FOURTH SECTION

DECISION

PILOT-JUDGMENT PROCEDURE

Application no. 27910/07
by Przemysław PIOTROWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 March 2011 as a Chamber composed of:
Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 June 2007,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the decision to examine the case simultaneously with the case of *The Association of Real Property Owners in Łódź* (no. 3485/02), pursuant to Rule 42 § 2 of the Rules of Court,

Having regard to the decision to apply the pilot-judgment procedure and to adjourn its consideration of applications deriving from the same systemic problem identified in the case of *Hutten-Czapska v. Poland* (no. 35014/97),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

PROCEDURE

1. The applicant, Mr Przemysław Piotrowski, is a Polish national who was born in 1976 and lives in Gniezno. He was represented before the Court by Mr A. Śpiewakowski, a lawyer practising in Poznań. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

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A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 27 February 1998 the Gniezno District Court (*Sąd Rejonowy*) gave a decision declaring that the applicant had acquired 3/16 of his late father's estate, which, among other things, included a tenement house with an annex in Gniezno. The total usable area of the building was 1,012.28 square metres ("sq. m."). It comprised commercial premises and several flats whose usable area was some 475 sq. m.

That house, which had previously belonged to the applicant's and his father's predecessors in title, had been taken under the so-called "state management of housing matters" introduced in 1946 and, subsequently, was made subject to the "special lease scheme" introduced in 1974 and the system of "controlled rent", which replaced the latter in 1994 and continued to apply until 10 July 2001 (see also *Hutten-Czapska v Poland (merits)*, no. 35014/97, [GC], §§ 12-14 and 67-84, ECHR 2006-VIII).

4. Since then, i.e. the entry into force of the Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and on amendments to the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*) ("the 2001 Act") the lease of flats in the applicant's house has been governed by the provisions of that law, in particular in respect of rent increases, termination of leases, maintenance and repairs and succession to leases (see *Hutten-Czapska (merits)*, cited above, §§ 85-106 and 113-146 and *Hutten-Czapska v Poland (friendly settlement)*, no. 35014/97, [GC], §§ 12-13 and 15-19).

5. On 30 May 2005 the applicant gave notice to a certain K.Z., a tenant living in the house, informing her of a rent increase which was to take effect on 1 September 2005. The rent currently paid was 4.95 Polish zlotys (PLN) per sq. m. The applicant further informed K.Z. that, according to an expert report obtained by him, the rent covering the costs of the proper maintenance of the dwelling, calculated with reference to the Constitutional Court's judgment partly repealing certain defective provisions on rent increases (see *Hutten-Czapska (merits)*, cited above, §§ 126, 132 and 136-141) should amount to PLN 13.00 per sq. m. In this regard, he relied on section 8a of the 2001 Act (see *Hutten-Czapska (merits)* cited above, § 125). Having regard to the particular circumstances of the tenants in his house, the applicant raised the rent to PLN 10.00 per sq. m. In K.Z.'s case the new rent was to be PLN 329.90, plus the charges for the use of the dwelling in the amount of PLN 69.00.

6. On 14 September 2005 K.Z. lodged a civil action with the Gniezno District Court, challenging the rent increase as unjustified. She submitted that she had lived in the building since 1945 and that the standard of the flat,

which had only electricity and water supply installations but no gas supply, did not justify the doubling of the rent. The rent had already been raised gradually since 2000. Despite the increase of the rent up to PLN 10.00 per sq. m. no renovations had so far been carried out by the owners. Lastly, the applicant stressed her old age (she was 82 at that time) and the fact that she was a handicapped person, whose only income was an old-age pension of PLN 1.170.

7. On 24 May 2006 the court dismissed her claim, finding that the rent increase was economically and otherwise justified.

K.Z. appealed, relying on the factual arguments concerning her personal circumstances and the standard of the flat. In addition, the key legal argument advanced by her in the appeal was that she was protected against rent increases by virtue of section 8a (4) and (5), which had been in force at the relevant time (see *Hutten-Czapska (merits),* cited above, § 125).

8. On 29 December 2006 the Poznań Regional Court (*Sąd Okręgowy*) amended the first-instance judgment, declared that the rent increase in respect of the flat occupied by K.Z. was unjustified and awarded her the costs of the proceedings against the applicant.

The Regional Court held that the lower court had rightly applied the above-mentioned section 8a and, in this regard, referred to the Constitutional Court's two rulings concerning this provision, i.e. the judgment of 19 April 2005 and the Recommendations of 29 June 2005 (see *Hutten-Czapska (merits),* cited above §§ 133-142). It reiterated that the Constitutional Court had many times held that rent paid by a tenant should be economically justified, that is to say not excessive, dictated by a landlord's legitimate economic interests. At the same time, it should include the costs of running repairs, renovations, maintenance costs, the building's depreciation in value and the landlord's decent profit. The decent profit derived from property was indispensable to secure the genuine protection of property rights. Without profit, there would be no new investment or even improvement, which were also in the interests of tenants.

The Regional Court noted that section 8a had been declared unconstitutional by virtue of the subsequent judgment of the Constitutional Court, given on 17 May 2006 (see *Hutten-Czapska (friendly settlement),* cited above, § 12) but only in so far as it had not included statutory criteria for "justified cases" where landlords could raise rent above the statutory ceiling. However, in its view, the lack of criteria for the judicial control of rent increases was not relevant since section 8a remained unchanged in the part stipulating that the burden of proof in respect of the justification for a rent increase rested with a landlord.

It was true that the applicant's house was in a bad technical state but this by itself did not justify the rent increase. The applicant had not produced any evidence showing the costs that he had borne in connection with the

necessary repairs or renovations, in particular an inventory of his income from rent from flats and commercial premises and expenditure on maintenance of the property. He had supplied only an expert report stating the costs of a major overhaul of the building. In consequence, it could not be said that the applicant had justified the rent increase in respect of the flat let by K.Z.

9. In support of his application to the Court, the applicant submitted the above-mentioned expert report, which had been drawn up by a certain A.K. According to the expert, the necessary costs of such a major overhaul amounted to PLN 1,188,678.80.

The applicant also supplied a calculation of the difference between the rent received from K.Z. under the provisions of the 2001 Act and the market-related rent for flats let outside the rules of that Act, estimated at PLN 10.00 per sq. m. From 1 March to 31 December 2005 the amounts of rent were, respectively PLN 1.829.02 and PLN 3,695.00, with the difference amounting to PLN 1.865. 98.

10. On 27 December 2007 the manager of the applicant's property, acting on the applicant's instructions, gave notice to a certain H.W., a tenant living in the house, informing her of a rent increase which was to take effect on 1 January 2008. The rent currently paid was 4.95 Polish zlotys (PLN) per sq. m and the applicant raised the rent to PLN 10.00 per sq. m.

11. On 22 April 2008 H.W. lodged a civil action with the Gniezno District Court, challenging the rent increase as unjustified.

On 22 December 2008 the Gniezno District Court declared that the increase in rent was unjustified. The reasons given for that ruling were similar to those relied on in the above-mentioned Regional Court's judgment. In particular the Court found that the increase of rent by more than 100% was excessive. It was true that the building required extensive reparations but no renovation had so far been made so as to warrant the increase in rent in order to obtain a return of a capital investment, as stipulated in section 8a(4) of the 2001 Act (see paragraph 19 below). Furthermore, the poor standard of the flat occupied by H.W. did not justify the elevated rent level. Lastly, the court noted that the applicant had not respected the statutory 3-month term for giving notice to a tenant.

12. On an unspecified date the applicant appealed, challenging, among other things, the finding that the time-limit for the notice had not been complied with.

13. On 2 June 2009 the Poznań Regional Court amended the first-instance judgment and declared that the increase in rent was justified up to the amount of PLN 6.67 per sq. m. The court held that the increase made by the applicant fell outside the list of "justified cases" referred to in section 8a (4) (a)-(b) of the 2001 Act. However, the applicant was entitled to raise rent within the limits applicable under section 8a(4)(d)

of that Act, that is to say up to 3% of the reconstruction value of the dwelling within 1 year, which corresponded to the said PLN 6.67 per sq. m.

B. Relevant domestic law and practice

1. General background and laws as applicable before the 2001 Act

14. A detailed description of the historical, social and economic background to the case and of laws restricting landlords' rights until the entry into force of the 2001 Act can be found in paragraphs 12-19 and 67-84 of the *Hutten-Czapska* pilot judgment on the merits (cited above).

2. The 2001 Act

15. The relevant provisions of the 2001 Act (as amended on several occasions and as applicable until the adoption of the *Hutten-Czapska* merits judgment), together with the summary of the related Constitutional Court's rulings, are set out in paragraphs 85- 106, 113 and 124-146 of that judgment.

