Lodz, March 15th, 2010.

Mr.
T. L. Early
Registrar of the Fourth Section

European Court of Human Rights
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indicated below
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Association of Real Property Owners in Lodz
represented by
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File ref. No. ECHR-LE4.3aR

Application No. 3485/02
Association of Real Property Owners in Lodz vs. Poland

REMARKS ON THE LETTER OF THE GOVERNMENT OF THE REPUBLIC OF POLAND OF JANUARY 29TH, 2010.

I hereby submit on the basis of Art. 36 § 2 and 4 of the Court Rules the power of attorney granted by the President of Association of Real Property Owners in Lodz – Mr. Andrzej Rozenkowski and I declare that I shall represent the Association in this case.

With reference to the High Court's request for clearing inconsistencies regarding the members of applicants group I present the following:

At the moment of submitting the application i.e. on December 29th, 2001, the actual support was granted by the group of people, whose personal data was attached to the motion. Since until accepting the motion for consideration (the Association was notified of the fact on November 26th, 2009) has been almost 9 years , the composition of the group of applicants has slightly changed. A lot of people of the group passed away, some people gave up on pursuing their claims (people who put in question legitimacy and legality of acts and resolutions felt and were harassed by officials and authorities) and some either sold their properties for low price or gave them away. Therefore the most current list of applicants seems to consist of the names of people who have so far sent their authorization forms. Moreover, after sending the application to the Court, the very application was additionally supported by Mrs. Ludwiczak and Mrs. Kukielka – their authorization forms have been already sent to the Court.

At the same time, on the basis of Art. 34 § 3 of the Court Rules I kindly apply to make it possible for the complaining party to submit correspondence in Polish. The Association of Real Property Owners is a non-profit organization and does not have means that would allow bearing costs of hiring translators. This letter was translated into English on friendly terms by a well-disposed interpreter who agreed to receive remuneration for the job later on.

With reference to arguments presented in the RP Government observations of January 29th, 2010 I would like to suggest the below explanation to be taken under consideration:

1) The statement of Polish Government representative that *„the applicant has not exhausted all domestic remedies"* is groundless. The subject of the motion is not

only *the Act of June 21st, 2001 on protection of the rights of tenants, housing resources of municipalities and amendment of the Civil Code* but also the way of its implementation – inconsistent with the rule of security of law as well as disrespectful for recommendations of the Constitutional Tribunal (CT) of the court decision of January 12th, 2000, file ref. No. P 11/98. Instead of meeting the recommendations of the Tribunal in scope of mentioned above court decision, Polish legislator introduced totally new, radically different rule on dwelling rent. At the same time the Tribunal indicated that *„if only the legislator set the precise timeframe, they cannot change such „rules" before expiry of the date they themselves set"* (see: the justification of the above mentioned court decision of CT) – in such case it is beyond dispute that the rule of security of law is being violated. Introducing a new act in 2001 made it impossible to pursue claims arising from the court decision of CT different from before the High Court in Strasbourg.

2) It needs to be underlined that when the former act regarding rent was in force (*Act of July 2nd, 1994 on dwellings rent and housing supplements*) real property owners restrained from initiating court proceedings for compensations due to losses arising from controlled rent in spite of the fact that such claim was economically justified back then. According to the legislator's statement, the act (in scope of methods of determining the rent rate) was of temporary character, pursuant to the provisions of Art. 56 item 2: *„Until December 31st, 2004 (inclusive) the rent rate (of the rent engaged in the way determined in item 1)of the dwellings located in the buildings owned by physical person or dwellings owned by such persons shall be determined in accordance with the provisions on controlled rent"*. The time limit was to allow smooth „freeing" rent rates and therefore adjusting rent rates to free market rates. The consequence of market facilitation of rent rates was supposed to be, first of all improving living standards and providing fast and effective revitalization of housing structure in Poland. In the above quoted

court decision of January 12th, 2000 file ref. No. P 11/98 the Constitutional Tribunal declared the above mentioned provision unconstitutional and at the same indicated the period of 18 months for it to lose validity. Therefore the provision shall lose its binding force on the day of July 11th, 2001, while in the meantime the legislator was obligated to undertake actions to realize said court decision of CT.

