising a farm of a detailed regulation which modifies the general provisions of the law of inheritance in some points. Such modifications may not be arbitrary, but are meant to serve the practical realisation of the principle, expressed in Article 23, whereby a family farm is the basis of the state's agricultural system. Obviously, a family farm is not an end in itself. According to the aforementioned provision of the Constitution, it should be an effective form of management, enabling agricultural production not just in order to ensure a „dignified” income for farming families but also to ensure a fullest possible satisfaction of society's needs. For only a farm run in such a way can form the basis of the state's agricultural system. Article 23 of the Constitution provides the basis for the legislator to accept particular regulations concerning the inheritance of farms, also in view of the fact that other constitutional directives, especially those deriving from the requirement to protect the right of succession, are not uniform, as has already been said above. This justifies a certain amount of freedom on the part of the legislator who, realising the above minimal requirements for the protection of the right of succession, may introduce solutions that serve other constitutional values. It is up to the Constitutional Tribunal to assess whether statutory norms setting forth the manner and scope of realising several constitutional values in such a situation remain in conformity with the Constitution.

Apart from that, one can observe that the running of a family farm may be considered a special form of business activity, and a family farm itself may be considered a type of enterprise. Admittedly, in the case of the inheritance of an enterprise, the public interests discussed in Article 22 of the Constitution may speak in favour of an enterprise remaining under the indivisible control of one person. This is combined with the mandate emanating from Article 23 of the Constitution, assuming that a farm is a particular form of ownership and the public authorities have the duty to see to it that running a farm is a „productive” form of management. Therefore, in the Constitutional Tribunal's opinion, also Article 22 and 23 of the Constitution provide a certain basis for a separate – though only to a certain extent and under strict conditions – regulation of inheritance matters relating to farms. Obviously, such a regulation should be coordinated with all the regulations governing trade in agricultural land.

The principle of equal protection of the right of ownership, other property rights and the right of succession for everyone, referring to the general principle of equality expressed in Article 32 of the Constitution, is set forth in Article 64 paragraph 2 of the Constitution. The historical context of the emergence of the Constitution explains

that the formulation of a principle of equal protection among those principles that regulate human and civic rights and freedoms is intended to highlight the fact that one must not permit a differentiated protection of ownership rights by the regulations that give the state and public entities a privileged position vis-a-vis natural and legal persons in private law. However, a varied regulation of the manner and scope of protection of rights may be the consequence of the fact that public entities, especially state ones, are constrained by constitutional norms that do not refer to private persons. Therefore the requirement to provide equal legal protection, like the principle of the equality of freedom expressed in Article 32, does not mean that the legal situation of public and private entities is fully identical.

The principle expressed in Article 64 paragraph 2 of the Constitution also refers to relations between several persons who inherit from the same deceased person, for in the regulation of inheritance issues, special provisions apply to the frequent situation where several persons inherit the same estate. In such a situation, each heir inherits a certain part of the estate, which results in the acquisition of co-ownership of certain things, and becomes the co-subject of other ownership rights. The economic aspect of this situation becomes clear when, for certain factual reasons (the indivisibility of objects) or economic reasons (the lack of expediency of division), a certain object or group of objects should remain in the hands of one person, so that ultimately ownership is acquired by only one person, whereby the remaining heirs are entitled only to the right to other components of the estate or to demand the pecuniary equivalent of their share in the estate. Therefore the formal aspect of the right of succession covers the acquisition of certain ownership rights to which the deceased person was previously entitled, whereas the material aspect covers material increment (also in pecuniary form) resulting from the items that form part of the estate. Against the background of the statutory regulation, the aforementioned aspects of the right of succession manifest themselves in institutions of the law of succession – the acquisition of an estate and the division of an estate. The constitutional principles determining the shape of these institutions are not uniform, and when considering the constitutional conformity of regulations regarding the acquisition of an estate, one cannot entirely leave out the question of the division of an estate.

In the opinion of the Constitutional Tribunal, the principle of equal protection of the right of succession does not mean equal rights for the heirs. After all, differentiation may result from the testator's wishes, appropriately formulated. The „inequality” of the heirs may also be the result of other causes, especially the factual or legal impossibility of giving them the same rights to all the objects that form part of the estate. The principle of equal protection of the right of succession involves not only assuring all nominated heirs of the same legal resources of protection, but also giving them the right to receive under equal terms material compensation appropriate to their share in the estate and the value of the estate. The principle of the equal protection of the right of succession is not absolute and does not exclude the possibility of restricting the amount of payments due from an heir who has received a farm as a result of the division of an estate, or a spread of these payments over the space of time, if this is justified by the need to protect the family nature of a farm or ensure correct and rational management. A statutory regulation of this subject matter should ensure the possibility of a suitable ‘balance’ of conflicting interests and entitlements between the heirs who inherit a farm and remaining heirs (for instance by taking into account hitherto employment on the farm).

Concluding this part of its considerations, the Constitutional Tribunal states that an equal protection of ownership rights cannot be identified with equal protection of rights acquired by inheritance. The legal situation of individual heirs may be

differentiated by legal regulations if this is necessary for the realisation of a different constitutional value and if it conforms to the ban, contained in Article 31 paragraph 3 of the Constitution, on excessive and unnecessary restrictions on the fulfilment of a constitutionally legitimate objective.