3. The December 2006 Amendment

16. The Act of 15 December 2006 on amendments to the 2001 Act on the protection of the rights of tenants, housing resources of municipalities and on amendments to the Civil Code ("the December 2006 Amendment") (*ustawa o zmianie ustawy o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*) entered into force on 1 January 2007. It modified a number of legal provisions governing leases, their termination and levels of rent with a view to implementing the Constitutional Court's judgment of 19 April 2005 and its resultant recommendations for Parliament of 29 June 2005 (see *Hutten-Czapska (merits)*, cited above, §§ 133-142), as well as the subsequent Constitutional Court's judgments of 17 May 2006 and of 11 September 2006. Those judgments are rendered in paragraphs 12-13 of the *Hutten-Czapska* friendly-settlement judgment.

(a) New statutory definition of expenses involved in maintenance of a rented dwelling

17. The December 2006 Amendment added a new subsection 8a to section 2(1) of the 2001 Act. Section 2(1) 8a reads:

> "If this law refers to expenses connected with maintenance of a dwelling, [this expression] should be understood as expenses incumbent on the landlord and calculated proportionally to the usable surface of the dwelling in relation to the total usable surface of all dwellings in the building, including a fee for perpetual use of the land, property tax and the [following] costs:

(a) maintenance and keeping property in a proper technical condition, as well as renovations;

(b) administration of property;

(c) upkeep of shared premises, lifts, collective aerial installations, intercoms and greenery;

(d) property insurance;

(e) other [items], if they are stipulated in a [lease] agreement."

(b) New provisions on rent increases

18. Following the December 2006 Amendment section 8a (4) of the 2001 Act[1] is worded as follows:

"An increase whereby rent or other charges for the use of the dwelling would exceed 3% of the reconstruction value of the dwelling within 1 year, may take place only in justified cases referred to in subsections 4(a) and 4(e). At the tenant's written request, the landlord shall, within 14 days from receipt of the request, give reasons for the increase and its calculation in writing, failing which the increase shall be null and void."

19. Amended rules for rent increases are set out in the above-mentioned new subsections 4(a)-4(e) which were inserted into section 8a. They read, in so far as relevant, as follows:

"4(a) If the landlord does not receive income from rent or other charges for the use of a dwelling at a level covering the costs of maintenance of the dwelling, as well as securing to him a return on capital investment and profit ... an increase enabling him to reach that level shall be considered justified if it remains within the limits set out in subsection 4(b).

4(b) In an increase of rent or other charges for the use of a dwelling, the landlord may include:

(1) a return on capital investment at the maximum level per year:

(a) 1.5% of the investments made by the landlord for the construction or purchase of a dwelling; or

(b) 10% of the investments made by the landlord for the permanent improvement of the dwelling, increasing its usable value

until the full return [of such investments];

(2) decent profit.

...

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1. The provision as applicable on the date of the adoption of the Hutten-Czapska merits judgment read: "An increase whereby rent or other charges for the use of the dwelling would exceed 3% of the reconstruction value of the dwelling within 1 year, may take place only in justified cases. At the tenant's written request, the landlord shall, within 7 days, give reasons for the increase and its calculation in writing." (see Hutten-Czapska, cited above, § 125).

> 4(e) An increase in rent or other charges for the use of a dwelling which does not exceed the average general yearly retail price index in the previous calendar year shall be considered justified. The average general yearly retail price index for the previous calendar year shall be published, in the form of a communiqué, by the President of the Central Statistical Office, in the Official Gazette of the Polish Republic '*Monitor Polski*'."

While section 11 of the 2001 Act maintains the general conditions for the termination of leases as applicable on the date of the adoption of the pilot judgment (see *Hutten-Czapska (merits)* cited above, §§ 127-129), pursuant to section 8a (2) and (5)(1-2), a tenant's refusal to accept the rent increase deemed to be justified under the above-cited provisions is tantamount to a termination of the contract by the end of the term of notice (3 months). Otherwise, it is still open to a tenant to lodge a civil action to have the increase declared unjustified or justified but in a different amount (ibid. § 125).

(c) New rule governing the civil liability of municipalities for failure to supply social accommodation to a protected tenant

20. Section 18(3) of the 2001 Act still maintains favourable provisions on the amount of rent to be paid during the period between the issue of an eviction order and the vacation of the flat by protected tenants who, on account of their low income, are entitled to social accommodation from a municipality (see the Constitutional Court's judgment of 11 September 2006 rendered in paragraph 13 of the *Hutten-Czapska (friendly settlement)* judgment; as regards the situation concerning the provision of social accommodation to tenants under the rent-control scheme as applicable until the adoption of the *Hutten-Czapska (merits)* judgment, see its paragraphs 79 and 89).

21. However, in connection with the implementation of the Constitutional Court's judgment of 11 September 2006, the December 2006 Amendment added a new provision (subsection (5)) to section 18, which makes the municipality liable, under the rules of tort, for any damage sustained by the landlord on account of its failure to provide the tenant with social accommodation. This provision reads as follows:

> "(5) If the municipality has not provided social accommodation to a person who is entitled to it by virtue of a judgment, the landlord shall have a claim for damages against the municipality, on the basis of Article 417 of the Civil Code."

Consequently, the municipality's failure is statutorily deemed to be an "unlawful omission" within the meaning of Article 417 of the Civil Code.

4. Article 417 of the Civil Code

22. Article 417 of the Civil Code reads, in so far as relevant, as follows:

> “1. The State Treasury, municipality or another legal person wielding public power by virtue of the law shall be liable for damage caused by an unlawful act or omission in the exercise of that power.”

23. The Supreme Court, in its ruling of 25 June 2008 (no. CZP 46/2008), concerning a claim for damages under section 18(5) of the 2001 Act read in conjunction with Article 417 of the Civil Code, confirmed that a landlord was entitled to full compensation for any damage sustained on account of a municipality’s failure to provide social accommodation to a tenant.

5. The December 2009 Amendment

24. The Act of 17 December 2009 on amendments to the 2001 Act on the protection of the rights of tenants, housing resources of municipalities and on amendments to the Civil Code and amendments to certain other statutes (*ustawa o zmianie ustawy o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego oraz o zmianie niektórych innych ustaw*) (“the December 2009 Amendment”) entered into force on 28 January 2010. It introduced a new chapter 12a into the 2001 Act, which deals with the so-called “occasional lease” (“*najem okazjonalny”*). The “occasional lease” is essentially removed from the operation of most provisions of the 2001 Act, in particular concerning rent increases, protection of tenants, termination of contracts and restrictions on eviction. It is designed for physical persons – owners of flats, who wish to rent them out for a free, contractual rent for a period not exceeding 10 years. A landlord who conducts business activity involving lease of flats cannot take advantage of this form of lease. The rent and the conditions for its increase are freely determined in a lease agreement and are not subject to any limitations foreseen in the 2001 Act (see paragraphs 10-11 above). The procedure for eviction is simplified. Upon the conclusion of a lease agreement, a tenant is obliged to make a notarised declaration on a voluntary vacation of the rented flat after the termination of the lease and must indicate a flat to which he is to be evicted in the event that an eviction order is issued against him.

Pursuant to section 3 of the December 2009 Amendment, income received from occasional lease is subject to a reduced tax of 8.5% per annum.

6. Other related laws

(a) The 2006 Act

25. The Act of 8 December 2006 on financial assistance for social accommodation, protected accommodation, night shelters and houses for the homeless (as amended) (*ustawa o finansowym wsparciu tworzenia lokali socjalnych, mieszkań chronionych, noclegowni i domów dla bezdomnych*) (“the 2006 Act”) sets out conditions for obtaining financial assistance from

the State for the construction of buildings or dwellings designated for social accommodation (as defined by the 2001 Act) and for the purpose of securing other forms of accommodation for the less well-off.

Such assistance can be obtained by municipalities, unions of municipalities and public benefit organisations (*organizacje pożytku publicznego*) in connection with the construction, renovation, conversion, alteration of use or purchase of social-accommodation buildings. Depending on the nature of the development, the subsidies available vary from 30% to 50% of the costs of the investment (section 13 as amended on 12 February 2009).

The payments are secured by the State Economy Bank (*Bank Gospodarstwa Krajowego*) from money allocated to the Subsidies Fund (*Fundusz Dopłat*).

(b) The August 2007 Amendment

26. The Act of 24 August 2007 on amendments to the 1997 Land Administration Act and certain other statutes ("the August 2007 Amendment") (*ustawa o zmianie ustawy o gospodarce nieruchomościami oraz o zmianie niektórych innych ustaw*) introduced an information system for monitoring the levels of rent within Poland. That system is referred to as a "rent mirror" (*lustro czynszowe*). It stores information on the average rent levels in a given region, thus creating an additional tool for civil courts adjudicating on disputes arising from rent increases by landlords (see *Hutten-Czapska (merits)*, cited above, § 138).

27. Under section 186a of the 1997 Land Administration Act, a new provision introduced by the August 2007 Amendment, a manager administering property including flats for rent is obliged to supply information to the relevant local government concerning the level of rent for rented flats in relation to the building's location, its age and technical condition, the usable area of the flat and its characteristics, resulting from tenancy agreements concluded in respect of dwellings in buildings administered by him.

