2006/02/28 - PL. ÚS 20/05: RENT CONTROL

HEADNOTES

The long-term inactivity of the Parliament of the Czech Republic, consisting of failure to pass a special legal regulation defining cases in which a landlord is entitled to unilaterally increase rent, payment for services relating to use of an apartment, and to change other conditions of a lease agreement (§ 696 par. 1 of the Civil Code), is unconstitutional and violates . 4 par. 3, . 4 par. 4 and . 11 of the Charter of Fundamental Rights and Freedoms and . 1 par. 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitutional Court here again points to the conclusions of its decision making practice in matters of rent control, in which it emphasized that it is not permissible to shift the social burden of one group of people (tenants) to another group (landlords), and adds that it is also not permissible to create various categories of landlords, depending on whether the rent in apartments owned by a group is subject to rent control or not. The consequences of the legislature's inactivity lead the Constitutional Court, being aware of its position as the body for protecting constitutionality, to the necessity of replacing the instruments for legal protection of landlord which are lacking at the level of "ordinary" law by applying the principles of constitutional law regulation. That is why the Constitutional Court insists on fulfillment of the fundamental function of the general courts, i.e. ensuring proportional protection of subjective rights and interests protected by law, and requires that the general courts provide them to landlords by not denying their complaints demanding determination of increased rent by referring to the inadequacy of the legal framework. That means that the general courts, even despite the absence of the specific regulations envisaged in § 696 par. 1 of the Civil Code must decide to increase rent, depending on local conditions, so as to prevent the abovementioned discrimination. In such decision making the courts must refrain from arbitrariness; a decision must be based on rational arguments and thorough weighing of all the circumstances of a case, the application of natural principles and the customs of civic life, the conclusions of legal learning and settled, constitutionally consistent court practice.

The selected judicial route to a solution is an expression of evaluating the relationship between the legislative and judicial branches. That relationship arises from the separation of powers in the state, as established in the Constitution. A material analysis necessarily leads us to conclude that this separation is not a purposes in and of itself, but pursues a higher purpose. From its very beginnings it was subjected by the constitutional framers to an idea based above all on service to the citizen and to society. Every power has a tendency to concentration, growth and corruption; absolute power to an uncontrollable corruption. If one of the branches of power exceeds its constitutional framework, its authority, or, on the contrary, does not fulfill its tasks and thus prevents the proper functioning of another branch (in the adjudicated case, of the judicial branch), the control mechanism of checks and balances, which is built into the system of separation of powers, must come into play. The Constitution defines the main task of the judicial branch as follows: "Courts are called upon above all to

provide protection of rights in the legally prescribed manner" (. 90) and "The fundamental rights and basic freedoms shall enjoy the protection of judicial bodies" (. 4). The Constitutional Court's position arises from the same framework of a democratic law-based state: "The Constitutional Court is the judicial body responsible for the protection of constitutionality" (. 83). From these viewpoints, the general courts, including the Supreme Court (cf. decision of 31 August 2005, file no. 26 Cdo 867/2004), err if they refuse to provide protection to the rights of natural persons and legal entities who have turned to them with a demand for justice, if they deny their complaints merely with a formalistic reasoning and reference to the inactivity of the legislature (the non-existence of the relevant legal regulations), after the Constitutional Court, as protector of constitutionality and review thereof, opened the way for them through its decisions. The Constitutional Court has repeatedly declared the unequal position of one group of owners of rental apartments and buildings to be discriminatory and unconstitutional, and the long-term inactivity of the Parliament of the CR to be incompatible with the requirements of a law-based state. The Constitutional Court, by the will of the constitutional framers, is responsible for the maintenance of the constitutional order in the Czech Republic, and therefore it does not intend to abandon this obligation, it calls on the general courts to fulfill their obligations, and refuses to rely merely on pressure from the European Court of Human Rights.

CZECH REPUBLIC
CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of the Chairman Pavel Rychetský, judge Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Ivana Janů, Vladimír Kurka, Dagmar Lastovecká, Jiří Mucha, Jan Musil, Jiří Nykodým, Miloslav Výborný and Eliška Wagnerová, decided on 28 February 2006 in the matter of a petition from the Municipal Court in Prague seeking the annulment of § 685 to § 716 of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, with the participation of the Chamber of Deputies and of the Senate of the Parliament of the Czech Republic, as follows:

I. The long-term inactivity of the Parliament of the Czech Republic, consisting of failure to pass a special legal regulation defining cases in which a landlord is entitled to unilaterally increase rent, payment for services relating to use of an apartment, and to change other conditions of a lease agreement, is unconstitutional and violates . 4 par.

3, art. 4 par. 4 and . 11 of the Charter of Fundamental Rights and Freedoms and . 1 par. 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

II. The petition to annul § 696 par. 1 of the Civil Code is denied.

III. The petition to annul § 685 to § 695, § 696 par. 2, § 697 to § 716 of the Civil Code is denied.

REASONING

A.

The petitioner, in accordance with Art. 95 par. 2 of the Constitution of the Czech Republic sought to have the Constitutional Court issue a judgment annulling the special provisions on lease of an apartment in division four, chapter seven, part eight of Act no. 40/1964 Coll., the Civil Code, as amended by later amendments (§ 685 to § 716 of the CC). It stated that in the matter of the plaintiff, Ing. arch. T. Z., represented by Mgr. S. N., attorney, against the defendant, R. P., the District Court of Prague 5 decided, in its verdict of 23 April 2004, ref. no. 6 C 392/2003-27, by denying the complaint with the petition for payment of CZK 3,668 and conveniences. In that matter, the plaintiff, as the landlord of the building in which the defendant rents an apartment, charged rent in the usual amount under § 671 par. 1 of the Civil Code, because he claimed the amount of rent was never agreed on, and until 19 March 2003 it was only officially set by a legal regulation, which, however, was annulled by judgments of the Constitutional Court. According to a private expert evaluation, the usual level of rent is CZK 4,839, but the defendant paid the plaintiff for July 2003 only CZK 1,171, and therefore the plaintiff seeks payment of the difference. After the presentation of evidence, the court of the first level concluded that the petition was not justified, based on the determination that the defendant was using the apartment on the basis of an agreement on use of an agreement entered into on 2 May 1990. The amount of CZK 1,171, paid in rent in July 2003, corresponds to the rent last stated by decree no. 176/1993 Coll. The court of the first level assessed these findings under § 696 par. 1 of the CC and stated that, in view of the fact that at the present time there is no legal regulation which would, within the scope of that provision, provided an opportunity to increase rent for use of an apartment when the general provisions of the Civil Code concerning rent can not be applied, the plaintiff's demand for payment of the usual rent is not justified, and the starting point must be the last determined rent level under decree no. 176/1993 Coll. The plaintiff filed an appeal against the verdict, in which he objected that the decision is inconsistent with the Constitutional Court's conclusions stated in its decisions no. 231/2000 Coll., no. 528/2002 Coll. and no. 84/2003 Coll., because the court of the first level provided protection to an unconstitutional situation, and the court of the first level should have presented the matter to the Constitutional Court with a petition to annul the provision of the Act which is inconsistent with the Constitution, i.e. § 696 of the CC. According to the plaintiff the contested decision is inconsistent not only with constitutional legal regulations, but also inconsistent with the law itself; decree no.

176/1993 Coll. was not an implementing legal regulation for the Civil Code, but a regulation issued on the basis of the Act on Prices, no. 526/1990 Coll. The provision of § 696 par. 1 of the CC was never fulfilled, which the Constitutional Court also stated in its judgment. Therefore, according to the plaintiff, § 696 of the CC can not be applied if there is no legal norm implementing it, and the court should have proceeded according to § 671 par. 1 of the CC and set the level of rent as the usual rent.

The appeals court, after reviewing certain evidence, concluded that it was appropriate to proceed according to § 109 par. 1 let. c) of the Civil Procedure Code. The evidence introduced indicates that the present dispute does not involve setting the rent as a condition for entering into a new lease agreement, when it would be possible, in the absence of a special implementing regulation envisaged by § 696 par. 1, to take as a starting point the usual rent under § 671 par. 1 of the CC. A lease agreement was duly entered into between the plaintiff's legal predecessor and the defendant, included the rent amount determined by the previously valid decree on rent, which also governed rent control. The plaintiff, as the legal successor of the previous owner, assumed all the rights and obligations of the landlord which arise from a concluded lease agreement. This conclusion is not changed by the fact that decree no. 176/1993 Coll., as well as other regulations, were annulled by the Constitutional Court. In this conflict the plaintiff's entitlement must be seen as an entitlement to unilaterally increase rent which was previously duly set, and because this involves legal evaluation of the matter, the court is not bound in this regard by the plaintiff's petition, which rejects the cited application of the law. For that reason the court of the first level decided correctly under § 696 par. 1 of the CC, but it reached an erroneous legal conclusion if it concluded that the complaint must be denied due to the inadequate legal regulations concerning § 696 of the CC.

The petitioner also points out that under § 493 of the CC an obligation relationship can not be changed without the consent of the parties, unless the Civil Code provides otherwise. Under § 696 par. 1 of the CC a special regulation shall provide the method of calculating rent, payment for services related to the use of an apartment, the manner of paying them, as well as cases in which the landlord is entitled to unilaterally increase the rent and charges for services relating to the use of an apartment, and change other conditions of a lease agreement. These provisions indicate that the Civil Code classified lease relationships to an apartment among exceptional obligations relationships, where a change in the obligations can also occur on the basis of a unilateral legal act by the creditor (landlord). This exception in the landlord's rights is balanced on the other side by the fact that the tenant enjoys increased protection arising from the special regulation of rights and obligations from lease of an apartment (e.g. restriction of the [landlord's] ability to give notice terminating the lease only to specified grounds, only with the consent of the court, and in statutory cases also for compensation). In the petitioner's opinion, § 696 par. 1 of the CC can not be interpreted to the effect that, in the absence of a special legal regulation a petition for payment of increased rent must be denied, because by proceedings that way the court would provided protection for an unconstitutional situation, which was found unconstitutional in all the above cited judgments of the Constitutional Court. That would violate the fundamental constitutional principle enshrined in . 90 of the Constitution of the CR, under which the courts are called upon

primarily to provide protection for rights in a statutorily prescribed manner. In the petitioner's opinion it is also necessary to begin with the principle that in civil law relationships one fundamentally can not deny protection to subjective rights with reference to non-existing legal norms; a court is required, in its decisions, to provide protection to the rights of a landlord who seeks an increase of regulated rent.

The petitioner, in the position of the appeals court, considered whether the dispute could be resolved with the help of statutory analogy (§ 853 of the CC), or analogy of laws, and also applied the opinion of the Plenum of the Constitutional Court stated in decision no. 21/1996. The petitioner concluded that in the absence of a direct implementing statutory regulation to § 696 par. 1 of the CC, in this case, it was not possibly to apply by analogy either the general Civil Code provisions on a lease agreement (§ 663 - § 684) or the general provisions on the law of obligations (part eight, chapter one of the CC), or the provisions of other civil law regulations, because none of them regulate the conditions under which it would be possible without prior agreement to unilaterally change the amount of payments under a lease agreement. In agreement with the court of the first level, the petitioner concluded that it is also not possible to proceed under Act no. 526/1990 Coll., on Prices, because that Act does not provide any conditions under which it would be possible to assess the validity of a unilateral legal act by the landlord aimed at increasing rent. Such conditions could be specified only by an appropriate civil law regulation, and the appeals court referred in full to the legal analysis presented on that issue by the Constitutional Court in judgment no. 528/2002 Coll. In that regard the petitioner concluded that even with the help of analogy the dispute in question can not be resolved.