6. Proceeding to assess the constitutional conformity of the provisions challenged in the application and legal questions, the Constitutional Tribunal decided that each of the challenged regulations needs to be examined separately and its legal purpose needs to be established and compared with the indicated constitutional model, for there is no justification in assuming that the constitutional nonconformity of certain rules governing a given legal institution (in this case the inheritance of farms) automatically means that the entire institution, i.e. all the norms that form it, also does not conform to the Constitution. The elimination of regulations which, in the Constitutional Tribunal's opinion, do not conform to the Constitution may deprive some other regulations envisaged in other provisions of their justification. However, an assessment of the expediency of legal provisions is basically beyond the scope of the Constitutional Tribunal. A mere decision that a given regulation is superfluous in legislation, or even becomes superfluous as a result of a judgement by the Tribunal, does not mean that it is or becomes non-conformant to the Constitution. The Constitutional Tribunal's is only competent to delete regulations which do not conform to the Constitution or with another substantive act which has higher status in the hierarchically-constructed legal system. This competence cannot be interpreted broadly and extended to include assessing the expediency of specific legal solutions.

It should be stressed that the applicant directs the charge of constitutional non-conformity mainly at some of the questioned regulations, whilst, as far as the remainder are concerned, claims that their constitutional non-conformity is indirectly the result of a constitutional non-conformity of other regulations. Thus, as far as some of the challenged provisions are concerned, there is basically no justification for the charge that they do not conform to the Constitution.

7. Guiding itself by the aforementioned assumptions and explanation of constitutional norms, the Constitutional Tribunal stated that Article 1058 of the Civil Code does not infringe the constitutional provisions that have been indicated as models of control. This article creates a conflicting norm, regulating the relationship of the detailed provisions set forth in title X book IV of the Civil Code to the general provisions of the law of succession set forth in titles I to IX of that book. The assumption justifying the existence of such a conflicting norm is the presence of substantive norms envisaging a detailed regulation of legal issues involving estates which comprise a farm. The validity of such a norm should be accepted even in the absence of a regulation expressing it. As was said above, the legislator has a certain amount of manoeuvring space as far as the regulation of issues in the law of succession are concerned. This freedom includes the adoption of the separate nature of farms. The constitutional provisions which make state farms the basis of the state's agricultural order and the regulations governing economic activity pave the way to special interference by the legislator, who established a legal order for farms also in the sphere of the law of succession. Thus, Article 1058 of the Civil Code itself does not directly conflict with the Constitution, and this conclusion applies both to the original version of this article and the version imparted by the Amending Act of 1990. This version has a narrower topical scope than the original version, for it determines the minimum surface area of a farm and, furthermore, speaks only of regulations concerning statutory inheritance. In any case, in that part the current wording of

Article 1058 of the Civil Code is misleading because further regulations contained in this article also concern topics that exceed the bounds of statutory inheritance (e.g. the bequest and division of an estate).

The fact that the very principle of a separate regulation of the inheritance of a farm belonging to an estate conforms to the Constitution does not mean that the norms envisaged in other challenged regulations do so.

8. From this point of view, a decisive role is played by Article 1059 of the Civil Code in the text imparted by the Amending Act of 1990, setting forth who inherits a farm in the absence of a will, and the complementary articles Article 1060 and 1062 of the Civil Code (envisaging so-called secondary inheritance). In the light of these regulations, the circle of statutory heirs to a farm may be larger than the circle of heirs inheriting a given estate under general principles, and may also include persons not nominated to inherit the remainder of a given estate. This means that the legislator creates two categories of statutory heirs of a person who has left an estate which includes a farm, i.e. heirs who acquire a farm and heirs who acquire only the remainder of the estate. Such an idea is not yet irreconcilable with the Constitution, but when realising it the legislator should not infringe the principle of equal legal protection of all heirs, for, as was said above, when establishing the rules of statutory inheritance, the legislator may guide himself by various mandates, and the principle of nominating the deceased person's closest heirs to inheriting his estate is – despite its fundamental significance – only one of these mandates. That is why the nomination of heirs to inherit a farm different to the heirs nominated to inherit the remainder of the estate, bearing in mind that the nominated heirs here also include the testator's family, need not be regarded as an infringement upon Article 64 paragraph 1 and Article 21 paragraph 1 of the Constitution.

However, the regulation adopted in the challenged provisions does not fulfil the requirements stemming from Article 64 paragraph 2 of the Constitution, and for several reasons. Firstly, one is struck by the glaringly unequal treatment of heirs, both those nominated to inherit by statute and those statutory heirs nominated to inherit vis-a-vis testamentary heirs, for in the second case there is an absence of any restrictions whatsoever of this kind, as in Article 1059 *et seq.* of the Civil Code in the text imparted by the Amending Act of 1990. This shows that even the legislator does not consider his own restrictions as necessary to attain the intended purpose, whether or not this purpose is constitutionally legitimate. Here one should add that not even trade in agricultural land *inter vivos* is subject to restrictions of this kind. Secondly, the circle of people nominated by the legislator, limited vis-a-vis the circle of people under general principles, is not based on assumptions that rationally leads to objectives which would conform to the Constitution. Insofar as proper economic considerations could justify the first two categories (Article 1059 subparagraph 1 and 2 of the Civil Code in the text imparted by the Amending Act of 1990), the third and fourth groups (Article 1059 subparagraph 3 and 4 of the Civil Code in the text imparted by the Amending Act of 1990) were introduced – as one could guess – solely for social reasons. One should point out that Article 1059 with Article 1060 and 1062 of the Civil Code in the currently binding version do not lead to an objective that would have constitutional justification, namely ensuring that a farm has a specific size that permits proper and cost-effective „family” management. Moreover – admitting to the statutory inheritance of a farm only those persons mentioned in Article 1059 subparagraph 3 of the Civil Code might prevent the attainment of this objective. Whereas, eliminating a given statutory heir from the circle of persons inheriting a farm because none of the conditions of Article 1059 of the Civil Code