Pursuant to section 6 of the August 2007 Amendment, the municipality is required to publish in the regional official gazette (*wojewódzki dziennik urzędowy*) an inventory of data concerning levels of rent for privately-owned residential dwellings situated within its administrative borders.

7. The 2008 Act

(a) Relevant provisions

28. The Law of 21 November 2008 on Supporting Thermo-Modernisation and Renovations (*ustawa o wspieraniu termomodernizacji i remontów*) ("the 2008 Act") was adopted

by Parliament on 21 November 2008 and entered into force on 19 March 2009.

The Act is part of the Government's housing programme, aimed at improving the existing housing resources. In particular, it concerns tenement houses – both State and privately-owned – that, as stated in an explanatory report , have been neglected and fallen into disrepair as a result of the operation of the rent-control scheme, which made it impossible for landlords to receive rent that would secure investment in proper maintenance and renovations. The explanatory report states that because of the past neglect, within the next 8 years it will become necessary to demolish 40,000 tenement houses with 200,000 flats belonging to private individuals, municipalities or housing communes.

29. Under sections 3-7 of the Act, an investor who has carried out renovation or thermo-modernisation work is entitled to the so-called "renovation refund" (*premia remontowa*) or "thermo-modernisation refund" (*premia termomodernizacyjna*).

The granting of those refunds is subject to the statutory condition that a given renovation or thermo-modernisation project would result in energy savings, in particular as regards heating and hot water supply systems in a building. The refunds are available only in respect of larger-scale, costly renovations.

30. A renovation refund means in practice a partial refund of a loan taken out for the purposes of renovating a building, including the replacement of windows, renovations of balconies, fitting of the necessary installations or equipment or alteration of the building resulting in its improvement.

Under section 9, a renovation refund constitutes 20% of a loan spent by an investor but not more than 15% of the costs of the entire renovation project. Thermo-modernisation refunds are subject to ceilings of 20% and 16% respectively.

The refund payments are to be secured by the State Economy Bank from money allocated to the Thermo-Modernisation and Renovations Fund (*Fundusz Termomodernizacji i Remontów*).

31. The Act introduced a system of compensatory refunds (*premie kompensacyjne*) available to owners whose property was subject to the rent-control scheme between 12 November 1994 and 25 April 2005[2] (see also *Hutten-Czapska (merits)*, cited above, §§ 71-72, 136-141 and 194).

Section 2(13) of the 2008 Act reads:

> " A dwelling subject to the rent-control scheme (*lokal kwaterunkowy*) is a dwelling within the meaning of [the 2001 Act] in respect of which the lease originated in an administrative decision on allocation to a dwelling or had another legal basis dating

2. The date of entry into force of the Constitutional Court's judgment of 19 April 2005 (see *Hutten-Czapska*, cited above, §§ 136-141).

back to the time before State management of housing matters or the special lease scheme were introduced in the relevant town, and in respect of which rent was:

(a) controlled;

(b) statutorily limited to 3% of the reconstruction value of the dwelling within 1 year;

(c) statutorily limited in its ... increase to 10% within 1 year

during any period between 12 November 1994 and 25 April 2005.”

Section 10 read:

“1. An investor – a physical person who on 25 April 2005 was an owner or heir of an owner of a building in which there was at least one dwelling subject to the rent-control scheme – shall be entitled to a refund hereinafter referred to as a ’compensatory refund’.

2. A compensatory refund in relation to one building shall be granted only once.

3. A compensatory refund shall be set aside for paying off a loan granted for carrying out:

(1) a renovation project; or

(2) the renovation of a one-family house

if [such a project] concerns the building referred to in subsection 1.

4. Except for the renovation referred to in subsection 3(2), a compensatory refund shall be granted together with a renovation refund.”

32. Section 11 read, in so far as relevant, as follows:

“1. ... a compensatory refund shall be equal to the product of the indicator of the costs of the investment and a sum amounting to 2.1% of the conversion index for each square metre of the usable surface of the dwelling subject to the rent-control scheme and for each year in which the limitations referred to in section 2(13) applied in the period from 12 November 1994 to 25 April 2005 or, if the building was not acquired through succession, from the date of acquisition to 25 April 2005.

2. If an indicator of the costs of the investment is lower than 0.5, for the purposes of the calculation of the compensatory refund it shall be assumed that that indicator is equal to 0.5.

3. If an indicator of the costs of the investment is higher than 0.7, for the purposes of the calculation of the compensatory refund it shall be assumed that that indicator is equal to 0.7.

4. The formula for the calculation of a compensatory refund is set out in the annex to this law.”

33. The annex sets out the following formula:

$$P = k * 0{,}02 * w * \sum_{i=1}^{n} \left(pu_i * \frac{m_i}{12} \right)$$

The components of the formula are listed as follows:

"P – the amount of the compensatory refund

$k =$ a) 0.5 if an indicator of the costs of the investment is lower than 0.5;

b) indicator of the costs of the investment, if that indicator is not lower than 0.5 and not higher than 0.7;

c) 0.7, if an indicator of the costs of the investment is higher than 0.7.

[An indicator of the costs of the investment is defined in section 2(12) as a ratio of the costs of the thermo-modernisation or renovation investment, which fulfils the criteria set out in section 10(1), calculated in relation to 1 square metre of the residential building's usable area, the price for 1 square metre of the residential building's usable area as established for the purposes of the calculation of a "guarantee refund" (*premia gwarancyjna*) – a kind of a loan refund granted by the State to persons who before the transformation to the market economy had savings plans for acquiring a flat from a housing cooperative.]

w – the value of the indicator of the costs of the investment in the municipality on whose territory the building is located as of the date on which an application for a loan has been made;

n – number of rented flats in the building;

pu_i – usable area of an i-th rented flat;

m_i – the period, expressed in months, during which an i-th rented flat was subject to restrictions referred to in section 2(12), from 12 November 1994 to 25 April 2005, and if the building has not been acquired through succession after 12 November 1994, from the date of acquisition to 25 April 2005."

34. Under section 19, the State Economy Bank shall transfer refunds to the lending bank if the project has been carried out within the time-limit set in the loan agreement.

Section 19 reads:

" The State Economy Bank shall transfer a compensatory refund [to the lending bank] after the amount of the loan spent [has reached the level of] the renovation refund granted."

Section 20 provides that the State Economy Bank is to keep an electronic database register of buildings in respect of which refunds have been granted.

(b) Operation in practice in 2008-2009

35. According to reports published in the Polish press in September 2009, no landlord had by that time taken advantage of the compensatory scheme under the 2008 Act. There were only 5 banks cooperating with the State Economy Bank and involved in the scheme. In contrast, 15 banks offered loans that include thermo-modernisation or renovation refunds. As the Ministry for Infrastructure stated, most banks were not interested in giving loans that included a compensatory refund. The Ministry intended to propose amendments to the 2008 Act whereby landlords who had made investments would be able to profit from the scheme, regardless of whether or not they had taken out a loan for this purpose.

(c) The March 2010 Amendment

36. On 5 March 2010 Parliament adopted the Act of 5 March 2010 on amendments to the Law on Supporting Thermo-Modernisation and Renovations (*ustawa o zmianie ustawy o wspieraniu termomodernixacji i remontów)* ("the March 2010 Amendment"). It entered into force on 7 June 2010.

37. Section 10 (as amended) at present reads, in so far as relevant, as follows:

> " "1. An investor, a physical person who is an owner of a residential building in which there is at least one dwelling subject to the rent-control scheme or an owner of part of a residential building and who, on 25 April 2005, was the owner of this residential building or this part of the residential building or heir of a person who was the owner on this day – shall be entitled to a compensatory refund.
>
> ...
>
> 3. A compensatory refund in respect of a residential building or part of a residential building shall be granted only once.
>
> 4. A compensatory refund shall be designated for the reimbursement of entire or partial costs of:
>
> 1) a renovation project; or
>
> (2) the renovation of a one-family house."

38. New subsections 4 and 5 were added to section 12, enabling a landlord to obtain a compensatory refund without the need to take out a bank loan for the investment. The amended section 12 at present reads, in so far as relevant, as follows:

> "4. If [an investor] intends to carry out a renovation project or renovation referred to in section 10(4) entirely out of other financial resources than a bank loan in connection with which a thermo-modernisation or renovation refund has been granted, he shall make an application for a compensatory refund directly to the [State Economy Bank].
>
> 5. In cases referred to in subsection 4, requirements laid down in section 7(1)1), (2) and (3) 1 shall not apply [the relevant requirements comprise particular conditions that must be fulfilled by other persons wishing to take advantage of the refunds scheme under the 2008 Act, such as the reduction in or savings of energy consumption that must result from a given renovation]."

39. In order to obtain a compensatory refund, a landlord should attach to his application certified copies of documents confirming that his property was subject to the rent-control scheme and indicating the relevant period or periods during which restrictions applied. Also, he should submit documents showing the extent of works and estimated costs of the investment.

