

THE CONSTITUTIONAL COURT THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of item 4, Part 2, item 2 of the Law of the Republic of Lithuania "On Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 12 January 1993, by which item 2, Part 2, Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been amended, and sub-item 4, item 2 of the Law of the Republic of Lithuania "On Amending and Appending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 11 January 1994, by which the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 4, with the Constitution of the Republic of Lithuania

15 June 1994, Vilnius

The Constitutional Court of the Republic of Lithuania, composed from the Justices of the Constitutional Court Algirdas Gailiūnas, Kęstutis Lapinskas, Zigmās Levickis, Vladas Pavilonis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilys,

the secretary of the hearing - Rolanda Stimbirytė,
the petitioner - Andrius Kubilius and advocate Narcizas Rasimavičius, representatives of a group of the Seimas members,
the party concerned - Seimas member Pranciškus Vitkevičius and Algirdas Taminskas, representatives of a group of the Seimas members,

pursuant to Part 1, Article 102 of the Constitution of the Republic and Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing of 6 June 1994 conducted the investigation of Case No 11-1993/9-1994 subsequent to the petition submitted to the Court by a group of the Seimas of the Republic of Lithuania members requesting to investigate if item 4, Part 2, item 2 of the Law of the Republic of Lithuania "On Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 12 January 1993, by which item 2, Part 2, Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been amended, is compliance with the Constitution of the Republic of Lithuania, as well as the petition submitted to the Court by the College of Civil Cases of the Supreme Court requesting to investigate if item 4, Part 2, item 2 of said Law of 12 January 1993 and sub-item 4 of item 2 of the Law of the Republic of Lithuania "On Amending and Appending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" of 11 January 1994, by which the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 4, is in compliance with the Constitution of the Republic of Lithuania.

The requests of a group of the Seimas members and the

Panel of Civil Cases of the Supreme Court have been joined into one case on the decision of the Constitutional Court, adopted on 27 May 1994.

The Constitutional Court
has established:

On 18 June 1991 the Seimas passed the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" (hereinafter it shall be referred to as "Law"), in the first and second parts of Article 8 entitled "Conditions and Procedures for the Restoration of Ownership Rights to Residential Houses" of which it is determined: "The ownership rights to residential houses (or portion thereof) shall be restored to persons specified in Article 2 of this law by returning the actual houses (or a portion thereof), or by compensating their value.

The procedure and time limits for the restoration of residential houses (or portions thereof) which do not fall under the category of houses defined in Article 14 of this Law, shall be established by the Government of the Republic of Lithuania, pursuant to the provision that the residential houses shall be returned in the case that:

- 1) they are reconstructed into premises not designed for living or if they are vacant;
- 2) tenants, occupying houses subject to being returned, and which are occupied by more than one family, are familiar with all the laws guaranteeing their rights, and with their option to move under the conditions proposed by the local government and set forth in Article 21 of this Law, or under other conditions guaranteed by the former owner of the house;
- 3) the residential house consists of a single dwelling unit;
- 4) the former owners reside in the house which is subject to being returned" (Official Gazette "Valstybės žinios", No 21-545, 1991).

The 7 May 1992 Law "On Appending and Amending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" has appended the second part of Article 8 of said Law by item 5: residential houses shall be returned in the case that "the residential house belonging to the state or public housing fund, together with equipment (with the exception of those already sold by the former owner), is on agricultural or forest land" (Official Gazette "Valstybės žinios", No 15-405, 1992).

On 12 January 1993 the Seimas adopted the Law "On Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ' (hereinafter it shall be referred to as "the 12 January 1993 Law"), which presented a new wording of Article 8 of the Law On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" (Official Gazette "Valstybės žinios", No 5-83, 1993). The previous norm of item 2 of the second part of this Article has been transferred into item 4 of the same part, and presented in the following way: the procedure and time limits for the restoration of residential houses (or portions thereof) shall be established by the Government of Lithuania, pursuant to the provision that the residential houses shall be returned in the case that "tenants, occupying houses subject to being returned, consent

to move, at their own will, into other residential premises allotted to them.