Therefore, the petitioner proposed that the existing unconstitutional situation be resolved by the Constitutional Court annulling the special part of the Civil Code (§ 685 – § 716 of the CC), which regulates the rights and obligations arising from lease of an apartment. The interconnectedness of the entire legal framework on lease of an apartment does not permit proposing the annulment of only some provision, e.g. § 696 par. 1 of the CC. That provision is an exception provided to protect the rights of the landlord, an is balanced by increased protection of the rights of a tenant during termination of a lease. In the petitioner's opinion the existing legal regulation of lease of an apartment, in the absence of an implementing regulation for § 696 par. 1 of the CC, is unbalanced and one-sidedly gives an advantage to the tenant's position. Therefore, it is inconsistent with the principle of equal protection of property rights (. 11 par. 1 second sentence of the Charter of Fundamental Rights and Freedoms, the "Charter"), as well as being inconsistent with the principle that forced limitation of property rights is possible in the public interest, on the basis of law, and for compensation (. 11 par. 4 of the Charter). The petitioner also emphasizes that it does not consider unconstitutional the content of the special provisions on lease of an apartment, but the gap in legislative activity consisting of the fact that neither by the deadline set by judgment no. 231/2000 Coll. or even in the following more than 3 years, the legal framework envisaged by § 696 par. 1 of the CC has not been passed. The petitioner is aware of the gravity of its petition, but it is not competent to resolve in the dispute at hand whether and what social consequences its petition might have in social, economic, and other areas. It adds that in this specific case annulling the entire legal framework regulating apartment leases would no longer make it possible for the

plaintiff to seek payment of higher rent by the defendant than had been set previously. However, the inequality of rights and obligations from the lease relationship in question would be removed, because all rights and obligations arising from the lease agreement to the apartment would have to be subject to the general regulations for a lease agreement, as well as the general framework for obligation relationships and general provisions of the Civil Code. Any excesses in the exercise of rights and obligations from the lease agreement would have to be resolved in court, as is done with other lease agreements. Because only the Constitutional Court is authorized to evaluate the consistency of individual provisions of the Civil Code with the Charter, the Municipal Court in Prague, pursuant to . 95 par. 2 of the Constitution and § 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (the "Act on the Constitutional Court"), this petition to annul the special provisions on lease of an apartment.

B.

The Chamber of Deputies of the Parliament of the Czech Republic, in its opinion statement, signed by its chairman, PhDr. Lubomír Zaorálek, first recapitulated the petitioner's position, and then stated that in 1991, as part of the reform of the legal order, an extensive amendment of the Civil Code was approved, published in the Collection of Laws as no. 509/1991; its aim was, among other things, to express the fundamental principles of enshrining civil rights and freedoms in the Constitution. This amendment inserted part eight, including the contested chapter seven, division four, entitled "Special Provisions on Apartment Leases." It was largely modeled on international treaties to which the Czech Republic has acceded and which were published as prescribed. Act no. 509/1991 Coll. was approved by the necessary majority of Federal Assembly deputies on 5 November 1991. The Chamber of Deputies also provides information about other laws which amended the contested provisions, Act no. 264/1992 Coll. and Act no. 267/1994 Coll. It adds that the acts were signed by the appropriate constitutional officials and were duly promulgated. In view of this, it expressed the opinion that the legislative assembly acted in the belief that the passed acts were consistent with the Constitutional and our legal order, and that it is up to the Constitutional Court to evaluate the constitutionality of the contested provisions in connection with the petition from the Municipal Court in Prague and to issue the appropriate decision.

The Senate of the Parliament of the Czech Republic also first reviewed the steps taken in introducing § 685 to § 716 into the Civil Code, and added that this was a monolithic block of provisions concerning the return of the classic law of obligations to our civil codex (part eight, the Law of Obligations – § 488 to § 852). Due to the special importance of an apartment in the life of every individual and society as a whole, a separate place was reserved in the extensive set of sections for the regulation of a lease relationship to this socially sensitive secondary subject of a civil law relationship. From a legislative-technical viewpoint, the provisions of § 685 – § 716 were included in one division, and from a systematic viewpoint they were conceived as special provisions related to those that govern a lease relationship generally. It then pointed out that the rules regulating lease of

an apartment have been amended only twice, more markedly and most recently by Act no. 267/1994 Coll. On this occasion it pointed out that the amendment had been aimed at lowering the number of acute conflicts in lease relationships, that it generally meant a shift to the benefit of the rights of landlords, and that the background report described the transfer of payment of all repairs of internal furnishing of an apartment from the landlord to the tenant as an indirect unilateral form of increasing rent.

The Senate of the Parliament of the CR, although the provisions in question were approved at a time when it had not been formed yet, and thus did not take part in the approval process, is aware that the critique of rental housing does not rid it of its part in the responsibility for the situation in this area. The Senate and individual senators tried to take a constructive approach to resolving the problems; the Senate largely believed that revision of rental housing must not be narrowed simply to amendment of the Civil Code, but that it is necessary to create a legal foundation such that the overall change of the landlord-tenant relationship would be realistic and legitimate (i.e. a change in the legal framework should take place on a wider basis, synchronously with the legal frameworks governing, e.g., cooperative housing, financial support for construction and purchasing of apartments, with the condition sine qua non being a thorough analysis including social discussion across a wide spectrum). Therefore, the Senate does not find the solution for such a serious issue to be a method of mere non-comprehensive annulment of individual provisions in one or another statute. The Senate also pointed to the fact that in the last five years three draft acts contained a regulation under which a landlord could unilaterally change the rent for an apartment (under § 696 par. 1 of the CC); however, due to lack of political will the legislative path ended in the Chamber of Deputies, without the Senate getting to speak in the legislative process.

The Senate formulated the following opinion regarding the merits of the matter: There is no doubt that both the interest of the owner of a rental apartment (the landlord) and the interest of the tenant are subject to the protection of a democratic legislature. One can give priority to the interests of one party (usually the tenant) in a certain timeframe, but not permanently and unilaterally. Thus, the tenant's right to a certain level of protection corresponds to the landlord's obligation, on the other side, on the assumption that there is a reasonable (justified) proportionality relationship between the means used and the aims pursued. In other words: ever modern housing policy involves seeking a balance between the principle of protecting the tenant and the principle of protecting the landlord's property, i.e. seeking a fair balance between the requirements of the general interest of society and the requirement to protect the fundamental rights of an individual. Under the case law of the European Court of Human Rights the legislature is given relatively great discretion in resolving this problem: "States are given the right to enact such laws as they consider necessary to regulate the use of property in accordance with the general interest. Such laws are especially necessary and usual in the area of housing, which is a central issue of social and economic policy in modern societies. In order to implement such a policy, the legislature must have a wide margin of appreciation, both in determining whether there is a public interest authorizing the exercise of control measures, and as regards the selection of detailed rules for implementing such measures." (Mellacher and others v. Austria, also Hutten-Czapska v. Poland). The Senate then points to the Constitutional Court's opinion

expressed in judgment no. 84/2003 Coll. In the next part, the Senate turns its attention to the institution of tenant protection, because the provisions proposed for derogation would de iure remove it. After pointing out the fundamental instruments serving to protect the tenant, as the weaker party (rent control and the provision of an exclusive listing of grounds for giving notice of termination), the Senate summarized that one can not think that the state would leave the housing issue completely to the mercy of the market and give up its ability to intervene in private law housing relationships. Housing is a service sui generis to the individual, which the state is required to secure thoroughly. With any kind of controls, there will unavoidably be a limitation of one constitutionally protected right to the detriment of another right, and therefore it is necessary to fundamentally insist that all the criteria be met that characterize such tenant protection as is not considered unconstitutional, by implementing a state policy (provided it pursues a legitimate aim, is implemented through constitutional means, is conceived as an extraordinary measure, and is a public law intervention that is limited in time).

As regards the special provisions of the Civil Code concerning apartment leases, the Senate states that, although the entire division on Apartment Leases primarily gives preference to tenant protection, they also include a number which are of a "neutral" nature, and respond only to various legal situations connected with use of an apartment (e.g. joint rent of an apartment), and there are also provisions which are conceived exclusively to the benefit of the landlord (the tenant's obligation to pay for minor repairs and expenses for routine maintenance of the apartment, the landlord's right of entry into the apartment, etc.). From that, the Senate concludes that § 685 to 716 must be seen as a complex of rules governing the rights and obligations to a specific object – an apartment. If the object of the public interest (an apartment, or rental housing) is unique, there is undoubtedly a need for special regulations, which permit the regulation of situations which are not routinely subject to them. The senate concludes that it is quite justified for the framework in question to be a special one, and it is difficult to reconcile it with a possible problem-free classification under the general provisions on a lease agreement.

C.

In evaluating the justification for the petition, the Constitutional Court requested additional position statements, from affected entities: - the Ministry for Local Development,
- the Tenants' Association of the CR,
- the Civic Association of Owners of Buildings and Other Real Estate of the CR.

From these statements, the Constitutional Court excerpts the following information:
a) The Ministry for Local Development
The Ministry fundamentally disagrees with the petition, and it stated that both the government and the deputies, at their legislative initiative, submitted to the Chamber of Deputies several new draft laws aiming to address apartment rent; however, the Chamber of Deputies did not pass any of them. The ministry also pointed out that the problem to

which the petitioner points is presently being addressed by the government's draft Act on unilateral increases of rent, which is proposed to go into effect on 31 March 2006.

b) The Tenants' Association of the CR
The Tenants' Association of the CR (the "Association") considers the petition fundamentally unacceptable, because granting it would lead to unjustified, deep interference in the rights and obligations of citizens without any sort of appropriate "compensation," and to the termination of a number of legal institutions which define the rights and obligations of citizens, which would quite clearly evoke considerable legal uncertainty. It also pointed to the fact that failure to pass the legal framework envisaged in § 696 par. 1 of the Civil Code can hardly be replaced by actions taken by a court, without erasing the separation between the judicial branch and the executive branch. The Association considers it curious that the petitioner seeks annulment of the provisions on apartment leases, but simultaneously emphasizes that it does not consider these provisions to be unconstitutional, that its aim is to "provoke" the legislative bodies to address the legal relationships concerning apartment leases. A petition is not competent to fulfill this aim, because § 696 par. 1 of the Civil Code is the only provision which permits unilateral increases of rent (though under conditions which are to be provided by a special legal regulation). The Association also requests that a legal regulation be passed as envisaged by § 696 par. 1 of the Civil Code, but it considers it quite out of the question, for that to happen without a "positive," i.e. statutory, regulation. The Association asked that the petition not be granted.

c) The Civic Association of Owners of Buildings and Other Real Estate of the CR
The Civic Association of Owners of Buildings and Other Real Estate of the CR (the "Owners' Association") provided the Constitutional Court a detailed position statement, including extensive appendices. In its statement it primarily emphasized that in Czech law the right to housing is logically not conceived as a fundamental human right, unlike the right to property, and it referred to the classification of lease relationships, including rent control, expressed in the Constitutional Court's judgments. The Owners' Association considers the proposed annulment of § 685 – § 716 of the Civil Code to be a measure which would significantly assist the necessary correction or removal of a now overcome unconstitutional communist relic, i.e. the consequences of the legal framework of so-called "personal use of an apartment"; the existing legal framework of a protected lease – in its opinion – grossly exceeds the normal limits of lease rights standard in Europe. In another part of its position statement the Owners' Association described the most fundamental and most disputed institutions of a protected lease, those being:
- the creation of the relation not on a voluntary basis, i.e. not on the basis of the parties' freedom of contract,
- the inheritability of a lease to apartments belonging to other subjects,
- the tenant's authorization to manage an apartment which does not belong to him, even in cases where he abandons the apartment,
- the inability to terminate the lease in accordance with the free will of the landlord, while the tenant is provided that right, not restricted by anything,
- the obligation of a former landlord to provide a substitute apartment of equal value to former tenants
and it formulated detailed arguments concerning them. Upon summarizing them, it

concludes that tenants in apartments with protected controlled rent (for a definite period) can apply the entire triad of property rights to the apartment, and they use the apartments without restriction for often laughably low payments; the Owners' Association objects that the owner has no rights of disposal, because he can not freely termination the lease of his apartment and freely lease his apartment. Therefore, it considers the contested provisions, in view of the manner in which the lease relationship is created, to be such fundamental interference in the rights of owners, that in the aggregate they are no longer consistent with the constitutional protection of property rights.

