

Decision

dated 30 November 1988 (K. 1/88)

The Constitutional Tribunal sitting with the bench composed of Chairman and President of the Constitutional Tribunal, Alfons Klafkowski, Judges: Czesław Bakalarski, Kazimierz Buchała, Kazimierz Działocha (Reporting Judge), Natalia Gajl, Henryk Groszyk, Adam Józefowicz, Andrzej Kabat, Maria Łabor-Soroka (Reporting Judge), Remigiusz Orzechowski, Stanisław Paweła.

(...)

held

1) That article 33, section 1, sub-section 5, from the words „subject to” and section 4 and 5 of the same article of the Act dated 14 December 1982 on Retirement Pensions for Employees and Their Families (Journal of Laws, Number 40, Item 267, amended by 1984, Number 52, Item 268, Number 52, Item 270; 1986, Number 1, Item 1) contravene article 5, sub-section 5, article 8, section 1, article 67, section 2 and article 70, sections 1 and 2, sub-section 1 of the Constitution of the People’s Republic of Poland,

2) That article 35, section 2 and article 49, section 2 of the Act conform with article 5, sub-section 5, article 67, section 2 and article 70, sections 1 and 2, sub-section 1 of the Constitution of the People’s Republic of Poland.

Reasoning

(...)

III

At the outset the Constitutional Tribunal considered which provisions of the Constitution should formulate the basis for evaluating the challenged provisions of the Act. (...)

1. The Constitutional Tribunal came to believe that article 5, sub-section 1 and sub-section 6 of the Constitution may not... be the basis for evaluating the constitutionality of the statute’s provisions challenged by the petition. The reason being that they do not define the constitutional and legal position of citizens, nor do they lay foundations for civil rights or determine their meaning. What they do determine, however, which follows directly from their wording, is the general directions of activity of the People’s Republic of Poland, in particular its organs in a variety of spheres of broadly understood social relations. (...)

The sphere of civil rights and liberties (duties, too), in particular general principles, the meaning and limits of individual fundamental rights, is regulated by article 8 of the Constitution and in other provisions relating to civil rights. The concretization of the general precepts of the Constitution in this area, within limits necessary for their enforcement, is the responsibility of the Sejm as a legislative body. This is so because pursuant to the constitutional provisions on civil rights and duties and the general premise of the Constitution (expressed primarily in article 90), the regulation of civil rights and duties is a matter reserved exclusively for a statute. Among the constitutional provisions concerning civil rights is article 67, section 1, which imposes a duty to „strengthen and extend the rights and freedoms of citizens.” The Constitutional Tribunal considered the meaning of the said constitutional directive for the evaluation of the constitutionality of the provisions of the Act that are questioned in the petition. While doing so, the Constitutional Tribunal took into account the wording of article 70 of the Constitution which places on the lawmaker the obligation to

„continue to effectuate” the right to receive assistance in the event of illness or inability to work by, among others, „developing social security against illness, old age and the inability to work.”

The Tribunal adopted a view consistent with its earlier decisions (cf. decision in case number U. 7/88) and in agreement with the position taken by the representative of the Sejm in the case in hand that a general, guideline-giving character of the said directive could provide grounds for declaring a statute unconstitutional only when successive legislative enactments issued over a longer period of time contradicted the progressive development of civil rights and not merely when individual provisions of a given statute in comparison to a previous one might raise doubts in this respect. In the opinion of the Constitutional Tribunal, such a situation did not occur as the result of a change in the necessary qualifications for a pension or a disability pension under the Act. The Constitutional Tribunal shared the view of expert witnesses in this case that in the area of disability insurance, continuous improvement, aimed at extending the eligibility for receiving benefits and raising their value, has been observed since 1954.

This position is an interpretation of article 67, section 1 of the Constitution and does not cover the manner of understanding the developmental nature of a specific, fundamental civil right regulated in the Constitution. If, therefore, article 70, section 2, sub-section 1 of the Constitution ordains „development of social security” to cover illness, retirement and the inability to 27

work, the provisions of statutes regulating eligibility to receive retirement and disability pensions must be evaluated from the point of view of that precept of the Constitution with respect to the specific rights following from a statute and a specific group of citizens and not only from the perspective of the whole statute.

