2006/03/28 - PL. ÚS 42/03: PROTECTION OF APARTMENT LEASE

HEADNOTES

Protection of apartment tenants or apartment leases is a legitimate aim for limitations on property rights, because it contributes to implementing the right to an adequate standard of living under Art. 11 of the International Covenant on Economic, Social and Cultural Rights, the right of the family to social, legal and economic protection under Art. 16 of the European Social Charter, or under Art. 4 par. 2 let. a) of the Additional Protocol to the European Social Charter. If the legitimate aim of protecting a lease is motivated by social reasons (the requirement to provide an adequate standard of living for the tenant, which includes adequate housing to meet the fundamental need to have a safe place to lay one's head) then it is evident that further limitation of an apartment owner beyond satisfying the basic housing needs of the tenant would not stand up to the test of proportionality. If the law limited the owner in his right of disposition of his property so much that it would not permit him to terminate a lease relationship even in a situation where the tenant's basic need for housing is quite evidently saturated, for example, because he has several housing opportunities at an adequate level, such limitation of the owner would have to be assessed as disproportionate to the aim pursued. If the protection of a lease is motivated, besides that, by the state's attempt to regulate the market in rental housing and, in the face of excessive demand, to support the just distribution of apartments, then it would not be a proportional measure if the legal framework limiting apartment owners permitted the accumulation of apartments in the hands of one tenant, or purposeless management of the housing stock so that apartments remained unused and unoccupied.

The Civil Code, in the version valid at the time in question, in § 711 par. 1 let. g) and h) gives the landlord the opportunity to terminate the lease relationship under certain conditions, and only with the consent of the court and if he provides accommodation once the apartment is vacated. The argument that this violates the principle of the parties' free will can not be applied to these provisions in isolation. The tenant's free will, or his freedom of contract, can not be torn out of the context in which it is applied. On the contrary, it is the landlord whose free will is markedly limited when terminating a lease, compared to the tenant. De lege lata, with every additional limitation of the landlord's right to unilaterally terminate a lease agreement, the tenant's right to the apartment could de facto become that quasi-ownership right, to the detriment of the landlord's true property right, which would then survive only as bare ownership, despite the constitutionally proclaimed principle of protecting it. Every further reduction of the exclusively listed catalog of grounds on which the landlord can terminate a lease goes against the spirit of private law, because it deepens the inequality between the parties to a private law relationship. Compared to the present situation, annulling the contested provisions would, to the detriment of the landlord, further deepen the unfair imbalance between the means used (the scope of limitation of property rights by the Civil Code provisions on apartment leases) and the legitimate aim pursued (protection of a lease, or a tenant).

Freedom of movement and residence do not give rise to a tenant's subjective right to have an apartment owner lease an apartment to him; it also does not give rise to a right for it to be impossible to terminate a lease on statutory grounds.

Equality is a relative category by definition: one can think in the category of equality on in the relationship between two persons in the same or comparable position. The provisions of § 711 par. 1 let. g) and h) of the Civil Code, as regards lease of a co-operative apartment, on one hand, and lease of a non-co-operative apartment, on the other hand, are not interference in the constitutionally protected principle of equality, because this is not a case of differentiating between the rights and obligations of tenants either in view of traditionally forbidden criteria (see Art. 3 par. 1 of the Charter), or in view of a different status, but a case of comparing the legal institutions of lease of a co-operative and non-co-operative apartment, to which the constitutionally protected principle of equality does not apply. Inequality can not be claimed to exist where the law provides the same conditions for a claim to all subjects that can be included in the personal scope of a legal regulation. The authority of a democratic legislature in the area of statutory regulation of private law includes the regulation of types of contracts. No provision of the constitutional order gives rise to a binding order that the legislature regulate lease relationships to apartments in a particular manner.

The differences of the institution of a co-operative apartment lease, in view of general principles of justice, would deserve a restrictive interpretation of the contested grounds for giving notice of termination in relation to co-operative apartments. The present legal framework gives sufficient space for such an interpretation. A general court may take into account the special features of a lease of a co-operative apartment when determining fulfillment of these grounds for giving notice of termination under the contested provisions, i.e., in evaluating whether the tenant can not justly be required to use only one apartment [§ 711 par. 1 let. g) of the Civil Code], or in evaluating serious or weighty reasons for which a tenant does not use an apartment or uses it only occasionally [§ 711 par. 1 let. h) of the Civil Code]. It must also take into account § 3 par. 1 of the Civil Code, under which the exercise of rights and obligations arising from civil law relationships may not, without legal grounds, interfere in the rights and justified interests of others, and may not be inconsistent with good morals.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court, composed of Stanislav Balík, František Duchoň, Vlasta Formánková, Vojen Güttler, Pavel Holländer, Vladimír Kůrka, Dagmar Lastovecká,

Jan Musil, Jiří Mucha, Jiří Nykodým, Miloslav Výborný, Pavel Rychetský, Eliška Wagnerová a Michaela Židlická decided on a petition from the District Court for Prague 7, represented by Mgr. T. M., Chairman of the Panel from the District Court for Prague 7, seeking the annulment of § 711 par. 1 let. g) and § 711 par. 1 let. h) of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, with the participation of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, as follows: The petition is denied.

REASONING

I.
Recapitulation of the Petition

1. The District Court for Prague 7 (the "petitioner"), in a petition filed under Art. 95 par. 2 of the Constitution of the Czech Republic (the "Constitution") and § 64 par. 3 of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations, sought the issuance of a judgment annulling § 711 par. 1 let. g) and § 711 par. 1 let. h) of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, as of the day the judgment is promulgated in the Collection of Laws.

2. The petitioner stated that the District Court for Prague 7 is conducting proceedings, file no. 26 C 386/2002, in the matter of the plaintiff B. d. Dělnická 1222 against the defendants T. S. and I. S. In those proceedings, the plaintiff, as a housing co-operative, seeks the court's consent to give notice terminating the lease of an apartment in Prague 7 Holešovice. Both defendants obtained the lease rights to this co-operative apartment on the basis of an agreement on transfer of rights and obligations connected with membership in the co-operative in 1997. However, they never moved into the apartment, and are not using it; the plaintiff claims that since 1988 to the present they have been living in a different apartment in Prague 6. The plaintiff wishes to give notice of termination on grounds under § 711 par. 1 let. d), g) and h) of the Civil Code, i.e. on the grounds that the defendants have not paid the rent and charges for services related to use of the flat for a period of more than three months (from July 2001 to December 2001), and also on the grounds that both defendants have more than one apartment, and that they do not use the apartment in question, without serious reasons, or use it only occasionally.

3. According to the petitioner, the contested Civil Code provisions are inconsistent with Art. 1 of the Constitution and with Art. 1, Art. 4 par. 2 and 4, Art. 10 par. 2 and Art. 14 par. 1 of the Charter of Fundamental Rights and Freedoms (the "Charter").

4. The petitioner acknowledged, that the contested provisions are legal norms with a relatively uncertain hypothesis ("cannot justly be required" or "does not use the apartment without serious reasons, or, without serious reasons, uses it only occasionally"),

which permits the court to define the reach of the norm in each individual case. Nevertheless, it concluded that the contested provisions as a whole are inconsistent with the constitutional order, because in the case it is handling it is forced to apply the contested provisions to the lease of a co-operative apartment.

5. The petitioner believes that both contested provisions are inconsistent with Art. 1 of the Charter, first sentence, because they violate the principle of equal rights, as it has been interpreted in a number of cases by the Constitutional Court (e.g., judgment file no. Pl. US 18/01 of 30 April 2002, published as no. 234/2002 Coll.). The legislature did not distinguish between co-operative and non-co-operative apartments, and set the same conditions for the termination of lease rights for both co-operative and non-co-operative apartments. Thus, it is impermissibly disadvantaging tenants of co-operative apartments compared to tenants of non-co-operative apartments, and does so by unjustifiably setting the same rules for different kinds of cases. The result is to negate the purpose of association in housing co-operatives. The petitioner pointed out that in the adjudicated case the plaintiff gave the defendants notice of terminating a lease of a co-operative apartment, without the defendants' membership in the co-operative having terminated in any way.

6. The petitioner sees inconsistency with Art. 4 par. 2 and 4 of the Charter in the fact that the legislature impermissibly interfered in the rights of co-operative apartment tenants with the contested norms, by not ruling out their application to the lease of co-operative apartments.

7. The petitioner also pointed to the history of the contested provisions. Both became part of the Civil Code only in the so-called "large" amendment implemented by Act no. 509/1991 Coll., but this was not a new legal regulation. Moreover, for the amended Civil Code the legislature more or less adopted the legal framework contained in the Civil Code's original wording – § 184 let. c) and d). The legal framework of these grounds for giving notice of termination became part of the legal order under completely different social-economic conditions, at the time of a centrally regulated state that appropriated the right to determine the amount of housing construction and interfere in its management and allocation to (and taking away from) individual users. The legal framework of these grounds for giving notice of termination was connected to the shift from the traditional framework of the lease of an apartment to so-called "personal use" of an apartment. The background report to the Civil Code justified this shift on the grounds, among other things, that "a lease is not appropriate, in particular for apartments of housing construction co-operatives, where the right to use of an apartment is similar to the right to use an apartment on the basis of ownership rights." Specifically, it was justified by the need to limit "negative speculation and obtaining revenues which are difficult to determine and obtained without working."