As regards the essence of the problem, the Owners' Association pointed out that the amount of so-called controlled rent is not even sufficient to cover the expenses of mere maintenance of a leased apartment, let alone improving it or obtaining appropriate profit, and it pointed to the attached materials from expert institutions. These sources agree that the expenses of mere maintenance range from 2.7 to ca. 4 % z of the current annual maintenance price of an apartment; according to the Ministry for Local Development, at the present time the average regulated rent is equal to ca. 1.2 % of the current annual maintenance price.

The Owners' Association considers the current situation of petrified regulation of apartment leases in the Civil code to be bad legally, economically and in terms of the national economy. It states that protected leases under the regime of the contested part of the Civil Code with rent set according to the annulled regulations on rent control apply in approximately 17% of housing stock, that is, in about 740,000 apartments, of which just under 300,000 apartments are in privately owned buildings. Therefore, in the conclusion of its statement it formulates three alternative recommendations:
a) If the Constitutional Court fully agrees to annul the entire legal framework for apartments leases, nothing will happen that can not be resolved in the framework of the general regulations of leases; it will thereby simultaneously require the state to resolve the problem with a new legal framework.
b) It is evident that certain provisions in the regulations of apartment leases are neutral from the viewpoint of fundamental human rights; therefore, the Owners' Association believes that it would be sufficient for the Constitutional Court to annul only the constitutionally disputed provisions, that is, § 685 par. 1, last sentence, § 696 par. 1, §§ 706, 708, 712, 712a, 713 and 715, last sentence.
c) If the Constitutional Court wished to minimize its intervention, it would be possible to annul only the most substantial and most problematic provisions, which are, at present, § 685 par. 1, last sentence, § 696 par. 1 and § 711 of the Civil Code.

The Civic Association of Owners of Buildings and Other Real Estate of the CR requested that it be given the status of a secondary party to the proceedings, by analogy under § 76 par. 3 of the Act on the Constitutional Court. The Constitutional Court did not decide on this request, because application by analogy of the cited provision does not apply in proceedings to annul a statute or part thereof.

D.

From the file of the District Court for Prague 5, file no. 6 C 392/2003, the Constitutional Court determined that it was conducting proceedings in which the plaintiff, as the landlord of a particular apartment in Prague 5, sought to have an obligation imposed upon the defendant, as tenant of that apartment, to pay him an amount corresponding to the difference between the amount of usual rent (per an expert assessment) and the amount paid for the month of July 2003. The plaintiff complained that the defendant's rent was set by law, by transformation of personal use of an apartment, and that the amount of rent had not been agreed between the parties. After the Constitutional Court annulled the sub-statutory legal regulations on rent control, the plaintiff tried to agree on a fair rent, but the defendant did not agree to his proposal. The court of the first level denied the complaint, when it accepted as proven that there was a lease relationship between the parties, established by an agreement on use of an apartment of 2 May 1990, that the tenant paid rent for use of the apartment which corresponded to the amount last set under decree no. 176/1993 Coll., annulled by Constitutional Court judgment no. 231/2001 Coll., with effect as of 31 December 2001, and that the complaint was not justified. The question of the amount of rent was disputed by the parties, and the court stated that at the present time there is no legal regulation which would at present determine the question of the amount of rent for use of an apartment. In view of this inadequacy in the legal framework, where on the one hand a Civil Code provision refers to a special legal regulation, which, however, does not exist, and on the other hand it is not possible to apply the general Civil Code provisions concerning leases (§ 671 of the Civil Code), the court concluded that § 969 (sic, should be 696) of the Civil Code must be applied to the legal relationship in question, as the amount of rent was determined by decree on the last day before it was annulled. If the lease relationship between the parties continued, the court concluded that the amount of rent set by the decree as of the day it was annulled is the present amount of rent. Although the court sees considerable inequality in the relationships between the landlord and tenant, as the rent last set in 2001 does not correspond to the situation existing in July 2003, at a minimum in view of the increased necessary costs for maintenance and administration of real estate, it did not agree with the plaintiff's opinion that the current amount of rent is inconsistent with Act no. 526/1990 Coll., on Prices, because that law does not apply to the present case. The court did not find grounds for granting the complaint in the inconsistency of the amount of rent with good morals, as claimed by the plaintiff, because inconsistency with good morals only permits denying legal protection to the exercise of a right, not establishing or in any way changing legal relationships.

The plaintiff filed an appeal against the first level verdict, in which it objected that the contested verdict was inconsistent with constitutional law regulations and with the law; he pointed to the fact that the verdict is inconsistent with Constitutional Court judgments. The appeals court reviewed the contested decision and the foregoing proceedings, and concluded that it was appropriate to proceed pursuant to § 109 par. 1 let. c) of the Civil Procedure Code. By resolution of 21 February 2005, ref. no. 18 Co 383/2004-44, it decided to suspend the proceedings pending a decision by the Constitutional Court on its petition to annul the special Civil Code provisions on apartment leases. It stated that it does not consider unconstitutional the text of these provisions, but the gap in legislative activity

consisting of the fact that the envisaged legal regulation had not been passed which would provide the ability for the landlord to increase rent by a unilateral legal act had not been passed.

E.

1. The Constitutional Court is required – in accordance with § 68 par. 2 of the Act on the Constitutional Court – to first consider the question whether the statute claimed to be unconstitutional was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. The petitioner seeks annulment of § 685 to § 716 of the Civil Code. These are provisions which were not part of the original Civil Code, i.e. Act no. 40/1964 Coll., which went into effect on 1 April 1964; they were only incorporated into it at the beginning of the 1990s, as a result of an amendment made by Act no. 509/1991 Coll., which Amends, Supplements, and Adjusts the Civil Code, with effect as of 1 January 1992, in the form of the special provisions on apartment leases in part eight, chapter seven, division four (note: in view of the length of the text, it is not included in the reasoning of the judgment).

Iin view of the fact that Act no. 509/1991 Coll. was passed at the time of the previous constitutional framework for the legislative process and division of legislative power between the then-existing Czechoslovak Federation and the republics, the Constitutional Court did not evaluate fulfillment of the condition whether the Act was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. For legal regulations issued before of the Constitution of the CR went into effect the Constitutional Court – under settled cases law – reviews only the consistency of their content with the existing constitutional order, and not the constitutionality of the manner in which they were created and observance of norm-creating competence (cf., e.g., the judgment file no. Pl US 10/99, Collection of Decisions – volume 16, 1st edition, Prague: C. H. Beck, 2000, p. 119).

2. With effect as of 1 January 1993, some of the provisions in question were subject to minor changes, based on Act no. 264/1992 Coll., which Amends and Supplements the Civil Code, Annuls the Act on State Notary Offices and Proceedings Before the State Notary's Office (the Notarial Code), and Amends and Supplements Certain Other Acts:
a) in § 707 par. 2 the words "state notary office" were replaced by the word "the court",
b) letter i) was added to § 711 par. 1; it reads:
c) "in the case of a special purpose apartment or an apartment in a special purpose building and the tenant is not a person with a health disability,"
d) a new paragraph 4 was inserted into § 711; it reads: "4) In the case of a special purpose apartment or an apartment in a special purpose building, notice of termination of the lease can be given under paragraph 1 only upon the prior consent of the person at whose expense that apartment was established, or his legal successor, or the consent of the appropriate body of the republic which recommended concluding the lease agreement

under the laws of the national councils.”

Because Act no. 264/1992 Coll. was also passed when the previous constitutional framework of the legislative process and division of legislative competence was in effect, the Constitutional Court did not evaluate fulfillment of the condition whether it was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner (see above).

3. With effect as of 1 January 1995 another change of the provisions in question was made, by Act no. 267/1994 Coll., which Amends and Supplements the Civil Code with effect as of 1 January 1995.
a) § 685 par. 1 reads:
“1) The lease of an apartment is based on a lease contract under which the lessor (the landlord) permits the lessee (the tenant) to use the apartment in return for payment of rent, either for a definite period or without determining the period of use. The lease of an apartment is protected; the lessor may give notice of termination to the lessee only for grounds determined by law.”.

b) § 686 par. 1 reads:
“1) The lease contract must contain a description of the flat (apartment) and its conveniences, the extent of its use, the amount of rent or the method of its calculation, as well as other payments for services (supplies) related to the use of the flat or the manner in which they are to be calculated. The lease contract must be in writing.”.

c) In § 692, after paragraph 2 a new paragraph 3 was inserted, which reads:
“3) After a prior written notice, the lessee is obliged to let the lessor, or a person entrusted by the lessor, install and maintain meters measuring heating and hot and cold water consumption, as well as read (record) the measurements shown on such meters. The lessee must also enable access to other technical equipment (installations) situated in the flat and owned by the lessor.”.

d) In § 694 this sentence was added at the end: “Where this duty is breached, the lessor is entitled to require the lessee to eliminate the effected changes and alterations without delay.”.

e) In § 706 par. 1 in the first sentence, after the words “daughter-in law, who” the words “shall demonstrate that” were inserted, and in the second sentence after the words “support, if” the words “shall demonstrate that” were inserted.

f) In § 709 the words “apartments permanently designated as” were deleted.

g) In § 710 par. 3 the part of the sentence after the semicolon was deleted.

h) § 711 par. 1 let. b) reads:
“b) if the lessee has ceased to perform the work to which the lease of a service flat is bound and the lessor needs the flat or another lessee who will perform this work;”.

i) In § 711 par. 1 let. h) at the end the following words were added: “or if he uses flat without serious reasons only occasionally;”.

j) A new paragraph 5 was added to § 711, which reads:
“5) If the lessor did not make use of the vacated flat, without serious reasons, for the purpose for which the court approved notice of termination, on an application by the lessee the court may rule that the lessor pay the lessee his moving expenses and other expenses relating to necessary modification of the lessee’s substitute flat. The court may further require the lessor to pay for the lessee the difference between the rent for the hitherto leased flat and the rent for the substitute flat for a period of up to five years, starting from the month when the lessee moved into the substitute flat, but no later than the day when the lease of the substitute flat is terminated by the lessee. The lessee’s right to reimbursement of the difference in rents shall not become statute-barred for five years. Other rights of the lessee are not affected thereby.”.

k) § 712 reads:
“§ 712
1) Housing substitutes are substitute flats and substitute accommodation.
2) A substitute flat is a flat which, according to its size and conveniences, provides for the lessee and members of his household accommodation for dignified human habitation. If the lease relationship was terminated by the lessor giving notice for reasons stated under § 711 par. 1 let. a), b), e), f) or i), the lessee shall have the right to a substitute flat which, in the local conditions, is essentially equivalent to the flat which he must vacate (an adequate substitute flat). The court may rule with regard to reasons which merit special consideration that the lessee is entitled to a substitute flat which has a smaller floor space than the one which he is vacating. If the lease relationship was terminated by the lessor giving notice for reasons stated under § 711 part. 1 let. b) and the lessee stopped performing work for the lessor without a serious reason, it is sufficient to provide the lessee on his vacating the flat with shelter; the court may rule that for reasons which merit special consideration the lessee has the right to a substitute flat of a smaller floor area, lower quality and with fewer conveniences, possibly located outside the municipality in which the flat which he is vacating is situated, or to substitute accommodation.
3) In cases under § 705 par. 2 first sentence, it is sufficient to provide substitute accommodation for a divorced spouse who must vacate the flat; however, the court may decide that, for reasons which merit special consideration, the divorced spouse shall be entitled to a substitute flat. In cases under § 705 par. 1 and par. 2, second sentence, a divorced spouse is entitled to a substitute flat; for reason which merit special consideration, the court may rule that the divorced spouse is entitled to substitute accommodation only.
4) Substitute accommodation means a one-room flat, or a room in a house for single persons, or the sub-lease of a furnished or unfurnished part of another lessee’s flat.
5) If the lease relationship is terminated by the lessor giving notice under § 711 par. 1 let. c), d), g) or h), it shall be sufficient to provide shelter. However, if a family with minor children is involved and if the lease relationship is terminated by the lessor’s notice under § 711 par. 1 ;et. c) or d), the court may rule for reasons which merit special consideration, that the lessee shall be entitled to substitute accommodation, or to a substitute flat. Shelter means temporary accommodation, until the lessee obtains proper accommodation, and premises for storing his furniture, other household equipment and personal belongings.