have been fulfilled excludes him from the possibility of receiving this farm as a result of the division of the estate, even if during the internal before the opening and division of the estate he fulfils the condition set forth in Article 1059 subparagraph 1 or 2 of the Civil Code. In other words, the challenged provisions do not guarantee the indivisibility of a farm, nor do they guarantee that the farm will be acquired by one person who possesses the greatest vocational qualifications for this. This objective may be successfully attained in a different way, by appropriately formulating the rules governing the division of an estate (whose text should be coordinated with the rules governing the division of agricultural land in the event of an abolition of co-ownership). None of the current rules in force concerning the division of an estate has been challenged in this case. Legal literature points out that if the challenged provisions were to be eliminated, it would be expedient also to change the rules governing the division of an estate which comprises a farm, in order to prevent an irrational split up of farms and consolidate the position of those heirs who were already employed on the inherited farm while the testator was alive. Thirdly, the regulation adopted in the challenged rules deprives, without adequate justification, heirs inheriting by statute under general principles of equal protection. The division of an estate into a farm on the one hand and remaining property components on the other already at the acquisition stage of the estate causes an unequal treatment of both groups of heirs from the point of view of property, because there is no fail-safe mechanism of „equalising” the property advantages stemming from inheritance. Despite the validity of Article 1079 of the Civil Code, one cannot exclude a situation where a statutory heir who is unable to inherit a farm on account of the terms of Article 1059, 1060 and 1062 of the Civil Code is deprived of any property advantages from the estate, even if the assets of the estate exceed the amount of the debt on the estate.

Therefore, the regulation adopted in the provisions discussed here does not conform to the Constitution. Furthermore, it should be noted that an unequal treatment of heirs inheriting a farm by statute cannot justify the holding of agricultural qualifications in order to acquire ownership of the farm. Such requirements were generally abolished in 1990, and the challenged provisions of the Civil Code are a leftover of the solutions introduced by the law of 1963. This makes it obvious that the legislator does not consider the subjective regulations applicable to the statutory inheritance of farms to be a realisation of the general principle of restrictions regarding the acquisition of a farm. At present, the holding of agricultural qualifications is not considered necessary in order to acquire a farm by legal means *inter vivos* (primarily by means of a sales agreement), therefore the legislator himself indirectly admits that from this point of view, the presence of restrictions on the acquisition of a farm through statutory inheritance is not necessary.

The above arguments, illustrating the constitutional non-conformity of Article 1059 of the Civil Code (and also Article 1087 of the Civil Code) in their current text (imparted by the Amending Act of 1990) apply even more to the text imparted by the Amending Act of 1971. In this version, they concern the children of the testator and set forth the conditions on which the inheritance of a farm depends. If the children fail to satisfy these conditions, the farm goes to those heirs who, on the basis of the general principles of statutory inheritance, would be nominated to inherit the farm if the testator's child died prior to the opening of the estate (Article 1060 § 2 and Article 1062 § 2 and 3 of the Civil Code in the text imparted by the Amending Act of 1971, and Article 1061 of the Civil Code). The terms envisaged in Article 1059 of the Civil Code in the text imparted by the Amending Act of 1971 should also apply to the testator's spouse and brothers and sisters. Heirs further removed than the testator's

grandchildren (Article 1060 § 1 of the Civil Code) and children of the testator's brothers and sisters (Article 1062 § 3 of the Civil Code in the text imparted by the Amending Act of 1971) are not nominated by statute to inherit a farm. Therefore this provision creates an even greater restriction on heirs to a farm than at present, and results in a „deeper” differentiation of the legal situation of persons who are statutory heirs on the basis of the general provisions of the law of succession.

Also decisive is that the narrowing of the group of statutory heirs inheriting a farm has expanded the scope of situations where a farm is inherited under statute by the State Treasury (Article 1063 of the Civil Code in the text in force prior to the coming into force of the Amending Act of 1982).

9. As for Article 1063 of the Civil Code in the currently binding text (imparted by the Amending Act of 1982), the charge of constitutional non-conformity is unjustified, for this provision refers to the general rules on inheritance in a case where there are no persons qualified to inherit a farm under the terms of Article 1059, 1060 and 1062 of the Civil Code. This referral itself can hardly be considered a breach of the constitutional provisions indicated in the application and legal questions. On the contrary – this is a „return” to the general rules on succession whose constitutional conformity is not challenged. One should note here that in fact, the first part of this provision is a kind of statutory confirmation of the norm expressed in Article 1058, i.e. in this part it has no fully substantive significance on its own. The regulation envisaged in the second part of this provision prevents a situation where a farm would be acquired solely by persons incapable of work at the moment of the opening of the estate. In itself, this regulation (examining it for the time being independently of the entire sphere of regulations on this subject) is to be considered justified in the light of the abovementioned constitutional principles regarding the state's agricultural system. Experience shows that a person who is permanently incapable of working on a farm is incapable of running a farm on his own, and would therefore be compelled to use the help of other people. Therefore, if the sole owners of a farm were persons permanently incapable of work, the farm's productivity would be in jeopardy.