40. According to the amended section 19(4), the State Economy Bank shall transfer a compensatory refund to an investor after he has incurred expenses involved in a renovation project, in accordance with the indicated

extent of works. The compensatory refund may not exceed the costs of the investment.

41. In consequence of the above amendments, a landlord can choose between an ordinary or simplified procedure for granting a compensatory refund.

In the ordinary procedure, it is necessary to take out a loan for the planned investment and fulfil the requirements laid down in section 7 of the 2008 Act in respect of the reduction in energy consumption that must result from a given renovation project. A detailed building plan and construction or energy audit are also required. The minimum costs of the investment must reach the statutory threshold, which is determined by reference to the so called "indicator of the costs of the investment" (see the components of the mathematical formula for the calculation of the compensatory refund in paragraph 32 above). This indicator may not be lower than 0.05 and higher than 0.70, which in practice means that the refund is available only in respect of substantial investments. A landlord may take advantage of compensatory and renovation refunds or compensatory and thermo-modernisation refunds at the same time. After the termination of the project, the State Economy Bank transfers the money to the lending bank, which deducts the relevant amount from the loan.

In the simplified procedure, a landlord may invest own money or find other sources of financing his project rather than a bank loan. An application should be supported by documents indicating the extent and costs of planned works but no building plan, construction or energy audit are required. There is no specific requirement regarding the level of costs of the planned investment but they must be at least equal to or higher than the compensatory refund available to the person concerned. In respect of the granting and payment of the refund, the landlord deals directly with the State Economy Bank.

A landlord who has chosen the simplified procedure may, having fulfilled the relevant requirements, take advantage of a renovation or thermo-modernisation refund in the future.

42. The authorities disseminated detailed information concerning the conditions for granting compensatory refunds to persons affected by the operation of the rent-control scheme and a comprehensive explanation of the mathematical formula and its respective components. They also made available to potential applicants an information technology system on the website of the State Economy Bank (http://www.bgk.com), which enables them to calculate or make a simulation of their refund with the help of a special calculator. All the necessary data (applicable conversion indexes, relevant indicators of the reconstruction value of 1 square metre of the usable area of residential buildings in all regions of Poland, prices for 1 square metre of a building at a given time and all other relevant statistical information) are also available on the website. Applicants also have at their

disposal PDF texts of the 2008 Act, the March 2010 Amendment, the Rules for Investors (*Regulamin dla Inwestorów*), and two standard application forms for granting a compensatory refund – one for the purposes of the ordinary procedure and one for the simplified procedure.

43. The explanation of the mathematical formula describes, in simple terms, the steps that are to be followed by an applicant in order to calculate the amount of the refund. To this end, an applicant indicates the costs of the planned investment, the total usable area of the building in question, the surface area of the flats that were subject to the rent-control scheme and the period during which restrictions applied. After uploading the relevant statistical information giving the price of 1 square metre of the building at the time of lodging an application and an indicator of the reconstruction value of 1 square metre of the building in the region of its location, he obtains the amount of the compensatory refund available to him.

Making a simulation of the approximate costs of a renovation project, an applicant may determine the amount of the available compensatory refund in such a way that it would cover all the costs involved in the investment.

(d) Calculations of hypothetical compensatory refunds supplied by the Government

44. The Government, at the Court's request, supplied several calculations of hypothetical compensatory refunds in respect of various notional properties situated in various regions in Poland which, for the purposes of the simulation, were considered to have been subject to the rent-control scheme for the entire period referred to in the 2008 Act.

The amount varied depending on the specific features of the property and level of the expenses to be incurred. For instance, as of the end of January 2010 an owner of a tenement house in Łódź, with a total surface area of 780 m^2 and comprising 12 flats which were all subject to the rent-control scheme for the entire statutory period (12 November 1994 – 25 April 2005) who were to incur expenses of 150,000 Polish zlotys (PLN) (approx. 36,800 euros (EUR)) for a renovation project, would be entitled to a compensatory refund amounting to PLN 366,912 (approx. EUR 90,000). This refund, if recalculated with the help of the calculator accessible via the State Economy Bank's website, would amount to PLN 393,530 (approx. EUR 96,500) in December 2010; however, since the maximum refund available cannot be higher than the costs of the investment, the landlord would receive PLN 150,000.

If only 6 flats with a total surface area of 490 m^2were subject to the rent-control scheme over the relevant period, the compensatory refund would decrease to PLN 230,496 (approx. EUR 56,500) which, given the statutory ceiling, would not change the amount of the reimbursement.

45. The Government were also asked to supply the figures for the refund in a situation where the statutory cut-off date would not be 25 April 2005 but 1 January 2007, the date of entry into force of the December 2006 Amendment (see paragraph 8 et seq. above). As of the end of January 2010, such hypothetical refund would amount to PLN 425,152 (approx. EUR 104,000). The comparison with the refund as determined under the 2008 Act (PLN 366,912) shows a difference of some 15-16%.

(e) Operation of the March 2010 Amendment in practice

46. According to the Government, as from 7 June 2010, the date of the March 2010 Amendment's entry into force, to the end of October 2010, forty-one applications for a compensatory refund had been lodged with the State Economy Bank, of which 12 were granted and the remainder required supplementary information. No application has been rejected and the total amount of refunds granted was PLN 750,000 (approx. EUR 184,000). In contrast, in 2009 only one application was made – and granted.

COMPLAINT

47. The applicant submitted that the various continuing restrictions on his property rights, including the control of rent increases, limitations on the lease termination and vacation of flats, as well as defective rules for the recovery of property maintenance costs, imposed on him by the Polish law, in particular the 2001 Act, amounted to a breach of Article 1 of Protocol No. 1 to the Convention.

THE LAW

A. Scope of the case before the Court

1. Questions put to the parties by the Court

48. When giving notice of the application to the respondent Government under Rule 54 § 2 (b) of the Rules of Court, the Court referred, in particular, to two points. First, it made reference to the laws adopted after the delivery of the merits and friendly-settlement judgments in the *Hutten-Czapska v. Poland* case, in particular the December 2006 Amendment, the 2006 Act, the August 2007 Amendment and the 2008 Act. Furthermore, the Court, referred to the compensatory scheme under the 2008 Act, providing redress for the Convention violation to landlords affected by the operation of the

laws found to be incompatible with Article 1 of Protocol No. 1 in the *Hutten–Czapska* pilot judgment.

In this connection, it invited the parties to state whether, having regard to the above-mentioned laws, the applicants' and other similarly situated Polish landlords' Convention claims under Article 1 of Protocol No. 1 have been satisfied at domestic level and, in consequence, "the matter ha[d] been resolved" within the meaning of Article 37 § 1 (b) of the Convention and whether, having regard to the features of the compensatory scheme under the 2008 Act, the redress offered by the State for the systemic violation of Article 1 of Protocol No. 1 was satisfactory.

49. Accordingly, the Court's examination of the case is limited at this stage to the issue of whether or not it is justified to apply Article 37 § 1 of the Convention.

2. Individual and general dimension of the case

50. The present case, as well as the related case of *The Association of Real Property Owners in Łódź v. Poland* lodged by a group of Polish landlords and the remaining 24 similar adjourned cases currently on the Court's docket originated in the same structural shortcoming that was found by the Court in the *Hutten–Czapska* case to be at the root of its finding of the violation of Article 1 of Protocol No. 1. That shortcoming was defined as "a systemic problem connected with the malfunctioning of domestic legislation in that: (a) it [had] imposed, and continue[d] to impose, restrictions on landlords' rights, including defective provisions on the determination of rent; [and] (b) it [had] not and still [did] not provide for any procedure or mechanism enabling landlords to recover losses incurred in connection with property maintenance" (see *Hutten-Czapska (merits),* cited above, the fourth operative provision of the judgment).

The Court perceived the problem as "a combination of restrictions on landlords' rights, including defective provisions on the determination of rent, which [had been] and still [wa]s exacerbated by the lack of any legal ways and means enabling them at least to recover losses incurred in connection with property maintenance, rather than as an issue solely related to the State's failure to secure to landlords a level of rent reasonably commensurate with the costs of property maintenance" (ibid. § 239).

In that connection, it directed that "in order to put an end to the systemic violation identified in the present case, the respondent State must, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community, in accordance with the standards of protection of property rights under the Convention" (ibid. the fourth operative provision of the judgment).

In consequence, the Court, applying the pilot-judgment procedure in the individual applicant's case, not only recognised the Convention

violation in respect of all actual and potential applicants who found themselves in a similar situation but also made clear that general measures at national level were called for in execution of the judgment and that those measures should take into account the other persons affected and remedy the systemic defect underlying the Court's finding of a violation.

B. Application of the pilot-judgment procedure

51. The object of the Court's designating a case for a "pilot-judgment procedure" is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order.