6) If the lessee is entitled to substitute housing, he is not obliged to move out of the flat until an adequate housing substitute is provided for him; joint lessees are entitled to only one housing substitute.".
l) After § 712 a new § 712a was inserted, which reads:
"§ 712a
In the period between the end of the lease relationship and the last day of the time-limit for removing things from the flat, the lessor and the person whose lease relationship has terminated have rights and obligations to an extend corresponding to those stipulated in § 687 to § 699 and, as appropriate, in § 700 to § 702 par. 1.".
m) § 713 par. 1 reads:
"1) If, after the death of the lessee or the dissolution of his marriage, his spouse or persons stipulated in § 706 par. 1 continue to use the service flat, such persons shall not be obliged to move out of the flat until they are provided with an adequate substitute flat. This shall also apply if the lessee of the service flat has permanently left the common household. In warranted cases, the court may decide (rule) that it shall be sufficient to provide a flat of a smaller floor area, lower quality or with fewer conveniences, possibly (if need be) a flat located in a town (or village) other than the one where the flat from which it is necessary to vacate is situated, or that it shall be sufficient to provide substitute accommodation.".
n) In § 714 the second sentence reads: "The lessee of a cooperative flat is not obliged to move out of the flat until a housing substitute is provided under the conditions stipulated in § 712.".
o) In § 719 paragraph 2 was deleted. The previous paragraph 3 and 4 are re-numbered as paragraphs 2 and 3.

Act no. 267/1994 Coll. was published in part 79/1994 of the Collection of Laws, which was distributed on 30 December 1994. From the electronic library of the Chamber of Deputies of the Parliament of the Czech Republic the Constitutional Court determined that the draft Act was submitted to the Chamber of Deputies as a government draft on 26 August 1994 and distributed to the deputies as publication 1125. The draft was passed at the 25the session of the Chamber of Deputies on 15 December 1994 by resolution no. 536; out of 163 deputies present, 96 were in favor, 32 against, 33 abstained, and 2 did not vote.

On 16 December 1994 the Act was delivered to the president for signature. The president signed the Act on 22 December 1994.

Therefore, the Constitutional Court, under § 68 par. 2 of the Act on the Constitutional Court, found that Act no. 267/1994 Coll., which Amends and Supplements the Civil Code, was passed and issued within the bounds of legislative competence of the Parliament of the CR set by the Constitution of the CR and in a constitutionally prescribed manner.

4. After the changes implemented, the text of the contested provisions is the following:
PART EIGHT
CHAPTER SEVEN
DIVISION FOUR: Special provisions on Lease of Flats (Apartments)
§ 685
1) The lease of a flat (or the lease of an apartment; in Czech "nájem bytu") is based on a

lease contract under which the lessor (the landlord) permits the lessee (the tenant) to use the flat in return for payment of rent, either for a definite period or without determining the period of use. The lease of a flat is protected; the lessor may give notice of termination to the lessee only for grounds determined by law.
2) A lease contract for a co-operative flat may be concluded on terms laid down in the statutes of the housing co-operative.
3) Acts (laws) of the National Councils shall specify what is meant by "a service flat," "a special purpose flat" and "a flat in a special purpose building," and under what conditions a lease contract may be concluded for the lease of such service flat, special purpose flat or flat in a special purpose building.

§ 686
1) The lease contract must contain a description of the flat (apartment) and its conveniences, the extent of its use, the amount of rent or the method of its calculation, as well as other payments for services (supplies) related to the use of the flat or the manner in which they are to be calculated. The lease contract must be in writing.
2) Where no period of lease has been agreed, it shall be presumed that the contract of lease was concluded for an indefinite period of time.

Rights and Obligations Related to the Lease of a Flat
§ 687
1) The lessor is obliged to hand over the flat to the lessee (tenant) in a condition suitable for its proper use and to ensure that the lessee is able to exercise the rights related to the use of such flat in full and without disturbance.
2) Unless the lease contract provides otherwise, minor repairs in the flat related to its use and costs related to its routine (customary) maintenance shall be paid for by the lessee. The term "minor repairs and expenses" related to routine maintenance of the flat is defined in special statutory provisions.
3) The rights and obligations of a tenant-member of a certain housing co-operative with regard to minor repairs in a co-operative flat and payment of costs related to (customary, normal) maintenance of the flat are regulated by the statutes of such co-operative.

§ 688
The lessee and persons who live with the lessee (tenant) in a common household shall have the right to use the flat and the common spaces of the building and its equipment, as well as the right to make use of services which are rendered in connection with the use of the flat.

§ 689
The lessee (tenant) shall use duly the flat, the common spaces and the building's facilities as well as services rendered in connection with the use of the flat.

§ 690
When exercising his rights, the lessee (tenant) must see to it that a milieu is created in the building which enables the other lessees to exercise their rights.

§ 691
Where the lessor fails to perform his obligation to remedy defects which inhibit proper use

of the flat, or which put at risk the exercise of the lessee's (tenant's) right, the lessee shall have the right – after notifying the lessor accordingly – to remedy such defects to the extent necessary, and to demand from the lessor compensation for the expenses that he expediently incurred. The right to compensation must be claimed with the lessor without undue delay. The right shall extinguish if it is not exercised within six months after removal of the defects.

§ 692
1) The lessee (tenant) is obliged to inform the lessor, without undue delay, of the need of repairs in the flat whose cost is to be borne by the lessor; the lessee must enable the execution of such repairs, otherwise he shall be liable for the damage arising from non-performance of this obligation.
2) Unless the lessee arranges for minor repairs and servicing in the flat to be made in time, the lessor shall have the right, after notifying the lessee, to make arrangements for their execution at his own expense and to demand reimbursement of such costs from the lessee.
3) After a prior written notice, the lessee is obliged to let the lessor, or a person entrusted by the lessor, install and maintain meters measuring heating and hot and cold water consumption, as well as read (record) the measurements shown on such meters. The lessee must also enable access to other technical equipment (installations) situated in the flat and owned by the lessor.

§ 693
The lessee (tenant) is obliged to remedy defects and repair damage in the house (building) which he caused himself, or which were caused by those living with him. Where he fails to do so, the lessor has the right, after having first notified the lessee, to remedy the defects and repair any such damage and demand compensation (reimbursement) from the lessee.

§ 694
The lessee (tenant) may not carry out constructional adaptations in the flat or any other substantial alterations (modifications) to the flat, even at his own expense, without the lessor's consent. Where this duty is breached, the lessor is entitled to require the lessee to eliminate the effected changes and alterations without delay.

§ 695
The lessor is entitled to carry out constructional adaptations in the flat and carry out other substantial alterations to the flat, only with the consent of the lessee, who may withhold his consent only for serious reasons. Where such modifications are made at the order of the competent state administrative authority, the lessee is obliged to enable their execution; otherwise he shall be liable for damage arising from non-performance of the obligation (duty).

Rent and Payments for Services Relating to the Use of a Certain Flat
§ 696
1) The method of calculating the rent, payments for services relating to the use of a certain flat, and the manner of their payment, as well as the circumstances under which the lessor is entitled unilaterally to increase rent and payments for services relating to the use of such flat, and to alter other terms (conditions) of the lease contract, are stipulated in other statutory provisions.

2) Payment for services rendered in connection with the use of the flat, or advance payments for them, shall be made together with payment of the rent, unless the parties agree otherwise, or unless other statutory provisions stipulate differently.
§ 697
If the lessee fails to pay the rent or to pay for services relating to the use of the flat within five days of the due date, he is obliged to pay the lessor a penalty for delay (late charges).

§ 698
1) The lessee (tenant) shall have the right to an appropriate reduction in the rent if the lessor, despite the lessee's notification of defects in the flat or building fails to remedy such defects in the flat or building which, substantially, or for a longer period of time, impair its use. The lessee shall also have the right to an appropriate reduction in the rent if services related to the use of such flat have not been rendered, or have been defectively rendered, as a result of which the proper use of such flat has been impaired.
2) The lessee shall have the same right where construction works in the building substantially, or for a longer period of time, impair the conditions for using the flat or building.
3) The lessee shall have the right to an appropriate reduction in the amounts paid for services relating to the use of the flat, where such services are not properly and timely rendered.

§ 699
The right to a reduction in the rent, or in amounts paid for services relating to the use of the flat, must be exercised with the lessor without undue delay. The right shall extinguish if it is not exercised within six months after the defects having been remedied.

Joint Lease of a Flat
§ 700
1) A flat may be jointly leased by two or more persons. Joint lessees shall have the same rights and obligations.
2) A joint lease can also be based on an agreement between the existing lessee, another person and the lessor.
3) In a co-operative flat, a joint lease may only be established between spouses (husband and wife).

§ 701
1) Any of the joint lessees (joint tenants) may arrange routine matters relating to the joint lease of a flat. In other matters, the consent of all of them shall be required, otherwise the act in law shall be null and void.
2) All joint lessees shall be entitled and bound by acts in law relating to the joint lease jointly and severally.

§ 702
1) Where joint lessees fail to reach an agreement as regards the rights and obligations arising from their joint lease of the flat, the court shall rule on the matter, acting thereby on a petition filed by any of them.
2) Acting on a petition filed by a joint lessee, the court may cancel the right to joint lease of a flat in a case which merits special consideration if, through no fault of the lessee, a

situation arose which inhibited joint use of the flat by the joint lessees. At the same time, the court shall determine which one or more of the joint lessees will continue to use the flat.

Joint Lease of a Flat by Spouses

§ 703

1) If during their marriage spouses, or one of them (become(s) the lessee(s) of a flat, a joint lease of the flat by the spouses is established.
2) If during their marriage only one of two spouses acquires the right to conclude a contract for lease of a co-operative flat, the joint lease of the flat by the spouses shall also establish their joint membership in the co-operative; both spouses shall be entitled and bound jointly and severally from this membership.
3) The provisions of subsections 1 and 2 shall not apply if the spouses do not live together permanently.

§ 704

1) If one of the spouses becomes the lessee of a flat prior to their marriage, once they get married, a joint lease of the flat arises to both spouses.
2) The same shall apply if, prior to their marriage, one of the spouses acquired the right to conclude a contract for the lease of a co-operative flat.

§ 705

1) If divorced spouses fail to reach an agreement about the lease of their flat and one of them files a petition with the court regarding this matter, the court shall terminate the right to joint lease of the flat. At the same time, the court shall determine which of the spouses shall continue to use the flat as a lessee.
2) If, prior to their marriage, one of the divorced spouses acquired the right to conclude a contract for lease of a co-operative flat, the right to joint lease of the flat shall extinguish upon the divorce; the right to use the flat shall pertain to the spouse who acquired the right to lease the flat prior to their marriage. In other cases where divorced spouses fail to reach an agreement about their joint lease of a co-operative flat and one of them files a petition with the court regarding this matter, the court shall rule on the extinguishment of this right, and determine which of them shall, as a member of the co-operative, continue to be the lessee of the flat; the court's ruling (judgment) shall also extinguish the divorced spouses' joint membership in the co-operative.
3) When ruling on the continued lease of a certain flat, the court shall especially take into consideration the interests of minor children and the opinion of the lessor.

Passage of the Lease of a Certain Flat

§ 706

1) If the lessee dies, and unless it concerns a flat in joint lease by spouses, the lessee's children, grandchildren, parents, brothers and sisters, son-in-law, or daughter-in-law, who prove that on the day of the lessee's death they lived together with him in a common household, and that they do not have a flat of their own, shall become (joint) lessees of the flat. Persons who took care of the deceased lessee's common household, or who had been dependent on the deceased for their subsistence (maintenance), shall also become (joint) lessees of the flat, provided that they prove that they lived together with the

deceased in a common household for no less than three years prior to his death and do not have a flat of their own.
2) If the lessee of a co-operative flat dies and if it is not a flat in joint lease of the spouses, both his membership in the co-operative and his lease of the flat passes to the heir upon whom his membership share in the co-operative devolves.