10. The Constitutional Tribunal has deemed Article 1064 of the Civil Code in the text imparted by the Amending Act of 1990 to be non-conformant to the Constitution because of the inclusion to the model of control of Article 31 paragraph 3 of the Constitution. As was said above, the legislator was entitled to establish a model of statutory inheritance of farms. Although in this case the question is not so much a restriction of the subjective right stemming directly from the Constitution, but to shape in a specific situation the scope of this law vis-a-vis persons, Article 31 paragraph 3 of the Constitution provides an indirect mandate for the legislator. According to this mandate, the shaping of a specified subjective law, possessing a constitutional dimension, should be made directly by means of an Act of Parliament. The Constitutional Tribunal has stated many times that it is inadmissible to refer fundamental elements of a given regulation to an ordinance. Article 1064 of the Civil Code in the text imparted by the Amending Act of 1990 violates this principle because basically, the regulation foreseen in the ordinance possesses decisive importance since without it, a use of the constitutionally guaranteed right of succession is not possible at all. Such a state of affairs should be considered a breach of the constitutionally-defined relationship between an act of parliament and a sub-statutory legal instrument in the sphere of human and civic rights and freedoms.

11. In the Constitutional Tribunal's opinion, Article 1066 of the Civil Code is

not a direct infringement of the constitutional principles indicated in the legal questions and application. Just as in the case of Article 1058 of the Civil Code, this article has no material-legal significance on its own, but is the procedural consequence of a particular order of rules governing farms. This provision is addressed to the courts whose business comprises determining the acquisition of an estate. The mere requirement to mention persons inheriting a farm separately in the decision on the acquisition of an estate, though considered unnecessary because these are the same people as those who are inheriting under general principles, is not a breach of the Constitution. Of course, if Article 1058 and 1059 of the Civil Code become void, this regulation will also be rendered void, but the question of the expediency of rules is beyond the scope of the Constitutional Tribunal's reasoning. The same applies to Article 670 § 2 and Article 677 § 2 and 3 of the Code of Civil Procedures, which are beyond the scope of this case.

12. The purport of the norm expressed in Article 1079 of the Civil Code is the binding validity of a particular regulation regarding the inheritance of farms. This regulation applies to a situation where not all persons nominated to inherit under the „general” principles of the law of inheritance also inherit a farm which belongs to the estate. It is intended to protect the property interests of those heirs, but can only be applied if an estate consists of, apart from a farm, other property components of comparable value. But even then the legislator's intended goal could not be attained on the basis of Article 1060 or 1062 of the Civil Code, a farm is inherited by a person not nominated to inherit the „entire” estate. However, this does not mean that this regulation does not conform to the aforementioned constitutional models.

13. Also Article 1081 of the Civil Code is the consequence of the concept, adopted by the legislator, of treating a farm as a separate component of inheritance. As the aforementioned considerations show, this concept *per se* is not a violation of the Constitution, therefore one should consider the content of the individual legal norms which shape specific solutions in this matter. Not defining in any way who belongs to the circle of heirs of a farm, Article 1081 of the Civil Code expresses a legal norm whereby debts on an estate incurred during the operation of a farm are the responsibility of the heir or heirs who have received the farm and of the person receiving payment from him. This norm, dividing estate debts into two groups, protects the interests of the heirs who are inheriting under general principles, restricting their responsibility for estate debts. Considering the certain connection between responsibility for the debts of an estate with the attained increment of the estate and the fact that a farm is considered a certain part of the entire estate, this resulting from the principle of equal protection of the right of succession, the legal solution adopted in Article 1081 of the Civil Code should not be considered a violation of the Constitution.

14. The next challenged provision – Article 1082 of the Civil Code – concerns the establishment of a circle of people entitled to inherit a compulsory portion of the estate. This provision restricts vis-a-vis the general principles the number of these people, thus referring to the provisions contained in title X book IV of the Civil Code, as well as to Article 216 of the Civil Code concerning the amount of payments due to co-owners of a farm. Although the question of assessing the institution of a compulsory portion of an estate from the angle of its conformity to the constitutional guarantee of ownership and succession (for a compulsory portion of an estate constitutes a restriction on the rights of heirs and beneficiaries) remains outside the