The pilot-judgment procedure is primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving problems at national level, thereby securing to the persons concerned their Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress but also, at the same time, making it unnecessary for the Court to adjudicate on large numbers of applications similar in substance which it would otherwise have to take to judgment (see *Broniowski (friendly settlement),* [GC], no. 31443/06, § 35, ECHR 2005-IX; *Hutten-Czapska (merits)*, cited above §§ 231-234; and *Wolkenberg and Others v. Poland* (dec.) no. 50003/99, 4 December 2007, §§ 34-35, ECHR 2007-XIV).

52. Another important aim of that procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task as defined by Article 19, that is, to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in large series of cases (see, *E.G. and 175 Other Bug River applications v. Poland* (dec.), no. 50425/99, § 27, ECHR 2008-...; and *Suljagić v. Bosnia and Herzegovina* (no. 27912/02), § 62, ECHR 2009-...).

The respondent State's action should primarily aim at the resolution of the systemic dysfunction found in the pilot judgment and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to examine the remaining cases pending before it and to take them to judgment so as to ensure effective observance of the Convention (see *E.G. v. Poland*, cited above, § 28; and *Suljagić*, ibid.).

53. This adjudicative approach is pursued with due respect for the Convention organs' respective functions. While it falls to the Committee

of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see *Broniowski (friendly settlement),* cited above, § 42; *Hutten-Czapska v. Poland (friendly settlement)* [GC] no. 35014/97; 42, ECHR 2008 ...; and *Suljagić*, cited above, § 61) the Court, in its examination of follow-up cases after the adoption of the pilot-judgment, has the power to decide whether, in view of the remedial action taken by the State the matter giving rise to the Convention complaints in those cases "has been resolved" for the purposes of Article 37 of the Convention and whether or not it is justified to continue the pilot-judgment procedure (see *Wolkenberg and Others* cited above, § 77; and *E.G.,* cited above, §§ 25-29).

54. Thus, it is inherent in the pilot-judgment procedure that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicant and requires it to examine that case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons (see *Hutten-Czapska (merits)*, cited above, § 238; *Broniowski (friendly settlement)* cited above, § 36; and *Hutten-Czapska (friendly settlement)* cited above, § 33).

The same logic applies to the Court's interpretation of the notion of "respect for human rights as defined in the Convention and the Protocols thereto" in cases dealt with in the context of this procedure where the Court, in determining whether it can strike the application out of its list pursuant to Article 37 § 1 (b) of the Convention on the ground that the matter has been resolved, will have regard not only to the applicant's individual situation but also to measures aimed at resolving the general underlying defect in the domestic legal order identified in the principal judgment as the source of the violation found (see *Wolkenberg and Others*, cited above, § 35; and, *mutattis mutandis*, *Broniowski (friendly settlement)*, cited above, § 36-36 and *Hutten-Czapska (friendly settlement)*, cited above, § 35).

55. In consequence, the ruling in the present case and the above-mentioned case of *The Association of Real Property Owners in Łódź*, chosen by the Court for the examination of the issue whether or not it is justified to apply Article 37 § 1 of the Convention and to continue the pilot-judgment procedure initiated in the *Hutten-Czapska* case, will have consequences for all the similar adjourned cases.

C. Application of Article 37 of the Convention

56. Article 37 reads, in so far as relevant, as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...

(b) the matter has been resolved; ...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

1. The parties' submissions

(a) The Government

57. The Government submitted that in implementation of the *Hutten-Czapska* pilot judgment on the merits and the friendly-settlement judgment, they had undertaken a number of legislative initiatives aimed at resolving the systemic problem identified in that case and at providing similarly affected persons with redress for the violation of their right of property. As a result, several new or amending laws had been enacted by the Polish Parliament in the period from December 2006 to March 2010.

(i) As regards global solutions aimed at resolving the systemic problem identified in the pilot judgment

58. The Government first referred to the December 2006 Amendment, stressing that it had an important, positive impact on the property rights of landlords. In accordance with directives emerging from the Constitutional Court's judgment of 19 April 2005 and its June 2005 Recommendations[3], it introduced a clear definition of expenses incurred in the maintenance of rented property and a rule that they had to be covered by rent derived from a flat. It further expressly laid down that a landlord was entitled to increase rent to an amount covering not only maintenance costs but also to secure a return on capital investment and a fair – decent – profit from the lease of the property.

Moreover, in order to compensate loss of rent incurred by landlords in consequence of delays on the part of the authorities in providing social accommodation to protected tenants in respect of whom eviction orders were issued, section 18(5) of the December 2006 Amendment had explicitly made the authorities liable for any damage sustained in this connection. In particular, it had enabled landlords to recover the difference between the rent paid by a tenant and a freely-determined and market-related rent.

59. In turn, the 2006 Act was enacted in order to stimulate investment in the construction of social accommodation, adaptation, development and renovation of municipal buildings with residential dwellings. In enacting this law, the State recognised the problems faced by municipalities responsible for providing council flats to persons entitled to such accommodation under court judgments ordering their eviction from

3. See §§ 133-142 of the *Hutten-Czapska* merits judgment.

privately-owned flats and for securing shelters for destitute and homeless persons.

The 2006 Act had introduced a system of State subsidies, amounting to 30-50% of the costs of investment available to the municipalities and other entities referred to in the law. These measures were aimed at enlarging gradually the hitherto existing pool of municipal property designated for social accommodation and ensuring a more efficient provision and distribution of flats with cheap rent for the less well-off, who had occupied privately-owned dwellings subject to the previous rent-control scheme.

60. Subsequently, the August 2007 Amendment had introduced a new tool for monitoring the levels of rent in Poland – the so-called “rent mirror”, the purpose of which was to ensure transparency of rent increases and facilitate the determination of rent and other charges in individual lease agreements concluded in a given locality. This tool was also used by civil courts dealing with disputes concerning rent increases initiated by tenants who had not accepted the increase made by a landlord. Its aim was to provide the courts with reliable data enabling them to assess the justification for the increase. The operation of this mechanism was continually monitored by the Ministry for Infrastructure.

61. The Government next pointed out that, on their initiative, Parliament had adopted the December 2009 Amendment to the 2001 Act which had introduced the so-called “occasional lease” – a lease based on a fully contractual and market-related rent freely determined by the parties. All owners who were physical persons and did not conduct any business activity involving the lease of flats could take advantage of this possibility. Most provisions of the 2001 Act, in particular those regarding the protection of tenants, conditions for rent increases, termination of lease agreements and restrictions on evictions did not apply to the occasional lease. As a result, an owner of an unoccupied flat could conclude a lease agreement based on flexible rules and, as a prospective tenant was required to make a notarised declaration that he would vacate the flat upon the termination of the lease, the procedure for eviction was simplified and did not depend on the provision of social accommodation to the tenant.

62. The Government stressed that the above-mentioned measures had been adopted to ensure the speediest and most effective implementation of the *Hutten-Czapska* pilot judgment and that they had fundamentally changed the previous system of housing laws found by the Court to have been in violation of Article 1 of Protocol No. 1 to the Convention. It should also be noted, they added, that those measures had been taken as part of the ongoing process of the systemic transformation of the country and had had to achieve a balance between the interests of landlords and tenants. Thus, pursuant to paragraph 239 of the pilot judgment, containing the Court’s directives on the general measures to be applied in order to put an end to the systemic violation of the right of property, the Polish State had been obliged

"through appropriate legal and/or other measures, to secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off – in accordance with the principles of the protection of property rights under the Convention".

63. They Government further underlined that in the pilot judgment the Court had expressly acknowledged the need to balance the conflicting interests of landlords and tenants, holding in paragraph 225 that "the Polish State which [had] inherited from the communist regime the acute shortage of flats available for lease at an affordable level of rent, had to balance the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of landlords and tenants" and that it "had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, often vulnerable individuals". Accordingly, in the light of the Court's directives, the domestic authorities had been required to take steps that had not been aimed solely at erasing the consequences of the breach of the Convention for landlords but also at improving the general housing situation in Poland through the allocation of substantial financial resources from the State budget for the construction of new residential buildings, the renovation of the existing property and other means stimulating investment in social accommodation.

64. In the Government's opinion, those tasks had been successfully carried out and the underlying systemic problem identified in the pilot judgment and defined by the Court as "a combination of restrictions on landlords' rights, including defective provisions on the determination of rent, which was and still is exacerbated by the lack of any legal ways and means enabling them at least to recover losses incurred in connection with property maintenance" had been satisfactorily resolved at domestic level.

(ii) As regards redress for persons affected by the systemic violation of Article 1 of Protocol No. 1

65. In addition to the general solutions addressing the systemic problem, the authorities had also secured to injured persons redress for the past violation of their property rights on account of the operation of the rent-control scheme.