8. In contrast, according to the petitioner, today, when the Czech Republic is a fully democratic state that protects human rights and individual freedoms, a law-based state founded on respect for the rights and freedoms of man and of citizens (Art. 1 of the Constitution), there can be no justification for a legal norm which punishes, through

grounds for notice of termination, a situation where the tenant, in his own free will and freedom of contract, decides to obtain, by leasing, the ability to use several apartments, or housing possibilities, whatever reasons the tenant has for doing so. It is only up to the will of the parties to a lease agreement whether they conclude it, under what conditions, and whether the tenant will in fact use the apartment. There is no reason to force a tenant to have only one apartment, if it is within his abilities to meet his obligations from leasing several apartments.

9. The petitioner also explained the inconsistency which may be found between its arguments based on the change in social-economic conditions and arguments based on the principle of equality, or unjustified differences between tenants of co-operative and non-co-operative apartments. The petitioner believes that it is precisely because of the non-existence of a positive legal provision excluding co-operative apartments from § 711 par. 1 let. g) and h) of the Civil Code, that these norms are unconstitutional in another way (inconsistent with Art. 1 and 4 par. 2 and 4 of the Charter), and that the mere fact that both of the contested provisions are part of the legal order is inconsistent with Art. 1 of the Constitution.

10. Finally, the petitioner sees the contested provisions as inconsistent with Art. 10 par. 2 and Art. 14 par. 1 of the Charter because, since the landlord of a co-operative apartment has a statutorily permitted ability to give a co-operative apartment tenant notice of termination on the grounds that the tenant has several apartments (housing possibilities) or on the grounds that the tenant does not use the co-operative apartment, the landlord can interfere in the tenant's private and family life and his freedom of residence. Moreover, this can happen on grounds whose inclusion in the legal order lost its justification with the fall of the totalitarian regime.

II.
The Proceedings and Recapitulation of the Statements from the Parties to the Proceedings

11. The Chamber of Deputies of the Parliament of the Czech Republic, through its Chairman, PhDr. L. Z., provided a response to the Constitutional Court's request, pursuant to § 69 of the Act on the Constitutional Court. It stated that, insofar as the legislature provided the same grounds for a landlord to give notice of terminating a lease with the consent of the court for tenants of co-operative and non-cooperative apartments, it did not thereby impermissibly favor one group. It pointed to Art. 1, Art. 3 par. 2 and Art. 4 par. 2 and 3 of the Charter and § 2 par. 2 of the Civil Code, which give rise to, on one hand, a ban on exceptions, privileges for certain categories of people or individuals, or discriminatory measures, and on the other hand, the principle of equal status of subjects of civil law relationships.

12. The Chamber of Deputies also disagreed with the petitioner's claim that the contested provisions of the Civil Code fail to respect freedom of movement and residence. No

provision of the law forbids the use of two or more apartments. The contested legal framework merely also respects the needs of the landlord, and thus eases the situation for him, because he can not give notice of termination on grounds other than those specified in the law. It is up to the court to carefully weight the situations of the landlord and tenant. The Chamber of Deputies also pointed out that freedom of movement under Art. 14 par. 1 of the Charter means the right of any natural person to move about the territory of the Czech Republic defined by its state borders, i.e. the ability of the person to visit any place within the state borders. Freedom of residence is the right to freely reside and settle in any place in the Czech Republic, the right to freely choose one's place of residence inside the Czech state.

13. In conclusion the Chamber of Deputies stated that Act no. 509/1991 Coll., which added the contested provisions to the Civil Code, was approved by the necessary majority of deputies in the Federal Assembly on 5 November 1991, and Act no. 267/1994 Coll., which added the words "or uses it without serious reasons only occasionally" to the Civil Code, in § 711 par. 1 at the end of let. h), was approved by the necessary majority of deputies of the Chamber of Deputies on 15 December 1994. Both these laws were signed by the appropriate constitutional authorities and were duly promulgated. The legislative assembly acted in the belief that the enacted statute was consistent with the Constitution and our legal order. According to the Chamber of Deputies, evaluation of its constitutionality in connection with the petition from the District Court for Prague 7 is up to the Constitutional Court.

14. The Senate of the Parliament of the Czech Republic, through its then-chairman, doc. JUDr. P. P., in its statement of 15 March 2004 stated that the provisions of the Civil Code concerned in the petition were approved at a time when the Senate had not yet been elected.

15. As regards the merits of the matter, the Senate stated the following. The provision on notice of terminating an apartment lease in § 711 par. 1 of the Civil Code must be interpreted in connection with § 685 par. 1, second sentence: "The lease of an apartment is protected; the landlord may give notice of termination to the tenant only on grounds provided by law." The grounds for giving notice of termination in § 711 par. 1 of the Civil Code are part of a wider set of measures identified in theory and practice as tenant protection, or protection of the weaker party (regulation of rent is considered to be the second component of tenant protection). Such protective measures had their place at a time when, as part of the consolidation of social relationships, or prevention of undesirable economic-social consequences, there was a public interest in creating stability in a particular area of social relationships. Such a situation arose here in the sphere of rental housing after the creation of Czechoslovakia, after both world wars, and again after 1989.

16. As the Senate further stated, grounds for giving notice of termination due to "lack of need" or "redundancy" have permeated our legal order in various formulations since 1920 (e.g., Act no. 225/1922 Coll., on Extraordinary Measures for Apartment Care, a series of

laws on tenant protection from the 1920s, laws on managing apartments in the era of the planned economy, and the current versions of the Civil Code). In this regard, it appears inappropriate for the petitioner to connect the similarity between the relevant grounds for giving notice of termination from 1964 and those from1991 to their pre- and post-November 1989 content or regulatory aim. The legal norm expressed by a legal text must withstand being measured against the values of a law-based state, as is declared in Art. 1 par. 1 of the Constitution, and interpretation of a legal norm passed in 1991 can not be based on a background report from 1964. Such arguments in and of themselves can not be relevant to reaching an opinion that Art. 1 par. 1 of the Constitution has been violated.

17. According to the Senate, protection of the weaker party finds support in the imperative to protect the adequate standard of living of every individual, including housing (see Constitutional Court judgment no. 231/2000 Coll.). Implementation of constitutional law in the sub-statutory level can be done using the conclusions of European case law, under which states are given the right to pass 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 becoming a central issue of social and economic policy in modern societies. In order to realize such policies, the legislature must have a wide margin of appreciation, both in determining whether a general interest exists that authorizes applying regulatory (control) measures, as well as in the choice of similar rules for implementing such measures.

18. According to the Senate, § 711 par. 1 can also be understood as an exception from the total ban on giving notice terminating an apartment lease. Seen thus, it is actually a positively stated “protection” of the person and property of the landlord. Annulling each of the grounds for termination in § 711 par. 1 of the Civil Code would increase the protection of the tenant to the detriment of the landlord-owner. In this regard the Senate pointed to the principle of a fair balance between the means used and the aim pursued.

19. The Senate rejected the petitioner’s deliberation on the impermissibility of a legal norm which limits the tenant’s contractual freedom or free will in acquiring the possibility of using several apartments, or limiting him in the decision not to use an apartment. According to the Senate, the legal status quo does not in any way forbid a tenant from having two or more apartments, not using an apartment, or using it only occasionally. Nor does the law order a landlord to rid himself of such tenants, it merely gives the landlord the opportunity to terminate the lease relationship under certain conditions, and only with the consent of the court and if he provides accommodation once the apartment is vacated. Thus, this case does not a priori concern the limitation of contractual freedom or free will.

20. In response to the petitioner’s argument that the legislature is unjustifiably disadvantaging tenants of co-operative apartments compared to tenants of non-co-operative apartments, the Senate stated that such an exception to application [of these provisions] would require an act by a positive legislature, which the Constitutional Court is not. However, it pointed out that the provisions of Part Eight, Chapter Seven, Division Four of the Civil Code are general provisions for apartment leases; they apply to the creation,

rights and obligations, and termination of all types of apartment leases, so the petitioner's claim of a completely different group of conditions for the creation of a lease for co-operative apartments is not appropriate. The creation of a co-operative apartment lease is legally subject to the same uniform principle. Its difference lies in the fact that an applicant for an apartment must also meet the conditions for membership in the housing co-operative. Ruling out application of the contested provisions to co-operative apartments could appear discriminatory against tenants of other types of apartments (including company apartments, special designation apartments, and apartments in special designation buildings). This would strengthen protection of a tenant who is a member of a co-operative, which would have the effect of lowering the protection of a landlord-owner, which, paradoxically, would distance co-operative housing from ownership rights.

21. As regards inconsistency with the right to protection of private and family life, the Senate stated that the contested legal framework does not impose an obligation on the tenant to give the landlord information about whether he has an apartment that he does not need, not does it permit the landlord to enter the tenant's apartment and violate his constitutional rights, including family life. As regards the guarantee of freedom of movement and residence, the Senate considers it indubitable that these directly applicable constitutional rights do not conflict with the ability to give notice of termination of a private law relationship (an apartment lease). If it were so, the entire § 711 par. 1, not just the contested grounds for giving notice of termination, would lose its constitutional foundation.

III.
Recapitulation of the Statements of Other Entities under § 49 of the Act on the Constitutional Court

22. Pursuant to § 49 par. 1 of the Act on the Constitutional Court, the Constitutional Court also contacted associations of persons representing the rights of owners of buildings and apartments, i.e. the interests of landlords, and associations representing the interests of tenants, and gave them an opportunity to respond to the petition.