scope of this case, one may observe that this institution remains connected to the mandate of protecting spouses, parents and families (Article 18 and 71 of the Constitution). But unlike the law of succession, the Constitution does not guarantee the institution of compulsory portion of an estate itself, and, in particular does not insist that such an institution be introduced, so that neither the shape of this institution nor the circle of its beneficiaries are defined. Neither does the Constitution specify whether the law on the compulsory portion of an estate should apply to the testator's entire estate or just to some parts thereof. If the legislator may, without violating the Constitution, exclude some ownership rights from the mechanism of succession and make it the subject of special rules of succession in the event of the death of the subject person, it may also modify the regulation of a compulsory part of an estate. Therefore the norm stemming from Article 1082 of the Civil Code does not, in principle, violate any constitutional provisions because the very fact that only a nominated heir can inherit the compulsory part of an estate is a logical consequence of the accepted model of regulating property affairs following the death of a person to whom the given rights apply. Assuming that Article 64 paragraph 2, in that part which expresses the protection of other property rights (which include the right to a compulsory part of an estate) provides the need to adapt the rules governing a compulsory part of an estate to the rules governing statutory inheritance, the Constitutional Tribunal has ruled that the determination of the constitutional non-conformity, to the extent described in the opening sentence of this judgement, of the rules governing the statutory inheritance of farms to which Article 1082 of the Civil Code refers, also permits the elimination of conflicts with the Constitution regarding an unequal protection of the rights of persons entitled to inherit a compulsory part of an estate under general principles and in a part concerning a farm. In view of the above, the Constitutional Tribunal found no basis on which to consider Article 1082 of the Civil Code „itself” not in conformity to the Constitution

15. Considering Article 1086 of the Civil Code, the Constitutional Tribunal did not see any non-conformity to the Constitution. The Constitution does not exclude the possibility that a land contribution to an agricultural production cooperative as a component of an estate may be treated in a special manner, although this does not require the introduction to this sphere of regulations different from the general ones. A justification for this separate treatment may be the very status of cooperatives, especially the provisions governing membership. Just as in the case of the statutory inheritance of a farm, the crux of the matter is not the introduction of special rules, but the definition of the differences which have been regulated in Article 1087 of the Civil Code. It should be stated that this regulation does not conform to the Constitution for the same reasons as Article 1059 of the Civil Code. Most of all, narrowing down the group of statutory heirs is not combined with a mechanism of equal protection of the rights of heirs during the division of individual component parts of the estate. The persons mentioned in Article 1087 of the Civil Code are unfairly privileged compared to other heirs.

16. The realisation that the contents of some of the provisions questioned in this case do not conform to the Constitution underlines the need to consider the problem previously mentioned, whether this non-conformity can eliminate the material-legal effects of constitutionally non-conforming regulations which were in force prior to this judgement by the Constitutional Tribunal. When considering this problem, one must accept the construction of the acquisition of an estate accepted in the Polish law of succession, whose basic outline is set by Article 924-925 of the Civil Code.

According to these provisions, an heir acquires an estate at the moment of the testator's death *ex lege*. From then on, the heir is a subject of the set of property rights and duties, regardless of whether they acquired them on the basis of statutory inheritance or testamentary inheritance. Therefore, though provisions of the law of succession that were in force at the moment of the testator's death create, as of that moment, the material-legal effect envisaged in them, in the form of a transfer of the estate to the heir, i.e. the person or persons defined in accordance with these provisions. This applies even when an event that occurs after the opening of the estate (e.g. rejection of the estate or a recognition of the heir as undeserving) causes the estate to go to another heir.

This regulation accepted in Polish law is accompanied by a intertemporal norm whereby the acquisition of an estate is governed by the rules that were in force when the testator died, regardless of when a court judgement on the acquisition of the state is issued (Article LI of the Introductory Regulations, and previously Article XVIII of the Decree of 8 October 1946 – Regulations Introducing on the Law of Succession; Journal of Laws – Dz.U. No. 60, item 329). This norm, also adopted in foreign legal systems, is a confirmation of the constitutional principle of a ban on retroaction (*lex retro non agit*), an important part of the legal culture of civilised countries. Although the legislator was under no constitutional obligation to establish the acquisition of an estate in the manner adopted in Article 924-925 of the Civil Code, the adoption of such a regulation is important in restricting constitutionally admissible changes to the legal system. Making the change introduced after the opening of the estate binding in the extent as to determining the group of heirs or their share in the estate would violate the property rights of the heirs governed by the rules in force prior to the opening of the estate. Meanwhile, the rights acquired by way of inheritance are guaranteed by those constitutional provisions dealing with ownership and other property rights. The protection of these rights is also justified by the principle of protecting legal security and confidence in the law, based on Article 2 of the Constitution.

As the Constitutional Tribunal has pointed out on many occasions, the principle of *lex retro non agit* is not absolute. A departure from it is admissible, especially when this is necessary in order to implement a constitutional value that is deemed to be more important than the value protected by that principle. Nevertheless, even though not directly expressed in the Constitution, the principle is one of the fundamental concepts of a state ruled by law, adopted in Article 2 of the Constitution. It is addressed not just to the legislative authorities, but also to the Constitutional Tribunal which, in its role as a „negative legislator,” has the power to deprive the whole or part of a normative act of its binding force, this causing a change to the legal situation which may result not only in a ban on the application of a provision that is deemed not to conform to the Constitution, but also the possibility of reconsidering cases already closed. Therefore, when passing judgement on the constitutional conformity of regulations questioned in this case, the Constitutional Tribunal must also examine the effect of a judgement determining the constitutional non-conformity of the questioned regulations on legal results which, prior to the promulgation of this judgement in the Journal of Laws, were shaped by the legal norms expressed in these regulations. Adapting estates opened prior to this date to the legal situation altered as a result of this judgement would inevitable lead to a collision with the constitutional principles which protect the abovementioned values, especially the legal security and confidence in the law. Therefore the Constitutional Tribunal considered it justified to minimise the impact of the judgement passed in this case on previously shaped legal relations. Considering this question, when issuing on this basis a judgement on the

acquisition or division of an estate, the Constitutional Tribunal considered the practical consequences of a determined non-conformity to the Constitution, particularly important in a situation where a farm has already been taken over by a person who is an heir on the basis of the challenged principles.