In discharging their obligation to secure such redress, which they had taken upon themselves under the terms of the friendly-settlement agreement concluded in respect of just satisfaction under Article 41 of the Convention in the pilot case, the Government had submitted to Parliament their Bill on Supporting Thermo-Modernisation and Renovations. It had been adopted shortly after the conclusion of the friendly settlement. The 2008 Act had entered into force on 19 March 2009 and had introduced a system of refunds

financed by the State budget and designated for the partial reimbursement of loans taken out by owners of tenement houses in connection with thermo-modernisation and renovation projects. The money earmarked for this purpose had been allocated to the Renovation and Thermo-Modernisation Fund, administered by the State Economy Bank. While any owner of a tenement house or one-family house could take advantage of renovation or thermo-modernisation refunds, each amounting to up to 20% of the loan taken out for the project, owners affected by the operation of the previous rent-control scheme could in addition claim the so-called “compensatory refund”.

The Government maintained that this special entitlement was based on the “principle of usefulness” as the granting of the refund was connected with the modernisation of tenement houses. Also, it constituted a form of State financial assistance for landlords enabling them to mitigate the consequences of the deterioration of their property caused by the insufficient rent in the past and the resultant lack of proper maintenance and impossibility of carrying out necessary repairs and renovations.

66. The compensatory refund was calculated on the basis of several factors connected with the features of the property and its localisation and could be available in respect of the period from 12 November 1994 to 25 April 2005. The first date had been taken by the Court itself as the beginning of the period of the operation of the rent-control scheme in Poland for the purposes of the ruling in the pilot case. The second date was the one on which the Constitutional Court’s judgment of 19 April 2005 had entered into force. It was chosen by the Government since, in their view, that ruling had marked the end of the rent-control scheme in Poland, in particular as it had struck down the provisions of the 2004 Amendments restricting increases in rent that exceeded 3% of the reconstruction value of the dwelling to a maximum yearly ceiling of 10% of the current rent.

67. Lastly, the Government referred to amendments to the 2008 Act which, at the time of filing their observations, they had intended to propose to Parliament. The Government’s proposal – which had later been accepted as Parliament had enacted the March 2010 Amendment (see paragraphs 35-43 above) – had been prompted by the assessment of the operation of the refunds scheme in practice. It had emerged from reports obtained from the Ministry for Infrastructure, which monitored the functioning of the scheme on a regular basis, that making the granting of compensatory refunds conditional on a prior taking out of a loan and limiting their availability to large-scale renovation projects constituted serious practical obstacles for entitled persons. Moreover, it had become apparent that the world crisis in the banking sector could generally undermine the Government’s renovation and thermo-modernisation programme. In the circumstances, it had been decided to simplify the procedure for granting compensatory refunds. While in respect of important, more costly renovations a landlord

could still profit from a double advantage – a renovation or thermo-modernisation refund coupled with a compensatory refund to be paid against a loan taken out for this purpose, it would become open for persons who wished to carry out smaller-scale renovations to obtain a compensatory refund without borrowing money from the bank and without renouncing the entitlement to a renovation or thermo-modernisation refund. Those refunds could be granted in the future. Other requirements would also be relaxed; a renovation project would not have to be aimed at achieving energy savings, a landlord would no longer be obliged to produce a building plan and a construction or energy audit and it would suffice for him to submit documentation indicating the scale and estimated costs of the investment.

In order to encourage potential applicants the authorities had disseminated, through the State Economy Bank's official website, comprehensive information about the possibility of receiving compensatory refunds. This included an explanation of the mathematical formula for the calculation of a compensatory refund. In this connection a special tool was created – a calculator – with the help of which an entitled person could make a simulation of a refund based on the estimated costs of the investment. Using the calculator an investor could adjust the costs in such a way that the refund would cover them in their entirety. Further amendments would make compensatory refunds available to persons owning part of a tenement house, which should facilitate the procedure for co-owners of properties with a complicated ownership structure, belonging to several heirs, who would then be able to receive refunds independently, without the need to carry out a common investment.

In sum, the amendments eliminated all the perceived shortcomings of the compensatory scheme, making it fully accessible to victims of the systemic violation found in the pilot judgment and providing them with sufficient just satisfaction for the purposes of Article 41.

(iii) Conclusion

68. The Government concluded that the above-mentioned laws, which had been adopted with a view to securing a rapid and effective implementation of the Court's directives laid down in the pilot judgment, had effectively removed obstacles to the peaceful enjoyment by Polish landlords of their property rights. They had consequently eliminated the underlying systemic problem identified in that judgment.

In turn, the 2008 Act, in particular after it had been amended, provided injured persons with satisfactory redress for the past violation at domestic level.

Accordingly, the purpose of the pilot-judgment procedure had been achieved and the Convention claims of the present and potential applicants would be best resolved by means that were put in place in the national legal

order, not in the international procedure before the Court. Otherwise, the Court's role in the pilot-judgment procedure – which was, as it had repeatedly held, to identify structural or systemic problems and assist the States in resolving such problems at national level by offering redress to applicants – would be seriously undermined. In this regard, the Government relied on the above cited *Wolkenberg* decision, in which the Court had stated that its role after the delivery of the pilot judgment and after the State had implemented the general measures in conformity with the Convention could not be converted into providing individualised financial relief in repetitive cases arising from the same systemic situation.

In view of the foregoing, the Government invited the Court to strike the application out of its list of cases on the ground that the matter giving rise to the applicants' complaints had been resolved within the meaning of Article 37 § 1 (b) of the Convention.

(b) The applicant

(i) As regards global solutions aimed at resolving the systemic problem identified in the pilot judgment relied on by the Government

69. The applicant considered that the laws adopted by the Polish State in 2006-2010, referred to by the Government, had not improved the situation of landlords but rather perpetuated the past state of affairs, found to have been incompatible with the Convention in the *Hutten-Czapska* pilot-judgment.

He stressed, in particular, that the State still retained control over rent increases. This task had simply been shifted from the legislative to the judicial authorities which, following the December 2006 Amendment, dealt with disputes concerning rent charged by an individual landlord.

70. In the applicant's view, the effects of laws obliging municipalities to supply social accommodation were illusory since, given the scarcity of such accommodation, they had not been able to discharge their duty. In reality, the 2006 Act had merely promised to municipalities a certain modest financial assistance to cover part of the costs of investment in social housing. This incentive was insufficient and, in consequence, landlords were forced to provide continually dwellings to protected tenants who as a rule were in rent arrears, paid insufficient rent, or even no rent at all. What was more, the general lack of council flats inevitably staggered proceedings for eviction, which were *ex officio* stayed by bailiffs pending the provision of accommodation by the municipality. It was true that landlords were entitled to compensation for any damage caused by the authorities' failure to fulfil their duty but in order to obtain it they had to file costly civil proceedings. Considering the generally dilatory conduct of Polish courts, a landlord could reasonably expect to have the claim satisfied after some two years of the litigation. During that time the tenant

would pay no rent at all, whereas the landlord would be forced to cover expenses involved in the maintenance of the flat from his own pocket.

71. In conclusion, the applicant maintained that the Polish State had not introduced in the domestic legal order measures securing to landlords their property rights in compliance with the Court's directives in the *Hutten-Czapska* pilot judgment.

(ii) As regards redress for persons affected by the systemic violation of Article 1 of Protocol No. 1 available under the 2008 Act

72. In respect of the refunds introduced by the 2008 Act the applicant maintained that, in adopting these measures, the Polish State had failed to recognise the fact that landlords did not need any so-called "aid" or "support" from the State but to have their property rights fully restored, that is to say, to be able to dispose of their property in accordance with their will and without any restrictions. The ability to manage their property freely and derive profit from it would allow them to secure the costs of maintenance and investment, without the necessity to obtain any financial assistance from the State budget.

73. In the applicant's submission, the refunds scheme was in any event defective and unsatisfactory. To begin with, in order to obtain a refund a landlord had to borrow from a bank a substantial sum of money for his investment because refunds were paid only in the form of a partial reimbursement of loans. Furthermore, refunds were available only in respect of large-scale renovation projects, which meant that a landlord had no real choice of the extent of his investment but, after having been deprived by the State of income from the lease of his house for many years, was effectively forced either to carry out a major overhaul of his property and take out a large, long-term loan, of which only 20% could be reimbursed.

(iii) Conclusion

74. In conclusion, the applicant submitted that the Polish State had not removed restrictions on his property rights. Nor was the refunds scheme under the 2008 Act capable of affording redress for the violation of Article 1 of Protocol No. 1 found in the pilot judgment. Accordingly, the matter had not been "resolved" within the meaning of Article 37 § 1 (b). He asked the Court to continue the examination of his application and to find a violation of his right of property.

2. *The Court's assessment*

(a) Amendments to Polish legislation

75. It is common ground that in the years 2006-2010 the Polish State enacted several laws in the area of housing, whose aim was to ensure the implementation of the general measures indicated by the Court in the

Hutten-Czapska pilot judgment on the merits of 19 June 2006 (see paragraphs 57 and 69 above). However, the parties disagreed in their assessment of the impact that those laws had had on the property rights of landlords. The Government maintained that the underlying systemic problem identified in the pilot case had been eliminated as the situation had been brought into line with the Convention standards, whereas the applicant argued that the amending and new statutes had no meaningful effect on his situation (see paragraphs 58-64 and 69-71 above).