23. The Association of Tenants of the Czech Republic (the "Association of Tenants"), in its response, through its chairman, JUDr. S. K., supported the petition to annul the contested provisions of the Civil Code, saying that it found the arguments relevant. It stated that both the contested provisions had been included in the Civil Code primarily in view of the rent control situation in 1992, when the legislature undoubtedly intended to make it impossible for tenants to misuse regulated rent in order to use multiple apartments, or to use an apartment which they did not need at the time. According to the Association of Tenants, the situation now is quite different. There is no longer any rent control on newly concluded lease agreements, and if a new lease agreement is concluded for another apartment then the original legislative intent is evidently not being fulfilled, and this measure has lost its original purpose. The Association of Tenants pointed out that both grounds for notice of termination are determined by case law, because in some cases the

use of two apartments is necessary, and, as the law in fact anticipates, the tenant can not justly be required to use only one apartment. Non-use of an apartment is difficult to prove, and it is equally difficult to prove use of an apartment in a situation where people's lifestyles are different, and it is not possible to explicitly specify what extent of use of an apartment is or is not consistent with the law, or how high a degree (e.g. daily) of use of an apartment the law will or will not tolerate.

24. The Civic Association of Owners of Buildings, Apartments, and other Real Estate in the Czech Republic (the "Association of Owners"), through its chairman, RNDr. T. Š., stated the opinion that the Constitutional Court should deny the petition. In its opinion, applying the contested provisions of the Civil Code to co-operative apartments, or to apartments leased freely and for contractually agreed rent, could be inconsistent with good morals under § 3 of the Civil Code; a court can evaluate this and then not consent to notice of termination on those grounds; in addition, a court also has the opportunity to evaluate these facts within the contested provisions (arguments: "the tenant cannot justly be required …," "… the tenant has serious reasons to use the apartment only occasionally"). According to the Association of Owners, the case before the petitioner can be resolved by applying the contested provisions of the Civil Code, merely by interpretation. After all, it can be said that tenants who are also co-operative members and who have expended a not insignificant sum to acquire their co-operative share, which has value for them only in connection with lease of a co-operative apartment, can not justly be required to use only one apartment. The same arguments can be made concerning "serious reasons." In both cases the court can say that exercise of the property rights of the co-operative, as owner, against a member of the co-operative, would be inconsistent with good morals, and therefore it can refuse consent to the termination notice, with reference to § 3 par. 1 of the Civil Code.

25. Thus, according to the Association of Owners, the problem is only in more detailed interpretation of the contested provisions. The contested provisions are, and after a transitional period will be, an inseparable part of inadequately transformed lease law, as established by Act no. 40/1964 Coll., the Civil Code, and by Act no. 41/1964 Coll., on Managing Apartments. According to the Association of Owners, any changes to or annulment of these grounds for giving notice of termination would have to be accompanied by a systematic transformation of all lease relationships into classic lease relationships characterized by the free will of both parties to enter into the temporary relationship under conditions to which both parties freely agree.

26. The Association of Owners pointed out that the right to use an apartment, which was renamed "lease of an apartment" in § 871 of the Civil Code, lacks the character of a freely-concluded contract. This preserved the situation which existed before 1989, when the right to use an apartment had the character of a social support payment. In order for the recipients of this social support payment not to be able to misuse it for negative speculations and obtaining revenues which were difficult to determine and obtained without working, and in order for it not to be excessive, the socialist legislature included in the Civil Code of that time the authorization for a court to decide on the termination of

the right to personal use of an apartment on the grounds that the user used or owned two apartments, or that he did not use an apartment at all, or only occasionally, without serious grounds [§ 184 let. c) and d)]. For the same reason, after 1989 a limitation was introduced into the Civil Code on those who could, as part of their social support in the form of the right to use an apartment for regulated rent, misuse this advantage, when they did not need it. Thus, even today a lease relationship is more similar to the earlier right to permanent use of an apartment, and the owners of such apartments are left with only "bare ownership." The grounds for giving notice of termination must also be seen in the context of other institutions that were taken over from the framework of the right to personal use [transfer of a lease without the landlord's consent under § 706 et seq. (previously § 179 et seq.), exchange of an apartment without the landlord's consent under § 715 et seq. (previously § 188), and creation of a joint apartment lease for spouses by law without the landlord's consent under§ 703 et seq. of the Civil Code (previously § 175)].

27. In this regard the Association of Owners also pointed to the Constitutional Court's deliberations expressed in judgments no. 231/2000 Coll. and, especially no. 528/2002 Coll. and no. 84/2003 Coll. It stated that if the Constitutional Court now granted the petition, this would deepen the quasi-ownership nature of a lease, and other curtailment of ius utendi a ius disponendi as fundamental elements of ownership rights. The Association of Owners acknowledges that it is absurd to apply the contested provisions to co-operative, i.e. de facto owned housing, but in its opinion the Constitutional Court should not overlook what effects granting the petition would have on another group of lease relationships, created on the basis of § 871 par. 1 of the Civil Code; the consequence would be violation of property rights under Art. 11 of the Charter. The Association of Owners pointed out that the contested provisions also have a transformational significance: they permit the shift of lease relationships concerning apartments from the sphere of the unconstitutional rent control, and the endlessness of that situation, into the sphere of ordinary lease relationships without quasi-ownership elements in the tenant's relationship to the rented thing, the apartment.

28. According to the Association of Owners the possible violation of tenant's rights also does not lie in the fact that the contested grounds for notice of termination of an apartment lease exist, but in the fact that there is no positive provision of ordinary law which rules out applying these grounds for giving notice of termination to co-operative apartments (or, as the case may be, to contractual lease relationships created by a free lease agreement after 1 January 1992, where, in view of free will, these grounds for giving notice of termination do not even come into consideration).

IV.
The Text of the Contested Provisions of the Law and their Legislative History

29. The Constitutional Court states that the provisions contested by the petition, § 711 par. 1 let. g) and h) of the Civil Code, at the time the petition was filed, and now, read as follows:

“§ 711
(1) The landlord may give a notice terminating the lease of an apartment only with the consent of the competent court, on the following grounds:
....
g) if the tenant has two or more apartment, unless he cannot justly be required to use only one apartment;
h) if the tenant does not use the apartment without serious reasons or if he uses the apartment without serious reasons only occasionally.

30. The provisions of § 711 par. 1 let. g) and h) of the Civil Code were introduced by Act no. 509/1991 Coll., which Amends, Supplements, and Alters the Civil Code, with effect as of 1 January 1992. The original text of the contested provisions according to this Act was the following: “g) if a tenant has two or more apartments, except in cases where he can not be justly required to use only one apartment; h) if the tenant does not use the apartment without serious reasons.”

31. The background report to the government draft of this Act (publication 685, 18th session of the Federal Assembly) states: “The former institutions of personal use, particularly personal use of apartments, are also returning to the law of obligations. Of course, there are certain problems connected to the legal regulation of use of apartments (in future, the lease of apartments). The primary problem is that there is not yet a market in apartments, and in view of the situation, creation of that market will be – as shown by experience in the law-based states of our western neighbors – a long-term process. … The previous framework took the special provisions on personal use of an apartment (§ 685 et seq.) together with changes which reflect the new social situation. ... The new regulation can not by itself create a market in apartments, but it can stimulate and support its creation. It removes the previous administrative interference in lease relationships. ... Protection of an apartment lease, which is specific to the legislation of law-based states, is based on the fact that if there is no agreement, a landlord can not terminate a lease without stating grounds, but can only file a petition with a court for the court’s consent to terminate an apartment lease on the basis of the grounds exclusively listed in § 711. The amendment expands these grounds while also respecting the needs of the landlord. ... The amendment assumes that an apartment lease is also created with co-operative apartments. However, the manner of concluding a lease agreement, the content of the lease, and its termination are modified under conditions provided in the by-laws of housing co-operatives.” In discussions of the government draft of the act, no deputy from the Federal Assembly stated any opinions on the provisions in question.

32. Act no. 267/1994 Coll., which amends and supplements the Civil Code, added the words “or uses it without serious reasons only occasionally” to the end of § 711 par. 1 let. h), with effect as of 1 January 1995. The proposal to amend the wording of this provision was not part of the government draft. It became part of the draft Act on the basis of the joint report of the Constitutional Law, Budget, and Economics Committees of the Chamber of Deputies, and the proponent (the Minister of the Economy, on behalf of the government) supported this amending proposal. The joint committee report did not

provide a justification, and during discussion no deputy stated any opinion on the amending proposal.

V.
Conditions for the Petitioner's Active Standing

33. The Constitutional Court first considered the question whether the petitioner – the District Court for Prague 7 – is authorized to submit a petition to annul the contested provisions. It concluded that it is. The petitioner correctly stated that it must apply the contested provisions in civil law proceedings on consent to giving notice of termination of an apartment lease, because the plaintiff in those proceedings bases the grounds for the termination notice on the contested provisions. Thus, the petition from the District Court for Prague 7 is related to its decision making activity, and therefore that court is an authorized petitioner under Art. 95 par. 2 of the Constitution and § 64 par. 3 of the Act on the Constitutional Court.