The petitioner - a group of the Seimas members - requests the Constitutional Court to recognise that said norm of the Law contradicts Article 23 of the Constitution. The petitioner bases the request on the fact that said Article of the Constitution establishes inviolability of property as well as the provision that the rights of ownership shall be protected by law. While establishing the option of tenants to move into other residential premises allotted to them, as the prerequisite for the restoration of residential houses, the Seimas violated Article 23 of the Constitution, i. e. refused to protect the rights of ownership by law and subjected the realization of these rights to the will of the leaseholder.

The petitioner's representatives have explained that: the norm of the Law that the residential houses shall be returned in the case that "tenants, occupying houses subject to being returned, consent to move, at their own will, into other residential premises allotted to them", contradicts the constitutional provision that the rights of ownership shall be protected by law. In the case that the tenants disagree to move into other residential premises allotted to them, the dwelling house is not restored to the owner and the latter is paid due compensation. The tenant's agreement or disagreement to move into other residential premises is groundlessly put on the same footing as the needs of society mentioned in Article 23 of the Constitution.

Tenants are not to be blamed for the present situation as they have been moved into those flats by the former Government. For this reason, the 16 July 1991 Resolution of the Supreme Council of the Republic of Lithuania regarding the process of enforcement and application of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" provided for certain privileges for said persons, in case problems concerning the dwelling arose. The Government at that time provided for the sources of funds necessary for the construction of dwelling units, however, after the elections of 1992, different policy has been pursued.

The petitioner's representatives have specified that in the explanations of the representatives of the party concerned, submitted to the Constitutional Court, it is misinformed that even prior to the adoption of the amendment to the Law in dispute, the restoration of the residential houses was related to the tenant's free will to move into other residential premises allotted to him. Then it was established that the tenants were given the option to move into another dwelling unit, thus, their rights were not violated. If, upon the restoration of the rights of ownership, tenants did not desire to move, the problem could be solved pursuant to the norms of civil law.

The petitioner's representatives request to recognise that item 3 of the second part of Article 8 of the Law (item 4 of the second part of Article 8 of the Law, at the time the petitioner applied to the Constitutional Court) contradicts the Constitution of the Republic of Lithuania.

On 11 January 1994 the Seimas adopted the Law "On Amending and Appending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" (hereinafter it shall be referred to as "the 11 January 1994 Law"), by which the

contents and sequence of norms of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" has been amended and appended (Official Gazette "Valstybės žinios", No 7-100, 1994). Subject to these amendments, the first and second parts have been formulated in the following way:

"The ownership right to residential houses (or portion thereof) shall be restored to persons specified in Article 2 of this Law by returning the actual houses (or portion thereof), or by compensating their value.

The procedure and time limits for the restoration of residential houses (or portion thereof) shall be established by the Government of the Republic of Lithuania, pursuant to the provision that the residential houses shall be returned in the case that:

- 1) they are reconstructed into premises not designed for living or if they are vacant;
- 2) they are not given over to institutions of science, medical care, culture, education and communication;
- 3) tenants, occupying houses subject to being returned, consent to move, at their own will, into other residential premises allotted to them;
- 4) natural persons, having acquired for ownership houses (or portion thereof) subject to restoration, consent to move, at their will, into other residential premises allotted to them;
- 5) the former owners reside in the house which is subject to being returned (in the event that former owners occupy part of the house, this part is unconditionally returned to them);
- 6) residential houses along with equipment which have been transferred by the state, public, co-operative organizations (enterprises) as well as collective farms for the ownership of natural persons, (with exception of those transferred by the owners themselves), are on agricultural or forest land subject to restoration".