76. In the *Hutten-Czapska* friendly-settlement judgment of 28 April 2008 the Court already had regard to certain new developments at domestic level in the context of general measures covering other persons affected by the systemic violation, referred to in the Government's declaration, which constituted an integral part of the settlement (see *Hutten-Czapska (friendly settlement)*, cited above, §§ 27 and 37-43).

In regard to the December 2006 Amendment and the introduction of new provisions governing rent increases, the Court found as follows:

> "In particular, the new provisions introduced by the December 2006 Act clarifying the criteria for rent increases and enabling landlords to increase rent in order not only to cover costs of maintenance of property but also to receive a return on capital investment and "decent profit" seem to remove the previous legal obstacles to raising rent above rigid statutory percentage ceilings based solely on the so-called "3% reconstruction value of the dwelling", whatever the particular condition or characteristics of property. While the said "3%" remains as one of the points of reference, an increase in rent in order to secure "decent profit" has been recognised as a "justified case" where a landlord may legitimately raise the rent (see paragraphs 15-17). This, in comparison to the previous situation as described in the principal judgment (see *Hutten-Czapska*, cited above, §§ 71-146), must be seen as a significant improvement."

Furthermore, it noted that the new rules in section 18(5) of the 2001 Act, enlarging the scope of the municipal authorities' civil liability for failure to provide protected tenants with social accommodation had "enable[d] landlords to recover compensation for losses incurred in that connection" and that this measure, in combination with the development of social accommodation under the 2006 Act, could be seen as "evidently designed to remove the effects of the previous and remaining restrictions on the termination of leases and the eviction of tenants", even though the results of the State's subsidies in that field would "be seen only in a longer time-frame" (ibid., § 41).

It was also noted that, by virtue of the August 2007 Amendment, the Polish State had introduced an information system for monitoring levels of rent within Poland, as a tool designed to assist civil courts in resolving disputes arising from rent increases by landlords (ibid. § 37).

77. In reviewing those legislative measures in the present-day situation and in the context of the instant case, the Court finds no reason to depart from the findings made in the friendly-settlement judgment.

In that connection, the Court would recall that in the pilot judgment on the merits it held that "the violation of the right of property in the present case is not exclusively linked to the question of the levels of rent chargeable but, rather, consists in the combined effect of defective provisions on the determination of rent and various restrictions on landlords' rights in respect of termination of leases, the statutory financial burdens imposed on them and the absence of any legal ways and means making it possible for them either to offset or mitigate the losses incurred in connection with maintenance of property or to have the necessary repairs subsidised by the State in justified cases" (see *Hutten-Czapska*, cited above, § 224; see also paragraph 50 above).

In the Court's view, amended section 8a (4) of the 2001 Act (see paragraphs 18-19 above), stipulating that any increase in rent intended to cover the costs of maintenance, to secure to a landlord a gradual, statutorily-determined return on capital investment for the construction, purchase or the permanent improvement of property and the so-called "decent profit" is *ipso iure* justified, seems to have adequately addressed the previous lack of legal rules for recovery of costs of maintenance (see also the third operative provision of the merits judgment). It also created legal and practical conditions for landlords to reclaim expenses incurred in connection with the acquisition and modernisation of their property and put in place safeguards designed to protect their right to derive profit from rent (see *Hutten–Czapska*, cited above, § 239).

78. The applicant stated that the new rules on rent increases had not improved landlords' situation and underlined that proceedings for eviction of tenants were ineffective. He relied in particular on a number of legal and practical obstacles faced by landlords in the procedure for the vacation of flats occupied by protected tenants failing to pay rent – such as the length of the process, high court fees and scarcity of social accommodation (see paragraphs 69-70 above).

79. The Government, for their part, attached importance to the introduction of the so-called "occasional lease" by virtue of the December 2009 Amendment and stressed that this form of lease was not subject to any provisions on the levels of rent, termination of leases and eviction under the 2001 Act (see paragraph 61 above). The applicant did not address this issue.

80. The Court notes that it is true that the general conditions for the termination of leases as applicable on the date of the adoption of the pilot judgment are still in force. However, at present the termination of a lease agreement is also linked to a tenant's refusal to accept any rent increase that remains within the statutorily defined limits. One of the elements relevant for the increase is, as stated above, "decent profit" (see paragraphs 19 and 77 above). Alternatively, a tenant may – as happened in the present case – challenge an increase before a civil court (see paragraphs 5-13 above). As shown by the outcome of the proceedings brought by one of the

applicant's tenants, an increase made in compliance with section 8a (4) (a)-(e) of the 2001 Act is bound to be found justified (see paragraphs 13 and 19 above). In the Court's view, this solution seems to attenuate at least to some extent the effects of the still existing limitations on the termination of leases and, despite the fact that the impugned provisions remain as such unchanged, can be seen as an element of a "mechanism maintaining a fair balance between the interests of landlords and the general interest of the community", as referred to in the fourth operative provision of the pilot judgment.

Moreover, as confirmed by the case-law of the Supreme Court, under section 18(5) of the 2001 Act read in conjunction with article 417 of the Civil Code, a landlord is entitled to full compensation for losses caused by staggered evictions of protected tenants, resulting from the municipality's failure to provide social accommodation (see paragraphs 20-23 above).

As regards the Government's arguments relating to the introduction of the so-called "occasional lease", the Court does not consider that at this stage of the pilot-judgment procedure it is called upon to determine what particular effects the December 2009 Amendment, an instrument apparently designed to encourage owners of unoccupied flats to rent them out on the free market, may or may not have on the property rights of landlords. This task falls to the Committee of Ministers which, in fulfilling its function under Article 46 § 2 of the Convention, will have to make its own global evaluation of all the above-mentioned laws in the context of the implementation of the general measures indicated in the pilot judgment (see also paragraph 53 above).

81. For the purposes of the present ruling, it suffices for the Court to conclude that its previous – positive – assessment of the laws introduced by the Polish State, as stated in the friendly-settlement judgment (see *Hutten-Czapska (friendly settlement*, § 43), is still valid and that, likewise, in the context of this case the State's remedial action aimed at resolving the systemic problem is a factor going to the issue of "respect for human rights as defined in the Convention and the Protocols thereto" within the meaning of Article 37 § 1 of the Convention.

(b) Redress for the violation of the Convention afforded to other persons affected

82. The Court notes at the outset that the remedies under the 2008 Act originated in the respondent Government's declaration made at the time of the conclusion of the friendly-settlement agreement in the pilot case, whereby they recognised their obligation to make available to other victims of the systemic violation identified in the pilot judgment "some form of redress for any damage caused to them by the operation of the impugned

rent-control legislation" (see *Hutten-Czapska (friendly settlement)*, cited above, § 27).

83. The parties had expressed different views on the adequacy of the compensatory scheme introduced by the 2008 Act. The Government submitted that the compensatory refunds afforded to the persons affected, at domestic level, constituted sufficient just satisfaction for the purposes of Article 41, thereby rendering further examination of this case and other similar cases by the Court no longer justified (see paragraphs 65-68 above). The applicant pointed out to a number of shortcomings of the refunds scheme which, in his view, made it entirely unsatisfactory (see paragraphs 72-73 above).

84. The Court finds that the compensation mechanism devised by the Polish authorities has certain peculiar features in comparison with the usual solutions for affording financial reparation for prejudice sustained. In particular, it first requires a claimant to incur expenses, which only if several further statutory conditions are met may subsequently be reimbursed, partly or entirely (see paragraphs 31-34 and 36-41 above).

As the applicant rightly said, the general scheme of refunds is founded on the assumption that an entitled person would either obtain a substantial bank loan to cover the necessary investment costs involved in the renovation of a tenement house or have another source of financing the investment, which in some situations might be unrealistic. He also pointed out – as was admitted by the Government – that the relevant refunds were available only in respect of very extensive property development and works, the costs of which many persons could hardly, if at all, afford (see paragraphs 67 and 72-73 above).

85. It is true that the redress system operates on a purely reimbursement basis, linking compensatory and other refunds to terminated development projects aimed at modernising property that has fallen into disrepair due to the defective operation of the rent-control system, rather than as a disbursement fund granting payments covering past damage. However, in the Court's view, this particular aspect does not of itself make it inefficient or inaccessible.

The provisions for compensatory refunds are included in a statute whose essential aim is not to compensate but rather to encourage – through financial incentives – owners to invest in their property in a manner that would not only boost its value but also result in the reduction of energy consumption (see paragraphs 28-34 and 36-43 above). While the general interest of the community in promoting energy-efficiency measures could well justify this solution, the applicant is right in saying that the requirement to achieve the statutory standards that are set for minimum costs of the investment necessitated large-scale, costly construction works, not leaving much choice to the owner as to the extent of the development. However, these shortcomings, which were perceived by the Government already in the

first year following the 2008 Act's entry into force, were promptly eliminated by the March 2010 Amendment (see paragraphs 35-43 above).

