

Judgment of 2nd October 2002, [K 48/01](#)
**LIMITATION OF RENT INCREASES
 FOR LIVING QUARTERS (I)**

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: Plenary session	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Restricting the freedom to increase rents for the use of living quarters by determining the limitations on the admissible increase, with reference made to the inflation level <small>[Act on the Protection of Tenants' Rights and Housing Resources of Communes and on the Amendment of the Civil Code 2001: Article 9(3)]</small>	Principle of proportionality Protection of ownership <small>[Constitution: Article 31(3) and Article 64(1) and (2)]</small>

The Communist authorities in Poland operated a low rent policy for lessees of living quarters. Strict rent limits were binding not only in relation to municipal housing but also, as a general rule, on private-owned buildings. These buildings were usually subject to de-capitalisation, since the artificially low rents did not cover the expenses of maintaining such buildings in a proper state. At the same time, owners were restricted by legal provisions which radically limited the possibility of terminating lease contracts. Furthermore until 1987, private housing owners usually had no free choice in respect of choosing whether, and to whom, to lease their living quarters, since living quarters were allocated by decisions of State administration organs within the framework of the so-called public housing management.

The Act of 16th July 1987 abolished the future administrative allocation of living quarters in private buildings, making it possible for owners of such properties to freely dispose of living quarters which had been vacated by a previous lessee. This Act, nevertheless, stipulated that, in respect of all leases having arisen on the basis of a prior administrative allocation, strict rent limits would continue to be binding.

Following the transformation of the Polish system, the Lease of Living Quarters and Housing Allowances Act of 2nd July 1994 (hereinafter referred to as the 1994 Act) created the prospect for this state of affairs to be changed, to the advantage of owners. This Act established a limit on permissible increases of so-called regulated rents which were compulsory in respect of municipal buildings, and also in respect of lessees in private buildings provided that such a lease had arisen in the past as the result of an administrative allocation. This limit constituted 3% of the annual reconstruction value of the living quarters. The Act was intended to remain in force only during a transitional period, expiring at the end of 2004. At the same time, the Act permitted commune councils (commune is a basic unit of local self-government) to enact lower limits for regulated rents than those provided for in the Act, in respect of their territorial jurisdiction. These limits would be binding in respect of both municipal and private buildings.

In its judgment of 12th January 2000 (reference number [P 11/98](#)), the Constitutional Tribunal ruled that the provision discussed above was, to the extent that it was applicable to private owners, incompatible

with Article 64 of the Constitution (guaranteeing the right to ownership), since they allowed the introduction of rent levels below the level of actual costs borne by building owners and failed to offer any appropriate compensation for this. In order to give the legislator time to prepare new (and constitutionally appropriate) provisions, including public assistance for impecunious lessees, the Tribunal delayed the loss of the binding force of these provisions for a period of 18 months. No challenge was made in respect of the continued application of the statutory limit of 3% of the annual reconstruction value of the living quarters, which would continue until the end of 2004.

Act of 21st June 2001 on the Protection of Tenants' Rights and Housing Resources of Communes and on the Amendment of the Civil Code (hereinafter referred to as the 2001 Act), disappointed those who expected that the legislator would fully adhere to all of the indications given by the Constitutional Tribunal in the aforementioned judgment of 2000. The new Act did abolish the distinction between "regulated rent" (which previously applied to leases established on the basis of a prior administrative allocation) and "freely-negotiated rent" (which previously applied in all remaining cases). Nevertheless, Article 9(3) of the Act introduced a restrictive mechanism for limiting rent increases and other fees for the use of living quarters which are not the property of the tenant, regardless of the legal nature of the tenancy. The mechanism referred, on the one hand, to price increases (inflation) and, on the other hand, to the relationship between the rent and the full annual reconstruction value of the living quarters, whilst allowing for an increase by a rate exceeding the rate of inflation, but not more than by 50%. Article 28(2) of the 2001 Act confirmed the guarantee, contained in the 1994 Act, that the statutory limitations on rent levels which were previously categorised as "regulated rents" (i.e. 3% of the annual reconstruction value of the living quarters) would continue in force only until the end of 2004. This guarantee was, however, insignificant in practice, since the limitations placed on rent increases by Article 9(3) of the 2001 Act would mean that the level of particular rent, previously regulated, would not in practice be attained prior to 31st December 2004 and possible even long after that date.

The Commissioner for Citizens' Rights asked the Constitutional Tribunal to declare Article 9(3) of the 2001 Act unconstitutional.

The Tribunal ruled in favour of the Commissioner's application, thereby enabling the owners to terminate existing rent agreements and increase rents to the maximum statutory limit of 3% of the annual reconstruction value of the living quarters, as of December 2002, following the day of official publication of the judgment in the Journal of Laws (i.e. 10th October 2002).

In its reasoning for the judgment, the Tribunal reiterated that the aforementioned 3% limit would be binding only until the end of 2004, although this would not prevent the legislator from adopting other mechanisms for the protection of tenants against excessive increase of payments required by them.

In the second part of the Tribunal's original ruling, Article 35(1) of the 2001 Act (dealing with a tenants' entitlement, upon eviction, to be housed in social living quarters financed by municipal resources) was declared to be partially incompatible with the Constitution. This part of the ruling is omitted in this summary, since it has no direct relation to the issue of rent levels.

RULING

Article 9(3) of the 2001 Act does not conform to Article 64(1) and Article 64(2) (guarantee of the right to ownership), read in conjunction with Article 31(3), of the Constitution (principle of proportionality).