The petitioner - Panel of Civil Cases of the Supreme Court - on 31 January 1994 investigated a civil case pursuant to the action by E. Aleinikovienė and D. Didvalienė brought against Šiauliai City Council, Mr. K. Kriščiūnas and Mr. B. Abromavičius, pertaining to the recognition of contracts of sale of dwelling units as null and void, restoration of the rights of ownership to a portion of the residential house and returning this house in kind.

The Panel of Civil Cases by its ruling suspended the investigation of the civil case and addressed the Constitutional Court with the request to investigate if items 3 and 4 of the second part Article 8 of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" are in conformity with Article 23 of the Constitution. The Panel of Civil Cases bases its request on the fact that the procedure and conditions for the restoration of residential houses (or portions thereof), which is a matter in dispute in the case under investigation in Court, are established in Article 8 of said Law. In accordance with items 3 and 4 of the second part of this Article, the restoration of the actual property is subjected to the consent of tenants or other persons to move into other premises. These legal norms restrict the owner's right to demand and obtain property which he has stopped managing against his will. This has provided the ground for the Court to maintain that said norms contradict

Article 23 of the Constitution.

The representatives of the party concerned have explained: the issue of contradiction to Article 23 of the Constitution may be raised only with regard to such a law, which establishes the possibility to violate the ownership rights. Persons specified in Article 2 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" may not be considered as owners whose rights have been violated, because no act of restitution, providing for the unconditional restoration of property for the former owners, has been adopted in the Republic of Lithuania. Besides, in case that these persons were regarded as owners whose rights have been violated, it would be recognized that the main provisions of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" contradict Article 143 of the Civil Code as well as other legal norms regulating the protection of ownership rights.

In the opinion of the representatives of the party concerned, the 12 January 1993 Law actually has not changed the former norm of item 2 of the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991, which specified that residential houses shall be returned in the case that "tenants, occupying houses subject to being returned, and which are occupied by more than one family, are familiar with all the laws guaranteeing their rights, and with the option to move under the conditions proposed by the local government and set forth in Article 21 of this Law, or under other conditions guaranteed by the former owner of the house". This norm of the Law did not mean, however, that it was sufficient to familiarise tenants, occupying houses subject to being returned, with their option to move into other residential premises. In resolutions of the Supreme Council and the Government of the Republic of Lithuania, with regard to the period of enforcement and application of said Law it was determined, that tenants occupying houses subject to restitution, shall be informed of their option to move, at their own will, by settling on a dwelling unit allotted to them which complies with the requirements set forth in Article 94 of the Housing Code of the Republic of Lithuania.

However, the main problem was not given due attention at that time, i. e. real possibilities to build as many houses as it would suffice to provide all the tenants made to move from the houses subject to restoration to former owners. Therefore, the disputed by the petitioner provision of the 12 January 1993 Law, that the actual houses shall be returned to the former owners in the case that tenants, occupying houses subject to being returned, consent to move, at their own will, into other residential premises allotted to them, was preconditioned by the necessity to protect the leaseholders' rights. That was the public interest. Besides, tenants, occupying houses subject to being returned, as well as other tenants residing in houses belonging to state or public housing funds, have been provided with the possibility to privatize dwelling units they possess.

The representatives of the party concerned have specified that the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" on 11 January 1994 was appended by the norm that "residential houses shall be returned in the case that natural persons, having acquired houses (or portions thereof) subject

to being restored, consent to move, at their own will, into other residential premises allotted to them". It would not have been necessary to adopt it, if courts had acted in compliance with the provision of Article 1 of the Law, specifying that "this Law shall legislate the procedure and conditions of the restoration of the right of ownership to the citizens of the Republic of Lithuania to the property which was nationalized under the laws of the USSR (Lithuanian SSR), or which was otherwise socialized, and which, on the day of enactment of this Law, is considered the property of the state, of the public, of co-operative organizations (enterprises), or of collective farms", and it shall not regulate the restoration of ownership rights to the property which is the private ownership of individuals. It came out, that the former owners, having already acquired houses (or portions thereof) subject to being returned, found themselves in worse position than the tenants who since the moment they moved over were protected by the provision that they had the option to move at their own will.