The Constitutional Tribunal's hitherto judgement shows that it would be an oversimplification to place the relationship between the challenged statutory principles and the constitutional principles meant to serve as a basis for assessing them solely in the category of a total and unequivocal conformity or non-conformity to the Constitution, for a statutory norm can only partly be in breach of the Constitution, and partly (to a specific extent) in conformity to it. There may also be a situation where only some portions of the legal regulation will be deemed to be in breach of the Constitution (an expose of acts of parliament in conformity to the Constitution has been applied many times in the Constitutional Tribunal's judgements).

In its hitherto adjudication, the Constitutional Tribunal has already stated that a certain regulation may not be in conformity to the Constitution in that part which applies to only some factual situations to which it applies in accordance with its contents. In the opinion of the Constitutional Tribunal, it is not out of the question that the criterion determining the degree of the constitutional unconstitutionality of a given regulation is a particular moment in time. Examples of such situations, which have already occurred in the Tribunal's judgements, are cases where an employer violated the principle of *lex retro non agit* or neglected to introduce a suitable *vacatio legis*. In such a situation, constitutional non-conformity is not absolute and unrestricted, but applies to a given moment in time vis-a-vis which, by a decision of the legislator, there is a ban on the application of regulations which do not conform to the Constitution.

Varied decisions on the constitutional conformity of a regulation at a specific moment in time have been expressed several times in judgements by the Constitutional Tribunal (e.g. in the judgements of 29 January 1992, Ref. No. K. 15/91, Constitutional Tribunal's Decisions – OTK in 1992, part I, item 8, 30 November 1993, Ref. No. K. 18/92, OTK in 1993, part II, item 41). In its judgement of 5 January 1998. (Ref. No. P. 2/97, Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 1/1998, item 1) the Constitutional Tribunal clearly associated non-constitutionality with a time element, stating that an ordinance by the Minister of Finance was not in conformity to the Constitution „only to the extent to which it may be applied to a situation” that occurred at a certain time prior to the Tribunal's judgement.

A determination of the time point of constitutional non-conformity requires an analysis which takes into account the particular characteristics of the situation covered by the norm contained in the regulations that are deemed not to conform to the Constitution. Firstly, this may apply to situations where regulations that have formally been repealed are still applied on the basis of intertemporal norms (as happened in case Ref. No. P. 2/97). Furthermore, the period of time in which the regulations applied must also be taken into account. This is significant in a situation where the subject of the case are regulations that applied before the Constitution of the Republic of Poland of 2 April 1997 came into force, and even more significant if these regulations were in force prior to the amendment to the Constitution of the Polish People's Republic of 29 December 1989 (Journal of Laws – Dz.U. No. 75, item 444), which amendment described Poland as a democratic state ruled by law and implementing the principles of social justice.

Out of these considerations, the Constitutional Tribunal decided to establish in

the sentence of the judgement a time period in which the challenged regulations cannot be deleted from the legal order because a consideration of other constitutional values and principles has priority over argumentation that justifies the constitutional non-conformity of a given regulation. Seeking a suitable criterion, the Constitutional Tribunal accepted that this criterion is the moment of opening of the estate, being the basic criterion of demarcation, in the light of the intertemporal norms in force in Polish law, of the period of the application of successively binding substantive norms of the law of succession. The Constitutional Tribunal's determination of the constitutional unconstitutionality of Article 1059, 1060, 1062, 1064 and 1087 of the Civil Code applies only to cases that concern estates opened after the promulgation of this judgement in the Journal of Laws and after the date on which it has come into force (Article 190 paragraph 3 of the Constitution).

17. The decision adopted in this point, which according to Article 190 paragraph 1 of the Constitution possesses universally binding force, excludes a repeated judgement in a closed case ending in a decision on the acquisition of an estate, as well as the possibility of not applying the regulations that were in force on the day of opening of the estate, even if the proceedings in this case continue after the Tribunal's judgement has been promulgated. For it should be clearly stated that in view of the position adopted by the Constitutional Tribunal, a refusal to apply the statutory regulations that were in force on the date of opening of the estate which occurred prior to the promulgation the Constitutional Tribunal's judgement in the Journal of Law, would violate basic constitutional values such as confidence in the law and the security of the law. For this reason, the challenged provisions of the Civil Code, despite the negative assessment of their contents, have been considered by the Tribunal to be in conformity to the Constitution. This results from a comparison of the constitutional values which remain, in this case, in collision.