2. The Constitutional Tribunal, in keeping with its earlier decisions and a consistent opinion on the constitutional doctrine of law, which was also cited by all the participants in the proceedings, expressed the view that it was necessary to take into account, while investigating the challenged provisions of the statute, all the principles and rules of the Constitution binding on the lawmaker in the area of relations regulated by the said statutory provisions. In this case, it was necessary, in the first place, to investigate whether the statutory provisions questioned in the petition conformed not only with article 70 of the Constitution, which establishes the right of citizens in the People's Republic of Poland to receive assistance in the event of illness or an inability to work realized, *inter alia*, by „the development of social security to cover illness, retirement and the inability to work,” but also with the constitutional principle of social justice, i.e. article 5, sub-section 5 of the Constitution, and constitutional equality, i.e. article 67, section 2 of the Constitution.

IV

While investigating the constitutionality of article 33, section 1, sub-section 5, and sections 4 and 5 of the Act, the Constitutional Tribunal first considered the meaning of article 70 of the Constitution, which is directly related to the matters regulated by the provisions of the Act questioned in the petition. By its contents, important for the evaluation of the Act, it (i) establishes the right of the citizens of the People's Republic of Poland to receive assistance from the State in the event of illness or an inability to work (right to social security), (ii) through social security (right to social security) and – which in this case is basically unimportant – through social assistance, (iii) ordains „development” of the right to social security (as well as „extension” of various forms of social assistance), i.e. formulates a directive of advancing (progressive) molding of the right to social security in regular legislation. The right to social security insurance, as a fundamental form of the right to social

security, is defined by the conditions (premises) of its acquisition, continuation and expiration. In this respect it is guaranteed by the Constitution, it forms the basis and the only meaning of the latter right against the generally formulated provision of article 70 of the Constitution. It is also in this respect that the precept of developing and extending the right to social security is valid. In particular, by extending the right to new groups of citizens who have not taken advantage of it yet. This means a ban on making the conditions for acquiring the right more difficult in the newly enacted legislation with respect to the legislation previously in force.

Article 70, section 2, sub-section 1 of the Constitution does not set forth any conditions (premises) of acquiring, continuing and losing the right to social security. The same is true of a significant element of this right, namely the right to a disability pension that is at issue in this case. In the opinion of the Constitutional Tribunal, in order to determine these conditions, and *ipso facto* the meaning of the constitutional right to social security, one should consider earlier legislation on retirement and disability pensions in force in Poland prior to the coming into force of the Constitution of the People's Republic of Poland as well as the provisions of conventions of the International Labor Organization (ILO) from the period ratified by Poland. The rationale being that the Constitution, guaranteeing

„development of social security,” ensured, in keeping with its summation and protective functions, conditions of acquiring the right to benefits at least at the level set by earlier legislation, including the ILO conventions of 1933 ratified by Poland.

Throughout the period when the Constitution was in force until the passage of the Act, regular legislation, i.e. the Decree dated 25 June 1954 on the Universal Retirement Plan and the Act dated 23 January 1968 on the Universal Retirement Plan of Employees and Their Families, set a five-year period as a maximum period necessary for acquiring the right to a disability pension. Similarly, article 5, sections 1 and 2 of ILO Convention Number 37 dated 29 June 1933, ratified by Poland on 26 June 1948 (Journal of Laws, Number 31, Item 277), set the maximum waiting time, i.e. the required period of employment, at 60 months (or 250 weeks) or five years. Moreover, ILO Convention Number 102 of 1952, which has not been ratified by Poland, provides for five years of employment or of making contributions (or three years of employment and making contributions amounting to half of the average contribution per annum) to be entitled to a lower disability pension. The Constitutional Tribunal is not competent, under the Constitutional Tribunal Act, to examine whether statutes conform with international agreements. If, however, Poland has ratified ILO Convention Number 37 and its provisions are to be binding (be applied in internal law), then the above-cited provisions cannot be denied significance for modeling the right to a disability pension in the social security act. The ratification of ILO Convention Number 37 in 1948 is of decisive importance, i.e. before the adoption of the current Constitution of the People's Republic of Poland in 1952. The Constitutional Tribunal has found, in particular on the basis of a statement made at a hearing by the Sejm's representative that the Sejm adopting the Act did not take into account ILO Convention Number 37.

It follows from the above findings that the concept of social security, as a concept existing prior to the adoption of the Constitution, was formed, not only in respect to its fundamental premises (the nature of the insurance relationship), but also in respect to one of the basic conditions for acquiring the right to a disability pension, namely the required period of employment, by earlier legislation in force in Poland.

The Constitutional Tribunal, while comparing the contents of article 70 of the Constitution arrived in the above manner at the contents of the questioned provisions of article 33, section 4 and section 5 of the statute, has reached the conclusion that these

provisions by extending, in comparison to the Act dated 23 January 1968 on Universal Retirement Plan of Employees and Their Families, the period of employment necessary for acquiring the right to a disability pension with respect to groups of persons named therein from five to ten years deprived. in consequence, a specific group of people of the right to a disability pension. The right had been molded over the period of the development of the disability pension system in Poland that spanned many years. Now it was taken away from some people without giving them any other right to such benefits. This is a right – as it will be shown below – serving the fundamental needs of a human being who has lost his or her ability to perform work because of a permanent or lengthy sickness or disability. Keeping these reasons in mind, the Constitutional Tribunal has held that article 33, section 4 and section 5 of the cited Act contravenes article 70, sections 1 and 2, sub-section I of the Constitution.

V

Analyzing article 33, section 1, sub-section 5, section 4 and section 5 of the statute from the point of view of their conformity with the constitutional principle of social justice, the Constitutional Tribunal has considered the following issues.

1. The reason why the Sejm enacted article 33, section 4 and section 5 of the Act in opposition to article 24 of the Act dated 23 January 1968 on the Universal Retirement Plan of Employees and Their Families, in particular the reason for extending from five to ten years the period of employment required of persons who took up employment for the first time being 40 years of age or over or who took up employment after turning 40 years old and after a 10-year break from the end of the previous employment or a equivalent period, was – as it was written in the explanatory statement to the draft legislation – a desire to „reduce the number of cases of taking up employment at an older age, frequently in the non-socialized sector, chiefly with the aim of obtaining eligibility to receive a disability pension after five years of employment” (Sejm Publications, Eighth Term, print number 23I and 258). The premises of the draft legislation, which later became the Act, aimed at curbing socially reproachable cases of abusing the law and did not take into account any more general, rational and social considerations related to the reform of the disability pension law. It was this reason that was most frequently given in their arguments in this case by the representative both for the Sejm and for the Prosecutor General of the People's Republic of Poland.

2. The Constitutional Tribunal, sharing the opinion of the Sejm's representative that restrictions, enacted in article 33, section 4 and section 5 of the Act, were meant to prevent situations which were unjustified from the viewpoint of social justice, must at the same time observe that the said restrictions, owing to the strictness of social security law, i.e. its *iuris stricti* nature, are binding universally on the statutory category of workers who took up employment for the first time after turning 40 or who took it up again after a 10-year break from the end of the previous period of employment (or periods equivalent to employment); in relation to no group of persons potentially affected in their right to receive a disability pension is an exception made. Consequently, and in comparison to the provisions in force prior to the enactment of the Act, we face here a significant restriction on the eligibility to receive a disability pension. Article 33, section 4 and section 5 of the Act make the eligibility requirements for a disability pension stricter in respect to considerable groups of workers regardless of the reasons cited by the lawmaker. It follows from the findings... that the challenged article 33, section 4 and section 5 of the statute practically affect persons, mostly women, who take up employment only at a later age for family reasons, such as raising children, next women who because of the termination or dissolution of their marriage have to take up employment to provide the subsistence that was lost for themselves or their children and, finally, farmers joining the ranks of hired laborers. Despite a lack of studies on the size and structure of the population whose legal and social situation was affected by the said

provisions of the Act, there are no reasons to question the facts quoted above. From the point of view of the Constitutional Tribunal a question arose whether the newly enacted regulation meant a restriction on the eligibility to receive a disability pension justified under the constitutional principles of social justice and whether such a restriction could be reconciled with them. To answer these questions, the Constitutional Tribunal had to consider first the significance of the said constitutional principle for the statutory regulation of the right to a disability pension and, by the same token, its significance for the constitutional revision of the regulation.

In this respect, the Constitutional Tribunal held as follows.

1. Article 5, sub-section 5 of the Constitution, which lays down the principle of social justice, is included in the group of the so-called program provisions of the Constitution. The formula: „the People's Republic of Poland ... implements the principles of social justice (similarly to the formula: „prevents the breaking of the principles of community life)” means that what is meant by them is principles or guidelines defined as to their basic aspects. The existence of such principles – as it can be concluded from the Tribunal's decisions in cases U. 5/86 and U. 7/87 – is confirmed by analysis of the text of the Constitution. However, to interpret these principles one should also refer to the social values and standards of extralegal character that are shared by Polish society. These principles have a character of binding rules of law and a rank of the fundamental principles of government, the contents of which are characteristic of a socialist State. Therefore, they may and should be taken into account when evaluating the conformity of the law with the Constitution.

2. Social justice, although defined – as it has been said – with respect to its basic meaning in the Constitution, assumes on the part of the state organs which implement it a choice of a hierarchy of specific formulas serving the purpose of its implementation in a given situation regulated by law. In the sphere of legislation, this choice is first and foremost the right and obligation of the Sejm. The normative character of social justice as a constitutional principle does not prevent the Constitutional Tribunal from evaluating the choices made by the Sejm in specific statutes. This is so because the Constitution does not exclude from the Tribunal's competence any rule or principle of the Constitution as a basis (criterion) for evaluating the constitutionality of law. Thus, in the opinion of the Constitutional Tribunal a difference in evaluation in this respect is possible between the Sejm and the Constitutional Tribunal; however, only in such situations when a system of values adopted in an Act of the Sejm raises serious doubts when confronted with the premises of the Constitution. This opinion was shared in principle by the Sejm's representative in a statement made at the hearing in reply to the question concerning the correct meaning of the opinion presented in his letter of 19 August 1988 (p. 6).

3. Social justice appears in the Constitution (...) in the form of various distribution formulas, in particular such as „to each according to his work,” „to each according to his merits” or „to each according to his needs.”

The Sejm's representative is right, following the teachings of jurisprudence, to say that the Polish pension and disability pension law has been developing under the influence of at least four principles: need, work, merit and injury. It is also right to stress the need to give more space in the provisions of the said law to the fundamental formula of social justice, according to article 19, section 3 of the Constitution, namely „from each according to his abilities, to each according to his work.” In the opinion of the Constitutional Tribunal, the principle of distribution according to work should yield to the principle of distribution according to need in relation to disability pensions. It is hardly possible to include, as a basic element in the eligibility requirements for a disability pension, a stimulus in the form of a higher benefit for an appropriately longer period of employment since extending the period of

employment is beyond the employee's control when it has been discontinued because of an accident causing a disability. By its very underlying assumption, a disability pension is meant to satisfy the social needs of people who have lost their ability to perform work or this ability has been diminished because of a permanent or long-lasting impairment of the functions of their bodies. It is the purpose of a disability pension to relieve the economic effects of accidents and ensure a decent standard of living to persons who cannot continue their previous employment. It should also be noted that in our socio-economic conditions, due to relatively low disability pensions, they may serve to satisfy only the basic needs (according to 1987 data, the most numerous group of disability pensioners, i.e. 18.2% of all those drawing benefits receive from PLN 14,000 to 16,000). It is right, therefore, that the basic eligibility requirement to receive a disability pension, pursuant to article 32, sub-section 1 of the statute, is a disability as defined in article 23, while in the case of a retirement pension it is the attainment of a specific retirement age and a required period of employment that are necessary to make one eligible to receive a pension (article 26). A period of employment, although it is required to receive a disability pension because of the necessary relationship of the disability with employment in time (article 32, sub-section 3 of the Act), is usually short (the younger the employees, the shorter the required time) or minimal as in the situation defined in article 33, section 3 of the statute. The view that in the case of the right to a disability pension one should give priority to social justice according to needs – which turn out to be quite basic – is shared by the jurisprudence of social security. The principle is justified also by the results of public opinion polls concerning various formulas of equitable distribution of goods in society.

In relation to what has been said, the Constitutional Tribunal wishes to observe that the level of benefits for group I and II disability pensioners and the level of pensions are basically the same and the benefit for disability pensioners included in group III does not differ much from the benefit for groups I and II. It is believed, therefore, that the current legislation reflects the principle, adopted by the disability and retirement benefit system, of satisfying only the basic needs of persons whose ability to work has been diminished by poor health or advanced age. (...)

4. The Constitutional Tribunal, while evaluating the import of article 33, section 4 and section 5 of the Act from the point of view of constitutional social justice, reached the conclusion that extending the period of employment required to be eligible to receive a disability pension from five to ten years restricts universal and equitable access to disability pensions. In a situation where retirement pension eligibility is strictly defined – especially in respect to the employment period – a disability pension is a substitute for a retirement pension for the elderly who have little chance of obtaining the right to a pension. On this issue, the Constitutional Tribunal's position reflects the view of the jurisprudence of social security, in particular the views of Waław Szubert ((Uwagi o funkcjach ubezpieczeń społecznych” [Remarks on the Functions of Social Security], *Seminarium Prawa Ubezpieczeń Społecznych*, 1977, I, p. 4). For these reasons, the Constitutional Tribunal could not share the view of the Sejm's representative submitted at the hearing that the current solutions of article 33, section 4 and section 5 of the Act better satisfy the requirements of social justice. In the opinion of the Constitutional Tribunal, the strictness of article 33, section 4 and section 5 of the Act, contravening social justice, cannot be relaxed by interpreting the provisions in a pro-constitutional manner nor with aid from social welfare agencies granted in a discretionary way pursuant to other regulations.

In relation to the consideration of article 33, section 4 and section 5 of the Act, the Constitutional Tribunal wishes to observe that a serious objection is raised also by the requirement of ten years of employment, pursuant to article 34 of the Act, for people who

took up employment for the first time after turning 40 suffering already from a disability. Article 34 of the Act was not included in the petition and was not entertained by the Constitutional Tribunal, however, the Tribunal wishes to observe that persons who are disability pensioners in groups I and II may have significant difficulties in finding employment suitable for their physical abilities in the present economic circumstances. Therefore, requiring them to have such a long period of employment may deprive them of the right to obtain a disability pension. The solution adopted in article 34 of the Act differs radically, with respect to the strictness of requirements, from the conditions imposed by the Act on the persons named in article 33, section 3, of whom it is required to complete only the minimum period of employment as a prerequisite for acquiring the right to a disability pension. The Constitutional Tribunal decided to make these comments a subject of a separate communication to the Sejm.

VI

The Constitutional Tribunal has also considered the question of the conformity of article 33, section 4 and section 5 of the Act to equality.

It follows from an analysis of the contents of article 33, section 4 of the Act, taking into account the diverse social situations covered by the said article, that it contravenes the principle of equal treatment afforded to women, i.e. the principle laid down in article 67, section 2 of the Constitution. This constitutional principle is applied to the social security law by article 78, section 2, sub-section 1 of the Constitution where social security is treated as one of the domains (aspects) of women and men's equal rights. The general condition of ten years of employment, formulated in the Act in respect to people who took up their first employment after reaching the age of 40, does not take into account socially important duties relating to the family and the upbringing of children fulfilled by women who do not work because of these duties in the earlier periods of life. The Act allows for the treatment of a certain period of „non-work” devoted to the upbringing of small children as a period equivalent to employment or counted towards years of employment. However, this possibility is opened only to women who, after taking up employment, give it up later and avail themselves of all kinds of leaves and interruptions of work related to the care of children (article 11, section 2, sub-section 1 and article 13, section 3, subsection 1 of the Act). Such a possibility is, by contrast, unavailable to women upbringing children prior to taking up first employment. The regulation contained in article 33, section 4 of the Act treats such women unequally not allowing them to count a certain number of years, devoted earlier to the care of children, towards the period of employment.

The principle of equality of civil rights is also broken by article 33, section 5 of the Act because the persons covered by this provision, i.e. workers who after taking up employment had a break in employment exceeding ten years, and who resumed employment after turning 40, cannot count the period of employment from before the break towards the required length of employment. These workers, contrary to obvious facts, have been treated as persons taking up employment for the first time. Such a provision also clearly contradicts the general rules of calculating the length of employment for the purposes of establishing the entitlement to or the amount of retirement and disability pensions. According to the rules, the length of a break in employment, the manner of dissolving employment, etc., have no bearing on the calculation of the length of employment. Taking into account all the reasons given above, the Constitutional Tribunal has ruled that article 33, section 4 and section 5 of the Act contravene not only constitutional social justice but also the equality of civil rights. In the opinion of the Constitutional Tribunal, the lawmaker could have taken care of the motives named earlier which it followed enacting article 33, section 4 and section 5 of the Act, i.e. preventing people from taking up employment at a later age primarily in order to become entitled to disability

pensions after a relative short, five-year period of employment, in a different way. Adopting the limit of five years of employment as a maximum necessary to be entitled to a disability pension, the lawmaker: 1) could have strengthened the review measures of dependability of disability assessment of persons taking up work at a later age; 2) had such measures been insufficient because persons taking up work at a later age (30 years and older) usually suffer from a certain degree of health deterioration, the lawmaker could have used the technique of general clauses that would give adjudicating organs the ability to assess various situations while making the decision to grant a disability pension in dubious cases; 3) could have differentiated, i.e. extended in comparison to the Act in force, the premises of entitlement to a disability pension after completing a five-year period of employment taking into account various typical situations and social circumstances in agreement with justice and equal treatment of citizens, the facts of which cases are the same.

VII

The Constitutional Tribunal has held that article 33, section 4 and section 5 of the Act contravenes the Constitution because the said provisions violate the principle of the non-retroactive effect of law.

The principle of the non-retroactive effect of law is understood by the Constitutional Tribunal in a broad manner, i.e. not only as a ban on enacting rules of law that would direct that newly enacted rules of law be applied to incidents that occurred prior to their coming into force and which until then had no legal consequences (the principle of *lex retro non agit* in its proper meaning), but also as a ban on enacting transitional provisions which are supposed to define the meaning of legal relations that came into being under the old rules of law but continue while the newly enacted ones are coming into force, if these provisions have a negative legal (and consequently social) impact on legal safety and the respect for vested rights.

The said principle, although it is not explicitly expressed in the Constitution, follows, in the opinion of the Constitutional Tribunal sitting with the full bench, from the constitutional principle of substantive legality (article 8, section 1) and from the principle of maintaining confidence in the State which underlies many constitutional provisions (article 9, article 20, section 2, article 101, provisions laying down the fundamental civil rights and liberties and guaranteeing their protection).