§ 707
1) If one of two spouses who were joint lessees (tenants) of a flat dies, the surviving spouse shall become the sole lessee (tenant) of the flat.
2) In the case of a co-operative flat, joint lease of the flat by spouses shall extinguish upon the death of one of the spouses. If the right to the co-operative flat was acquired during the marriage, the surviving spouse continues to be a member of the co-operative and acquires the membership share; the court shall take this fact into consideration during probate (inheritance) proceedings. If the spouse who died acquired the right to the co-operative flat prior to the marriage, on his death both membership in the co-operative and lease of the flat shall pass to the heir upon whom the membership share in the co-operative devolves. If the lease concerns several objects, the membership share may be inherited by two or more heirs.
3) If one of the joint lessees dies, his rights shall devolve upon the other joint lessees.

§ 708
The provisions of § 706 par. 1 and § 707 par. 1 shall even apply when the lessee has permanently left a common household.

§ 709
The provisions of § 703 to § 708 shall not apply to service flats, special purpose flats and flats in special purpose buildings.
Termination of the Lease of a Flat

§ 710
1) The lease of a flat shall be terminated by a written agreement concluded between the lessor and the lessee, or by a written notice of termination.
2) If the lease of a flat was concluded for a definite period of time, it shall terminate upon expiry of that period of time.
3) A written notice of termination must specify the period when the lease is to terminate; the period may not be less than three months and must finish at the end of a calendar month.

§ 711
1) The lessor may give a notice terminating the lease of a flat only with the consent of the competent court in the following circumstances:
a) if he needs the flat used by the lessee (tenant) for himself, his spouse, his children, grandchildren, son-in-law or daughter-in-law, his parents, or siblings;
b) if the lessee has ceased to perform the work to which the lease of a service flat is connected and the lessor needs the flat for another lessee who will perform this work;
c) if the lessee or those who live with him, despite a written warning, grossly breach morality (good morals) in the house;

d) if the lessee grossly breaches his obligations arising from lease of the flat, especially by not paying the rent or charges for services related to the use of such flat, for a period longer than three months;
e) if it is necessary for reasons of public interest to dispose of the flat or the building (house) so that it cannot be used, or if the flat or the building requires such repairs that the flat or the building cannot be used for a prolonged period of time;
f) if the flat is a flat which is structurally connected to premises designated for operation of a shop, or some other entrepreneurial (business) activity, and the lessee or the owner of such non-residential premises wants to use the flat;
g) if the lessee has two or more flats, unless he cannot justly be required to use only one flat;
h) if the lessee does not use the flat without serious reasons or if he uses the flat without serious reasons only occasionally;
i) if it concerns a special purpose flat or a flat in a special purpose building, unless the lessee is a handicapped (disabled) person.
2) If the court approves a certain notice terminating the lease of a flat, it shall also determine the date on which the lease relationship is to be terminated, taking into consideration the notice period (§ 710). This notice period shall start to run only on the first day of the calendar month following the month when the court ruling (judgment) becomes legally effective. At the same time the court shall also rule that the lessee is obliged to vacate the flat no later than 15 days following expiry of the notice period. If the lessee is entitled to be provided with a substitute flat (or substitute accommodation), the court shall rule that the lessee is obliged to vacate the flat within 15 days of the day when a substitute flat is provided to him and, where substitute accommodation is sufficient, within 15 days of such substitute accommodation being provided.
3) Where the court approves the termination notice for reasons stated under letters a), b), e) and f), the court may, in warranted cases, impose on the lessor an obligation to compensate the lessee for his moving expenses which it shall determine.
4) In the case of a special purpose flat or a flat in a special purpose building, the lease contract may be terminated under paragraph 1 only when this is first approved by the party at whose expense such flat was established or by the legal successor of such party, or when this is first approved by the relevant authority which, in accordance with the laws of the National Council (Parliament), recommended the conclusion of such lease contract.
5) if the lessor did not make use of the vacated flat, without serious reasons, for the purpose for which the court approved notice of termination concerning the flat from which the lessee moved out his things, on a petition filed by the lessee the court may rule that the lessor shall pay the lessee his moving expenses and other expenses relating to modification of the lessee's substitute flat. The court may further require the lessor to pay for the lessee the difference between the rent for the hitherto leased flat and the rent for the substitute flat for a period of up to five years, starting from the month when the lessee moved into the substitute flat, but latest until the day when the lease of the substitute flat is terminated by the lessee. The lessee's right to reimbursement of the difference in rents shall not become statute-barred for five years. Other rights of the lessee are not thereby affected.

§ 712
1) Housing substitutes shall be substitute flats and substitute accommodation.
2) A substitute flat shall be a flat which, according to its size and conveniences, provides

for the lessee and members of his household accommodation for dignified human habitation. If the lease relationship was terminated by the lessor giving notice for reasons stated under § 711 par. 1 let. a), b), e), f) or i), the lessee shall have the right to a substitute flat which, in the local conditions, is essentially equivalent to the flat which he must vacate (an adequate substitute flat). The court may rule with regard to reasons which merit special consideration that the lessee is entitled to a substitute flat which has a smaller floor space than the one which he is vacating. If the lease relationship was terminated by the lessor giving notice for reasons stated under § 711 part. 1 let. b) and the lessee stopped performing work for the lessor without a serious reason, it is sufficient to provide the lessee on his vacating the flat with shelter; the court may rule that for reasons which merit special consideration the lessee has the right to a substitute flat of a smaller floor area, lower quality and with fewer conveniences, possibly located outside the municipality in which the flat which he is vacating is situated, or to substitute accommodation.
3) In cases under § 705 par. 2 first sentence, it is sufficient to provide substitute accommodation for a divorced spouse who must vacate the flat; however, the court may decide that, for reasons which merit special consideration, the divorced spouse shall be entitled to a substitute flat. In cases under § 705 par. 1 and par. 2, second sentence, a divorced spouse is entitled to a substitute flat; for reason which merit special consideration, the court may rule that the divorced spouse is entitled to substitute accommodation only.
4) Substitute accommodation means a one-room flat, or a room in a house for single persons, or the sub-lease of a furnished or unfurnished part of another lessee's flat.
5) If the lease relationship is terminated by the lessor giving notice under § 711 par. 1 let. c), d), g) or h), it shall be sufficient to provide shelter. However, if a family with minor children is involved and if the lease relationship is terminated by the lessor's notice under § 711 par. 1 let. c) or d), the court may rule for reasons which merit special consideration, that the lessee shall be entitled to substitute accommodation, or to a substitute flat. Shelter means temporary accommodation, until the lessee obtains proper accommodation, and premises for storing his furniture, other household equipment and personal belongings.
6) If the lessee is entitled to substitute housing, he is not obliged to move out of the flat until an adequate housing substitute is provided for him; joint lessees are entitled to only one housing substitute.

§ 712a
In the period between the end of the lease relationship and the last day of the time-limit for removing things from the flat, the lessor and the person whose lease relationship has terminated have rights and obligations to an extent corresponding to those stipulated in § 687 to § 699 and, as appropriate, in § 700 to § 702 par. 1.

§ 713
1) If, after the death of the lessee or the dissolution of his marriage, his spouse or persons stipulated in § 706 par. 1 continue to use the service flat, such persons shall not be obliged to move out of the flat until they are provided with an adequate substitute flat. This shall also apply if the lessee of the service flat has permanently left the common household. In warranted cases, the court may decide (rule) that it shall be sufficient to provide a flat of

a smaller floor area, lower quality or with fewer conveniences, possibly (if need be) a flat located in a town (or village) other than the one where the flat from which it is necessary to vacate is situated, or that it shall be sufficient to provide substitute accommodation. 2) The provisions of paragraph 1 shall apply as appropriate to special purpose flats and flats in special purpose buildings.

§ 714
Upon termination of a person's membership in a housing co-operative, his leaves of a (co-operative) flat shall also terminate. The lessee of a cooperative flat is not obliged to move out of the flat until a housing substitute is provided under the conditions stipulated in § 712. The member may demand return of his membership share in the co-operative only after he vacated the flat, namely within the time-limit stipulated in the articles of association.
Regulation of Rights upon the Mutual Exchange of Flats

§ 715
Lessees may make an agreement for exchange of their flats only with the consent of the lessors. The consent and the agreement must be in writing. If the lessor withholds to give consent to an exchange of a flat without serious reasons and the lessee files a petition with the court, its ruling on the matter may replace the manifestation of the lessor's will.

§ 716
1) The right concerning performance of an agreement on the exchange of flats must be asserted before the court within three months of the day when consent to such agreement was given; otherwise the right shall terminate.2) Where such serious circumstances subsequently affect one of the parties that performance of the agreement cannot fairly be demanded of this party, such party may withdraw from the agreement, but this must be done without undue delay. The obligation to render compensation for damage incurred shall not hereby be affected.

F.

The Constitutional Court considered the question whether the petitioner – the Municipal Court in Prague – is authorized to file a petition to annul the contested Civil Code provisions. The active standing of a court to file a petition to annul a legal regulation or provisions thereof is defined by . 95 par. 2 of the Constitution so that, if a court concludes that a statute which is to be applied in resolving a matter is inconsistent with the constitutional order, it shall submit the matter to the Constitutional Court. The Act on the Constitutional Court provides in § 64 par. 3 that a court is also authorized to file a petition to annul a statute or individual provisions thereof in connection with its decision making aktivity under . 95 par. 2 of the Constitution.

In the adjudicated matter (see findings made by the Constitutional Court from the file of the District Court for Prague 5 file no. 6 C 392/2003), in view of the subject matter of the

dispute, in which the landlord seeks to have an obligation imposed on the tenant to pay him the amount of the difference between the usual rent and the rent paid thus far, of the provisions proposed to be annulled only § 696 par. 1 comes into consideration; the other Civil Code provisions on lease of an apartment are not provisions which are to be used in resolving the matter. Thus, the Constitutional Court states that only the petition to annul § 696 par. 1 of the Civil Code is related to the decision making activity of the Municipal Court in Prague, and therefore it denied the petition to annul the other provisions on the lease of an apartment (verdict III.).

G.

The petitioners constitutional law objections to the contested provisions are based on the belief that the present condition of the legal regulation of apartment leases is unbalanced, because the provisions which protect the landlord's rights (i.e. § 696 par. 1 of the CC, envisaging the passage of a legal regulation on the calculation and unilateral increase of rent) is absent, whereas the provisions protecting the tenant are in effect, which – in the petitioner's opinion – unilaterally gives an advantage to the tenant's position. The second level of constitutional law objections consists of the claim that the very gap in legislation, consisting of the fact that the legal framework envisaged by § 696 par. 1 of the CC has not yet been passed, is unconstitutional. The petitioner states that it realizes that annulling all the special legal regulations on apartment leases would then make it impossible for the landlord to seek payment from the tenant of higher rent than had been previously specified. However, the inequality of rights and obligations arising from the apartment lease relationship in question would allegedly be removed, because all rights and obligations arising from the lease agreement to the apartment would have to be subject to the general legal regulation of a lease agreement, as well as the general regulations of obligation relationships and the general provisions of the Civil Code. Any excesses in the exercise of rights and obligations arising form a lease agreement would have to be resolved at court, as is the case with other lease agreements.

The Constitutional Court finds the petitioner's objections, thus formulated, only partly justified, but in the part where it agrees with them, it finds a solution different from the one which the petitioner requests. The Constitutional Court concluded that no grounds exist to annul § 696 par. 1 of the Civil Code. The text itself of § 696 par. 1 of the Civil Code, which merely expects the passage of new regulations, is not unconstitutional; what is unconstitutional is the long-term inactivity of the legislature, which has led to the constitutionally unacceptable inequality, and whose final result is the violation of constitutional principles (verdict I.).

