

Judgment

dated 24 March 1998 (K. 40/97)

The Constitutional Tribunal sitting with the bench composed of the Chairman Teresa Dębowska-Romanowska, Lech Garlicki (Reporting Judge), Krzysztof Kolasiński, Biruta Lewaszkiwicz-Petrykowska and Andrzej Mączyński.

(...)

held

1. article 13, section 1, sub-section 3 of the Act dated 25 March 1994 on the System of the Capital City of Warsaw (Journal of Laws, Number 48, Item 195; amended: 1994, Number 86, Item 396;1995, Number 124, Item 601) contravenes article 167, section 3 of the Constitution of the Republic of Poland in that the specification of the principles for shaping the I obligatory expenditures of the Warsaw townships has been placed with an act which is not a statute and it thereby violates the principle of a township's financial independence.

2. article 9, section 3 in conjunction with articles 20 and 21 of the aforementioned Act conforms with article 32 of the Constitution of the Republic of Poland.

Reasoning

(...)

III

(...)

2. The Act dated 25 March 1994... attributed a special form to the system of the capital which is fundamentally different from the system in other metropolises. The Capital City of Warsaw was deemed to be a „communal union as understood by the Local Self government Act dated 8 March 1990” (article 1, section 1 of the Act dated 1994). This could suggest a reference to the provisions of Chapter 7 of the Local Self government Act, but this chapter primarily deals with voluntary unions of townships and communal understandings, while the Warsaw Act establishes a union of townships by the power of law. For this same reason it would be difficult to treat the Warsaw communal union as a form of realizing the right of local self government units to gather in groups (article 172 of the Constitution, and before that article 75 of the Small Constitution). Nor does the Constitution have any other particular basis to ascribe a special form to the system of Warsaw nor to obligatorily annex Warsaw townships into the communal union formed by the Capital City of Warsaw. The absence of a special constitutional basis does not of course exclude the opportunity for the lawmaker to regulate the system of Warsaw separately, in keeping with the peculiar nature of this metropolis. However, it does not permit one to abandon the general constitutional principles concerning the system and position of townships, and in particular to make the city-township relationship fit the superiority-subordination model. Insofar as a separate constitutional basis for regulating the system of Warsaw was not established, the separateness introduced at the level of ordinary statutes must remain within the framework of general constitutional provisions pertaining to townships. The Capital City of Warsaw, as a communal union, is not a township, which after all has been explicitly stated in article 1, section 2 of the Act dated 1994, enumerating the 11 townships which make up this city. The Constitutional Tribunal fully accepts the view of the Supreme Court that „the stipulations of the Act on the System of the Capital City of Warsaw must be interpreted in accordance with the constitutional principles concerning the system and the operation of a local self government, including the

principle of assistance (expressed in the preamble to the Constitution of the Republic of Poland dated 2 April 1997) and in accordance with the general principle of presuming that local self government powers are devolved in favor of townships” (Judgment dated 6 November 1997, III RN 50/97, p.11).

The statutory regulations concerning the position of the Warsaw townships should be evaluated from the point of view of the principle that townships constitute „fundamental local self government units” (article 164 of the Constitution, repeating the formulation in article 70, section 4, sentence 1 of the Small Constitution), as well as from the point of view of the township's independence. The principle of independence was mentioned in 1990 in what was then article 44, section 2 of the Constitution. Although this formulation was not adopted in the body of the Small Constitution, nevertheless, both the doctrine and the jurisprudence have favorably embraced not only the continued existence of this principle (which was obvious on the grounds of article 2, section 3 of the Local Self government Act), but also its retention of constitutional rank. As the Constitutional Tribunal pointed out in its decision dated 24 January 1995 (K. 5/94, Collection of the Constitutional Tribunal's Decisions,1995, Part I, p. 41), „the de-constitutionalization of the certain written expression on the principle of a township's independence... does not refer to the principle itself. For this principle can also be deduced from the currently binding provisions of the Small Constitution... The constitutional concept of local self government itself supplies the most general reason that the principle of a township's independence stems from the Constitution whereby the township (commune) is afforded a wide range of freedom to decide about local affairs in order to meet the needs of its residents. All external integration is permissible only in the instances, forms and to the extent defined by the law, while the relevant provisions should be interpreted in categories of exceptions from the general principle of independence (see e.g. resolution IC of the Supreme Court dated 30 April 1997, III CZP 13/97, OSP 1997, Number 10, p. 477: „Only an act may specify intervention into the operation of the local self government... Constraints on the independence of a township (commune) ... may not be interpreted more broadly”).