VI.
Constitutional Conformity of the Legislative Process

34. Under § 68 par. 2 of the Act on the Constitutional Court, the Constitutional Court, apart from evaluating whether a contested law is consistent with constitutional laws, is to determine whether it was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner. In doing so, it relies on § 66 par. 2 of the Act on the Constitutional Court, under which a petition is impermissible if the constitutional law with which the regulation is inconsistent, according to the petition, ceased to be in effect before the petition was delivered to the Constitutional Court. The foregoing indicates that with legal regulations issued before the Constitution went into effect (1 January 1993) the Constitutional Court is authorized to review only their consistency with the existing constitutional order, but not the constitutionality of the process by which they were passed and observance of norm-creating jurisdiction (see also judgment file no. Pl. US 10/99, published as judgment no. 150, vol. 16 Collection of Decisions, pp. 115, 119).

35. Thus, in this matter the Constitutional Court did not examine whether Act no. 509/1991 Coll., which inserted the contested provisions into the Civil Code, with effect as of 1 January 1992, was passed and issued within the bounds of the jurisdiction provided by the federal constitution at that time and in a manner prescribed by it.

36. Act no. 267/1994 Coll., which the contested provisions amended, was, however, passed and issued during a time when the Constitution was in effect, and therefore it is first necessary to determine whether it was passed and issued within the bounds of

constitutionally provided jurisdiction and in a constitutionally prescribed manner.

37. The Constitutional Court determined from resolution no. 536 of the Chamber of Deputies of the Parliament of the Czech Republic, from the 25th session, on 15 December 1994, that the government draft of the Act which amends and supplements the Civil Code, according to Chamber of Deputies publication 112, in the version from the joint committee report from Chamber of Deputies publication 1264 and the approved amending proposal, was approved by the Chamber of Deputies. The Constitutional Court determined from the transcript of that session that, out of 163 deputies present, 96 deputies voted for the draft, 32 deputies were against, 33 deputies abstained, and 2 did not vote (vote 399). At that time the Senate had not yet been elected. The Act was delivered to the president for signature on 16 December 1994, and the president signed it on 22 December 1994. The Act was promulgated on 30 December 1994 in the Collection of Laws, in part 79 as number 267/1994 Coll. The Constitutional Court states that Act no. 267/1994 Coll. was passed and issued within the bounds of constitutionally provided jurisdiction and in a constitutionally prescribed manner.

38. At this point the Constitutional Court notes that it is aware that the Chamber of Deputies of the Parliament of the Czech Republic, on 14 March 2006, approved a draft Act on Unilateral Increases of Apartment Rent and amending Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, in a version approved by the Senate, which also substantially amends § 711 of the Civil Code, with the expected effective date of 31 March 2006. However, in view of the fact that the contested provisions, in their existing wording, will have to be applied to legal relationships arising before the Civil Code amendment takes effect, and many proceedings before the general courts may concern them, the Constitutional Court did not find a reason to wait until the of the Civil Code amendment is promulgated in the Collection of Laws and then stop the proceedings under § 67 par. 1 of the Act on the Constitutional Court (the Constitutional Court proceeded similarly in judgment Pl. US 33/2000 of 10 January 2001, published as judgment no. 5, vol. 21 Collection of Decisions of the Constitutional Court, p. 29, in the Collection of Laws as no. 78/2001 Coll.). In any case, at the time of the Constitutional Court's decision making the contested provisions are still in effect, and therefore conditions for stopping proceedings under § 67 par. 1 of the Act on the Constitutional Court have not been met.

VII.
The Constitutional Court's Evaluation

39. The petitioner's constitutional law objects to the contested provisions are presented from two positions: from the point of view of equality, and from the point of view of protecting free will. Secondarily, the petitioner makes arguments concerning interference in the tenant's private and family life and his freedom of residence. The Constitutional Court first turned to evaluating the objects based on protection of free will, private and family life and freedom of residence, because these concern all tenants, without distinguishing among tenants of co-operative and non-co-operative apartments. It

subsequently considered objections based on the specific features of a co-operative apartment lease.

VII./A

40. The petitioner's first objection is that the contested provisions are inconsistent with the principles of protecting free will and contractual freedom, which it draws from Art. 1 par. 1 of the Constitution. According to the petitioner it is the tenant's business if he has the opportunity to use several apartments, regardless of the reasons which lead him to it. It is only up to the will of the parties of an apartment lease agreement whether to conclude it, under what conditions, and whether the tenant will really use the apartment. There is no reason to force a tenant to have only one apartment, if it is within his abilities to meet his obligations from the lease of several apartments.

41. In a number of its decisions the Constitutional Court has recognized a constitutional law dimension to the principle of free will and contractual freedom. In the Constitutional Court's opinion [see judgment file no. Pl. US 24/99 of 23 May 2000 (judgment no. 73, vol. 18 Collection of Decisions of the Constitutional Court –"Coll. Dec.," p. 135), Pl. US 5/01 of 16 October 2001 (judgment no. 149, vol. 24 Coll. Dec., p. 79) and Pl. US 39/01 of 30 October 2002 (judgment no. 135, vol. 28 Coll. Dec., p. 151)] an essential element of a democratic law-based state is protection of freedom of contract, which is derivative of the constitutional protection of property rights under Art. 11 par. 1 of the Charter (a fundamental component of which is ius disponendi). However, it did not limit freedom of contract only to property rights, although it is precisely in this context that it is most firmly enshrined in constitutional law. In its judgment file no. I. US 113/04 of 4 May 2004 (judgment no. 63, vol. 33 Coll. Dec., p. 129) the Constitutional Court stated that respect for the sphere of the individual is a general condition for the functioning of a law-based state under Art. 1 par. 1 of the Constitution, or Art. 2 par. 3 of the Charter. The individual's right to free will, i.e. individual freedom, corresponds to the requirement laid on the state power to recognize autonomous expressions of the will of individuals and corresponding conduct. Provided such conduct does not interfere in the rights of third persons, the state power must only respect the expressions of individuals, or, as the case may be, approve them. The state power can interfere in an individual's freedom only in cases which are justified by a certain public interest, if such interference is proportional to the aims which are to be achieved.

42. The principle of protecting the free will of subjects of law is widely reflected in private law, which is characterized by the principles of equality of the parties (this is a concept of equality reflected in the reciprocity of the internal structures in private law relationships, compared to public law, which is characterized by the dominance of the representative of public sovereign power, not the concept of equality before the law as discussed below in part VII./C). Expressions of the free will of subjects of law include contractual freedom, i.e. the freedom to conclude contracts. However, even in the area of private law, objective law places certain limits on free will, or freedom of contract (see §

2 par. 2 and 3 of the Civil Code). It can not be overlooked that as regards regulation of apartment leases the Civil Code contains a number of mandatory norms whose common denominator is protection of a lease, or the tenant of an apartment. Thus, these mandatory norms limit free will primarily on the other side of the lease relationship, i.e. on the side of the landlord. Given that the landlord is typically the apartment owner, it is evident that the increased level of protection of the tenant is reflected in limitation of the property right of the landlord, specifically in limiting the right of disposition with the owned object. Thus, protection of a lease can come into conflict with the constitutional guarantee of property rights under Art. 11 of the Charter.1) Yet, as was stated in the as yet unpublished judgment file no. Pl. US 20/05 of 28 February 2006, it is precisely the nature of a legal relationship, including an apartment lease, as an obligations relationship, that conceptually assumes that maximum space will be created for exercising the free will and contractual freedom of the parties (with the exception arising from point 46 of this judgment).

43. Based on these starting points, the Constitutional Court must agree with the arguments of the Senate of the Parliament of the Czech Republic that the contested provisions, or all the grounds for giving notice of terminating an apartment lease, are part of a wider set of measures described by theory and practice as tenant protection, or as protection of the weaker party (see also § 685 par. 1 of the Civil Code). It is not reaching this conclusion for the first time. In judgment file no. IV. US 524/03 of 23 September 2004 (judgment no. 138, vol. 34 Coll. Dec., p. 387) the Constitutional Court stated that Czech law on apartment leases is based on marked protection of tenants. This manifests itself, in particular, in termination of a lease relationship, on the one hand, in the precisely defined grounds on which a court can consent to termination notice being given, and on the other, tenant protection is ensured by the fact that a tenant is not required to move out of an apartment until comparable substitute housing has been secured.

44. The Constitutional Court has also repeatedly considered another component of lease protection – rent control: see Constitutional Court judgment file no. Pl. US 3/2000 of 21 June 2000 (judgment no. 93, vol. 18 Coll. Dec., p. 287, 231/2000 Coll., 130/2001 Coll.), judgment file no. Pl. US 8/02 of 20 November 2002 (judgment no. 142, vol. 28 Coll. Dec., p. 237, 528/2002 Coll.) and judgment Pl. US 2/03 of 19 March 2003 (judgment no. 41, vol. 29 Coll. Dec., p. 371, 84/2003 Coll.). In these judgments the Constitutional Court took the position that protection of apartment tenants has been a permanent component of our legal order since the 1920s, and in today's context it can be understood as a control on use of property, i.e. as a legitimate limitation on ownership under Art. 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (promulgated together with the Convention as no. 209/1992 Coll., the "Protocol"). Under this provision, states may enforce such laws as they deem necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. Similarly, Art. 11 par. 3 of the Charter indicates that ownership entail obligations, and may not be misused to the detriment of the rights of others or in conflict with legally protected public interests.