The Constitutional Court considers it essential to evaluate the petitioner's true motivations leading to formulation of the petition to annul the special provisions on apartment leases. It is evident that the true motive behind the petition is the lack of constitutional regulation, or de-regulation of rent, based on the ability to unilaterally increase it. In addressing this undoubtedly sensitive social issue, whose roots lie in the era of the

totalitarian system, it is necessary to respect the fact that the nature of a lease relationship, including the lease of an apartment, as an obligation relationship, conceptually assumes that the greatest possible space will be created to apply the parties' free will and freedom of contract. In a number of its decisions the Constitutional Court has recognized the constitutional dimension of the principle of free will and freedom of contract. In the Constitutional Court's opinion (see the judgment in the matter file no. Pl. US 24/99, Collection of Decisions – volume 18, 1st edition, Prague: C. H. Beck 2001, p. 135, file no. Pl. US 5/01, Collection of Decisions – volume 24, 1st edition, Prague: C. H. Beck 2002, p. 79, file no. Pl. US 39/01, Collection of Decisions – volume 28, 1st edition, Prague: C. H. Beck 2003, p. 153) an essential component of a democratic, law-based stated is protection of the freedom of contract, which is derived from the constitutional protection of property rights under . 11 of the Charter. However, it did not limit freedom of contract only to property rights, although it is precisely in that context that it is most firmly enshrined in constitutional law. In its judgment in the matter file no. I. US 113/04 (Collection of Decisions - volume 33, 1st edition, Prague: C. H. Beck 2005, p. 129) it stated that respect for an individual's sphere of autonomy is a general condition for the functioning of a law-based state under . 1 par. 1 of the Constitution, or . 2 par. 3 of the Charter. An individual's right to free will, i.e. ultimately individual freedom itself, corresponds to the requirement laid on the state power to recognize individuals' autonomous expressions of will and corresponding conduct. As long as that conduct does not interfere in the rights of third persons, the state must only respect, or approve these individual expressions. The state may resort to interference in an individual's freedom only in cases that are justified by a particular public interest, if such interference is proportional in view of the aim which is to be achieved. The principle of protecting the free will of subjects of law is widely reflected in private law, which is characterized by the principle of equality of the parties (this concept of equality is reflected in the reciprocity of the internal structure of private law relationships in comparison with public law, which is characterized by the predominance of the holder of sovereign power, not a concept of equality before the law in the sense of no-accessory equality, i.e. general equality before the law). However, even in the area of private law objective law imposes certain limits on free will or freedom of contract (cf. § 2 par. 2 and 3 of the CC). It can not be overlooked that, precisely as regards the legal regulation of apartment leases, the Civil Code contains a number of norms of a compulsory (mandatory) nature, whose common denominator is the concept of the so-called "protected" apartment lease. However, these norms restrict free will primarily on the other side of the lease relationship, i.e. on the side of the landlord. If we realize that the landlord is typically the owner of an apartment, it is evident that the increased level of tenant protection is reflected in a limitation of the property rights of the landlord, specifically in limitation of his right to dispose of the object of ownership and to draw benefits from it.

The cited protection of free will affects another typical principle of the law of obligations: pacta sunt servanda. This is also an expression of the equality of parties to an obligation relationship, which is also manifested by the fact that neither party has the ability (the right) to change the content of the obligation relationship by its own expression of will (see § 493 of the Civil Code, which was not proposed to be annulled). Unilateral interventions are legally relevant only if the law so provides expressly. De lege lata they include the ability to unilaterally increase rent, by defining conditions (limits) under which

a landlord can change the previously negotiated or specified rent. These rules have come to be known as “rent control.” The absence of the envisaged regulation leads to a situation where a change in the content of a lease (including the amount of rent) is, during the existence of the lease, a matter for agreement by the parties. If such agreement is not reached, there is no legal procedure available (as a result of the legislature’s inactivity), through which it would be possible to implement changes by a unilateral expression of will by the landlord.

The Constitutional Court has repeatedly considered the issue of rent control; see, in particular, Constitutional Court judgment in the matter file no. Pl. US 3/2000 (Collection of Decisions – volume 18, 1st edition, Prague: C. H. Beck, 2001, p. 287 et seq., promulgated as no. 231/2000 Coll., as amended by the notice published as no. 130/2001 Coll.), the judgment in the matter file no. Pl. US 8/02 (Collection of Decisions – volume 28, 1st edition, Prague: C. H. Beck, 2003, p. 237, promulgated as no. 528/2002 Coll.) and the judgment in the matter Pl. US 2/03 (Collection of Decisions – volume 29, 1st edition, Prague: C. H. Beck, 2003, p. 371, promulgated as no. 84/2003 Coll.). In judgment file no. Pl. US 3/2000 the Constitutional Court expressed the opinion that the principle of proportional (just) balance requires that, in respecting the requirements contained in . 11 of the International Covenant on Economic, Social and Cultural Rights, the process of destruction of property rights be taken into account, particular as regards the owners of rental buildings, discriminated against compared to other owners. Price control, if it is not to exceed the bounds of constitutionally, clearly may not lower a price so much that, in view of all proved and necessarily incurred expenses, it would eliminate the possibility of at least recovering them, because in that case it would imply denial of the purpose and all functions of ownership. In judgment file no. Pl.US 8/02 the Constitutional Court stated that protection of property rights does not rule out rent control as a constitutional form of implementing state policy if it is within the bounds defined by the Czech Republic’s constitutional order and international obligations. State intervention must respect a proportionate (just) balance between the requirement of the general interest of society and the requirement to protect an individual’s fundamental rights. That means that there must be a reasonable (justified) proportionality relationship between the means used and the aims pursued. Rent control is not expropriation, but it can affect the content of property rights. In the Charter (. 11 par. 3), property is not understood as an unlimitable right, but under the Charter (. 11 par. 4) it can be limited only on the basis of law and under conditions specified by the Charter (. 4 par. 2), and only in a scope which does not affect the essence of ownership (which may not become a mere shell devoid of content), and even such limitation is subject to the ban on discrimination (art. 4 par. 3 of the Charter). Therefore, the rule in this area is to set rent by agreement (. 2 par. 3 of the Charter), as unregulated (not arbitrary) rent, and regulation of it is an exception which should be limited in a time to the necessary period.

It is necessary to point to the fact that the mutual interconnectedness of rent control and the lagging transformation of civil law relationships regulating housing manifests itself when addressing the fundamental conflict of every modern housing policy, that is, seeking a balance between the principle of protecting tenants and the principle of protecting property, and that the greatest violation of this balance is the fact that in the dual state of

transformation in the Czech Republic a situation arose where subsidies provided to tenants from society-wide funds through low rents were transferred to certain private owner landlords, who received nationalized buildings in restitution. These landlords must pay for operation, maintenance and administration out of their own funds. The unsustainability of such a situation was pointed out by the European Court of Human Rights, which decided in the matter Hutten-Czapska v. Poland that limiting the property rights of owners of rent-controlled apartments is inconsistent with the right to peaceful enjoyment of property guaranteed in . 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Constitutional Court points out that the decision in the matter file no. Pl. US 8/02 was made over three years ago (20 November 2002), and it is evident that not much could have changed in the situation with the housing market. Instead of the legislature, in cooperation with the government, to respond flexibly to the judgments in which the Constitutional Court emphatically criticized the then-existing legal framework of strict rent control, denying the property rights of apartment owners and the incomplete transformation of lease relationships, up to the present it has not succeeded in fulfilling the aim envisaged by the construction of § 696 par. 1 of the Civil Code. The consequence of this activity, or rather, inactivity, is the de facto freezing of controlled rent, which further deepens the violation of property rights of the owners of those apartments to which rent control applied. The intended balance can not be secured in the legal framework otherwise than by passing the envisaged legal regulations. By not passing them, the legislative assembly evoked an unconstitutional situation with is in sharp conflict with the Charter (see verdict I.), by “blessing” the inequality (i.e. impermissible discrimination) between landlords who are able to let apartments for the usual rent, and landlords who are forced to let apartments for rent in an amount existing before annulment of the rent control regulations. However, this situation does, after all, also create an inequality between groups of tenants, which is also manifest in their property sphere, and lacks reasonable justification. The Constitutional Court is aware of the proposal from the Government of the CR to pass a statute on unilateral increasing of apartment rent, but it also points to the rumors that – if the draft is passed – it will contain rules which are applicable pro futuro.

The Constitutional Court here again points out that it is not permissible to shift the social burden of one group of people (tenants) to another group (landlords), and adds that it is also not permissible to create various categories of landlords, depending on whether the rent in apartments owned by a group is subject to rent control or not. The flagrant consequences of the legislature’s inactivity lead the Constitutional Court, being aware of its position as the body for protecting constitutionality, to the necessity of replacing the instruments for legal protection of landlord which are lacking at the level of “ordinary” law by applying the principles of constitutional law regulation. That is why the Constitutional Court insists on fulfillment of the fundamental function of the general courts, i.e. ensuring proportional protection of subjective rights and interests protected by law, and requires that the general courts provide them to landlords by not denying their complaints demanding determination of increased rent by referring to the inadequacy of the legal framework. The Constitutional Court considers denial of these complaints on

grounds summarized in the Supreme Court decision of 31 August 2005, file no. 26 Cdo 867/2004 (subsequently applied in decisions denying an appeal on a point of law ("dovolání") due to impermissibility – see decision file no. 26 Cdo 80/2005, file no. 26 Cdo 819/2005, file no. 26 Cdo 1647/2005, file no. 26 Cdo 1912/2005), to be a violation of . 36 of the Charter. The Supreme Court based the justification of its legal opinion on the following arguments:

In view of § 871 par. 1 of the Civil Code, which, as of 1 January 1992 changed the right to personal use into the right to lease, an apartment lease established by this statutory transformation must be considered equal to a lease created by contract after the given date: thus, one can not conclude that it lacks one of the essential (conceptual) elements – determination of the amount of rent. It follows from the nature of the matter that this element of a lease relationship was preserved from the previous relationship of personal use (where compensation for use of an apartment was set by legal regulation, and thus logically did not have to be negotiated by the parties). A lease relationship thus constituted is also an obligation relationship, which, under § 493 of the Civil Code can not be changed without the consent of the parties, unless the Civil Code provides otherwise. A unilateral change in the amount of apartment rent – as envisaged by § 696 par. 1 of the Civil Code – may be provided by a special legal regulation, which, however, does not exist at present. The Civil Code (or any other law) does not permit a court to interfere in a lease obligation relationship by changing one of its components, including the amount of rent. This power belongs to the legislative and executive branches, and the general courts are not authorized to interfere in it, or to supplement it (cf. . 2 par. 1, 3 of the Constitution). Insofar as the price of rent and services related to use of an apartment was controlled by legal regulations after the creation of the right of personal use, or after its transformation into a lease, this situation must be taken as a starting point until the appropriate special regulation, envisaged by § 696 par. 1 of the Civil Code, is passed. This conclusion can not e changed by the fact that these legal regulations were later annulled as unconstitutional (see § 71 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, under which the rights and obligations from legal relationships arising before a legal regulation is annulled remain unaffected).

At another point in the cited decision the Supreme Court states:

Nor does the appeals court in this matter consider fundamentally legally significant the evaluation of the issue of the binding nature of Constitutional Court judgment no. 84/2003 Coll., which expressly acknowledges the landlord's ability to seek the usual rent, because in view of the fact that, even according to the opinion set forth in the reasoning of that judgment (not undisputed in legal theory or in the decision making practice of the Constitutional Court itself), that what is binding is the verdict of the judgment and those parts of the reasoning which contain "material" grounds, and in view of the fact that the verdict of the cited judgment annulled government decree no. 567/2002 Coll., which provides a price moratorium on apartment rents, and denied the petition to forbid the government of the Czech Republic from continuing to interfere in the area of apartment rents by issuing its own legal regulations, it can not be presumed that the contested decision is inconsistent with the verdict of the cited judgment or with the material grounds

for the decision which led to issuing it.

The Constitutional Court considers the Supreme Courts arguments to be purely positivistic, even rationalizing and completely removed from an effort to resolve the problems which have been creating long-term tension in our society. The Supreme Court's solution not only did not help the practice of the general courts, but also completely abandoned the court's position as the supreme body of the general court system, as it evidently overlooked how long the unconstitutional interference in the positions of landlords had continued (the verdict was issued 31 August 2005). The Constitutional Court also expresses its fundamental disagreement with the assessment that the Supreme Court formulated on the binding nature of the reasoning of judgments, because that assessment is concentrated solely on the judgment in the matter file no. Pl. US 2/03, and does not take into account ideas from previous judgments. These ideas create "material" grounds, which led the Constitutional Court to make its decision.