The principle of independence does not have of course an absolute nature and may be " subject to various kinds of limitation, in particular limitations instituted by the lawmaker. In the Constitutional Tribunal's jurisprudence a clear line of decisions has taken form which indicates that in this area the lawmaker's regulatory freedom is subject to constraints both in the material aspect and in the formal aspect (see especially the decision dated 24 January 1995, K. 5/94, as above; dated 23 October 1996, K.1/96, OTK ZU Number 5,1996, p. 330). In its formal aspect the guaranty of independence is the institution of the principle that the Act is exclusive with reference to the regulation of affairs related to the system, the scope of tasks and the way in which the local self government operates. Every statutory regulation concerning these issues may be evaluated from the point of view of following the „rules of decent legislation,” which the Tribunal's jurisprudence has deduced from the democratic rule of law (e.g. the decision dated 4 October 1995, K. 8/95, Collection of the Constitutional Tribunal s Decisions,1995, Part II, p. 35 and dated 23 October 1996, K.1/96, as above, pp. 329-330).

The Constitutional Tribunal is of the opinion that the principle of independence on the part of units of local self government understood in this fashion (and thus – in the current legal state – the principle of a township's independence) retains its entire currency on the grounds of the provisions of the Constitution dated 2 April 1997, all the more so as article 165, section 2 of the Constitution explicitly mentions this principle (referring after all to the formula introduced in 1990 to article 44, section 2 of the Constitution dated 1952).

3. The principle of independence concerns all aspects of a township's activities, including the principle of financial independence. The importance of the latter is to provide

local self government units with revenues allowing them to carry out the public tasks ascribed to these units, leaving them the freedom to shape their expenses (while nevertheless including statutory reservations) and creating the relevant formal and procedural guarantees in this area.

The principle of the township's financial independence has currently found expression in the Constitution, *inter alia* in article 167, section 3 indicating that the „sources of income of local self government units are defined in the act.” This formulation is more categorical than the previous one in article 73, section 2 of the Small Constitution („The sources of income of local self government units are statutorily guaranteed within the field of public tasks”).

The Constitutional Tribunal believes that the regulation laid out in article 167, section 3 of the Constitution should be attributed a two-fold legal meaning. First and foremost, it should be treated as a provision guaranteeing that townships have the appropriate level of income enabling them to carry out the tasks which have been delineated in the

Constitution (one should be reminded that – in light of the general constitutional principle expressed in article 16, section 2 – the local self government is vested with a significant portion of public tasks, while the local self government is supposed to perform these tasks in its own name and on its own accountability), while also respecting the form of the Act for defining the source of this income. This means that all basic decisions must be formulated at the statutory level to demarcate the type and legal nature of the individual sources of income, and thereby – those decisions demarcating the way in which the amount of this income is determined. In other words, the general level of income for local self government units must be able to be set on the grounds of a statutory regulation, in other words, this regulation must retain the proper degree of precision and detail; it cannot restrict itself to cursory references to executive regulations.

The Constitutional Tribunal believes however that the legal meaning of article 167, section 3 is not exhausted hereby, especially since this provision should be interpreted in connection with article 16 as well as in connection with the remaining stipulations of Chapter 7 of the Constitution. The statutory guaranty for the sources of income plays an instrumental role with respect to the fundamental goal of providing the local self government unit (the township) with the proper financial means to carry out its tasks. Article 167, section 3 may thus be treated as an expression of a more general principle guaranteeing the township not only that certain financial means will be left to it (by guaranteeing the sources from which they will be derived), but also guaranteeing the township the opportunity to utilize these means independently, and thereby to make expenditures and to shape them with the assistance of tasks. For if the existence of constitutional guarantees for independence in making expenditures were to be eliminated then the statutory guaranty of sources of income and the independent performance of tasks could turn out to be illusory since the financial means obtained could be taken away from the township without any limitations.

This does not mean of course that the township's financial independence may be interpreted as full autonomy in the field of managing the financial means acquired, and thus *inter alia* – in setting its expenditures. There have never been any doubts in the doctrine or in the jurisprudence that the independence for the township to shape its expenditures must be carried out within statutory boundaries from which e.g. the absolute priority of expenses for obligatory proprietary tasks stems. Nor is it a matter of conflict that various types of financial burdens may be statutorily imposed upon townships, including the duty of transferring contributions to maintain communal unions or – in the future – in favor of higher ranking local self government units. In this place it is necessary to return to the formal aspect of the guarantees expressed in article 167, section 3 of the Constitution, namely to the restriction of the form of the Act for regulating the sources of income for townships. Insofar as there is a

direct link between the definition of the sources of income for townships, the attainment of financial means and the management of these financial means by townships (in other words making expenses), then the provision set forth in article 167, section 3 may not be subjected to interpretation *a contrario* and to recognize that the principle of exclusivity of the Act instituted therein refers only to the definition of a local self-government's source of income. In light of the general principle of independence of local self government units, as well as in light of the „fundamental” nature of the township in the system of this local self government (article 164, section 1) one should accept that the principle of exclusivity of the Act refers to all of the aforementioned aspects of financial management by local self government units, and thus to setting and defining the obligatory expenses of these units (see W. Miemieć: *Europejska Karta „Samorządu Terytorialnego jako zespół gwarancji zabezpieczających samodzielność finansową gmin, Samorząd Terytorialny* [The European Local Self government Charter as a Complex of Guarantees Safeguarding the Financial Independence of Townships], *Local Self-government*, 1997, Number 10, p. 57). As a supporting argument the formulations set forth in article 216, section 1 of the Constitution should be recalled as they indicate that the „Financial means for „public purposes are... expended in the manner prescribed by the act.” This is an additional confirmation of the principle of the exclusivity of the Act, referred to the definition of all public expenses, and thus to those expenses with which townships are to be burdened.

The Constitutional Tribunal believes that the Constitution does not institute an absolute ban against imposing on townships (and other local self government units in the future) the duty of carrying out certain expenditures, nor is there a necessity for the duty of carrying out expenditures to always have a derivative, nature stemming from the statutorily defined duty of executing specific tasks. On the material plane it is always necessary, however, to treat it as an exception from the general principle of a township's financial independence. In turn, on the formal plane these issues belong to the scope of the Act's exclusivity, just like the issues of defining the local self government's sources of income. This means that the form of the Act is necessary not only for the general institution of the duty to incur certain expenditures for certain purposes, but also the general shape of this expenditure must be defined in the act itself, and thus *inter alia* the decisions setting the way in which the amounts of these expenditures will be determined. In other words, the general level of expenses in local self government units must be possible to determine on the grounds of a statutory regulation, in other words, this regulation must retain the appropriate degree of precision and detail while it cannot restrict itself to blanket references to executive regulations.