The representatives of the party concerned have stated, that the 11 January 1994 Law expanded the rights of the former owners. They got entitled to the right to receive compensation for the houses they had passed, which had to be paid out within 10 years, also they acquired the right to restoration for ownership the residential houses together with equipment thereof provided that they are on agricultural land subject to being returned, irrespective of the fact whether these houses along with equipment are considered the property of the state, of the public, of co-operative organizations (enterprises) or whether they are transferred by said organizations and collective farms for the ownership of natural persons.

In the opinion of the representatives of the party concerned, all former property relations are not possible to restore. The changes which have taken place, public interests, as well as social purpose of property ought to be taken into consideration.

Pursuant to the above mentioned arguments, the representatives of the party concerned requested to recognize that items 3 and 4 of the second part of Article 8 of the Law are in conformity with Article 23 of the Constitution.

The Constitutional Court
holds that:

On 11 March 1990 the Supreme Council of the Republic of Lithuania adopted the Act on the Restoration of the Independent State of Lithuania and thereby proclaimed that the Constitution of any other State had no jurisdiction within it. The Supreme Council by the Law "On the Reinstatement of the May 12, 1938 Lithuanian Constitution", passed on the same day, annulled "the April 20, 1978 Constitution of Lithuania, the October 7, 1977 USSR Constitution, as well as the fundamentals of legislation of the USSR and Union republics, and other USSR legislation in the Republic of Lithuania, suspending those paragraphs and articles governing the status and powers of the President of the Republic, the Assembly, the State Council and the State Supervisory body. Chapter 8 "National Economy", containing regulation of property relations, was not suspended. This meant restoration of the institute of the right of private ownership.

On 11 March 1990 the Supreme Council ratified the Provisional Basic Law of the Republic of Lithuania. In Article 44 thereof it was set forth that the economy of Lithuania shall

be based on the property of the Republic of Lithuania, which shall consist of the private property of its citizens, the property of groups of citizens, and state property. Thereby, the continuity of the institute of the right of private ownership, present in former Constitutions of Lithuanian State, was confirmed.

Upon overall nationalization and alienation of private property in other unlawful manner, carried out by the occupation government, the human natural right to possess private property was denied. The establishment of the institute of the right of private ownership in the Provisional Basic Law meant determination of the state to protect this human right. However, legal relations based on private ownership right, which had been terminated by force, were not reinstated by said legal acts. In the preamble to the Law "On the Provisional Basic Law of the Republic of Lithuania" the Supreme Council stressed the necessity of bringing the provisions into accord "with today's changing political, economic and other social circumstances".

While realizing the constitutional provision of the continuity of ownership rights, the Supreme Council on 5 November 1990 confirmed the statement that the recognition of the continuity of ownership rights of the citizens of Lithuania is undeniable and formulated its implementation in the following way: "To establish that citizens of Lithuania have the right to restore the actual property they were entitled to in the scope and procedure established by laws, and in the case that there is no possibility to recover the actual property, to get compensation for it." The realization of said provisions proclaiming restricted restitution was determined in the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", adopted on 18 June 1991. In the first part of Article 1 thereof it is set forth that: "This Law shall legislate the procedures and conditions of the right of ownership to the citizens of the Republic of Lithuania to the property which was nationalized under the laws of the USSR (Lithuanian SSR), or which was otherwise unlawfully socialized, and which, on the day of enactment of this Law, is considered the property of the state, of the public, of co-operative organizations (enterprises), or of collective farms".

Pursuant to this Law, ownership rights shall be restored not for all former owners and not to all the property they possessed. Mass character of violations of ownership rights, committed by the occupation government, new property relations as well as other objective circumstances having stipulated only restricted restitution, predetermined the situation when the impaired ownership rights could not be protected under the norms of the Civil Code in force. Therefore, special procedure and conditions for the restoration of the rights of ownership were determined in the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property". The Law guarantees the restoration of ownership rights, and the conditions established thereby are applied only in cases when the former owners desire to recover the actual property. In the event when there is no possibility to restore the existing real property in kind for the former owner, due compensation also ensures the restitution of ownership rights (Constitutional Court Ruling of 27 May 1994).