45. Under these provisions, the Constitutional Court, like the European Court of Human Rights, briefly speaking, evaluates whether the limitation on the use of property (ownership rights) pursues a legitimate aim, whether it is consistent with domestic law, and whether it is proportional in relation to the legitimate aim pursued [see, e.g., Constitutional Court judgment file no. II. US 482/02 of 8 April 2004 (judgment no. 52, vol. 33 Coll. Dec., p. 39)]. There is no doubt that protection of a lease is based on a legal norm with the force of a statute. In all the abovementioned judgments the Constitutional Court also did not doubt that protection of apartment tenants or apartment leases is a legitimate aim for limitations on property rights, because it contributes to implementing the right to an adequate standard of living under Art. 11 of the International Covenant on Economic, Social and Cultural Rights (promulgated as no. 120/1976 Coll.), the right of the family to social, legal and economic protection under Art. 16 of the European Social Charter (promulgated as no. 14/2000 Coll. of International Treaties), or under Art. 4 par. 2 let. a) of the Additional Protocol to the European Social Charter (promulgated as no. 15/2000 Coll. of International Treaties). Therefore, we must turn to the third part of the test, and evaluate the contested legal framework in terms of the proportionality of the limitations on an owner in relation to the aim pursued.

46. If the legitimate aim of protecting a lease is motivated by social reasons (see the abovementioned judgment file no. IV. US 524/03) – the requirement to provide an adequate standard of living for the tenant, which includes adequate housing to meet the fundamental need to have a safe place to lay one's head – then it is evident that further limitation of an apartment owner beyond satisfying the basic housing needs of the tenant would not stand up to the test of proportionality. If the law limited the owner in his right of disposition of his property so much that it would not permit him to terminate a lease relationship even in a situation where the tenant's basic need for housing is quite evidently saturated, for example, because he has several housing opportunities at an adequate level, such limitation of the owner would have to be assessed as disproportionate to the aim pursued. Tenant protection in this sense may not be misused to protect the tenant's doing business with leased apartments, or accumulating apartments to the detriment of their true owners. It is also necessary to take into account the landlord's justified interest in properly making use of the apartment [see judgment of the Constitutional Court file no. I. US 360/02 of 10 June 2003 (judgment no. 86, vol. 30 Coll. Dec., p. 303, 306)]. If the protection of a lease is motivated, besides that, by the state's attempt to regulate the market in rental housing and, in the face of excessive demand, to support the just distribution of apartments, then it would not be a proportional measure if the legal framework limiting apartment owners permitted the accumulation of apartments in the hands of one tenant, or purposeless management of the housing stock so that apartments remained unused and unoccupied. It is precisely the contested provisions that are supposed to resist such situations. Annulling them would further deepen the limitation of ownership rights of apartment owners, and in the given situation would cease (if it hasn't already) to meet the criterion of proportionality in relation to the legitimate aim of protecting tenants.

47. At this point it is appropriate to review the deliberations which the Constitutional Court made in its judgment file no. Pl. US 8/02, cited above. The Constitutional Court then

noted that by European standards a lease relationship is usually temporary, whereas in this country it is generally concluded for an indefinite period of time, and, in view of the fact that transfers of the right to personal use of an apartment were very similar to rights in inheriting property, the right to personal [use of] an apartment de facto established a permanent relationship and developed into a kind of quasi-ownership. The majority of lease relationships in the past were not created by a free contract, but by an administrative order, often against the will of the owners, in accordance with the plan to gradually transfer the entire housing stock into so-called "higher socialist forms of ownership." Thus the so-called "housing right" became part of public law, and it is not easily compared with the European concept of the classic private law institution of a lease. In addition, this hybrid legal relationship, described under socialism as "personal use," and now merely renamed "lease," also, in terms of civil law theory, shifted from the area of the law of obligations into some kind of new substantive rights. This transformation took place and continues to exist in fact in real life: people sell and buy rented apartments, often in the disguised form of exchanges, but recently also openly for so-called "severance payments." The scope of the transfer of rights of use to apartments, or the rights of tenants, is, in this country, comparable to inheriting these apartments, whereas in European law it is more limited. The Constitutional Court then also stated that the correlation between rent control and the slow transformation of civil law relationships regulating housing manifests itself in the fundamental conflict of every modern housing policy, the search for a balance between the principle of protection tenants, and the principle of protecting property rights.

48. The Constitutional Court points out that the cited judgment was issued more than three years ago, and it is evident that not much could have changed in the housing market situation. The legislature, instead of working with the government to flexibly respond to the judgments in which the Constitutional Court emphatically criticized the then-existing legal framework of stiff rent control, which denied the ownership rights of apartment owners and the incomplete transformation of lease relationships, did nothing for a long time. The result of this inactivity was a de facto freeze of controlled rent, which further deepens the violation of ownership rights of owners of apartments subject to rent control. The Constitutional Court also emphatically criticized the legislature's inactivity in its last judgment concerning the issue of rent, file no. Pl. US 20/05 of 28 February 2006.

49. Thus, as regards the claimed violation of the free will of the tenant, or his freedom of contract, it is evident from the foregoing analysis that it is not affected by the contested provisions. The present legal framework does not forbid a tenant from having two or more apartments, or not using an apartment or using it only occasionally. The law only gives the landlord a limited opportunity to termination a lease relationship, on certain conditions, and, moreover, only with the consent of a court, and if he provides accommodation when the apartment is vacated. The tenant's free will, or his freedom of contract, can not be torn out of the context in which it is applied. On the contrary, it is the landlord whose free will is markedly limited when terminating a lease, compared to the tenant. If the lease of an apartment were not protected, the standard framework for a lease relationship agreed for an indefinite period would apply, in which both parties can, under equal conditions, terminate the lease unilaterally by giving notice when they no longer have any interest in

continuing it further (see § 677 par. 1 of the Civil Code).

50. Thus, annulling the contested provisions would lead to even greater limitation of the rights of landlords to the benefit of tenants, whereby the Constitutional Court would go against the purpose of its previous judgments. De lege lata, with every additional limitation of the landlord's right to unilaterally terminate a lease agreement, the tenant's right to the apartment could de facto become that quasi-ownership right, to the detriment of the landlord's true property right, which would then survive only as bare ownership, despite the constitutionally proclaimed principle of protecting it. Every further reduction of the exclusively listed catalog of grounds on which the landlord can terminate a lease goes against the spirit of private law, because it deepens the inequality between the parties to a private law relationship. Compared to the present situation, annulling the contested provisions would, to the detriment of the landlord, further deepen the unfair imbalance between the means used (the scope of limitation of property rights by the Civil Code provisions on apartment leases) and the legitimate aim pursued (protection of a lease, or a tenant), which is becoming notorious in our legal environment, even though the Constitutional Court has not yet had an opportunity to consider the special provisions on lease of an apartment (§§ 685 – 716 and § 719 of the Civil Code) comprehensively, in terms of their consistency with the constitutional order. The Constitutional Court here again declares (see the cited judgment file no. IV. US 524/03) that it is not permissible to transfer the social burden of one group of people (tenants) to another group (landlords), which applies not only to the legal framework of rent and increases of rent, but also comprehensively, to the legal framework for rights and obligations between landlord and tenant.

51. Difficulties in proving that a tenant does not use an apartment or uses it only occasionally can not be an argument in favor of annulling the contested provisions, as the Association of Tenants of the Czech Republic argued. In addition, the Constitutional Court points out that the burden of proof in that case falls on the landlord, not the tenant, which is also indicated by the settled case law of the general courts. 2)

VII./B

52. The Constitutional Court also disagrees with the petitioner's further claim that the contested provisions in abstracto are unconstitutional interference in the fundamental right to private and family life. At the abstract level, the contested grounds for giving notice of termination are justifiable in terms of protection of the rights and freedoms of others (see Art. 8 par. 2 of the Convention, or Art. 12 par. 3 of the Charter), specifically property rights. The Constitutional Court agrees with the Senate that the contested legal framework does not give the tenant an obligation to provide the landlord information about whether he has an apartment he does not need, nor does it permit the landlord to enter the apartment and violate the tenant's constitutional rights, including his family life. The Constitutional Court does not rule out the possibility that interference in private and family life could occur in a particular case upon application of the contested grounds for

giving notice of termination, e.g. through arbitrary interpretation of them or as a result of erroneous or insufficient determination of facts. However, in such cases the injured party has at his disposal procedural means of protection, including a constitutional complaint. The Constitutional Court points out that the mere possibility that a statutory provision will be applied in a manner inconsistent with the constitutional order, is not by itself sufficient to disqualify it.

53. As regards the guarantee of freedom of movement and residence, the Constitutional Court, like the Chamber of Deputies and the Senate, finds it quite indisputable that these directly applicable constitutional rights in no way conflict with the ability to give notice of terminating a private law relationship (an apartment lease). Just as freedom of movement and residence do not give rise to a tenant's subjective right to have an apartment owner lease an apartment to him, it also does not give rise to a right for it to be impossible to terminate a lease on statutory grounds.

VII./C

54. Finally, the petitioner claims that the contested provisions establish inequality between tenants of co-operative apartments, on one side, and tenants of non-co-operative apartments, on the other, by impermissibly disadvantaging the first category of tenants compared to the second category of tenants. According to the petitioner, tenants of co-operative apartments are disadvantaged because the legislature has applied the same rules for terminating a lease to them, without taking into account the unique nature of the lease of a co-operative apartment, which, according to the petitioner, is of a quasi-property nature. Thus, the petitioner in fact objects that the legislature created an unconstitutional gap in the legal framework for termination of an apartment lease, because it did not provide a special framework to cover the termination of a co-operative apartment lease.