4. On the basis of these general premises the Constitutional Tribunal performed an analysis of article 13, section 1, sub-section 3 of the Act on the System of the Capital City of Warsaw. The establishment of the institution of contributions does not give rise to any objections since this solution is typical for the relations between townships and communal unions or higher level local self government units. The question, however, does arise whether the stipulations of the Warsaw Act in establishing this institution have completely satisfied the requirements of detail and precision mentioned in the previous section of the Reasoning. The obligatory nature of the Warsaw communal union should be emphasized here one more time which – within the territorial boundaries defined by article 1, section 2 of the Act dated 1994- exists by the power of law, notwithstanding the will of the interested townships. This embodies the difference between this union and the voluntary township communal unions mentioned in Chapter 7 of the Local Self government Act. For if a communal union is founded with the will of the interested townships, then the legal shape of this union shall be reflected in the charter adopted by the councils of all the interested townships (article 67, section 1 of the Local Self government Act), while this charter shall specify *inter alia* „the

principles of participating in the costs of joint activity, profits and covering the union's losses" (article 67, section 2, sub-section 6). In this sense however the contents of the charter take effect as an expression of the will of all of the interested townships and the extent of the financial burdens stemming therefrom must be accepted by every township – participant in the communal union. This does not oppose the principle of a township's financial independence in any way whatsoever, contrarily – the generality of the statutory regulation further confirms this independence.

The nature of the Warsaw township union is totally different. It exists not only by the power of law but the nature of this union is not set under the course prescribed in article 67, section 1 of the Local Self government Act. As was mentioned previously, the charter of the Capital City of Warsaw is ratified by the City Council of the Capital City of Warsaw (which is a body comprised under direct elections, thus there is no personal connection between the councils of the Warsaw townships), requires agreement to be reached with the President of the Council of Ministers, and if differences arise in viewpoints, the charter may be ascribed to Warsaw by the President of the Council of Ministers (article 14 of the Warsaw Act). The Constitutional Tribunal has not challenged the accuracy of these procedural solutions; it does assert, however, that this gives Warsaw's charter a totally different nature from the charters of the voluntary communal unions mentioned in the Local Self government Act. Thereby one cannot accept the interpretation applied by the Prosecutor General who speaks about the similarity of regulations in article 67, section 2, sub-section 6 of the Local Self government Act and article 13, section 1, sub-section 3 of the Warsaw Act. Although the contents of these regulations are approximate to one another, they concern acts with a totally different point of reference to the independence of a township: the charter of a voluntary communal union set up on the basis of the Local Self government Act is an expression of this independence while Warsaw's charter – is an expression of the curtailment of this independence. It is no accident that article 67, section 4 of the Local Self government Act, which – as the only provision of this Act – speaks of communal unions created obligatorily, allows for the introduction of another requirement to approve a mandatory charter but it does not indicate a different course for ratifying the said charter besides the one envisaged by article 67, section 1.

The Constitutional Tribunal asserts that certain constraints to the independence of individual townships may turn out to be indispensable to manage such a complex urban organism like the Capital City of Warsaw. This purpose *inter alia* is to be served by defining the system of Warsaw in a separate statute. The scope, directions and forms of these limitations are to remain within the sphere of the lawmaker's regulatory freedom since „the making of the law is the parliament's role, while (the Constitutional Tribunal) has not been established to evaluate the equity or the expedience of the solutions adopted by the lawmaker" (decision dated 23 September 1997, K. 25/96, OTK ZU Number 3-4,1997 . 316-317 and numerous previous decisions). At the same time, however, the principle of a township's independence makes it necessary for these restrictions to be introduced in a statute and for the relevant statutory regulations to have a sufficient degree of precision and detail.

The Constitutional Tribunal believes that this degree of precision and detail cannot be ascribed to the stipulations set forth in article 13, section 1, sub-section 3 of the Warsaw Act. They are limited to indicating that the charter of the Capital City of Warsaw may define the duty of remitting contributions, and to the reference to the charter for defining the principles of setting the amounts of these contributions and the way in which they are transferred. This regulation may be fully permissible with reference to voluntary communal unions in which the stipulations of the charter are shaped according to the will of each one of the participants, but it elicits grave objections with reference to the Warsaw Communal Union. For the Warsaw Act does not formulate any limitations or indications pertaining to the shaping of the

contributions (besides linking them to the performance of public tasks which the Supreme Administration Court accurately deduced). In particular, it leaves to the charter the freedom of defining the course whereby the amount of contributions will be set (but the charter, as was mentioned previously, allowed for the City Council of the Capital City of Warsaw to do this), but what's more – even more importantly, it does not institute any limitations on the amount or the manner in which they are set. As is known, the currently binding charter specified that the amount of the contribution cannot exceed 10% of the township's budgetary income (minus certain components), but article 13, section 1, subsection 3 of the Act does not create any impediments against introducing a higher limit (just as was attempted to carry out in § 37 of the charter), where it hypothetically could have reached several tens of percent of the income. Perhaps the lawmaker could have instituted this construction of contributions but it would have to stem from an explicit regulation specifying in particular the ceiling of the contribution and the way in which it is computed. The Act, however, leaves the definition of these matters to the bodies which ratify the charter, that is to the City Council of the Capital City of Warsaw and the President of the Council of Ministers.

According to the conviction of the Constitutional Tribunal this ascribes to article 13, section 1, sub-section 3 the nature of a blanket regulation. The Constitutional Tribunal maintains its stance that a statutory delegation cannot be formulated in such a way that the authorized body is left with the ability to regulate a complex of issues on its own with respect to which the body of the statute does not have any direct regulations or indications (decision dated 22 September 1997, K. 25/97, OTK ZU Number 3-4,1997, p. 304). There is not, however, any need here to evaluate article 13, section 1, sub-section 3 from the point of view of the general principles defining the relationship of executive orders to statutes, especially since article 94 of the Constitution has applied fewer requirements to the' statutory delegations to issue acts of local law than the ones which were applied in article 92 to the delegations to issue regulations. Since, however, article 13, section 1, sub-section 3 of the Warsaw Act concerns township finance, the evaluation of this provision must be carried out based on article 167, section 3 of the Constitution and the principle of the Act's exclusivity which stems therefrom for governing the general shape of the expenses, where the township has been obliged to incur them. This principle necessitates that the frame be specified at the statutory level which cannot be surpassed when setting the amount and the extent of these expenses which must be carried out by the township in favor of the obligatory communal township. Leaving total regulatory freedom to the bodies of this union and to governmental bodies cannot be reconciled with the principle of a township's financial independence, for it creates the opportunity to erase or to curtail this independence significantly. There are no impediments against the lawmaker setting up the institution of contributions by the Warsaw townships; if, however, it resolves to do so, then it cannot refer the definition of this institution's construction to the basic executive order which is the charter of the Capital City of Warsaw.

Thereby, article 13, section 1, sub-section 3 of the Warsaw Act is, as it is currently formulated, inconsistent with the constitutional order of retaining the form of a statute to define the legal shape of the township's obligatory expenditures, deduced by the Constitutional Tribunal from article 167, section 3 of the Constitution, and which finds its general basis in the principle of a township's independence as the basic local self government unit. Under this state of affairs the Constitutional Tribunal does not perceive the need of separately reviewing the problem of conformity between article 13, section 1, sub-section 3 of the Warsaw Act and article 2 of the Constitution.

The Constitutional Tribunal then considered the allegation of the nonconformity between article 9, section 3 (in conjunction with article 20 and article 21) of the Warsaw Act and the constitutional principle of equality.

1. The Warsaw Act introduces a special system of authorities in the Capital City of Warsaw. Just as has already been discussed, Warsaw is a union of 11 townships which has been created by the power of law, where among these townships a special role has fallen to the Warsaw-Centrum Township to play and which has 2/3 of the city's residents. The representative body of this union is the City Council of the Capital City of Warsaw chosen in general elections (article 32, section 1, sub-section 2 of the Warsaw Act) and totally distinct from the councils of the Warsaw townships. The executive body of the Capital City of Warsaw is the Management Board (article 9, section 1), comprised by the Mayor of the Capital City of Warsaw and his/her deputy mayors. The City Council of the Capital City of Warsaw elects the Deputy Mayors at the request of the President (article 9, section 2). Article 9, section 3 has in turn referred the definition of the course of election and the dismissal of the Mayor to article 20 and article 21 of the Warsaw Act. The Mayor of the Capital City of Warsaw is *ex officio* the Mayor of the Warsaw-Centrum Township. He/she is therefore elected by the Council of the Warsaw-Centrum Township (article 20, section 1 of the Warsaw Act), where, however, the councils of the Warsaw townships have been awarded the right to submit candidacies (moreover, candidates may also be submitted by the city council members of the Warsaw-Centrum Township and the City Council of the Capital City of Warsaw). Thus there is a particular personal overlap between the chairperson of the executive body in the Warsaw-Centrum Township and in the Capital City of Warsaw.