PRINCIPAL REASONS FOR THE RULING

1. The duties of public authorities resulting from Articles 75 and 76 of the Constitution include, inter alia, the duty to guarantee the stability of the legal relationship forming the basis for the use of living quarters and, furthermore, the duty to protect tenants against inflated payments. From the perspective of the right of ownership, as guaranteed by Article 64 of the Constitution, realisation of the aforementioned duties may not impose burdens on owners of leased properties in respect of costs related to the maintenance and everyday exploitation of such properties.
2. The principles of legal security and protection of acquired rights, resulting from Article 2 of the Constitution, demand that the legislator realises the guarantees arising from Article 56(2), read in conjunction with Article 25(2), of the Lease of Living Quarters and Housing Allowances Act 1994 that, for a period extending at least until the end of 2004, the annual “regulated rent” payable under this Act (defined on the basis of commune council resolutions) may not exceed 3% of the annual reconstruction value of the living quarters. This guarantee is confirmed by Article 28(2) of the Act of 21st June 2001 on the Protection of Tenants’ Rights and Housing Resources of Communes and on the Amendment of the Civil Code.
3. Article 9(3) of the 2001 Act, being the challenged provision in these proceedings, applies to all landlord-tenant relationships – those arising on the grounds of a contract in which the lease rent (or other payment for use of the living quarters) was agreed by the parties, and those having arisen in the past as a result of administrative decisions, in which the rent prior to the Act coming into force was a “regulated rent”. The legal regime created by this provision is defective since it applies the same legal limitations on increases of payments for the use of living quarters to very different factual situations (i.e. “regulated rents” and “freely-negotiated rents”). In doing so, it fails to ensure the two purposes for which it was intended: firstly, to ensure that current “regulated rents” were brought up to a more realistic level (cf. point 4) whilst, on the other hand, keeping a tight rein on freely-negotiated contractual rents (cf. point 5).
4. The aforementioned provision not only “freezes” the unfavourable situation of owners currently bound by “regulated rents”, in accordance with Article 56(2) of the 1994 Act, which the Constitutional Tribunal ruled to be unconstitutional in its judgment of 12th January 2000 (reference number P 11/98), but also makes this situation even worse. When the new Act came into force on 10th July 2001, “regulated rents”, as established by commune councils, amounted on average to 60% of current exploitation costs of buildings. In the challenged provisions of the 2001 Act the legislator, maintaining an irrationally low starting rate for rents, allows only tightly controlled increases, whilst at the same time linking such increases with the rate of inflation. Given the existence of a continuously decreasing inflation rate, such increases have no hope of reaching such a level as to guarantee profitability or, at the very least, a return of

costs incurred for the upkeep of buildings. The previous legal provisions provided owners of habitable buildings with the possibility of a rent “release” (cf. point 2 above). Despite the fact that, from 31st December 2004, the 3% of the annual reconstruction value of the living quarters will no longer be valid, the effect of Article 9(3) of the 2001 Act will still mean that the attainment of such levels will be practically impossible. The legislator did not change any other aspects of the legal situation of building owners, other than the situation in relation to rent, in a manner such as to compensate them for losses connected with the lowered lease rents. The Tribunal finds that, in accordance with its ruling in case P 11/98, the limitations placed on the right to ownership in respect of persons hitherto bound, on the basis of the aforementioned provision, by “regulated rent”, fail to meet the requirement of proportionality as expressed in Article 31(3) of the Constitution and, therefore, exceed the permissible extent of limitations on the right to ownership.

5. In relation to rents set at a level agreed upon freely by the parties by way of negotiation, Article 9(3) of the 2001 Act signifies the legislator’s consent to economically unjustified rent increases in excess of the inflation rate. The Polish legislator failed to take heed of foreign experience with regard to lessees’ protection against unjustified rent increases in conditions of a free market economy. The challenged provision breaches a fundamental principle of contract law by allowing one contractual party (the owner) to alter the terms of the contract in the absence of the other party’s consent (i.e. by increasing the lessee’s performance) without requiring justification of any such alteration, in particular without requiring demonstration of any correlation with an increase in the value of the provided non-pecuniary performance, such as providing access to living quarters. This constitutes a violation of tenants’ rights as they arise from the lease contract, or other contract which constitutes the basis for the use of living quarters. These rights, being property rights other than the right of ownership, are protected by Article 64(1) and Article 64(2) of the Constitution.
6. The Constitutional Tribunal’s ruling that Article 9(3) of the 2001 Act is unconstitutional does not lead to the conclusion that rent payments due for the period preceding the publication of this judgment in the Journal of Laws shall be subject to challenge.
7. The term “freely-negotiated rent” does not mean that there are no limitations on the amount of rent. Despite the quashing of Article 9(3) of the 2001 Act, significant limitations on the freedom to increase rents remain in force, including Article 28(2) and Article 9(1) of the 2001 Act, together with Article 5, Article 58 § 2, Article 388 and Article 685¹ of the Civil Code. Nevertheless, the Constitutional Tribunal considers that the challenged provision proved insufficient in its scope of application. It seems essential to indicate certain limitations on the permissible initial contract rate for rent payments, in particular by ensuring a correlation between this rate and the standard and location of the living quarters. The publication of statistical data on rent levels would also make it easier to avoid the imposition of flagrantly exorbitant rent in particular cases.

Provisions of the Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

Art. 20. A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

Art. 21. 1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 64. 1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

Art. 75. 1. Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.
2. Protection of the rights of tenants shall be established by statute.

Art. 76. Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute.