

Decision

dated 5 November 1986 (U. 5/86)

The Constitutional Tribunal sitting with the full bench: Chairman and President of the Constitutional Tribunal Alfons Klafkowski, Judges: Czesław Bakalarski, Kazimierz Buchała, Kazimierz Działocha, Natalia Gajl, Adam Józefowicz, Andrzej Kabat (Reporting Judge), Leonard Łukaszuk, Remigiusz Orzechowski, Stanisław Paweła (Reporting Judge).

(...)

held

1) That § 30, section 1, sub-section 1 of the Regulation issued by the Council of Ministers dated 16 September 1985 in the matter of the particular principles and the course for the permanent usufruct of land and the sale of state realty, the settlements related thereto and the management of the realty sold (Journal of Laws, Number 47, Item 239) in the wording set by the Regulation of the Council of Ministers dated 30 January 1986 amending the Regulation in the matter of the particular principles and the course for the permanent usufruct of land and the sale of state realty, the settlements related the and the management of the realty sold (Journal of Laws, Number 3, Item 17) contravenes article 67, section 2 of the Constitution of the People's Republic of Poland and article 36, section 1 of Act dated 29 April 1985 on Land Management and Expropriation of Realty (Journal of Laws, Number 22, Item 99),

2) That § 31 of the Regulation of the Council of Ministers dated 16 September 1985 in the matter of the particular principles and the course for the permanent usufruct of land and the sale of state realty, the settlements related thereto and the management of the realty sold (Journal of Laws, Number 47, Item 239) in the part concerning maintenance, current and major repair fees contravenes article 36, section 1 of Act dated 29 April 1985 on Land Management and Expropriation of Realty (Journal of Laws, Number 22, Item 99),

3) To set a three-month time limit from the service hereof in which the conflict of the above named provisions (Item 1 and 2 above) of the Regulation of the Council of Ministers dated 16 September 1985 with article 67, section 2 of the Constitution of the People's Republic of Poland and article 36, section 1 of Act dated 29 April 1985 on Land Management and Expropriation of Realty should be removed; if this contradiction is not eliminated, the aforementioned provisions of the Regulation of the Council of Ministers dated 16 September 1985 shall become null and void after the lapse of the said time limit to the extent determined herein.

Reasoning

(...)

The reason for reconsidering the case by the Constitutional Tribunal was... the petition of the Presidium of the People's Provincial Council in Wrocław. The correct interpretation of the provisions of the quoted Act dated 29 April 1985 on the Constitutional Tribunal and the resolution of the Sejm dated 31 July 1985 on the detailed rules of procedure before the Constitutional Tribunal leads to the inevitable conclusion that only the rulings given in the decision are binding, hence it is only in the contents of the decision that a law's constitutionality or unconstitutionality may be ascertained together with all the consequences of such a ruling. The reasoning of the decision comprises only the premises and arguments on which the Tribunal's findings and the decision were based. Therefore, the reasoning is not capable of independently (i.e. separately from the decision) causing the results which the Act

dated 29 April 1985 on the Constitutional Tribunal attaches to rulings included in the decision.

The deliberations of the Constitutional Tribunal concerning the quoted Act dated 29 April 1985 on Land Management and Expropriation of Realty were aimed at determining the proper meaning of the delegation given in article 36, section 1 of the said Act and giving its interpretation necessary for a correct assessment of the legality of the disputed provisions of the mentioned Regulation of the Council of Ministers. It follows that the deliberations remained safely within the scope of jurisdiction set by article 2 of the quoted Act on the Constitutional Tribunal (...).

(...)

The Act dated 29 April 1985 on Land Management and Expropriation of Realty (Journal of Laws, Number 22, Item 99) has laid down the rules for establishing perpetual usufruct and selling state realty. (...) Article 36, section 1 of the Act dated 29 April 1985 on Land Management and Expropriation of Realty contains the following delegation: „The Council of Ministers shall lay down by Regulation the detailed rules and the manner of establishing perpetual usufruct on state lands and the sale of state realty, the manner of payment for lands on which housing estates are to be built, the rules for determining the costs of maintenance and repairs to be borne by owners of individual dwelling units in multi-flat buildings and the manner of managing such buildings as well as the assignment of costs in the event that part of a house is converted for habitation purposes.”

Pursuant to this delegation, the Council of Ministers issued a Regulation dated 16 September 1985 on the detailed rules and the manner of establishing perpetual usufruct on state lands and the sale of state realty, the costs and settlements relating thereto and the management of the realty sold (Journal of Laws, Number 47, Item 239). The said Regulation was subsequently amended by the Regulation of the Council of Ministers dated 30 January 1986 amending the Regulation on the detailed rules and the manner of establishing perpetual usufruct on state lands and the sale of state realty, the costs and settlements relating thereto and the management of realty sold (Journal of Laws, Number 3, Item 17).

The petition of the Presidium of the People's Provincial Council in Wrocław concerns § 30, section 1, sub-section 1 and § 31 of the amended Regulation of the Council of Ministers dated 16 September 1985.

The Constitutional Tribunal sitting with the full bench, (...) while examining the constitutionality and legality of § 30, section 1, sub-section 1 and § 31 of the said Regulation of the Council of Ministers questioned in the petition, aimed to establish whether in this very case the following prerequisites of the constitutional design of the Regulation and its relation to the Act had been met:

1) Issuing the Regulation pursuant to an express, i.e. not solely implied, and detailed statutory delegation concerning matters defined in the authorization,

2) Issuing the Regulation within the scope of the statutory delegation and for the purpose of enforcing the statute,

3) Issuing the Regulation without contravening any principles of the Constitution of the People's Republic of Poland or any other legislative acts in force which directly or indirectly govern the subject matter of the Regulation.

The Constitutional Tribunal sitting with the full bench, before embarking on a detailed analysis of the foregoing prerequisites, stated that these prerequisites, following the Constitution of the People's Republic of Poland, were „a guiding principle” of the decision

rendered in this case. It should also be remembered that the same prerequisites served as the basis of the rulings of the Constitutional Tribunal included in the decisions of 16 June 1986, reference number U. 3/86 and of 20 October 1986, reference number P 2/86.

Guided by the above prerequisites of the constitutional legality of the Regulation, the Constitutional Tribunal, on the basis of the examined evidence and the circumstances revealed in the course of the present proceedings, held in this respect as follows.

As far as the first issue is concerned, i.e. whether § 30, section 1, sub-section 1 and § 31 of the said Regulation of the Council of Ministers questioned in the petition were issued in pursuance of the required statutory delegation, the Constitutional Tribunal held that the Council of Ministers had not received in article 36, section 1 of the Act dated 29 April 1985 on Land Management and Expropriation of Realty, nor in any other provision of the Act, a delegation to extend the rules of determining the costs of maintenance and repairs laid down in the Regulation issued in compliance with the Act to houses in which the titles to individual dwellings had been acquired prior to the date when the Regulation came into force.

The Constitutional Tribunal sitting with the full bench concurs completely with the view expressed in the reasoning underlying the Tribunal's Decision dated 28 May 1986 that a lack of the lawmaker's position on a given issue must be interpreted as a failure to grant rulemaking powers in the given scope. A statutory delegation is always subject to a strict and literal interpretation; assuming that a delegation comprises matters not enumerated in it on the grounds, for instance, of a teleological interpretation is, as a rule, out of the question.

(...) The Council of Ministers received a delegation in article 36, section 1 of the said Act dated 29 April 1985 to regulate the matter defined as „rules for determining the costs of maintenance and repairs to be borne by owners of individual dwelling units in multi-flat buildings and the manner of managing such buildings.” The delegation was not questioned by the Constitutional Tribunal sitting with a regular bench and the claim included in the petition to reconsider the case that the Tribunal „*a priori* assumed, against linguistic and logical interpretation, that the Act dated 29 April 1985 did not authorize the Council of Ministers to regulate the costs of maintenance and repairs” is wrong. From the outset of the proceedings in this case, it is obvious that what this case is about is the extent of the delegation following from article 36, section 1 of the said Act dated 29 April 1985 to lay down the rules for determining the costs in question and whether the Council of Ministers stayed within the scope of the delegation granted to it.