The applicant has alleged that this solution violates constitutional equality (the applicant cites article 32 of the Constitution), since this statute places both the residents of the Warsaw townships and the council members of these townships in an unequal position because only one council – of the 11- decides about the election of the City Mayor.

2. The Constitutional Tribunal does not share this allegation. Although it is not dubious that article 9, section 3 in connection with article 20 and article 21 variegate the legal situation of the Warsaw townships, since only one of them has been given the fullness of decision making in terms of selecting the person who will also become the Mayor of the entire city. An evident inequality thus arises in the position and the powers of the council of the Warsaw-Centrum Township and the councils of the other 10 townships. This statement is not however a sufficient argument to acknowledge that article 32 of the Constitution has been infringed.

The principle of equality as defined by article 32 of the Constitution, refers first and foremost to the legal situation of natural persons which comes from the general connection between the overall shape of the stipulations in Chapter II of the Constitution and the legal status of a „person and a citizen.” Without engaging here in the problem of whether and to what extent article 32 of the Constitution may have reference to the legal situation of legal persons, one should recall the stance of the Constitutional Tribunal – expressed in light of article 67, section 2 of the former constitutional provisions that this provision „refers directly to citizens and is only indirectly linked to the issue of the rights vested in townships” (decision dated 17 October 1995, K. 10/95, Collection of the Constitutional Tribunal's Decisions, 1995, Part II 76; similarly, the decision dated 9 January 1996, K. 18/96, OTK ZU Number 1/1996, p. 26). The violation of equality in relationships among townships is rather subject to evaluation from the point of view of the democratic rule of law, *inter alia* against the backdrop of proportionality and social justice (decision dated 27 June 1995, K. 4/94, Collection of the Constitutional Tribunal's Decisions 1995, Part I, p.181 and dated 23 June 1997, K. 3/97, OTK ZU Number 2,1997, p. 210). The foregoing statements issued by the Constitutional Tribunal retain their currency in the new constitutional state of affairs and for

this reason the allegation of infringing upon article 32 of the Constitution should be deemed to be unjustified. The resolution of the Township Council in Warsaw Bielany, where only this document may outline the scope of the petition, does not take up the allegation of infringing upon article 2 of the Constitution by the provisions discussed here.