3) About a month before losing binding force of Art. 56 item 2 of the Act of dwelling rent, the Parliament of the Republic of Poland passed another act – *Act of June 21st, 2001 on protection of the rights of tenants, housing resources of municipalities and amendment of Civil code.* The Act entered into force on July 10th, 2001 so only one day before losing binding force of Art. 56 item 2 of the Act of dwelling rent. At the same time it is worth mentioning that the new act in any way whatsoever does not refer to recommendations of the court decision of CT. Moreover, the legislator significantly worsened the situation of real estate owners by putting even more limits to their ownership rights. As far as this act is concerned there can be the following objections:

   a) Lack of legislative continuity – new act has introduced totally different and even more disadvantageous then before way of determining rent rates. The legislator seems to have forgotten their obligation to "free" rent rates, which was guaranteed by the act of dwelling rent of 1994. Thus the confidence of citizens to their country was undermined. Moreover it is also significant that the legislator have not finished the process of adjusting the former act to the Constitution and economic standards in Poland and with no public consultations whatsoever unexpectedly introduced new provisions that clearly worsened the status of real estate owners.

b) Lack of accordingly long *vacatio legis* – the Act of protection of the rights of tenants entered into force on the day of publication and such fact made it impossible for the owners to adjust to new standards.

c) The Act is in effect backwards which violates the rule of security and predictability of law.

d) By the power of the provisions of the act the financial load was transferred to the real estate owners, the financial load of providing dwellings while in general it is a competence of municipality. That is why it was refrained to balance the interests of landlords and tenants by privileging the latest and discriminating the owners.

e) Real estate owners, pursuant with the provisions of the Act, had to tolerate the situation when the municipality controlled the rent to be on the level of 1/3 reinstatement value indicator (the above illustrates the scheme constituting Attachment No. 1 to this letter). Such value let to a situation that the dwelling rent caused constant deteriorating of technological stage of the building which in consequence caused significant decrease of the market value of the real estate. As a consequence the owners were willing to give up their buildings and give them to the municipality while the municipality (considering all the costs and expenses due to real estate administration) refused acquiring objects and explained that it would be unprofitable 'investment'. Finally the legislator moderated the Act by obligating municipalities to acquire real estates. Thus it seems that the legislator was aware of the problem of rent rates.

f) In 2008 (almost 6 years after submitting the motion to the Court) the legislator also backed away legislator from previously anticipated in the act institution of mandatory settlement between a tenant and landlord (owner) – there was an obligation of reaching a settlement while the owner was obliged to withdraw from receiving interest for untimely payments. Moreover by concluding a settlement the effective notice period was prolonged to 9

months. It is also worth mentioning that some companies such as media suppliers especially those belonging to municipalities calculate interest with no exceptions whatsoever that are due to untimely payments.

g) By the power of the Act municipality was granted the competence to determine discounts and reductions. So sometimes the discounts reached even So sometimes the discounts reached even 40% of "reinstatement indicator" determined by governor. In the meantime, whenever the owner wished to purchase renovation materials, they would not be able to do that including 40% discount. The only thing to do was to get support from usable area rent.

h) It was impossible to conclude rental agreement for the period shorter then 3 years, which would not allow adjusting rent offer to market needs.

i) Ignoring statements of administrators and real estate owners while legislative works on the act draft.

4) Having in mind the argument of Government representative on implementing by legislator legal solutions introducing recommendations of Constitutional Tribunal of the court decision of 2000, it should be indicated that significant majority of such recommendations including indicated above is really meaningless as far as practice is concerned.

For example: such institution as "occasional rent" mentioned in item 31 (point 2.3.) of the government observations is practically unused mostly because of fiscal arguments. The assumption of such institution is that it would be used by owners of single apartments, not occupied at the time. At the same time it does not comprise owners gathered in the Association, who generally dispose of more then one apartment.

Mentioned in point 2.5. of the Government observations *the Act of November 21st, 2008 on supporting thermal modernizations and renovations* was supposd to compensate to owners underestimated continuously rent rates and encourage

real estate owners to improve technological state and looks of buildings. Thermo modernization and renovation bonuses were supposed to allow that. It seemed that such solutions could support owners, but a lot of and strict requirements regarding potential beneficiaries of bonuses lead to a situation that over less then a year of the Act being in force such support was not granted to a single real estate owner. The Government representative mentioned limitations of bonuses access in item 55: *„renovation bonus may only be paid to natural persons, associations of flat owners with the majority of natural persons, housing cooperatives and social housing societies"*. Moreover, *„bonuses are not envisaged in the case of relatively small renovation projects"*. And at last *„investors financing thermomodernization projects of their own funds shall not be granted the bonus"*, which leads for the owner to a necessity of drawing a credit. Bearing in mind that very often there are situations when at least one tenant does not pay their rent, building owner is not able to credit such investment – thus whenever the owner would not pay credit installment, it would be possible for the bank to vindicate due receivables and financing suspension. It would be then very close to insolvency and bankruptcy of the owner. Also an amendment of the Act (passed as a result of government motion) describes the requirements that in any way cannot be met by owners – there is no longer a condition of receiving funds from credits drawn while at the same time it is really difficult to point other sources of financing investments by owners. Actually the solutions offered are simply fiction, with no reference to reality, while the legislator still tries hard not to solve the problem in the systemic manner.