86. In particular, the Court notes that the March 2010 Amendment introduced an alternative, simplified procedure for granting compensatory refunds by removing a number of statutory conditions previously attached to the entitlement. Landlords may at present choose between the procedure for granting a compensatory refund in combination with renovation or thermo-modernisation refunds, which is subject to the above-mentioned strict requirements, and the simplified procedure aimed solely at obtaining a compensatory refund. The latter choice does not exclude the possibility of claiming one of the other refunds in the future (see paragraphs 41 and 67 above).

In the simplified procedure the persons entitled are no longer required to obtain a prior bank loan for the planned investment but may finance it from other sources. They have full discretion as to the scale and costs of their renovation project since compensatory refunds can be claimed separately, without the need for them to meet the strict technical and other requirements set by the 2008 Act for renovation and thermo-modernisation refunds, such as the rigid indicators of costs of the investment, the need to achieve a reduction in energy consumption and to supply complex technical documentation (see paragraphs 41 and 67 above). More importantly, as there is no minimum fixed for the costs of the investment, except for the stipulation that the compensatory refund to be granted cannot be higher than the expenses actually incurred for the renovation, applicants may, using various simulations, tailor the future costs so as to have them even entirely covered by the refund (see paragraphs 41-44 above).

In addition, the authorities made considerable efforts to disseminate information about the availability of compensatory refunds and the relevant procedure through the State Economy Banks' website. The persons entitled have at their disposal all the necessary data enabling them to calculate – or make a simulation of – their refunds on the basis of the mathematical formula laid down in the 2008 Act, with the help of a special calculator facilitating the use of the formula (see paragraphs 42-43 above).

Having regard to the above developments, which appear to have addressed adequately all the various points of concern and misgivings voiced by the applicant, the Court concludes that his reservations concerning the practical accessibility of the compensatory scheme are misconceived.

87. There is, however, another aspect of that scheme which was not challenged by the applicant but which the Court raised of its own motion.

Sections 2(13) and 10 of the 2008 Act (see paragraph 31 above), lay down, among other things, that compensatory refunds are available to those persons whose property was subject to the rent-control scheme "during any period between 12 November 1994 and 25 April 2005". The first date was

taken by the Court as the beginning of the period under its consideration in the pilot case, having regard to the Court's jurisdiction *ratione temporis* and the actual impact of the impugned housing laws on the applicant's property rights (see *Hutten-Czapska (merits)*, cited above, §§ 152 and 194). However, the cut-off date 25 April 2005, on which the Constitutional Court's judgment of 19 April 2005 entered into force, was, as acknowledged by the Government, selected by the Polish authorities because they considered that that ruling had marked the end of the operation of the restrictions imposed under the rent-control scheme (see paragraph 66 above; see also *Hutten-Czapska (merits)*, cited above, §§ 136-141).

The Court would recall that the Government's argument to this effect, adduced before the Grand Chamber, was rejected in unambiguous terms (ibid. §§ 221-222). In particular, in paragraph 222 of the pilot judgment the Court held:

> "In consequence, it cannot be said that the Constitutional Court's judgment has in itself eased the disproportionate burden placed on the exercise of landlords' property rights by the operation of the impugned laws. Nor can it be said that the general situation underlying the finding of the violation in the present case has thereby been brought into line with Convention standards. In contrast, in the light of that judgment and the June 2005 Recommendations it is clear that not much progress in that field can, and will, be achieved unless the above-mentioned general defects of the Polish housing legislation are removed rapidly and the entire system is reformed in a manner ensuring genuine and effective protection of this fundamental right in respect of other similarly situated persons."

Furthermore, in its ruling concerning the general measures Court made clear that the systemic violation of Article 1 of Protocol No. 1 still continued on the date of the adoption of the judgment, which was 17 May 2006 (ibid. § 237).

88. While it was the Court that drew the parties' attention to this issue, it does not, after considering the matter, find it necessary to give in this case a ruling as to the present or future effects of the Government's decision (see paragraph 45 above) on the general adequacy of the redress scheme under the 2008 Act. This matter will more appropriately be dealt with by the Committee of Ministers in its supervision of the execution of the pilot judgment.

For the purposes of its own assessment of the compensatory mechanism at the present phase of the pilot-judgment procedure, the Court, as follows from its above conclusions (see paragraphs 84-86 above), is satisfied that the system introduced by the Government offers to the persons affected reasonable prospects of recovering compensation for the damage caused by the systemic violation of their property rights.

(c) Whether “the matter has been resolved” for the purposes of Article 37

89. It remains for the Court to determine whether, in view of the foregoing, “the matter has been resolved” within the meaning of Article 37 § 1 (b) of the Convention.

90. As stated above, it is a fundamental feature of the pilot-judgment procedure that the Court’s assessment of whether the matter involved in the case has been resolved is not limited to relief afforded to an individual applicant and to solutions adopted in his case, but necessarily encompasses general measures applied by the State in order to resolve the general underlying defect in the domestic legal order identified in the pilot case as the source of the violation found (see paragraph 46 above; see also *Hutten-Czapska (merits)*, cited above, § 238).

91. The Court, in order to conclude that the matter raised in the pilot-judgment follow-up applications “has been resolved” and that it is, therefore, legitimate to strike them out of its list of cases, must be satisfied that the remedial action taken by the respondent State in implementation of the general measures indicated by the Court, including means for redress for the systemic violation, provided the applicants with relief at domestic level that make its further examination of their cases no longer justified. In accordance with Article 37 § 1 *in fine*, the Court must also establish that there are no special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto, which require the continued examination of those cases. Such a conclusion by the Court is, however, without prejudice to its decision, pursuant to Article 37 § 2, to restore at any time the applications to its list of cases if the circumstances, in particular failure to achieve continued compliance with the Court’s pilot judgment on the part of the respondent State, so require (see *Wolkenberg and Others*, cited above, § 77; and *E.G. and 175 Bug River applications*, cited above, §§ 25 and 28-29; see also paragraph 52 above).

92. The Court has already held that global solutions adopted by the respondent State in order to resolve the underlying systemic problem identified in the pilot judgment have addressed, in a satisfactory manner, the previous lack of legal provisions enabling landlords to recover costs involved in the maintenance of property, thus protecting them against financial losses in situations where the rent paid by tenants was insufficient. The Court has also noted that the new legal rules which are now in place allow them to include in rent charged a gradual return of capital investment for the acquisition or modernisation of property. Furthermore, a landlord’s right to derive profit from rent has been expressly guaranteed by law (see paragraph 77 above).

93. As regards redress for the past prejudice suffered by persons affected by the defective operation of the rent-control scheme, the Court reiterates that under Article 41 of the Convention it may afford just satisfaction to the party injured by a violation of the Convention or the Protocols thereto if the

internal law of the High Contracting Party concerned allows only partial reparation to be made. However, the Court would do so only if “necessary”.

The reference back to the domestic system in this provision reflects the subsidiarity principle on which the Convention system is founded; the national authorities have at their disposal a much wider range of legal and other measures capable of providing appropriate relief tailored to the particular circumstances of a given case, whereas relief available in the international procedure before the Court is, in most situations, limited to a pecuniary award.

94. In the framework of the pilot-judgment procedure, one of the essential characteristics of which is the incitement of the respondent State to introduce a remedy for all victims of a systemic violation (see paragraph 52 above), the responsibility for affording reparation is necessarily shifted back to the domestic authorities. The Court’s principal task, as defined by Article 19 of the Convention, is “to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto”, the adjudication on awards under Article 41 being only accessory to this task. In consequence and having regard to the purpose of the pilot-judgment procedure which, as stated above, is to assist States in resolving systemic problems at national level, thereby securing to persons concerned their Convention rights and freedoms as required by Article 1 of the Convention, the Court’s role after the delivery of the pilot judgment and after the State has taken remedial action in conformity with the Convention cannot be converted into providing individualised financial relief in each and every repetitive case arising from the same systemic situation (see *Wolkenberg and Others*, cited above, § 76; see also paragraphs 51-52 above).

95. In the present case the Court has found that the redress scheme introduced by the 2008 Act offers to the persons affected reasonable prospects of recovering compensation for damage caused by the systemic violation of Article 1 of Protocol No. 1 identified in the pilot case (see paragraph 88 above). Consequently, the authorities have established a mechanism enabling the practical treatment of reparation claims for the Convention breach, which may be regarded as serving the same function as an award under Article 41 of the Convention.

96. In view of the foregoing, in particular its assessment of the global solutions adopted by the Polish State and the redress scheme available at domestic level, the Court holds that the matter giving rise to the present application “has been resolved” for the purposes of Article 37 § 1(b) of the Convention and that it is no longer justified to continue the examination of this case (see also *The Association of Real Property Owners in Łódź v. Poland* (dec.) no. 3485/02, 8 March 2011, §§ 88-90, ECHR 2011-...).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Fatoş Aracı Deputy Registrar	Nicolas Bratza President