The subject matter of the provisions of the Regulation of the Council of Ministers, which is mentioned in article 36, section 1 of the said Act, specified as „rules for determining the costs of maintenance and repairs” has been broadly defined.

Since the regulations of the Council of Ministers, in accordance with article 41, sub-section 8 of the Constitution of the People's Republic of Poland are issued not only following an express delegation contained in a statute – whose requirement is generally satisfied by article 36, section 1 of the said Act – but also to enforce a statute, the failure to define in the delegation, or even in the whole authorizing statute, the provisions specifying the subject matter of the „rules for determining the costs of maintenance and repairs” may have hindered the implementation of the delegation. However, for the sole reason that the delegation included in article 36, section 1 of the said Act does not satisfy the requirements for a detailed delegation, i.e. it does not set the criteria for calculating the costs in question, one may not share the opinion that there were no limitations on the scope of operation of the regulation which was to be issued in pursuance to the Act dated 29 April 1985.

In the opinion of the Constitutional Tribunal sitting with the full bench, the position taken by the representative for the Council of Ministers could be deemed as justified only when it is accepted that:

a) The rules for determining the cost of maintenance and repairs to be borne by dwelling owners do not constitute a matter to be regulated exclusively by statute; then – in consequence – they would not be regulated by regulation, either, since a regulation is a law organically bound to a statute;

b) There are no rules in the valid legislative acts imposing an obligation to bear such costs in legal relations pertinent to the matter in hand, i.e. in relations resulting from obligations concerning the maintenance of a thing held in common and that there are no criteria for determining such costs.

Such assumptions, however, cannot be adopted in the matter in hand for the following reasons that were pertinently pointed out in the reasoning underlying the Constitutional Tribunal's Decision dated 28 May 1986:

a) As far as the legal imposition of duties on citizens and other persons endowed with rights is concerned, according to the prevailing view of both doctrine and the practice of law, the Constitution of the People's Republic of Poland does not provide for any other way than by statute (and decree with the force of a statute). It is only subsidiarily, i.e. following a delegation contained in a statute and for the purpose of enforcing it, that a duty can be imposed by a regulation. The principle of a statute's exclusivity in this respect applies, *inter alia*, to the imposition of all kinds of obligatory performances for the benefit of the State, both personal and pecuniary, as well as to performances in legal relations between citizens and between citizens and the State in the areas not covered by contracts.

b) There are in binding statutory law, specifically in the Civil Code in article 207, *iuris dispositivi* rules enacting both a duty to bear costs relating to the maintenance of a thing held in common and the rules for calculating them. They have the nature and rank of rules of a codified statute and regardless of the meaning of the *ratio legis* of the delegation given in article 36, section 1 of the said Act and of the „rules for determining costs” formula used in the delegation, there is no doubt that these „rules”, having been set forth in a regulation, cannot contravene the statutory rules which concern the same matters as the said „rules” (...).

With respect to the matters covered by Item 2 above, i.e. whether the provisions of the Regulation were issued within the scope of delegation given in the statute and in order to enforce it, the Constitutional Tribunal ascertains that while deciding the question whether § 30, section 1, subsection 1 of the said Regulation dated 16 September 1985 in the part concerning the rules for determining the amount of fees to cover the maintenance and repair of houses was issued within the scope of article 36, section 1 of the Act dated 29 April 1985, it took into account the following facts. The subject matter of the Regulatory enactment defined in article 36, section 1 of the Act as „rules for determining the costs of maintenance and repairs to be borne by owners of individual dwelling units in multi-flat buildings” and „the manner of managing such houses” is a statutory matter. The concept of „rules” mentioned in this provision of the Act, should be taken to mean the criteria for determining or a manner of calculating the amount (measure) of the said fees. This, in turn, fits in the category of „citizens' duties” which – as it has already been shown – are a major item reserved for statutes as far as legislation is concerned.

It is wrong to believe, as it is done in the petition to reconsider the case (and a rare belief it is), that „no rule of law in the Constitution provides that all duties of citizens may be regulated solely by a statute” (...). In connection with the above quoted belief, it is necessary

to stress that the Constitutional Tribunal when determining the rulemaking contents of the Constitution of the People's Republic of Poland always takes into account not just the simple wording of its provisions but also their interpretation (construction) by the books of authority and judicial decisions. It strives to construe the interpreted provisions consistently with the axiology of our system of government and the law. The axiology, in turn, exhorts us to consider the position of citizens in the country, determined and protected by the Constitution of the People's Republic of Poland and statutes, as central. (...)

This opinion is fully supported by the widely shared views expressed in the doctrine of law. As Assistant Professor S. Wronkowska-Jaśkiewicz, Ph.D. in jurisprudence, stresses, aside from a few exceptions, the view is prevalent that all civil rights and duties should be granted or imposed by statute or, possibly, by a lower-ranking enactment pursuant to and on the authority of a statute.

The Constitutional Tribunal sitting with the full bench shared this the opinion of the Tribunal, sitting with a regular bench, in which all the participants of proceedings concurred except the representative for the Council of Ministers, that the principle making a statute absolutely necessary to impose duties on citizens applies also to the exacting of all kinds of obligatory performances whatsoever in legal relations between citizens and between citizens and the State in the areas not regulated by contracts.

Neither article 36, section 1 of the quoted Act dated 29 April 1985, nor any other rule of law contained therein, specified in any detail the rules for determining the cost of maintenance and repairs giving the Council of Ministers full freedom in this respect. The general character of prerogatives given to the Council of Ministers by article 36, section 1 enabled the Council to regulate the calculation of fees due to maintenance and repair costs in a manner adapted to the nature of the institution of separate ownership of dwelling units and the real state of affairs in the area of the financial management of multi-flat houses managed by the State in which such form of ownership exists. The said state of affairs is caused, primarily, by the fact that the State's share in covering these costs is by far the largest.

The Constitutional Tribunal sitting with a regular bench did not show what the possibilities of regulation by a regulatory enactment were in the matter having adopted the correct assumption, which is fully shared by the Constitutional Tribunal sitting with the full bench, that it is not the role of the Constitutional Tribunal to „show” the Council of Ministers, a political body, what is the most appropriate way to use the prerogatives given to it by statute. It is, however, the domain of the Constitutional Tribunal, acting within its jurisdiction defined in article 2 of the Act on the Constitutional Tribunal, only to set the absolute limits of legally admissible rulemaking power of a state organ in case there are doubts as to such limits. (...)

The Constitutional Tribunal sitting with the full bench rejects as wrong the view expressed in the petition to reconsider the case that the enactment of the rule of law in § 31 of the cited Regulation, dated 16 September 1985 was necessary to avoid interpretational doubts when applying the Regulation... It has to be stressed in this respect that the provisions of the Regulation are not of an instructive nature and that the subject matter of transitional provisions is of absolutely fundamental significance for society, constitutes a statutory matter and may be regulated only by enactments of a statutory rank.

With respect to the third of the above mentioned prerequisites of the constitutionality of § 30, section: 1, sub-section 1 of the cited Regulation dated 16 September 1985, i.e. non-contravention by these I provisions of any – besides the authorizing Act – legislative acts and the Constitution of the People's Republic of Poland, the Constitutional Tribunal sitting with the full bench held as follows. As a point of departure for the deliberations in this respect, the

Constitutional Tribunal sitting with the full bench has adopted the same assumption as the Constitutional Tribunal sitting with a regular bench, namely the view universally shared by jurisprudence that a regulation cannot infringe upon the sphere of legal matters regulated by other statutes or in pursuance of the same, neither can it alter, modify or synthesize their contents or even repeat it.

The Constitutional Tribunal sitting with the full bench found that contrary to the above assumption concerning the relationship of enactments ranking below a statute to statutory enactments in force, § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985, in the part questioned in the petition of the Presidium of the People's Council in Wrocław, contravened article 207 of the Civil Code, i.e. a provision of a statutory rank regulating legal relationships homogeneous as to their kind with those which are the subject of the cited § 30, ! section 1, sub-section 1 of the Regulation.

The contradiction between § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985, and article 207 of the Civil Code is caused, in particular, by the following.

The Constitutional Tribunal sitting with the full bench shared thus the opinion of the Tribunal sitting with a regular bench, in which all the participants of proceedings concurred except the representative for the Council of Ministers, that the principle making a statute absolutely necessary to impose duties on citizens applies also to the exacting of all kinds of obligatory performances whatsoever in legal relations between citizens and between citizens and the State in the areas not regulated by contracts.

Neither article 36, section 1 of the quoted Act dated 29 April 1985, nor any other rule of law contained therein, specified in any detail the rules for determining the cost of maintenance and repairs giving the Council of Ministers full freedom in this respect. The general character of prerogatives given to the Council of Ministers by article 36, section 1 enabled the Council to regulate the calculation of fees due to maintenance and repair costs in a manner adapted to the nature of the institution of separate ownership of dwelling units and the real state of affairs in the area of the financial management of multi-flat houses managed by the State in which such form of ownership exists. The said state of affairs is caused, primarily, by the fact that the State's share, in covering these costs is by far the largest.

The Constitutional Tribunal sitting with a regular bench did not show what the possibilities of regulation by a regulatory enactment were in the matter having adopted the correct assumption, which is fully shared by the Constitutional Tribunal sitting with the full bench, that it is not the role of the Constitutional Tribunal to „show” the Council of Ministers, a political body, what is the most appropriate way to use the prerogatives given to it by statute. It is, however, the domain of the Constitutional Tribunal, acting within its jurisdiction defined in article 2 of the Act on the Constitutional Tribunal, only to set the absolute limits of legally admissible rulemaking power of a state organ in case there are doubts as to such limits. (...)

The Constitutional Tribunal sitting with the full bench rejects as wrong the view expressed in the petition to reconsider the case that the enactment of the rule of law in § 31 of the cited Regulation dated 16 September 1985 was necessary to avoid interpretational doubts when applying the Regulation... It has to be stressed in this respect that the provisions of the Regulation are not of an instructive nature and that the subject matter of transitional provisions is of absolutely fundamental significance for society, constitutes a statutory matter and may be regulated only by enactments of a statutory rank.

With respect to the third of the above mentioned prerequisites of the constitutionality of § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985, i.e. non-contravention by these provisions of any – besides the authorizing Act – legislative acts and the Constitution of the People's Republic of Poland, the Constitutional Tribunal sitting with the full bench held as follows. As a point of departure for the deliberations in this respect, the Constitutional Tribunal sitting with the full bench has adopted the same assumption as the Constitutional Tribunal sitting with a regular bench, namely the view universally shared by jurisprudence that a regulation cannot infringe upon the sphere of legal matters regulated by other statutes or in pursuance of the same, neither can it alter, modify or synthesize their contents or even repeat it. The Constitutional Tribunal sitting with the full bench found that contrary to the above assumption concerning the relationship of enactments ranking below a statute to statutory enactments in force, § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985, in the part questioned in the petition of the Presidium of the People's Council in Wrocław, contravened article 207 of the Civil Code, i.e. a provision of a statutory rank regulating legal relationships homogeneous as to their kind with those which are the subject of the cited § 30, section 1, sub-section 1 of the Regulation.

The contradiction between § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985; and article 207 of the Civil Code is caused, in particular, by the following.

Article 207 of the Civil Code lays down rules of law which are discretionary in nature and which prevail in the Civil Code, whereas § 30, section 1, sub-section 1 of the Regulation introduces absolutely binding rules. The discretionary nature of article 207 of the Civil Code means that within its scope of operation the parties of a legal relationship (co-owners) may regulate their legal situation in a given case differently from that which has been indicated in the said provision; they may, for instance, define differently the criteria indicated in article 207 of the Civil Code relating to the manner of bearing costs thus excluding the application of the provision to their case. However, the area covered by a discretionary provision is not legally neutral. It is not a free domain accessible to any kind of lawmaking activity other than a contract between parties. In particular, the discretionary nature of the rule of law contained in article 207 of the Civil Code does not mean that a state body may freely, by its rulemaking enactment, regulate a sphere covered by a discretionary rule of law laid down in a statute. § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985 are an example of the practice of administrative organs which consider any sphere covered by a discretionary rule of law as free and as such allowing them to issue lawmaking enactments within its scope.

The Constitutional Tribunal sitting with the full bench fully concurs with the criticism of such practice by administrative organs contained in the arguments of the Decision dated 28 May 1986 and wishes to add that the main objection against such practice is the fact that it leads to the general exclusion of the principle that a general enactment of a lower rank cannot contradict another enactment standing higher in the hierarchy of discretionary rulemaking. (30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985 contravenes article 207 of the Civil Code also in that it establishes another criterion for calculating the burdens (onus) of dwelling-unit owners besides the said article 207. The said article adopts a principle whereby burdens and expenses relating to a thing held in common are borne pro rata to the shares of co-owners in the thing held. Whereas § 30, section 1, sub-section 1 of the cited Regulation introduces instead a principle whereby costs are to be borne as monthly rates of rent set for a given dwelling unit in regulations on lease rent.

The nonconformity of § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985 with article 207 of the Civil Code consists, furthermore, in that the said provisions of the Regulation supersede the settlement of actual expenses by a demand of

payment towards amounts that will actually be due in the future. In connection with this solution adopted in the Regulation in contravention of article 207 of the Civil Code, it has to be stressed that an expert witness, Professor A. Klein, Ph.D., expressed his opinion that the principle of distribution of burdens (and incomes) according to article 207 of the Civil Code „seems to be beneficial to all parties involved in a final reckoning while at the same time it reduces to a minimum the impact of secondary situations on the position of an owner of a separate dwelling unit as a co-owner of the building, whose co-owner is the State” (...). The expert witness, Professor A. Klein, Ph.D. continued by saying that in his opinion „these advantages are absent from the solution whereby the amount of costs is related to the price paid for the purchased dwelling unit or the rent for such a unit.” The Constitutional Tribunal shared the opinion expressed by Professor A. Klein, Ph.D. as well as his belief that taking rent rates as a basis of calculation of the said costs is wrong in particular because „the amount of rent is affected by the size of locality and the location of the realty in the locality which are related neither to the costs of repairs nor, to a large degree, to those of maintenance” (...).

The Constitutional Tribunal sitting with the full bench fully concurred with the opinion of the Constitutional Tribunal sitting with a regular bench regarding the source of tile nonconformity of § 30, section 1, sub-section 1 of the cited Regulation dated 16 September 1985 with article 207 of the Civil Code. To a considerable degree the nonconformity originated with the erroneous understanding by administrative organs of article XVI of the Introductory Provisions of the Civil Code. The Constitutional Tribunal sitting with the full bench wishes to confirm in this respect that it fully shares the view expressed in the arguments of the Decision dated 28 May 1986 that it is inadmissible to interpret article XVI of the Introductory Provisions of the Civil Code in a way leading to the obliteration or outright rejection of the hierarchical structure of the sources of law which is a fundamental principle of the lawmaking system in the Constitution of the People’s Republic of Poland.

IV

With regard to the allegation contained in the petition of the Presidium of the Peoples Council in Wrocław that § 30, section 1, sub-section 1 of the cited Regulation of the Council of Ministers of 16 September 1985 contravenes... the principle of equality, the Constitutional Tribunal held as follows:

In light of the evidence in this case, the duties of dwelling unit owners, who are referred to in § 30. section 1, sub-section 3 of the cited regulation, are indeed greater when compared to those of tenants of dwelling units while fees imposed on dwelling unit owners and tenants living in the same houses have been made equal (...).

It follows inexorably from the above that dwelling unit owners have been burdened with greater duties than the tenants of such dwelling units.

One consequence of imposing different duties on the tenants and owners of the said dwelling units should have been a certain differentiation for the benefit of owners on the fees payable by owners due to maintenance and repairs and of the rent payable by tenants. In the view of the Constitutional Tribunal, the failure to take into account these different duties when calculating the said fees makes § 30, section 1, sub-section 1 of the cited Regulation of the Council of Ministers dated 16 September 1985 contravene the constitutional principle of equality (article 67, section 2 of the Constitution of the People’s Republic of Poland).