It is essential that the conditions set forth in the Law, due to which the actual property might not be restored, would

not contradict the constitutional provisions protecting property. However, taking the fact that the restoration of ownership rights, terminated during occupation period by force, inevitably influence the existing system of social and legal relations, into account, this process must go on bringing into accord the lawful interests of former and present owners of the same property as well as tenants, occupying the houses subject to being restored.

On the compliance of item 4 of the second part of item 2 of the Law of the Republic of Lithuania ""On Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" of 12 January 1993, by which item 2, Part 2, Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been amended, with the Constitution of the Republic of Lithuania.

The 12 January 1993 Law has amended Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property". The norm of item 2 of the second part was transferred into item 4 of the same part (item 3, after the amendment of 11 January 1994 Law), which establishes that residential houses (or portions thereof) shall be returned in the case that "tenants, occupying houses subject to being returned, consent to move, at their own will, into residential premises allotted to them".

Residential houses were nationalized or otherwise unlawfully socialized under the 31 October 1940 Decree of the Presidium of the Supreme Council of the Lithuanian SSR and other governmental acts. Residential houses, which were nationalized or otherwise unlawfully socialized, passed under the factual management of local administration, various state and public organizations. Premises fit for residential use were ascribed to the state or public housing fund and allotted to the residents. Persons, to whom dwelling units were allotted in nationalized or otherwise unlawfully socialized residential houses, utilized these premises pursuant to lease contracts. Therefore, legal evaluation of existing lease relations is significant while resolving issues concerning the restoration of such houses to the former owners.

In civil law a tenant of a dwelling unit is considered a person who concludes a lease contract of a dwelling, and a lessor is the owner of a dwelling or a person managing it on other grounds. One of the rules of the lease contract is that the lessor is not necessarily the owner of the leased property, however, this property must be physically and economically managed by said subject on the bases prescribed by laws, and this entitles him the right to influence property in a certain way, for example, to lease it for other persons. The lessor must himself meet the conditions of contract as well as take lawful measures with regard to third parties, whose actions prevent the tenant from using the leasehold (e. g. they declare having ownership rights to the leasehold property).

The transition of ownership rights to another person generally is not a ground for changing or breaking the lease contract of property. In such cases, rights of obligation of the real property leaseholder acquire the characteristics of real rights, thus, providing the tenant with the possibility to preserve and protect the rights ensuing from the lease contract against the third persons, consequently against the new owner as well. These provisions of civil law safeguarding the rights

of tenants confirm that the right of tenants, occupying the houses subject to being returned to former owners, must be protected. While regulating the restoration of the ownership rights to residential houses, the housing lease relations, which have been formed over decades, must not be ignored, because it was not the tenants but the occupation government who violated the human rights of ownership. Therefore, the tenants must not bear the obligation assumed by the state with regard to the former owners. The rights of such tenants should be protected providing guarantees to acquire other residential premises at the expense of the state, as well as warranting the stability and fair conditions of dwelling lease.

In item 2 of the second part of Article 8 it was established that the ownership rights to residential houses shall be restored by returning the actual houses (or portions thereof) if they do not fall under the category of the houses to be bought out by the State, in the case that tenants, occupying houses subject to being returned, and which are occupied by more than one family, are familiar with all the laws guaranteeing their rights, and with their option to move, at their own will, under the conditions proposed by the local government and set forth in Article 21 of this Law, or under other conditions guaranteed by the former owner of the house. In item 3 of the Supreme Council Resolution "On the Enforcement and Application of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" of 16 July 1991 it was specified that: "The tenants occupying houses subject to restitution, as defined in item 2 of the second part of Article 8, shall be informed of their option to move, at their own will, by settling on a dwelling unit allotted to them, which complies with requirements set forth in Article 94 of the Housing Code of the Republic of Lithuania". In this Article it was established that in cases that citizens are made to move, another suitably equipped and equivalent in size dwelling unit must be allotted to them, which would meet the requirements determined in Articles 42 and 43 of the Housing Code, i. e. must be equipped according to the conditions of locality and comply with sanitary-technical requirements, etc.