5) *The Act of June 21st, 2001 on protection of the rights of tenants …* has made it extremely difficult for the real estate owners to perform their ownership right and receive profits from it. There are the following negative – from the owners' point of view – consequences of the Act being in force:

a) Prolonging the period for evicting unpaying tenant

In such situation that the tenant does not pay due rent (for three full consecutive payment periods), the Act obligates to call them for payment while the period for paying cannot be shorter then 1 month. Not earlier then upon expiry of the term it is possible to terminate the agreement with the effect at the end of the month following the month of delivery the notice of agreement termination. There are a lot of provisions on the matter in Art. 11 of the Act. Pre-judgment proceeding connected with rent agreement termination is 7 month long while the tenant in the meantime usually does not pay anything. Filing the motion for eviction (civil proceedings) regards the necessity to incur significant fees and the court decision is usually concluded about a year and a half later. Obtaining eviction order does not yet equal to the case ending – executing eviction orders is a really long and difficult procedure and often takes longer then obtaining eviction order. The whole procedure of evicting unpaying tenant takes about 6-7 years, while the tenant does not pay not only the rent but also media fees and other receivables. Generally speaking it is possible to say that the tenant occupies an apartment at the owner's expense.

b) Lengthiness of eviction and high costs of the procedure

It seems really easy for the tenants to restrain the debt collector executing eviction order – the order itself is stamped with viability clause comprising people indicated in the motion. So in the meantime, whenever the tenant changes a partner or someone else moves in, the debt collector shall have no right to evict this person from the premises. This can happen over and over again so the execution of eviction order is continouosly delayed with no consequence for the tenant and with significant losses for owners.

c) Impunity of tenants

Situations mentioned above are really common and negatively influence other co-tenants. Because they see their neighbours not paiyng rent and go unpunished so they also stop paying. It is also very common that tenants speak freely that they will not make any payments and in the closest future (6 or 7 years) with no need to worry about eviction. *Besides,* it is worth mentioning that the court in an eviction order suspends its execution until the evicted is provided with social flat or temporary one. In consequence the owners lose their confidence to potential tenants and therefore it seems cheaper not to rent an apartment then bear additional costs of having unpaying tenant. In accordance with the provisions of law the owner of an apartment is only able to receive a deposit of the amount equal to 12 month rent. Therefore a lot of apartments are simply empty.

d) Transferring financial burdens to the real estate owners

Until emptying an apartment it is the owner who incurrs current costs of maintaining the building. It could be so (and it really happens in practice) that the rent is paid by a few tenants – and this way it is not only impossible to have profit, but also maintaining the building and afford to pay for the media connected such as central heating, tap water, proper technological stage and neatness. The costs of current repairs and conservations are in such case incurred by the owner on their own while all the neccessary materials and services they buy for market prices.

e) Low number of social apartments

Difficulties with evicting unpaying tenant lead to a situation that until final eviction of the tenant the owner in some way provides them with free apartment. Moreover, even when the eviction order is passed and it shall be executed immediately, it is not because usually courts order to provide the tenant with the social apartment. This additionally prolongs the period of occupying the apartment by unpaying tenant and bearing all the costs by the owner. It should be underlined that it is not a role for private subjects to

provide social benefits including social flats, especially that there are specialized institutions for such purpose. In general they are obliged to provide evicted with social flats. And it is commonly known that there is a low number of social flats for the evicted to be evicted to because presently in Lodz there are 3000 families with eviction orders waiting for social flats.

f) Lack of temporary flats

Introducing an expression 'temporary flat' into the act is supposed to prevent from so called evictions onto the street which means without providing any other flat. Such institution is being used in situation when the evicted is not entitled to social apartment. The legislator neither did not determine who was obligated to provide such flat nor what was the meaning of 'temporary' (5 days, 2 months or 1 year). Because of that, in practice debt collectors call the creditor meaning real estate owner for providing such flat. And again the owner is burdened with the results of defective legal regulation.

g) The amount of losses incurred by physical persons – real estate owners

Real estate owners who decided to take back their property from the administration of municipalities, have been receiving financial calculations comprising the period of last 10 years with payment request up to 80,000 PLN attached. Usually the municipality – detrmining the rent rate – did not execute receivables from tenants (such receivables, pursuant with the provisions of law, fell under statute of limitation after 3 years), then filed (and sometimes still files) motions to the court agains building owners for an extra charge of such amount. The above situation is another proof of the statement that the consequences of bad renting economy were intentionally transferred to incurr by physical persons.