Article 67, section 2 of the Constitution of the People’s Republic of Poland says that a citizen cannot be deprived of any rights because of any of the characteristics enumerated in this provision. Equality also precludes the possibility of granting privileges to any group of society or an individual citizen because of gender, birth, profession; nationality, race, religion,

social status and origin, hence certain factual, extralegal states (characteristics). Article 67, section 2 of the Constitution of the People's Republic of Poland, although expressed in the most general terms compared to other provisions of the Constitution which express the constitutional principle of equality (article 19, section 3; articles 68, 78, 81, 95-96 of the Constitution of the People's Republic of Poland), does not exhaust its purport. Nor does it take into account all characteristics, on account of which citizens cannot be differentiated with respect to the law, although it does include characteristics that are fundamental from the point of view of the underlying premises of the system of government in the People's Republic of Poland. Thus it assumes the existence of other indeterminate factual states, on account of which civil rights cannot be differentiated at all (e.g. franchise, cf. articles 95-96 of the Constitution) or they can be differentiated provided, however, that it does not contravene the fundamental criteria intentioned in article 67, section 2, and article 1 and articles 4-5 of the Constitution of the People's Republic of Poland. The correct interpretation of constitutional equality for the purpose of determining the question of conformity of § 30, section 1, sub-section 1 of the Regulation with the said principle calls for taking into account another principle, closely related to the first one, which has to be derived partially directly and partially by construction from the provisions of the Constitution of the People's Republic of Poland, particularly from article 67, section 3. This is the principle of interdependence of rights and duties of citizens. It is manifested, *inter alia*, by an equal distribution of rights and duties among citizens who are in similar factual circumstances.

The right to be treated equally grounded in the provisions of the Constitution of the People's Republic of Poland is not concerned solely with the sphere of law but affects all the spheres of public, political, economic, social and cultural life. It follows then from the provisions of the Constitution of the People's Republic of Poland, which lay down the principle of equality of citizens, that if legal provisions in a specific situation differentiate the duties of citizens, as has been done in respect to the tenants and owners of dwelling units in the present case by ignoring the costs of maintenance and repairs of such dwellings borne by them, it is an infringement of constitutional equality. In this connection, equality requires one to maintain a proportion between the extent of duties and the extent of performance; this is, indeed, not equal from the point of view of the different duties of tenants and dwelling unit owners cannot be treated as equal.

(...) As regards the conformity of § 30, section I, sub-section 1 of the cited Regulation of the Council of Ministers dated 16 September 1985 to constitutional social justice (article 5, subsection 5 of the Constitution of the People's Republic of Poland), the Constitutional Tribunal sitting with a regular bench held that creating a possibility of partially covering the monthly fees related to the costs of maintenance and repairs due from dwelling unit owners by the Land Management and Housing Fund if their owners' only source of subsistence is a retirement pension or a disability pension (1, sub-section 1 of the Regulation of the Council of Ministers dated 30 January 1986, Journal of Laws, Number 3, Item 18) satisfies the principle of social justice. The Constitutional Tribunal sitting with the regular bench continued by ascertaining that justice „being in fact – in a broader sense – a program directive determining the activities of the People's Republic of Poland and its organs in internal relations of the State” (p. 31 of the decision's reasoning) in relation to the case under discussion it should be understood as a far-reaching consideration for equality in respect to citizens ending themselves in a dire economic situation.

(...)

However, one cannot share the allegation made in the petition to reconsider the case (Item 7 thereof that there is an internal contradiction between the premises of the opinion in

respect to the nonconformity of the regulation to equality and social justice. The allegation, curiously enough, has not been substantiated at all in the petition (...).

In the broadest meaning of the concept of justice, any infringement of equality is unjust. But, the Constitution of the People's Republic of Poland, besides provisions concerning the equality of civil rights (article 67, section 2), includes other provisions concerning the implementation of justice in all activities of the People's Republic of Poland and its organs (article 5, section 5). This means that the scope of meaning of both principles is different.

Therefore, investigating the legality of § 30, section 1, sub-section 1 and § 31 of the cited Regulation one should do it separately from the point of view of each provision of the Constitution of the People's Republic of Poland named above. The result of such an investigation has been presented above. The Constitutional Tribunal does not see any contradiction in such an assessment of the matter under investigation. The constitutional principles of equality and social justice are not the same, although it may happen that in a specific case a given provision of law will concurrently infringe upon both principles. However, this was not the case here.

(...)