12 January 1993 having amended the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" , when it was established that residential houses (or portions thereof) shall be returned in kind when tenants consent to move, at their own will, into other residential premises allotted to them, the previous condition (familiarizing the tenants with their option to move, at their own will, under the conditions proposed by the local government and set forth in Article 21 of this Law, or under other conditions guaranteed by the former owner of the house) was changed by the tenants' consent to move, at their own will, by settling on a dwelling unit allotted to them. Under this norm of the Law, the tenant's refusal to move into other residential premises, irrespective of the character and motives thereof, may not be called in question.

In the law of obligation, upon alteration of important circumstances, terms of the contract may be changed in the cases and procedure prescribed by laws without the will of the party to the contract. Therefore, the necessity to restore the ownership rights, terminated by the occupation government, justifies changes in housing lease relations. In cases when restoring the ownership rights of former owners to residential

houses, tenants occupying these houses are allotted other dwelling units, which comply with the requirements prescribed by laws, it is considered a sufficient measure employed to protect the tenants' rights. The condition that, in cases when the tenants do not agree to change the lease contract, residential houses shall not be returned, set forth in the January 1993 Law, is not in conformity with the provisions of property protection established in Article 23 of the Constitution.

It should be noted, that persons to whom ownership rights to residential houses are being restored, had the possibility to restore the actual houses under different conditions (after the amendment of the Law they had to face harder requirements than in the first period of its validity). However, new requirements may not be applied to the existing legal relations with the same contents, as it would mean violation of person's equality before law. Therefore, the amendment of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" is flawed in this respect too.

On the compliance of sub-item 4 of item 2 of the Law of the Republic of Lithuania "On Amending and Appending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" of 11 January 1994, by which the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 4, with the Constitution of the Republic of Lithuania.

The Seimas by the 11 January 1994 Law has appended item 1 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" by the provision that this Law shall also legislate the restoration of ownership rights to the existing real property which was nationalized or otherwise unlawfully socialized, and which was given over for the ownership of natural persons by the state, public, co-operative organizations (enterprises) or collective farms. Thereby, it was established the right for the former owners to restore ownership rights to residential houses (or portion thereof), given over by said organizations for the ownership of natural persons, i. e. to restore the actual houses or receive due compensation.

The Seimas, by the 11 January 1994 Law has also appended the second part of Article 8 of the Law by item 4 which establishes that: "natural persons, having acquired for ownership houses (or portions thereof) subject to being returned, consent to move, at their own will, by settling on a dwelling unit allotted to them".

Property relations, like other civil legal relations, appear, change and end upon the occurrence of certain juridical facts. Juridical facts, that serve as causes for emergence of property relations, are generally as follows: the production of a new thing by manufacturing or some other activity, acquisition of property on contracts, obtaining results and gaining profit. In item 4 of the second part of Article 8 of the Law mention is made of persons, to whom residential houses have been transferred by the state, public, co-operative organizations (enterprises) or collective farms. The right of transferral of property to other persons (to dispose of property) is given to the former owner or authorized by him persons. However, lawful state property could not and did not

appear on the basis of overall nationalization carried out by the occupation government and other arbitrary acts. The property alienated from people was only factually managed by the state (Constitutional Court Ruling, 27 May 1994). As neither the state nor legal persons, who at that time factually managed the alienated property, did not own that property, they, from the present perspective, could not dispose of that property. However, pursuant to the Soviet normative acts, which were in force at that time, and the procedure prescribed thereby, the state, public and co-operative organizations (enterprises) or collective farms could transfer to natural persons residential houses (or portions thereof), which were factually managed by them. In accordance with the 13 March 1989 Resolution of the Council of Ministers of the Lithuanian SSR and the Council of Trade Unions of the Lithuanian Republic "On the sale for the private ownership of citizens of dwelling units and houses belonging to the state and public housing fund", tenants were provided with the possibility to purchase not only residential houses (or portions thereof) which were nationalized or otherwise unlawfully socialized, but also apartments in such houses.