As regards the arguments of the general courts that it is made impossible for them, under . 90 and . 95 of the Constitution, to fulfill the fundamental duties that they are called upon to perform, i.e. to provide "protection of rights in the legally prescribed manner," the Constitutional Court emphasizes that in a situation where, with the consent of the government and Parliament, two groups of owners of rental apartments have existed side by side on a long term basis, one with market income from leases and one with rent administrative determined in the past, which is, at an estimate, several times lower, and where the legal relationships in both these groups are based on the legal regulation contained in the valid Civil Code, then, with the contribution of the principles contained in the ideas forming the material decision-making grounds in the cited judgments, the Constitutional Court believes that the general courts have a sufficient legal framework to make decisions and provide protection for the fundamental rights of parties who have brought their dispute before them.

Based on these facts, the Constitutional Court, in its role of protector of constitutionality, can not limit its function to the mere position of a "negative" legislature, and must, in the framework of a balance of the individual branches of power characteristic of a law-based state founded on respect for the rights and freedoms of man and of citizens (. 1 par. 1 of the Constitution ČR), create space for the preservation of the fundamental rights and freedoms. Therefore, the general courts, even despite the absence of the envisaged specific regulations, must decide to increase rent, depending on local conditions, so as to prevent the abovementioned discrimination. In view of the fact that such cases will involve the finding and application of simple law, which is not a matter for the Constitutional Court, as it has repeatedly emphasized in its case law, the Constitutional Court refrains from offering a specific decision-making procedure and thereby replacing the mission of the general courts. It merely states that it is necessary to refrain from arbitrariness; a decision must be based on rational arguments and thorough weighing of all the circumstances of a case, the application of natural principles and the customs of civic life, the conclusions of legal learning and settled, constitutionally consistent court practice.

The second level of the petitioner's objections, based on the claimed unconstitutional gap in legislation consisting of the fact that the envisaged legal regulations have not yet been passed, also deserves attention. As a consequence of the inactivity of the legislative assembly it can evoke an unconstitutional situation, if the legislature is required to pass certain regulations, does not do so, and thereby interferes in a right protected by the law and by the constitution. The legislature's obligation can arise both directly from the constitutional law level (e.g. in ensuring the exercise of fundamental rights and freedoms or in protecting them) and from the level of "ordinary" laws, in which it assigns this obligation to itself expressis verbis. It is known that the work of constitutional courts developed protection against inactivity, especially with the German Federal Constitutional Court. Likewise, in the Czech Republic, the Constitutional Court's activity has touched on the issues of gaps (cf. the judgment in the matter file no. Pl. US 48/95, the judgment in the matter file no. Pl. US 36/01; in the reasoning of the latter judgment the Constitutional Court considers to be unconstitutional such omission by the legislature, as has as its consequence a constitutionally unacceptable inequality). Thus, we can conclude that under certain conditions the consequences of a gap (a missing legal regulation) are unconstitutional, in particular when the legislature decides that it will regulate a particular area, states that intention in law, but does not pass the envisaged regulations. The same conclusion applies to the case where Parliament passed the declared regulations, but they were annulled because they did not meet constitutional criteria, and the legislature did not pass a constitutional replacement, although the Constitutional Court gave it a sufficient period of time to do so (18 months). Moreover, it remained inactive even after that time period expired, and to this day has not passed the necessary legal framework (after more than 4 years).

The relationship between the legislative and judicial branches arises from the separation of powers in the state, as established in the Constitution. A material analysis necessarily leads us to conclude that this separation is not a purposes in and of itself, but pursues a higher purpose. From its very beginnings it was subjected by the constitutional framers to an idea based above all on service to the citizen and to society. Every power has a tendency to concentration, growth and corruption; absolute power to an uncontrollable corruption. If one of the branches of power exceeds its constitutional framework, its authority, or, on the contrary, does not fulfill its tasks and thus prevents the proper functioning of another branch (in the adjudicated case, of the judicial branch), the control mechanism of checks and balances, which is built into the system of separation of powers, must come into play. The Constitution defines the main task of the judicial branch as follows: "Courts are called upon above all to provide protection of rights in the legally prescribed manner" (. 90) and "The fundamental rights and basic freedoms shall enjoy the protection of judicial bodies" (. 4). The Constitutional Court's position arises from the same framework of a democratic law-based state: "The Constitutional Court is the judicial body responsible for the protection of constitutionality" (. 83). If we analyze the Supreme Court's arguments in light of these rules, we conclude that the Supreme Court and other general courts err if they refuse to provide protection to the rights of natural persons and legal entities who have turned to them with a demand for justice, if they deny their complaints merely with a formalistic reasoning and reference to the inactivity of the legislature (the non-existence of the relevant legal regulations), after the Constitutional Court, as protector of constitutionality and review thereof, opened the way for them

through its decisions. The Constitutional Court has repeatedly declared the unequal position of one group of owners of rental apartments and buildings to be discriminatory and unconstitutional, and the long-term inactivity of the Parliament of the CR to be incompatible with the requirements of a law-based state. The Constitutional Court, by the will of the constitutional framers, is responsible for the maintenance of the constitutional order in the Czech Republic, and therefore it does not intend to abandon this obligation, it calls on the general courts to fulfill their obligations, and refuses to rely merely on pressure from the European Court of Human Rights, and therefore it decided as stated in verdict no. I.

In relation to the petition itself, after conducting proceedings, the Constitutional Court states that grounds do not exist to annul § 696 par. 1 of the Civil Code, because that provision is not, in and of itself, inconsistent with . 11 par. 1 second sentence of the Charter or with . 11 par. 4 of the Charter, and therefore it denied the petition from the Municipal Court in Prague under § 70 par. 2 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations (verdict II.).

Notice: Decisions of the Constitutional Court can not be appealed.

Brno, 28 February 2006

Dissenting Opinion
of judges Vlasta Formánková and Stanislav Balík

We voted in steps, first against verdict III., which denied the petition to annul § 685 to § 695, § 696 par. 2, and § 697 to § 716 of the Civil Code.

Having been outvoted, we can only wait to see whether the tale from antiquity repeats itself and we will be told: “Hic Rhodus, hic saltate.” We do not agree with the formalistic approach which led to the majority opinion that the Municipal Court in Prague is not an authorized petitioner as regards the Civil Code provisions cited above. With that concept the court not even, for example, resolve the preliminary question whether it is to rule in the matter of a landlord’s complaint against a tenant. A dispute in which a court could be an authorized petitioner as regards § 685 to § 716 of the Civil Code – the unconstitutionality of which can only be evaluated in the mutual interconnections forming a whole which is difficult to separate – can hardly be construed, even hypothetically, in an overly formalistic concept. Thus, is the petitioner, which is not the relevant panel of the Municipal Court in Prague, but the Municipal Court in Prague, next time first to combine for joint proceedings all disputes from complaints under § 685 to § 716, or should it be taken into account that in the adjudicated matter, precisely concerning application of § 696 par. 1 of the Civil Code the petitioner – having in mind the experience of its extensive decision making practice as an appeals court – found the inseparable set of special regulations in Civil Code provisions on apartment leases as a whole to be unconstitutional?

We do not consider the second alternative to be activist. Placed before the narrowed subject matter of the proceedings, we voted to deny the petition to annul § 696 par. 1 of the Civil Code, reserving the right to a dissenting opinion to the reasoning in relation to verdict II. of the judgment. In and of itself, § 696 par. 1 of the Civil Code certainly is not unconstitutional; the question is whether that would be so, e.g. in relation to § 706 par. 1 of the Civil Code …

In the present situation, the long-term inactivity of the Parliament of the Czech Republic, consisting of failure to pass a special regulation to define cases in which a landlord is entitled to unilaterally increase rent and payment for services related to use of an apartment, and change other conditions in a lease agreement, is unconstitutional; we voted to have this declared in the academic verdict I., reserving the right to a dissenting opinion to the reasoning, justifiable above all by the fact that it is a mere drop in the ocean of unconstitutionality of the inactivity of the Parliament of the Czech Republic in the field of rental housing law.

We can only add that in the event of "saltandi" it is necessary to give weight to a number of arguments fished out of the dissenting opinions of other dissenting judges. That, however, would require wider discussion …

Dissenting Opinion
of judge Jiří Nykodým

I disagree with the judgments' verdict which denied the petition to annul the special framework of Civil Code provisions on apartment leases. The Constitutional Court thus avoided resolving a fundamental question which has been unresolved long-term and creates constant tension in society. The petitioner correctly concluded that the entire framework for apartment leases is unconstitutional, and I do not agree that it exceeded the scope of what it could contest, because in its case, in the majority opinion of the Constitutional Court, only application of § 696 par.1 of the Civil Code came under consideration, and not all other provisions of the special framework for apartment leases. this provision can not be taken out of the context of the whole framework. Annulling it in isolation could not correct the problem which the petitioner posed, but, on the contrary, would make it quite impossible to resolve it, which, in any case, the Constitutional Court recognized by not annulling the provision, and, on the contrary, concluding that it is precisely under this provision that the courts should, by a judicial route, correct the unconstitutional situation consisting of the legislature's inactivity. Therefore, they correctly proposed annulling the entire special framework for apartment leases, which would lead to a situation where only the general regulation of leases would apply, which, in § 671 par. 1 of the Civil Code, permits amending the price of a lease if it is not provided by agreement so as to correspond to the usual price at the time the agreement is concluded. Where the price of a lease was governed by a regulation which left no room for

negotiation, one can not conclude that the rent was agreed upon. Therefore the petitioners' deliberations were correct.

I have no doubt that the entire special framework for apartment lease, as a whole, is inconsistent with our constitutional order. This framework led to conserving the situation which was created in the period before 1989. The valid framework is nothing more than a modification of the Civil Code provisions on personal use of apartments, which left no room for the free will of the parties in concluding this type of agreement. The fact that the 1991 amendment of the Civil Code (Act no. 509/1991 Coll.) labeled the previous personal use as a lease, could change nothing about the fact that the legal relationships created in that area until that time had not been created on the basis of freedom of contract, but on the basis of a public law decision. If the legislature did not create space for the parties of the legal relationship thus created to have the ability to conclude a true lease agreement between themselves by a certain, statutorily provided deadline, the legislature itself came into conflict with the fundamental constitutional principles, enshrined in the Constitution and in the Charter. Under . 1 par. 1 of the Constitution the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens. Under . 1 of the Charter people are free, have equal dignity, and enjoy equality of rights.

It is a violation of the principle of equality if a legal relationship was created only on the basis of free choice of only one of the parties and the will of the other party was replaced by a public law decision which, if it was not respected by the owner, was replaced by the decision of a court which, after determining that a valid public law decision was in effect and that the owner did not sign an agreement on delivery and acceptance of an apartment, was required to issue such a decision. This applies to virtually all so-called lease relationships which arose before 1989 and which became leases only on the basis of a statutory provision, specifically § 871 par. 1 of the Civil Code, that is, not on the basis of the free will of the parties to the relationship. Even respecting the principle of indirect retroactive effect, which is a generally recognized principle, one can not accept a situation where, under the conditions of the valid constitutional order, conditions survive which are established on principles completely contrary to those on which it stands. The continuity of rights and obligations arising under the previous legal framework does not mean that a situation must be preserved that is evidently unjust, and violates one of the fundamental pillars of the constitutional order, which the principle of equality undoubtedly is. It was, and still is, up to the legislature to correct this unfortunate situation and create a transitional period, sufficiently long, in which there will be room for the parties of such lease relationships to reach a true agreement, and to also address the situation fro cases where no agreement is reached, even in the period thus provided.

It is a violation of the principle of equality if one group of subjects of law is required to finance the social program of the state solely out of its own revenues. That is the situation in the case of landlords who received tenants whose right to use an apartment arose under the legal framework described above. Of course, the state has the right to regulate certain prices, in areas where the speculative formation of prices could have serious economic or

social consequences. However, a regulated price can not lead to a situation where expenses and profit are not part of the calculation. If a regulated price is in conflict with these principles, such a measure becomes inconsistent with . 11 par. 1 of the Charter, because a certain group of owners finds itself in a situation where their property rights do not have the same legal content and the same protection as other owners, who do not face this disadvantage.