In no case can the principle of a direct application of the Constitution (Article 8 paragraph 8 of the Constitution) be the basis on which a court refuses to apply the provisions that were in force on the date of opening of the estate. A direct application of the Constitution does not mean that courts and other legal authorities have the authority to control the constitutional conformity of legislation. The procedures for this control have been expressed clearly and unequivocally in the Constitution itself. Article 188 of the Constitution states that only the Constitutional Tribunal is empowered to adjudicate on the matters mentioned in that article, whether the judgement is generally binding, or whether it is restricted to an individual case. An alleged conformity of a law to the Constitution may be overruled only by a judgement of the Constitutional Tribunal, and a judge's commitment to a law is effective as long as this law possesses binding force (compare *Supreme Court judgement of 25 August 1994, Ref. No. I PRN 53/94*, OSNAPiUS 1994, vol. 11, item 179, *Chief Administrative Court judgement of 27 November 2000, Ref. No. II SA/Kr 609/98*).

An important feature of the model of control of the constitutional conformity of laws, adopted in the Polish Constitution and patterned on other European countries, is the institution of a legal question discussed in Article 193. The regulation based on Article 188 and 193 of the Constitution, interpreted in the light of the principle of a state ruled by law expressed in Article 2 of the Constitution, is not overruled by the fact that judges are subject to the Constitution and acts of parliament as stated in Article 178 paragraph 1 of the Constitution. This provision does not say anything directly on the subject of resolving conflicts between the Constitution and an act of parliament, but it does complement Article 193 of the Constitution which says that the possibility stated in this provision should be used whenever an adjudicating court

concludes that a norm which provides the basis of judgement does not conform to the Constitution. Neither are courts excluded from the principle in Article 190 paragraph 1 of the Constitution whereby judgements of the Constitutional Tribunal are universally binding.

18. However, the abovementioned statements regarding the duration of a stated non-conformity to the Constitution do not apply to Article 1063 of the Civil Code, which, in the version in force up to 6 April 1982 (consolidated text of 1964, Journal of Laws – Dz.U. No. 16, item 93, supplemented by the Amending Act of 1971), violates both Article 21 paragraph 1 of the Constitution (interpreted in connection with Article 20 i 21 paragraph 2 of the Constitution), and Article 64 paragraph 1 and 3 of the Constitution in connection with Article 31 paragraph 3. According to this provision, a farm or land contribution belonging to a natural person goes to the State Treasury, also if the State Treasury is not nominated by statute to inherit the entire estate. There can be no doubt that the purpose of this provision was neither to tidy up ownership relations in agriculture, nor to preserve farms as a certain economic whole. The purpose was the take-over of agricultural land by the state, in other words a kind of disenfranchisement. In the Tribunal's opinion, non-conformity to the Constitution in this case is so obvious that it justifies the complete abolition of this provision, for the regulation therein touches upon the very essence of the law of succession. The essence of constitutional subjective law – as the Constitutional Tribunal said in a judgement of 12 January 1999 (Official Collection of Constitutional Tribunal's Decisions – OTK ZU No. 1/1999, item 2) – is connected with the function of a specific right or freedom the individual. Looking at the law of succession from the angle of the economic principles of the Republic of Poland expressed in Article 20 of the Constitution, it should be repeated that this right is primarily intended to protect private ownership. Therefore, a situation in which a testator's estate is inherited by natural persons, but only the farm belonging to this estate is inherited by the State Treasury, should be considered a glaring violation of the basic constitutional function of the right of succession.

Here one should also note that the principles of protecting acquired rights and of the security and confidence in the law protect individuals and legal entities against interference by the state authorities, but they do not apply in the same scope to the State Treasury (the state as a subject of private legal relationships). Inheritance by the State Treasury is not covered by the constitutional guarantee of the right of succession. This right applies primarily to natural persons and other entities of private law, for in this case the state is an entity obliged to ensure protection, and is not entitled to avail itself of this protection. For conceptual reasons, it is impossible for the State Treasury to submit claims against the state itself over the protection of acquired rights or other constitutional rights because the State Treasury is an embodiment of the state, described only in private legal relationships and in a particular manner resulting from tradition.

In this regard, the conflict with the Constitution was not removed by Article 15 of the Amending Act of 1990 which concerns an heir who is sole owner of a property which forms part of a farm, as well as heirs who satisfy the conditions of Article 1059 subparagraph 1 or 2 of the Civil Code in the text imparted by that Act. Thus, this provision only applies to some potential heirs to a farm, so it does not fully eliminate the results of unconstitutional solutions.

In the Tribunal's view, these three circumstances, i.e., a violation of the essence of the law subject to protection by the Constitution, a lack of necessity to protect acquired rights, and the Action of the legislator who partially „reversed” the legal

results of the mandate expressed in Article 1063 § 1 of the Civil Code, justify a special treatment of the legal results of the determination of the constitutional unconstitutionality of this regulation. Referring to earlier considerations, the Constitutional Tribunal is of the opinion that in this regard, the legal results of this judgement require no time restrictions. Stating at the present moment in time that, despite the existence of other heirs, the State Treasury acquired a farm in the past would be such a glaring and obvious breach of the Constitution, the supreme law of the Republic of Poland, that in this case it would be justified to depart from the above principle of the law of succession and deprive the challenged provision of its binding force also vis-a-vis those estates that were opened before this judgement was promulgated.

However, it should be stressed that the arguments that justify the determination of the constitutional unconstitutionality of Article 1063 § 1 of the Civil Code do not mean that the State Treasury cannot inherit a farm under general principles. i.e. on the basis of Article 935 § 3 of the Civil Code. The constitutional conformity of this latest provision is not challenged in this case.