55. The Constitutional Court must first answer the question whether the contested provisions of the Civil Code can constitute interference in the constitutionally protected principle of equality, or the right to equal treatment under Art. 1 of the Constitution, under which 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, Art. 1 of the Charter, under which people are free, have equal dignity, and enjoy equality of rights, Art. 3 par. 1 of the Charter, which enshrines equality in guarantees of fundamental rights and freedoms, and Art. 4 par. 3 of the Charter, under which statutory limitation upon the fundamental rights and basic freedoms must apply in the same way to all cases which meet the specified conditions. The principle of equal rights must also be seen in connection with Art. 26 of the International Covenant on Civil and Political Rights (promulgated as no. 120/1976 Coll.), under which all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, and the law is to prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political

or other opinion, national or social origin, property, or birth.

56. In its case law, the Constitutional Court maintains the concept of accessory equality, i.e. equality in relation to another fundamental right or freedom, and the concept of non-accessory equality, i.e. general equality before the law. It understands equality not as absolute, but as relative: the principle of equal rights must be understood such that legal differentiation between subjects in access to certain rights may not be an expression of arbitrariness; see Constitutional Court judgments file no. Pl. US 16/93 [judgment no. 25, vol. 1 Coll. Dec., p. 189], file no. Pl. US 36/93 (Coll. Dec., vol. 1, judgment no. 24, p. 175), file no. Pl. US 4/95 (Coll. Dec., vol. 3, judgment no. 29, p. 209), file no. Pl. US 5/95 (Coll. Dec., vol. 4, judgment no. 74, p. 205), file no. Pl. US 9/95 95 (Coll. Dec., vol. 5, judgment no. 16, p. 107), file no. Pl. US 33/96 (Coll. Dec., vol. 8, judgment no. 67, p. 163), file no. Pl. US 15/02 (Coll. Dec., vol. 29, judgment no. 11, p. 79). The Constitutional Court of the CSFR understood the principle of equality the same way. In its judgment file no. Pl. US 22/92 (Collection of Decisions of the Constitutional Court of the CSFR, judgment no. 11, p. 37) it cited the monograph of J. Pražák, Rakouské právo ústavní [Austrian Constitutional Law], Prague 1902, pp. 42-43, who concluded that the expression "all citizens are equal before the law" does not say that all citizens have the same rights, but merely provides a directive that the manner in which already acquired rights are exercised, as well as the conditions for acquiring individual rights, must be the same for all citizens. The Constitutional Court of the CSFR then subscribed to that concept of equality, and since its establishment the Constitutional Court of the Czech Republic has also subscribed to it.

57. Equality is also a relative category by definition in another sense: one can think in the category of equality on in the relationship between two persons in the same or comparable position (see also the cited judgment of the Constitutional Court of the CSFR file no. Pl. US 22/92). Determining a group of persons who can be compared in terms of preserving the principle of equality is one of the most difficult tasks when applying this argument [see Constitutional Court judgment file no. Pl. US 47/95 (judgment no. 25, vol. 5 Coll. Dec., p. 209, 122/1996 Coll.)]. The basic guideline is a list of objectivized attributes based on which any differentiating or different treatment is impermissible (see Art. 3 par. 1 of the Charter and similar anti-discrimination provisions in many international human rights instruments).

58. From another point of view, the fundamental constitutional principle of equality can be understood on two levels – as formal equality, and also as de facto equality. There is no doubt that it is the task of the legislature, when creating the legal order, to ensure formal equality to all persons at whom legal norms are aimed, but in view of the fact that in the real world of nature and society there is de facto inequality for a number of reasons, the legislature must, in justified cases, also consider cases where the norms establish inequality, which, for example, will remove de facto inequality or some other handicap. It is evident that, for example, a normative advantage for a physically handicapped person over a healthy person in a specific life situation (for example, in the area of employing persons with disabilities that reduce employability, preferential access to so-called barrier

free apartments, etc.) would not conflict with the constitutional requirement of equality. Even where the legislature did not choose the route of consciously giving an advantage to a "weaker" person, in order to give priority to de facto equality over formal equality in a specific life situation, it leaves the body that applies positive law room to resolve the tension between the incompleteness of written law and the nature of a specific case by applying constitutional principles in the substantive conception of a law-based state (judicial discretion).

59. The Constitutional Court points out that the petitioner is confusing the category of equality in the abovementioned conception, which applies comprehensively to subjects of law, with "equality" among legal institutions. It assumes that there are difference between the lease of a co-operative apartment and the lease of a non-co-operative apartment which would deserve a different regulation even as regards termination of the lease by notice from the landlord. However, comparing the lease of a non-co-operative apartment on one side with a co-operative apartment on the other side and deriving from the differences in these legal institutions a requirement that they be regulated differently at the level of civil law is inappropriate in the context of the principle of equality.

60. The Constitutional Court was guided by the following deliberations. From the point of view of sub-constitutional law, the lease of a co-operative apartment, as regards the conceptual elements of a lease agreement, is identical with the lease of a non-co-operative apartment. Unless the law provides otherwise, the tenant who is a co-operative member is a party to a lease relationship with all rights and obligations, like every other tenant. The practical difference between these leases arises from the fact that the lease of a co-operative apartment is primarily derived from a co-operative member's property share in the acquisition of the apartment, and his membership in the housing co-operative. Thus, the unique feature of co-operative housing does not come from the subject of the lease, but from the legally distinct relationship between the member of the co-operative (tenant) to the co-operative (landlord). In this relationship the tenant who is a co-operative member finds a greater degree of lease stability, which approaches the stability that is provided by using an apartment that one owns. It is for this reason also that the Civil Code in § 714 ties the termination of an apartment lease to termination of membership in a housing co-operative. The tenant of a housing co-operative, who is also a co-operative member, is in a more favorable position because he is organized in the housing co-operative and because, in accordance with the bylaws, he participates in the activities of the housing co-operative, his landlord, including in creating its will. In addition, membership in a housing co-operative also carries effective instruments for legal protection against co-operative decisions which are inconsistent with the law or with the co-operative's bylaws. Thus, the fact that the tenant of a co-operative apartment is a member of the co-operative which is his landlord in certain respects really does put him in a different position compared to the tenant of a non-co-operative apartment, especially in the area of conditions for the creation of a lease relationship, different structure of rent (without the element of profit, and with the co-operative member's direct property participation in the maintenance, operation and repairs of the building), and especially in the quite exclusive right of disposition to the lease relationship and membership in the co-operative through the entitlement to an unlimited transfer of membership under § 230 of

the Commercial Code. However, these differences result from the different legal relationship into which he has entered.

61. It is clear from the foregoing arguments that the contested provisions are not interference in the constitutionally protected principle of equality, because this is not a case of differentiating between the rights and obligations of tenants either in view of traditionally forbidden criteria (see Art. 3 par. 1 of the Charter), or in view of a different status, but a case of comparing the legal institutions of lease of a co-operative and non-co-operative apartment, to which the constitutionally protected principle of equality does not apply. “Inequality can not be claimed to exist where the law provides the same conditions for a claim to all subjects that can be included in the personal scope of a legal regulation.” (see judgment Pl. US 47/95, cited above). The creation, content, and guarantee of the right of a lease are the same for all persons. In terms of the principle of equality, the essential thing is that all persons have the same conditions under the law for entering into the legal position of a tenant of a co-operative apartment, or that they have the same conditions for becoming tenants of non-co-operative apartments, and at the same time all tenants of co-operative apartments have, under the Civil Code, the same rights and obligations regardless of their sex, race, skin color, language, faith and religion, political or other beliefs, national or social origin, membership in a national or ethnic minority, property, birth or other status.

62. In its judgment file no. III. US 258/03 of 6 May 2004 (judgment no. 66, vol. 33 Coll. Dec., p. 156, 167), the Constitutional Court stated, among other things, that the authority of a democratic legislature in the area of statutory regulation of private law includes the regulation of types of contracts. No provision of the constitutional order gives rise to a binding order that the legislature regulate lease relationships to apartments in a particular manner. There is no provision of the Charter that would (for example, similarly to ownership) provide that a lease is guaranteed and the lease of all tenants, or that under specified conditions a different legal framework is permitted depending on the subject of the lease agreement. Thus, it is in the legislature’s discretion whether to regulate leases generally for all imaginable subjects of lease agreements, or whether to respond through special provisions to the specifics of leases of agricultural land, non-residential premises, or apartments, or whether civil law will continue to differentiate and distinguish leases of co-operative and non-co-operative apartments, company apartments, special designation apartments, or other kinds of apartments, based on the aims pursued at the time by the legal framework. Insofar as it passes such a legal framework within the bounds of the constitutional order, and leaves the court which applies it discretion for a constitutional interpretation of the norm in question, it is not desirable for the Constitutional Court, as a body for the protection of constitutionally and also as a negative legislature, to further widen the alleged constitutional gap through its derogative intervention.