Natural persons, while acquiring residential houses (or portions thereof) on the contract, conformed to the rules of conclusion of contracts established by normative acts that were in force at that time, performed obligations of the party ensuing from such contracts. Upon denial of ownership rights which appeared on the basis of lawful contracts, the contents of existing legal relations would be changed. Therefore, while restoring the ownership rights to residential houses transferred for natural persons by the state, public and co-operative organizations (enterprises) or collective farms, the rights of natural persons, who have acquired such property, should be protected along with the rights of the former owners.

The former owner's subjective rights are restored only upon the recovery of property or paying out of due compensation. The Law, however, entitles such a person to the right to bring an action to the court asking to resolve in civil procedure his or her request pertaining to the restoration of the residential house (or a portion thereof), which has been transferred for the ownership of natural persons. Obligatory investigation in court of the issue concerning the restoration of the actual house, conducted upon such an action, confirms the provision of the Law that, while restoring the ownership rights to the existing real property, the priority is given to the returning of actual property. However, it would not be fair to seize the residential house (or a portion thereof) against the will of the natural person, who has acquired it on the contract, without violation of normative acts that were in effect at the time of acquisition, and which is under the management and disposition of this natural person, and to return it to the former owner. While defending the rights of the former owner, the rights of the present owner may not be denied in non-dispute procedure. In case that there is no possibility to return the residential house (or a portion thereof) for the former owner without the consent of the present one, the ownership rights, pursuant to the Law, may be restored to him in other manner. Fair compensation also ensures the restitution of ownership rights. Thus, there is no ground for maintaining, that the norm of item 4 of the second part of Article 8 of the Law contradicts the provisions of the protection of property established in Article

23 of the Constitution.

The above mentioned arguments of the Constitutional Court are related to the ownership rights to residential houses (or portions thereof), which had been acquired by natural persons on the contracts prior to the enforcement of the Law on Privatization of Dwelling, i. e. before 30 June 1991. In Article 3 of this Law it is determined that, according to this Law, residential houses or dwelling units, which have been seized, confiscated or nationalized by administrative acts or in other manner from those citizens of Lithuania who are entitled to the restoration of ownership rights under Article 2 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" , shall not be sold. On 9 December 1993, the Law on Privatization of Dwelling was appended by the provision that residential houses and dwelling units may be sold provided that the owner consents to receive compensation for the house subject to being returned on the decision of city or district board. Therefore, after the enforcement of the Law on Privatization of Dwelling, the sale of residential houses or dwelling units, disregarding the prohibition specified therein or violating the conditions determined in the supplement of 9 December 1993 to this Law, may not be considered lawful. However, in such cases it is not the contents of norms of the Law but the application thereof, which causes "unlawfulness". Disputes pertaining to the acquisition of residential houses (or portion thereof) and apartments are investigated in civil procedure.

Conforming to Article 102 of the Constitution of the Republic of Lithuania as well as Articles 53, 54, 55 and 56 of the Law On the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania has passed the following

ruling:

1. To recognize that item 4 of the second part of item 2 of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 12 January 1993, by which item 2 of the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been amended, contradicts Article 23 of the Constitution of the Republic of Lithuania.

2. To recognize that sub-item 4 of item 2 of the Law of the Republic of Lithuania "On Amending and Appending the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property"" of 11 January 1994, by which the second part of Article 8 of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" of 18 June 1991 has been appended by item 4, is in compliance with the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.