19. The charge that the special provisions dealing with the inheritance of farms are in breach of Article 37 of the Constitution requires separate consideration. This charge is based on an excessively broad interpretation of this provision. Article 37 of the Constitution expresses the principle of a universal right to use the rights and freedoms guaranteed in the Constitution, without restricting them to Polish citizens or individuals selected according to other criteria. The charge relating to the legal provision governing the inheritance of farms basically concerns Article 32 (the principle of equality) and Article 64 paragraph 2 (the principle of the equal protection of the right of succession). In fact, in this case Article 37 is of no importance, but its content is important for interpreting the meaning of „everyone” and „equal protection for everyone,” as well as the substantive scope of individual rights and freedoms guaranteed by the Constitution.

Submitting this legal question, the court perceives a constitutional unconstitutionality of the regulation which, in certain conditions, provides foreign citizens whose entitlement to a farm has been excluded or limited by a special regulation, of the pecuniary equivalent of the estate (or bequest) which they would have received were it not for that special regulation. Indeed, such a state of affairs divides those subject to the rules governing the inheritance of farms into two categories, according to their citizenship. But this does not mean that the charge of a violation of Article 37 of the Constitution by the provisions indicated in the legal question may be considered justified, for one can perceive a violation of the principle of a universal use of rights only in Article XXIII of the Introductory Regulations, which grants entitlement to receive pecuniary compensation. It is this regulation, and not the provisions of the Civil Code challenged in the legal question, that restrict this entitlement solely to foreign citizens.

In view of the principle of binding the Constitutional Tribunal within the constraints of the legal question (Article 66 of the Constitutional Tribunal Act), the question of the constitutional conformity of Article XXIII of the introductory regulations must remain beyond the scope of this case, whilst the charge of a breach of Article 37 should be considered unjustified because of the inadequacy of its purport to the legal norms stemming from the challenged statutory provisions.

20. In the Constitutional Tribunal's opinion, the charge of that the current rules on the statutory inheritance of farms are in breach of Article 1 of Protocol No. 1 of the

European Convention on Human Rights and Fundamental Freedoms is not justified. The above provision gives natural and legal persons the right to a respect for their possessions (in the French text: *biens*, in the English text: *possessions*) and restrict the possibility of depriving possessions (in the French text: *propriété*, in the English text: *possessions*, and not: *property*). But it does not mention the protection of inheritance directly. That does not mean that questions on the law of succession are excluded from the application of Article 1 Protocol No. 1 of the Convention, but it can only apply to those issues in this sphere that cannot be regarded as an integral component of the „possessions” of a given person.

Referring to the position of the European Court of Human Rights presented in the statement of reasons of the judgement of 13 June 1979 in the case of *Marckx versus Belgium* (A. 31), the Constitutional Tribunal decided that Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms protects everyone's right to make unimpeded use of his own property, therefore this provision applies only to property belonging to a certain person at a certain time. But it does not guarantee the right to acquire property either by inheritance or any other way (see also *Judgement of 28 October 1987 in the case of Inze versus Austria*; A. 126).

Therefore one can say that the protection afforded by Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms concerns the freedom to dispose of one's own estate in the event of death, but no one can refer to this provision as a basis on which to submit a claim to acquire a deceased person's estate. In view of this, the regulation governing the statutory inheritance of farms contained in the challenged provisions of the Civil Code and introduced by the Amending Act of 1990 does not touch at all upon the general rights and freedoms of the individual covered in Article 1 of Protocol No. 1, for this regulation does not apply to the use of an existing (acquired) property right. Therefore the Constitutional Tribunal recognised the charge of a breach of Article 1 of Protocol No. 1, protecting rights emanating from the already acquired status of owner, but guaranteeing to no one the acquisition of property, as unjustified.

21. As far as the charge about the constitutional nonconformity of the Ordinance of the Council of Ministers of 12 December 1990 on the Conditions Governing the Statutory Inheritance of Farms (Journal of Laws – Dz.U. No. 89, item 519) is concerned, the Constitutional Tribunal stated that this ordinance does not conform to the Constitution to the same extent as Article 1064 of the Civil Code and 1059, 1060 and 1062 of the Civil Code do not conform to it. On account of its executive nature, the Ordinance is closely associated with the statutory authority on the basis of which it was issued. Depriving of the binding force of an authorising regulation because it does not conform to the Constitution inevitably leads to a depriving of the binding force of the executive provisions issued on its basis, for it is obvious that the constitutional nonconformity of an authorising regulation also extends to the regulations that were issued on its basis.

Furthermore, a judgement on the constitutional conformity of the abovementioned ordinance is closely linked to an examination of the constitutional conformity of the regulations for whose implementation it possesses importance. It emerges from the provisions of title X book IV of the Civil Code that this Ordinance is mainly important for the application of Article 1059 *et seq.* of the Civil Code. It contains no provisions which could be applied independently, i.e. without being linked to these Civil Code provisions. Therefore the charge of constitutional nonconformity has no separate justification here. In any case, it was not formulated

separately in the legal question, but is strictly connected to the unconstitutional nature of regulations which employ the concepts contained in the Ordinance.

For these reasons, the Constitutional Tribunal passes the judgement that was stated in the introduction.