63. Although co-operative housing provides the tenant who is a co-operative member a higher degree of lease stability than classical rental housing, it also does not authorize the conclusion that the tenant’s relationship to the co-operative apartments falls in the category of ownership or quasi-ownership. The owner of a co-operative apartment is not

the co-operative member, but the co-operative, and it enjoys the protection of ownership rights based on Art. 11 of the Charter [see Constitutional Court judgment file no. IV. US 8/93 of 13 February 1995 (judgment no. 8, vol. 3 Coll. Dec., p. 35): according to that judgment the decision to evict the complainant from a housing co-operative did not "interfere in the right enshrined in Art. 11 of the Charter, not to mention the fact that Art. 11 of the Charter protects already-existing ownership, and the co-operative apartment was not and is not owned by the plaintiff, nor does she own a co-operative share, when its value, representing the property share of a member in the co-operative was also, during the time that the complainant was in the co-operative, owned by the co-operative."]. 3)

VII./D

64. Although the Constitutional Court did not agree with the cited grounds for declaring the contested provisions unconstitutional, it must agree with the petitioner that application of the contested grounds for giving notice of termination of a lease of an apartment owned by a housing co-operative to a tenant who is a member of that housing co-operative raises doubts. It would undoubtedly be desirable and suitable if, in addition to special provisions on concluding a lease agreement for a co-operative apartment or on minor repairs and payment of expenses connected with routine maintenance (§ 685 par. 2, § 687 par. 3 of the Civil Code), on joint lease of a co-operative apartment by spouses (§ 700 par. 3, § 703 par. 2, § 704 par. 2, § 705 par. 2 of the Civil Code) or transfer of the lease of a co-operative apartment (§ 706 par. 2, § 707 par. 2 of the Civil Code), provisions were also passed which would, in view of the special features of co-operative housing, also more appropriately regulate the termination of a co-operative apartment lease by notice. The Constitutional Court even acknowledges that the regime of a lease agreement is not the most suitable solution for use of a co-operative apartment and that transformation of the institution of personal use into lease of a co-operative apartment was not thought through in a number of aspects. However, doubts about the suitability of a legal framework are not sufficient for the Constitutional Court to conclude that it is unconstitutional. In its case law it has repeatedly given priority to a constitutional interpretation of contested provisions over their annulment.

65. Thus, if the petitioner believes, and the Constitutional Court shares this belief, that the differences of the institution of a co-operative apartment lease, in view of general principles of justice, would deserve a restrictive interpretation of the contested grounds for giving notice of termination in relation to co-operative apartments, the present legal framework gives sufficient space for such an interpretation. A general court may take into account the special features of a lease of a co-operative apartment when determining fulfillment of these grounds for giving notice of termination under the contested provisions, i.e., in evaluating whether the tenant can not justly be required to use only one apartment [§ 711 par. 1 let. g) of the Civil Code], or in evaluating serious or weighty reasons for which a tenant does not use an apartment or uses it only occasionally [§ 711 par. 1 let. h) of the Civil Code]. It must also take into account § 3 par. 1 of the Civil Code, under which the exercise of rights and obligations arising from civil law relationships may

not, without legal grounds, interfere in the rights and justified interests of others, and may not be inconsistent with good morals.

66. In this regard the Constitutional Court points out “that the unsustainable factor for the use of a law is its application based purely on linguistic analysis; linguistic analysis is only the first approach to the applied legal norm, it is a starting point for clarifying and enlightening its significance and purpose (for which a number of other procedures are also used, such as logical and systematic analysis, analysis e ratione legis, etc.); cf. judgment file no. III. US 258/03 cited above. And, in a different context, in judgment file no. Pl. US 21/96 of 4 February 1997 (judgment no. 13, vol. 7 Coll. Dec., p. 87, 96) the Constitutional Court stated : “The court … is not absolutely bound by the express wording of a statutory provision, but may and must diverge from it if this is required for serious reasons by the purpose of the law, the history of its creation, the systematic context, or one of the principles which are based in the constitutionally consistent legal order as a unit of meaning. In doing so, it must avoid arbitrariness; the decision of a court must be based on rational arguments.” These conclusions can undoubtedly also be applied to interpretation of the contested grounds for giving notice of termination in respect of a co-operative apartment.

67. After the conducted proceedings, the Constitutional Court states that there are no grounds to annul § 711 par. 1 let. g) and § 711 par. 1 let. h) of the Civil Code, because these provisions, in abstracto and especially in context of the special provisions on an apartment lease (§ 685 et seq. of the Civil Code), which were not contested and whose constitutionality the Constitutional Court did not have an opportunity to evaluate comprehensively, are not inconsistent with Art. 1 par. 1 of the Constitution and with Art. 1, Art. 3 par. 1, Art. 4 par. 2 and 4, Art. 10 par. 2 and Art. 14 par. 1 of the Charter, and therefore it denies the petition from the District Court for Prague 7 under § 70 par. 2 of the Act on the Constitutional Court. However, the Constitutional Court considers it important at this point to emphasize that this conclusion does not prevent the constitutionality of the contested provisions from being evaluated differently in a different context, in particular as part of comprehensive evaluation of the constitutionality of all the provisions of Part VIII, Chapter VII, Division IV of the Civil Code.

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

Brno, 28 March 2006

Dissenting Opinion
of judge František Duchoň

I am of the opinion that proceedings in this matter should have been suspended under § 67 par. 1 of Act no. 182/1993 Coll. on the Constitutional Court, pending publication of Act no. 107/2006 in the Collection of Laws.
The Plenum decided in the matter on 28 March 2006, in a situation when we all knew that the legislative process concerning Act no. 107/2006 Coll. on Unilateral Increasing of Apartment Rent and Amending Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, had been completed. That Act newly amended the wording of § 711 of the Civil Code, to the effect that giving notice of termination of an apartment on grounds under § 711 par. l let. g), h) of the Civil Code before the amendment [now § 711 par.2 let. c), d)], no longer requires the consent of a court.

Deciding on the merits on a petition to annul a statute in a situation when the legislative process for a statute annulling the provisions proposed to be annulled has been completed, and whose publication in the Collection of Laws is only a question of a short period of time does not appear to me suitable, as a principle.
In this regard I point to the necessity of taking a definitive position as regards judgment Pl. US 33/2000.

Brno, 4 April 2006

Dissenting Opinion
of Constitutional Court judges JUDr. Pavel Holländer, JUDr. Stanislav Balík and JUDr. Vlasta Formánková, taken pursuant to § 14 of Act no. 182/1993 Coll. to the judgment of the Constitutional Court in the matter of a petition from the District Court for Prague 7 to annul § 711 par. 1 let. g), h) of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations.

This dissenting opinion filed to the verdict of the judgment denying the petition from the District Court for Prague 7 to annul § 711 par. 1 let. g), h) of Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, is based on the following arguments:

The Constitutional Court decide to deny the petition in question on 28 March 2006. In the reasoning of the judgment it stated that “it is aware that the Chamber of Deputies of the Parliament of the Czech Republic, on 14 March 2006, approved a draft Act on Unilateral Increases of Apartment Rent and Amending Act no. 40/1964 Coll., the Civil Code, as amended by later regulations, in a version approved by the Senate, which also substantially amends § 711 of the Civil Code, with the expected effective date of 31 March 2006. However, in view of the fact that the contested provisions, in their existing wording, will have to be applied to legal relationships arising before the Civil Code amendment

takes effect, and many proceedings before the general courts may concern them, the Constitutional Court did not find a reason to wait until the of the Civil Code amendment is promulgated in the Collection of Laws and then stop the proceedings under § 67 par. 1 of the Act on the Constitutional Court (the Constitutional Court proceeded similarly in judgment Pl. US 33/2000 of 10 January 2001, published as judgment no. 5, vol. 21 Collection of Decisions of the Constitutional Court, p. 29, in the Collection of Laws as no. 78/2001 Coll.). In any case, at the time of the Constitutional Court's decision making the contested provisions are still in effect, and therefore conditions for stopping proceedings under § 67 par. 1 of the Act on the Constitutional Court have not been met."

Under the cited statutory provision, the Constitutional Court shall stop proceedings on review of a norm if the statute, other legal regulation, or the individual provisions thereof that are proposed to be annulled shall cease to be in effect before the proceedings in question are finished.

In the present matter the Constitutional Court was making its decision by judgment at a time after the passage of the Act on Unilateral Increasing of Apartment Rent and Amending the Civil Code, under § 97 par. 5 of Act no. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, and after it had been forwarded to the president (§ 98 par. 1, § 107 par. 2 of that Act), i.e. at a time regarding which the Constitutional Court, in a comparable context, authoritatively stated that "therefore, a resolution by the Chamber of Deputies, expressing consent with the draft Act must be viewed as a decision containing (in the given procedural phase) a statement with final effect, whereby the legislative process in the Chamber of Deputies has been completed" (file no. Pl. US 5/02). If the president does not exercise his veto (Art. 50 par. 1 of the Constitution), it is the constitutional obligation of the appropriate state bodies to promulgate the Act in the prescribed manner (Act no. 399/1999 Coll., on the Collection of Laws and the Collection of International Treaties), which is a condition for it going into effect (Art. 52 of the Constitution).

If the Constitutional Court annulled the provisions of a statute in the period between its annulment by parliament until publication of a derogative statute in the Collection of Laws (which is one of the alternatives which the Constitutional Court has recognized by its decision on the merits), this would create a situation of legal uncertainty: there could be competing grounds for derogation, uncertainty in the matter of the grounds for validity of statutory provisions, for example, by publication of a derogative statute and derogative judgment in the same part of the Collection of Laws, or by publication of a derogative act which would precede the publication of the derogative judgment. Such a procedure would be inconsistent with the principle of a law-based state under Art. 1 par. 1 of the Constitution. A constitutional interpretation of § 67 par. 1 of Act no. 182/1993 Coll. per analogiam, affecting the circumstances of the adjudicated case, reflecting the maxims arising from Art. 1 par. 1 of the Constitution, can be considered to be that the Constitutional Court either waits for the publication of the statute in question and suspends proceedings under § 67 par. 1 of Act no. 182/1993 Coll. or, if the statute is vetoed by the president, which re-opens the legislative process, decides on the merits (§

70 of Act no. 182/1993 Coll.).