It needs to be taken under consideration that throughout almost 9 year period of *the Act on protection of the rights of tenants …* being in force, it was amended several times, often rashly and incautiosly. Introduced amendments were of temporary

character, new provisions were inconsistent with former regulations. Moreover in the actions of the legislator there seems to be no systemic solutions that would provide balance between interests of tenants and owners. In such scope the responsibility for providing housing resources is laid on the owners – private entities. Such situation causes significant limitation to performing ownership right which is severly contrary to the provisions of Art. 1 of the Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time it needs to be underlined that freeing the market of real estate rent is not synonymous with advantages for owners – there could be also negative consequences such as rent rates decrease or enlarged competition. The owners gathered in the Association are aware of that – yet, bearing in mind the care and responsibility for their tenants, decided to file the motion. At the same time the members of Association express their hope that considering the motion by High Court shall allow normalizing relations between owners and tenants in Poland on the basis closest to those of Civil code thus with the use of the least interference of additional protective means.

Bartosz Orlicki
attorney at law

Enclosed:
- power of attorney

Attachment No. 1

I	II	III	IV	V	VI
Year	Quarter	Amount in PLN	**Maximum monthly rate**	**Used monthly rate**	%
1994	I			0,12	
1994	II			0,12	
1994	III			0,12	
1994	IV	670	1,67	0,12	0,21%
1995	I	630	1,57	0,80	1,52%
1995	II	724	1,81	0,80	1,33%
1995	III	720	1,80	0,80	1,33%
1995	IV	816	2,04	0,80	1,18%
1996	I	920	2,30	0,80	1,04%
1996	II	960	2,40	0,80	1,00%
1966	III	1102	2,75	1,10	1,20%
1996	IV	1048	2,62	1,10	1,26%
1997	I	1256	3,14	1,25	1,49%
1997	II	1244	3,11	1,25	1,21%
1997	III	1321	3,30	1,25	1,14%
1997	IV	1374	3,43	1,25	1,09%
1998	I	1823	4,56	1,25	0,82%
1998	II	1502	3,75	1,40	1,12%
1998	III	1624	4,06	1,40	1,03%
1998	IV	1969	4,92	1,40	0,85%
1999	I	1971	4,93	1,40	0,85%
1999	II	1899	4,75	1,40/2,10	0,89/1,33%
1999	III	1803	4,51	2,10	1,40%
1999	IV	2187	5,47	2,10	1,15%
2000	I	2249	5,62	2,10	1,12%
2000	II	2064	5,16	2,10/2,48	1,22/1,44%
2000	III	2349	5,87	2,48	1,24%

2000	IV	2349	5,87	2,48	1,24%
2001	I	2388	5,97	2,48	1,25%
2001	II	2474	6,18	2,48/2,92	1,24%
2001	III	2467	6,16	2,92	1,42%
2001	IV	2387	5,97	2,92	1,47%
2002	I	2387	5,97	2,92	1,47%
2002	II	2364	5,91	2,92	1,48%
2002	III	2371	5,93	2,92	1,48%
2002	IV	2371	5,93	2,92	1,48%
2003	I	2378	5,95	3,20/3,05	1,62/1,54%
2003	II	2378	5,95	3,20/3,05	1,62/1,54%
2003	III	2378	5,95	3,20/3,05	1,62/1,54%
2003	IV	2378	5,95	3,20/3,05	1,62/1,54%
2004	I	2378	5,95	3,20/3,15	1,62/1,59%
2004	II	2378	5,95	3,20/3,15	1,62/1,59%
2004	III	2378	5,95	3,20/3,15	1,62/1,59%
2004	IV	2405	6,01	3,20/3,15	1,60/1,57%
2005	I	2405	6,01	3,35/3,15	1,67/1,57%
2005	II	2627	6,57	3,35/3,15	1,53/1,44%
2005	III	2627	6,57	3,35/3,15	1,53/1,44%
2005	IV	2873	7,18	3,35/3,15	1,40/1,32%