Even if one were to acknowledge that certain elements of equality refer to the legal situation of townships as deduced from the link between article 2 and article 32 of the Constitution, it would be necessary to recall that one may speak of violating the principle of equality only in the event that two conditions are simultaneously fulfilled: the variegation of the legal situation must apply to similar entities and this variegation must be discriminatory in nature: The Constitutional Tribunal has upheld the stance expressed in its decision dated 3 September 1996, K.10/96, OTK ZU Number 4/1996, p. 281, that departures from the principle of equality may be permissible if they can find justification in rational and proportional arguments which are founded in other constitutional norms, principles or values. One should speak of discrimination in a situation when the variegation introduced is arbitrary, disproportionate and unjustified in nature. From this point of view it is first necessary to recall that the system of executive bodies adopted in the Warsaw Act was the result of a conscious decision to adopt the „metropolitan” concept and to reject what is known as the „borough” project and thus the project of making Warsaw one enormous township. As the doctrine points out „a pre-requisite for the operation of the *metropolitan* system is for there to be a far-reaching personal union between the central township and the rest of Warsaw” (H. Izdebski: *Ustawa z dnia 25 marca 1994 r o ustroju m.st. Warszawy Tekst z komentarzem* [Act dated 25 March 1994 on the System of the Capital City of Warsaw. Text with commentary], Warsaw 1994, p. 4). It cannot be denied that the Warsaw-Centrum Township differs substantially from the remaining Warsaw townships both in the number of residents and the level of income or the functions discharged within the framework of the metropolis. It should be added that the decision making body which is the City Council of the Capital City of Warsaw is formed under general and equal elections while the selection of deputy mayors for the city is done by this Council. If the City Mayor holds two executive posts this may limit his/her ability to deal with the affairs of the Warsaw-Centrum Township and impede the care exercised for the interests of this township in confrontation with the interests of the entire city. Many arguments therefore support the view that „even if certain privileges are perceived in the solutions under analysis, they are objectively justified by the special tasks and the special, objectively existing differences while they are not powers of such a scale that they could be evaluated as infringing upon the principle of *proportional equality* (P. Sarnecki: *Opinia, Biuletyn Biura Studiów i Ekspertyz Kancelarii Sejmu*). *Opinion*, Bulletin of the Bureau of Studies and Expert Opinions from the Sejm's Office, Number 2, 1994, p. 75). Although it is possible to single out differing opinions (B. Zawadzka: *Niespójności i sprzeczności w ustawodawstwie samorządowym*, *Przegląd Legislacyjny* [Incoherencies and Contradictions in Local Self government Legislation], *Legislative Review*, 1996, Number 2, pp. 59-60), in any case one should assert that the solution adopted in the Warsaw Act does not create an arbitrary, disproportionate and unjustified variegation in the legal circumstances of the Warsaw-Centrum Township and the legal circumstances of the other townships.

The applicants did not present any detailed arguments in this area nor did they demonstrate arbitrariness, an absence of proportionality or the absence of justification for introducing variegation in the position among the individual Warsaw townships, restricting themselves only to a general statement of allegation about infringing upon equality. In turn, it is necessary to agree with the stance of the Prosecutor General that the duty of demonstrating the nonconformity between the challenged provision and the Constitution rests upon the applicant in keeping with the general supposition that the statutes under review conform with

the Constitution. One should thereby recognize that the regulations incorporated in article 9, section 3 in connection with article 20 and article 21 of the Warsaw Act fit within the scope of the regulatory freedom vested in the lawmaker. The Capital City of Warsaw is not a township, and thus the system of its decision making and executive bodies does not have to be shaped according to the principles defined in article 169 of the Constitution.

The stance of the Constitutional Tribunal should also be recalled here (taken against the backdrop of the Act dated 24 November 1995 about Amending the Scope of Action for Some Cities and the Urban Zones of Public Services) that differences in the legal situations of townships are permissible provided that they occur on the basis of the criteria set up by the lawmaker (decision dated 13 May 1997, K. 20/96, OTK ZU Number 2/1997, p.145). The size and the strength of a township may form such a criterion.

3. Nor are there any grounds to consider the differentiation of the position of Warsaw townships as equal with the variation of the legal situations of the citizens who reside in these townships. There is a series of regulations in the Polish legal system which capture the scope of the powers and tasks of townships differently depending upon their location and size (the Prosecutor General rightly makes mention of the Act dated 24 November 1995 about Amending the Scope of Action for Some Cities and the Urban Zones of Public Services). In an indirect way this sheds light on the situation of the residents, it would be difficult however to treat each type of differentiation as an infringement upon the principle of equality. For so long as the addressees of legal variations are townships, and not the citizens directly, it will not be possible to differently refer to these differences all of the consequences and requirements which should be extracted from article 32 of the Constitution.

The Warsaw Act does not introduce a system of direct elections for the City Mayor by the citizens (which would lead to the necessity of fully endorsing the principle of universality). The job of mayor is filled under a different method and by different entities while the secondary impact exerted by these decisions on the legal situation of the citizens cannot be considered to be an infringement upon the equality of the residents of Warsaw.