Under the legal opinion in judgment file no. Pl. US 33/2000, which is referred to in the reasoning of judgment file no. Pl. US 43/03, if a general court judge concludes that a statute which is to be applied in adjudicating a matter (that is, not only one in valid at that time, but also one no longer valid but still applicable) is inconsistent with a constitutional law, it is required to submit the matter to the Constitutional Court (Art. 95 par. 2 of the Constitution). The Constitutional Court considered that refusal to provide assistance to the general court by its decision on the constitutionality or unconstitutionality of the applicable statute would create an irresolvable legal vacuum; it classified the general court's decision on the unconstitutionality of the applied provisions as a procedure inconsistent with the Constitution, specifically inconsistent with the principle of a concentrated constitutional judiciary (Art. 83 and Art. 95 par. 1 and par. 2 of the Constitution).

The consensus of the dissenting opinion of six judges, filed to the verdict of judgment file no. Pl. US 33/2000, is that this has exceeded the constitutionally granted powers under Art. 87 of the Constitution.

In the constitutional judiciary of the Czech Republic, proceedings on review of a norm are conceived according to the Austrian model, as it was formed under the influence of the ideas of Hans Kelsen. In them, the Constitutional Court is a body for protection of constitutionality, a so-called "negative legislature," which has at its disposal derogative authority, i.e. the authority to annul statutes and their individual provisions due to inconsistency with the legal order, with effect ex nunc (i.e., with effect for the future). As regards evaluation of the constitutionality of statutes which contain so-called "Massnahmenormen," that is, statutes which were in effect at a point in time, the Constitutional Court, in its legal opinion contained in resolution file no. Pl. US 5/98, confirmed by judgment file no. III. US 288/04, stated: "The legal framework for the constitutional judiciary in the Czech Republic specifies the legal effects of derogative judgments of the Constitutional Court when reviewing norms to be ex nunc and not ex tunc (§ 70 a § 71 of Act no. 182/1993 Coll.). The purpose of this concept of the constitutional judiciary is to prevent the creation of possible unconstitutional legal consequences in cases where the evaluated legal regulation at least hypothetically assumes the future existence of a legal fact which could create such unconstitutionality. In legal practice, however, there is a group of legal norms which are fulfilled in one moment (e.g., § 871 par. 1 of the Civil Code, as amended, which transformed the right of personal use of an apartment into a lease), and there in future, no legal fact can arise, even hypothetically, which would create consequences not foreseen by the legal norm. Evaluation of such cases, which is, by its nature, retroactive evaluation, exceeds the powers of the Constitutional Court, and fully belongs, with the awareness of constitutional limitations, to the powers of the democratic legislature. For that reason, all restitution related legislation, with its necessary retroactive components, was implemented by the democratic legislature, and not by the Constitutional Court."

If this statement applies to a "Massnahmenorm," it should, in terms of the constitutional maxim of a ban on retroactivity (Art. 1 par. 1 of the Constitution) apply all the more to evaluation of the constitutionality of legal regulations which are no longer valid.

This thesis is illustrated by § 154 par. 1 of the Civil Procedure Code, under which, in cases where a decision only declares the rights and obligations of the parties, the decisive legal status quo is that at the time when the rights and obligations concerned in the proceedings arose, were changed, or ceased to exist. Thus, if a general court, in proceedings on a so-called "complaint for determination" evaluates the creation of a certain private law relationship in 1947, it will apply the relevant provisions of General Civil Code. If it found these provisions unconstitutional under the existing constitutional order, then, under judgment file no. Pl. US 33/2000, it would suspend the proceedings, and proceed according to Art. 95 par. 2 of the Constitution. If the Constitutional Court then, let us say by an academic verdict, granted the general court's petition for review of a norm, such a process would necessarily bear the signs of true retroactivity (on the concept of true retroactivity see E. Tilsch, Občanské právo. Obecná část [Civil Law. The General Part], Prague 1925, pp. 75-78, A. Procházka, Základy práva intertemporálního [Foundations of Intertemporal Law], Brno 1928, p. 111, A. Procházka, Retroaktivita zákonů [Retroactivity of Laws]. In: Slovník veřejného práva [Dictionary of Public Law]. Vol. III, Brno 1934, p. 800, L. Tichý, K časové působnosti novely občanského zákoníku, Právník, č. 12, 1984, [On the Applicability in Time of the Amendment to the Civil Code] p. 1104, and, from the Constitutional Court's case law, especially judgment file no. Pl. US 21/96).

The Constitution of Austria, in Art. 140 par. 4, par. 7, recognizes the possibility of an academic verdict of the Constitutional Court on the unconstitutionality of a statute which has already been annulled, but assumes the possibility of "new" evaluation of previous factual events only in cases which created an incentive for proceedings on review of a norm which led to a derogative (but not academic) verdict. In any case, the Constitutional Court of the Czech Republic has proceeded analogously in its case law (see judgments file no. I. US 102/2000, I. US 738/2000, IV. US 582/02, III. US 569/03).

The unrestricted application of the procedure established by interpretation of Art. 95 par. 2 of the Constitution, contained in judgment Pl. US 33/2000, and confirmed by judgment Pl. US 42/03, thus shows signs of true retroactivity, and is therefore inconsistent with the principle of a law-based state (Art. 1 par. 1 of the Constitution). The only possible case of breaking the ban on retroactive effect of a legal norm by the Constitutional Court that could have been accepted would have been protection of values which fall into the substantive core of the Constitution under Art. 9 par. 2.

Brno, 28 March 2006

Dissenting Opinion
of judge Eliška Wagnerová

I have a dissenting opinion to the reasoning of the majority decision, because I maintain the opinion which I stated in my dissenting opinion to the judgment in the matter file no. Pl. US 20/05. Also, I believe that in the case of legal regulation of apartment leases it is not possible to evaluate individual provisions in isolation, but only in the context of the complete legal regulation of this subject matter.

Insofar as I did not vote to annul the contested provision of the Civil Code, it is only because annulling it would only worsen the already imbalanced position of landlords.

Brno, 28 March 2006

Dissenting Opinion
of judges Dagmar Lastovecká and Jiří Nykodým to part of the reasoning under points 46 and 67

The Constitutional Court found § 711 par. 1 let. g), h) of the Civil Code to be constitutional, primarily in view of the existence of a special legal regulation of apartment leases, which could not be evaluated as a whole in the adjudicated matter. However, point 67 allows the possibility that in comprehensive evaluation of that special legal regulation of the leases of apartments even the contested provisions would not necessarily be found to be constitutional.

As a result of an excessively restrictive analysis of § 64 par. 3 of the Act on the Constitutional Court, the Constitutional Court did not make use of the ability to comprehensively evaluate this special legal framework in the matter file no. Pl. US 20/05; therefore, we refer to our dissenting opinions taken in that matter.

Brno, 28 March 2006

Notes:

1) See, e.g. judgment file no. III. US 114/94 (judgment no. 9, vol. 3 Coll. Dec., p. 45): "The provision of § 712 par. 2 of the Civil Code must also be considered a statutory provision that restricts ownership rights ... In its interpretation of that provision of the Civil Code the Regional court in Brno rejected an "expansive interpretation" of the concept of "fundamental" equality of the appropriate substitute apartment and the vacated apartment. It thereby concluded that if, in local conditions, it is "difficult" or impossible to secure an appropriate substitute apartment, then exercise of the owner's right to give notice of termination is ruled out (in the given matter, under § 711 par. 1 let. a) of the Civil Code). This interpretation of § 712 par. 2 of the Civil Code led to elimination of the owner's right of disposition (which includes the possibility of giving notice of termination), and thus did not preserve the significance and purpose of one of the constitutionally guaranteed fundamental rights. It thus led to violation of Art. 4 par. 4 of the Charter of Fundamental Rights and Freedoms."

2) Supreme Court decision 26 Cdo 1900/99 of 7 March 2001: "The court can agree with notice of termination only on the assumption that … the landlord (and no one else), in proceedings on consent to notice of termination, also proves his claims about the facts on which the notice (contained in this case in the complaint), i.e. the burden of proof in this case is on the landlord – the Supreme Court of the Czech Republic reached the same conclusion in its decisions of 8 June 1999, file no. 26 Cdo 2259/98, and 24 February 2000, file no. 20 Cdo 1456/99."

3) Similarly, judgment file no. III.US 445/04 of 16 December 2004. In the constitutional complaint, the complainants – briefly summarized – complained about the fact that although they, properly and in a timely manner, called on the co-operative to transfer the apartment, it had not been transferred to their personal ownership, and they are thus required, in conflict with the law, to remain in a lease relationship to the co-operative. They also disagreed with the fact that ownership relationships to the land on which their apartment building is constructed have not been sorted out. The co-operative wanted rent payments from the complainants, although it was supposed to transfer the apartment to their personal ownership. The Constitutional Court stated that the objection of violation of Art. 11 of the Charter was not justified. "The settled case law of the Constitutional Court within the intentions of Art. 11 par. 1 of the Charter protects only already acquired, existing ownership, and not only a claimed entitlement to it (see, e.g. the judgment in the matter I. US 115/94 in The Constitutional Court of the Czech Republic: Collection of Decisions – volume 3., no. 41, Prague 1995)."