The principle of substantive legality requires that law represent values reflecting the democratic nature of the State. Pursuant to the wording of article 8, section 1 of the Constitution, the laws of the People's Republic of Poland are to be „an expression of the interests and will of the working people”, which means that the Constitution refers to the most fundamental values recognized by its drafters... One of the secondary values (besides social justice, equality, humanism and democracy of law) related to the interests and will of the people, which law is to implement, -is without doubt the requirement of social stability (constancy) of rights guaranteed by statutes and related to the legal safety of citizens. They are given expression in and are protected by the non-retroactive effect of law. As an element of substantive legality, the former principle itself is of instrumental nature in respect to superior values, i.e. the interests and will of the working people. Hence, the lawmaker, giving expression to these superior values, must simultaneously keep in mind that the laws it enacts should give a feeling of stability of civil rights. The limits of stability can be drawn also only by the will and interests of the sovereign.

Maintaining confidence in the State, underlying the above-mentioned provisions of the Constitution and the system of state institutions regulated by them, is – similarly to substantive legality – a principle concerning constitutional law and, as such, it imposes certain

obligations in the sphere of State activities. In the sphere of the State's lawmaking activity, it imposes an obligation to draft laws in such a way so that civil liberties are not restricted if it is not required by an important social or individual interest protected by the Constitution. Next, it places an obligation on the lawmaker to grant rights to citizens and guarantee their enforcement, to enact laws in a consistent and clear manner, intelligible to citizens and finally not to give retroactive effect to legal provisions. In relation to the last mentioned obligation, the maintenance of confidence in the State requires that retrospective force not be given to provisions regulating civil rights and duties and worsening their legal position. Neither should any provisions be enacted that would in any way restrict the list of rights grounded in the Constitution or serving their enforcement. The maintenance of confidence in the State and social strength are based on nothing else but the stability and expanding nature of civil rights and duties. Thus, maintaining confidence in the State also becomes a basic value, referred to and protected by constitutional provisions, for the whole society.

As regards the principle of non-retroactive effect of law as the basic principle of legal order in the State, it is necessary for the Constitutional Tribunal to entertain the contents of article 33, section 4 and section 5 of the Act in relation to article 115, section 2 of the Act. Article 33, section 4 and section 5 of the Act – similarly to other provisions of this Act – came into force on 1 January 1983 and was applied not only to the cases submitted beginning on that date, but, pursuant to article 115, section 2 of the Act, also to applications for benefits submitted prior to that date if one of the conditions to be entitled to a benefit was met after 1 January 1983. Thus, if a citizen interested in acquiring the right to a disability pension filed an application earlier and at the time of filing completed a five-year period of employment required by the hitherto binding Act dated 23 January 1968 on the Universal Retirement Plan of Employees and Their Families, but his disability was ascertained only after the Act came into force, then the right to a disability pension did not arise because the new Act provided for a new ten-year period of employment as a prerequisite for acquiring the right to a disability pension.

The Constitutional Tribunal sees no reason why, from the point of view *de lege fundamentale lata* [of the fundamental law in force], the legal position of a disability pensioner, protected under the Act dated 23 January 1968 on the Universal Retirement Plan of Employees and Their Families, should not be covered by the principle of non-retroactive effect of law. All the prerequisites for acquiring, enjoying and losing the right to disability pensions, specifically the requirement of completing a period of employment of five years, were clearly defined by law and the insurance decisions of the Social Security Service were, basically, declaratory. Those decisions were simply assessments whether facts in a given case conformed to statutory premises for acquiring the right to a disability pension.

Therefore, the position taken by the representative of the Procurator-General, claiming that what has been granted to a citizen by a statute may be taken away from him/her by a statute, is unacceptable. In view of the protection of disability pension rights, as an important element of the constitutional right to social security, the lawmaker cannot arbitrarily interfere with these rights substantially deteriorating a citizen's legal position.

The Constitutional Tribunal shared also the opinion of Professor Czesław Jackowiak, an expert witness in this case, that the non-retroactive effect of law requires that any amendments to provisions defining the legal position of a disability pensioner come into force after periods of time that would allow one to satisfy the stricter conditions for acquiring the right to disability pensions. Any exceptions to this principle must follow from the Constitution if they are to apply – as is the case here – to a Constitutionally guaranteed right.