Dissenting Opinion
of judge Vladimír Kůrka

This dissenting opinion relates to the judgment's verdicts I. and II. and to the reasoning of verdict III.

The petition in this matter was filed by a clearly unauthorized subject.

A general court has standing to file a petition under § 64 par. 3 of the Act on the Constitutional Court if there is a connection to its decision-making, or – under . 95 par. 2 of the Constitution – if it concludes that the statute which is to be applied in resolving a matter is inconsistent with the constitutional order.

The aim and significance of this review of the constitutional of legal norms indicates that a "statue which is to be applied in resolving the matter" is one (or the provision thereof) which is a barrier to achieving a desirable (constitutionally consistent) result; if it were not removed, the result of the dispute would be different. To document its standing the petitioner must at least claim such a result.

The only provision which, from the point of view of the considerations presented in the petition, even "concerns" the proceedings on rent (for July 2003) in question is § 696 par. 1 of the Civil Code.

Even that, however, does not meet the described condition of an "applied" provision.

The petitioner acknowledges that annulling this provision does not cause the complaining landlord to receive a position in the dispute that is in any way more favorable, and even the non-existence of the special regulation envisaged by § 696 par. 1 of the Civil Code does not mean that a complaint seeking rent higher than that negotiated must always be denied. On the contrary, it makes it clear that even with the existing legal framework (though not annulled) there is another solution available to the dispute than the solution

which it opposes (ane which was accepted by the court of the first level). Of course, then nothing prevented the petitioner from accepting it – without anything further – in the appeal proceedings.

In terms of the aim, which is to be achieved, according to the petitioner, the proposed annulment of § 696 par. 1 of the Civil Code is anyway illogical, insofar as it is precisely that provision (as evidently the only one) which opens that possibility; it envisages the possibility of external interference into the contractually established amount of rent.

Therefore, the entire petition should have been denied under § 43 par. 1 let. c) of the Act on the Constitutional Court.

The proclamatory verdict stated under point I. thus loses the appropriate basis in the result of proceedings on a constitutional complaint.

Dissenting Opinion
of judge Jan Musil

I disagree with part of the reasoning in judgment file no. Pl. US 20/05, and I have a dissenting opinion to it under § 14 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations.

I agree with the opinion stated in the judgment's reasoning that the present state of the legislative framework for price control of apartment rents is extremely unsatisfactory and is unsustainable. I also agree with the criticism expressed therein of the long-term inactivity of the legislative branch, which does not respect the previous decisions of the Constitutional Court.

However, I have serious doubts whether the manner of correcting the matter identified in part G of the judgment is realistic, and whether it is capable of improving the situation. In this situation, where the legislature has not filled a legal gap and has not yet issued a special regulation governing the regulation of rent, the existence of which is presumed in § 696 par. 1 the Civil Code, the Constitutional Court calls upon the general courts, despite the lack of the envisaged specific framework, to decide on rent increases.

I believe that this transfers the responsibility for addressing a serious general problem, with serious social consequences, to the general courts. The problem of rent control affects an unusually large social group of residents (the judgment's reasoning states that this affects approximately 740,000 apartments). I am of the opinion that such a serious, and essentially, mass social problem can be satisfactorily resolved only by finding social

consensus expressed in legislation. The method indicated in the second part of the background report, i.e. deciding individual disputes before the general courts when no objective criteria exist for setting the amount of rent, could lead to arbitrariness or accidentalness in the general courts' decision-making. The possible mass filing of complaints with the courts can cause social uncertainty, will lead to increased expenses of court proceedings, and from a purely practical viewpoint can lead to further overburdening of the court system.

I also point to certain time-tested foreign approaches to the legal framework for increasing rent, where it is assumed that the courts are competent to resolve disputes over increasing rent, but for which the legislature created, in advance, suitable legislative instruments to guarantee the just resolution of court disputes, which permit weighing both the market and social aspects of the problem.

For an example of a possible legislative solution one can cite the 2001 reform of lease laws in Germany(§§ 535-580a of the Civil Code - BGB), which creates a new model for increasing rent through a court complaint (§ 558b BGB). The German legislature created suitable instruments for fair judicial decision-making. In making decisions, the courts can rely on the price indices maintained by the federal statistics office (§ 557b BGB) or surveys of the local usual rent (§ 558c BGB – Mietspiegel), available in a public database (§ 558e BGB - Mietdatenbank); certain percent limits are placed on rent increases (§ 558/3 – Kappungsgrenze). The Czech courts have nothing like that available to them, and I find it difficult to imagine how they could at the present time fairly and predictable decide individual disputes, especially in the event of mass filings of complaints. Some of the evidentiary methods which are available in such disputes (e.g. expert valuations), are lengthy, procedurally complicated, and expensive for the parties to the dispute.

Dissenting Opinion
of judge Eliška Wagnerová

I have reserved a dissenting opinion to the majority decision concerning verdict III., as well as concerning the reasoning related to verdict II.

In the reasoning of my dissenting position on verdict III. I join the formal objections to the arguments of my colleagues, judges Stanislav Balík and Vlasta Formánková. In addition, I state that I considered it necessary to acknowledge the petitioner's active standing in relation to all the contested Civil Code provisions regulating apartment leases because the constitutionality of § 696 par. 1 of the Civil Code, which the petitioner is supposed to apply can not be evaluated in isolation. Meaningful evaluation of that provision is possible only in the context of the entire legal framework regulation apartment leases. It is only in that context that one can test and evaluate the proportionality of interference in landlords'

property rights (. 11 par. 1 of the Charter), or the proportionality of interference in the peaceful enjoyment of property (. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms). The ability to propose also evaluating the constitutionality of those statutory provisions which, although the petitioner (the court) does not apply all of them in resolving the present matter, must be recognized precisely when it is not possible to evaluate the constitutionality of the actually applied statutory provision in isolation, which is exactly this case. The Constitutional Court's case law (Pl. US 16/99), to which one can refer, also testifies for the possibility of that procedure. Only because this contextual evaluation was not made, I had no choice but to vote with the majority verdict II.

Nevertheless, I consider it necessary to state that if § 696 par. 1 of the Civil Code remains in effect, then in my opinion, and also in accordance with the Constitutional Court's previous judgments (Pl. US 8/02, Pl. US 2/03), it is necessary to insist that the so-called regulation envisaged by that provision must be understood not as an administrative regulation, but as regulation which "is based on market prices depending on the location of buildings (...) As from a comparative law viewpoint, from an economic viewpoint also it is not possible to compare the key term of rent control. In European standards rent control is based on market housing prices. These include, apart from the market prices of land and buildings, also the market expenses for repairs, management and maintenance, as well as appropriate profit. our construction of rent prices is generally based on mandatory prices, which were based on a fundamentally different concept of housing as a social service, paid predominantly out of society-wide funds. This system ruled out adjusting housing prices according to territorially differing levels of land rent. The present attempts at a compromise between these two concepts does not use the allocational and informational effect of market prices, but leads to not making full use of available housing stock, unfairness when allocating it, and corruption" (see judgment file no. Pl. US 8/02). And, as the Constitutional Court also stated in both of the cited judgments, in the future legal framework it is necessary to re-evalute the entire content of the regulation of apartment leases so that the new framework will above all respect the free will of the parties to lease relationships. This requirement arises from . 1 par. 1 of the Constitution, because free will overlaps with the very essence of a material law-based state.

Because the reasoning in the majority opinion, on the contrary, approves a number of mandatory norms, which guarantee the concept of a so-called protected apartment lease, without differentiating between so-called social apartments, whose existence is desirable, although their undoubtedly loss-making operation must be at the expense of public budgets, and apartments whose lease, on the contrary, may not be subject to excessive regulation but must generate appropriate profit, I can not agree with the reasoning. I also criticize the reasoning because it clearly builds on the first Constitutional Court judgment concerning the issue of rent control (Pl. US 3/2000), although it is quite obvious from the two subsequent Constitutional Court judgments (Pl. US 8/02 and Pl. US 2/03) that the Constitutional Court's original position was superseded in the sense of increased emphasis on freeing up the content of a lease agreement, including de-regulation of rent, in view of the passage of time. Judgment Pl. US 2/03 states: "at a general level, the Constitutional Court is of the opinion that it is possible – assuming, of course, protection of an important

public interest – to apply different standards for very short-term interference in an individual's rights and freedoms, precisely because of its lesser effects, than in the case of interference unlimited in time; however, that can not apply if the interference is preceded by a number of instances of interference concerning substantially the same subject matter and already declared to be unconstitutional – that is, concerning the question of the amount of rent – because that basically denies the cited element of "short-term"; in other words, extending an existing unconstitutional situation is not only undesirable, but also impermissible, and thus a regulation which causes such extension is also unconstitutional."

For these reasons I find the majority opinion's reasoning relating to verdict II. to be incompatible with the opinions expressed in the Constitutional Court's last two judgments on the issue of de-regulation of rent. The understandability of the reasoning would certainly also benefit if the passages referring to previous judgments separated quotations from them by quotation marks so that the actual text of the previous judgments would be distinguishable from the interpretation of it, with which I disagree, as is evident above. I consider it necessary to state that I agree with the arguments presented in the dissenting opinions of my colleagues, judges Dagmar Lastovecká and Jiří Nykodým, and for that reasons I do not further discuss the aspects contained in them.

Dissenting Opinion
of judge Dagmar Lastovecká

Verdict III. of the judgment denied the petition to annul § 685-695, § 696 par. 2 and § 697 to § 716 of the Civil Code, with the provision that the petitioner, the Municipal Court in Prague, in proceedings on imposing an obligation on the tenant to pay the landlord an amount corresponding to the difference between the usual rent and the rent paid thus far, will apply only § 696 par. 1 of the Civil Code. The petitioner justified its petition to annul the entire special framework for apartment leases on the basis of the interconnectedness of the individual provisions, which it can not overlook when addressing the question which is the subject matter of the proceedings before it.

The Constitutional Court stated (without more detailed justification), that only the proposal to annul § 696 par. 1 relates to the decision making activity of the Municipal Court in Prague, and therefore it is the only one of the provisions proposed to be annulled which comes into consideration.

This dissenting opinion does not agree with the overly restrictive interpretation of § 64 par. 3 of the Act on the Constitutional Court, under which "a petition to annul a statute or individual provisions thereof may also be submitted by a court in connection with its decision-making activity under . 95 par. 2 of the Constitution of the CR." the legal criteria for the Constitutional Court to be able to begin reviewing the merits of a petition to annul a statute or individual provisions thereof is whether the statute or the individual provisions thereof are connected to a court's decision-making activity. The provision of § 696 par. 1 of the Civil Code is a component of a wider complex of norms concerning apartment

leases, both from a systematic point of view, as it is contained in division four of the Civil Code, and from the point of view of content. The Constitutional Court interpreted the concept of connection with a court's decision-making activity to restrictively in the adjudicated matter, because it was appropriate to also subsume in it the other provisions proposed to be annulled, and the claimed unconstitutionality should have been evaluated in relation to them as well.

The significance and purpose of the special legal framework for apartment leases is, above all, tenant protection, the consequences of which are naturally to limit landlords' property rights, and the provisions of division four are thus interference in a constitutionally guaranteed right, property rights (. 11 par. 4 of the Charter). As the Constitutional Court has consistently ruled, it is possible to submit to a limitation of constitutionally guaranteed rights (even in the case of the category of owners), but only if the conditions arising from . 3 par. 3 and 4 of the Charter are met, i.e. if their essence and significance are preserved. However, in the present matter it is not possible to evaluate whether these principles have been respected when reviewing in isolation only § 696 par. 1, which limits the free will of the parties and replaces it with a special legal regulation. Although an individual provision from the special framework for apartment leases need not be found unconstitutional, it may still be "disproportionate" interference in property rights, precisely in the context of other constitutional complaints against the contested Civil Code provisions.