RESOLUTION
of the Constitutional Tribunal
dated 7 March 1995 (W. 9/94)

In the matter of establishing the universally binding interpretation of article 13, section 1 of the Constitutional Tribunal Act dated 29 April 1985 (Journal of Laws,1991, Number 109, Item 470 with subsequent amendments).

The Constitutional Tribunal sitting with the full bench composed

of the Chairman and President of the Constitutional Tribunal, Andrzej Zoll

and Judges: Zdzisław Czeszejko-Sochacki, Tomasz Dybowski (Reporting Judge), Lech Garlicki, Stefan Jaworski, Krzysztof Kolasiński, Wojciech Łączkowski, Ferdynand Rymarz, Wojciech Sokolewicz, Janusz Trzciński, Błażej Wierzbowski, Janina Zakrzewska.

After review, at sittings on 14 June 1994, I 1 and 17 January and 7 and 21 February as well as 1 and 7 March 1995 under the course prescribed by article 13, sections 1 and 2 of the Constitutional Tribunal Act dated 29 April 1985 (uniform text, Journal of Laws,1991, Number 109, Item 470; amended in 1993, Number 47, Item 213; 1994, Number 122, Item 593 of the edition filed b the Commissioner for Citizens' Rights to establish the universally binding interpretation of article 13, section 1 of the Constitutional Tribunal Act by adopting that the Resolution of the Constitutional Tribunal undertaken on the basis of this provision:

1. specifies the meaning ascribed to the statute being interpreted (the statutory provision) by the lawmaker before and after the adoption of the resolution by the Constitutional Tribunal;

2. establishes the universally binding interpretation of statutes in the sense that it obliges all the bodies applying the law and the entities founded to interpret provisions for the benefit of other entities to apply the provisions of law consistently with this interpretation and to take it into consideration when reviewing all cases under way, including those which were initiated before its ratification but which were not brought to a conclusion with legally-binding decisions by the time when the resolution is published;

3. may constitute a basis to reinstate proceedings, but still on the basis of the provisions of the Criminal Proceedings Code, the Civil Proceedings Code. the Administrative Proceedings Code or other binding norms envisaging the reinstatement of proceedings and according to the principles envisaged by these norms;

4. is binding upon the bodies applying the law in completed cases,(exhausted legal relationships), too, when proceedings are reinstated on the grounds of the relevant provisions (the Criminal Proceedings Code, the Civil Proceedings Code, the Administrative Proceedings Code or others) as well as in cases under review as a result of an extraordinary appeal if the extraordinary appeal is not adjudicated before the publication of the resolution adopted by the Constitutional Tribunal;

5. is universally binding from the date of publication in the Journal of Laws for the entire time in cases under examination against the backdrop of the provision to be interpreted; moreover, to establish:

6. whether the scope of the Constitutional Tribunal's cognition envisaged in article 13 of the Constitutional Tribunal Act includes the power to establish the universally binding interpretation of the regulations issued by the Council of Ministers by the power of a statute

pursuant to article 23 in conjunction with article 52, section 2, sub-section 2 of the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 426);

7. whether the Constitutional Tribunal pursuant to article 13 of the Act may issue the universally binding interpretation of a provision whose meaning was previously determined by the Supreme Court under the course prescribed in article 13, sub-section 3 of the Supreme Court Act dated 20 September 1984 (Journal of Laws,1990, Number 26, Item 153 with subsequent amendments) or if the Supreme Court has refused to adopt such a resolution;

8. whether the Constitutional Tribunal, after issuing a resolution under the course prescribed by article 13 of the Act, may adopt a new resolution to establish with universally binding force the interpretation of the very same provision of a statute fitted to a new social context (current system of values);

held

article 13, section 1 of the Constitutional Tribunal Act should be understood in the following manner:

l. The Constitutional Tribunal shall establish by way of a resolution adopted at a sitting with its full bench the universally binding interpretation of statutes only at the request of the entities enumerated in this provision, where the said resolution, having been publicized by publication in the Journal of Laws, specifies the binding understanding of the provision subject to interpretation from the day when it comes into force for the entire period of its validity unless the Constitutional Tribunal held otherwise by taking into consideration a change in context over the period of the provision's validity;

2. the relevant provisions govern the permissibility, scope and course for correcting the results of acts of applying the law which occurred before the date of publication of the Constitutional Tribunal's resolution inconsistent with the understanding of the provision established in the said resolution;

3. the term „statute" used in article 13 of the Constitutional Tribunal Act shall also denote legal acts with the power of a statute, including regulations issued by the Council of Ministers pursuant to article 23 in conjunction with article 52, section 2, sub-section 2 of the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 426);

4. the adoption by the Supreme Court of the resolution mentioned in article 13, sub-section 3 of the Supreme Court Act dated 20 September 1984 (Journal of Laws,1990, Number 26, Item 153 as amended) or the refusal to adopt such a resolution shall not curtail the rights of the entities enumerated in article 13, section 1 of the Constitutional Tribunal Act to make a request for a universally binding interpretation of the provisions affected by the mentioned resolution of the Supreme Court;

5. at the request of the entities enumerated in article 13, section l, the Constitutional Tribunal may interpret a provision which was already the subject matter of a universally binding interpretation of the Constitutional Tribunal, if the applicant makes reference to such a change in the context of the provision which substantiates a different understanding thereof.

Reasoning

(...)

II.

The Constitutional Tribunal in interpreting article 13, section 1 of the Constitutional Tribunal Act noted the following:

1. Taking into consideration the contents of the petition and the initial fragment of its reasoning, the Constitutional Tribunal deemed it to be appropriate to establish first and foremost what are the contents of the provision set forth in article 13, section 1 of the Constitutional Tribunal Act.

In the opinion of the Commissioner for Citizens' Rights this provision entails two norms: 1) a competency norm authorizing the Constitutional Tribunal to explain the contents of the Act (provision) whose formulations give rise to doubts in terms of their meaning, 2) a norm granting this interpretation universally binding force. Nevertheless, the Constitutional Tribunal acknowledged that the contents of article 13, section 1 of the Constitutional Tribunal Act do not entitle one to understand the meaning in this manner. The power to make a universally binding interpretation of the provisions of statutes was ascribed to the Constitutional Tribunal by the provision in 33a, section 1 of the constitutional provisions remaining in force and by the provision in article 5 of the Constitutional Tribunal Act. The latter outright repeats the constitutional norm incorporated in the aforementioned article 33a, section 1 and constitutes its statutory execution. If the view expressed by the Commissioner for Citizens' Rights on the contents of article 13, section 1 of the Constitutional Tribunal Act were to be accepted, that would imply that the provision incorporated therein would entail a dispensable repetition of that which the Constitutional Tribunal Act expressed previously in article 5. Article 13 of the Constitutional Tribunal Act entails in turn a norm specifying the entities endowed with the power to submit a petition to the Constitutional Tribunal to make a universally binding interpretation of the statutes (provisions) indicated by the said entities. Therefore, the phrase „universally binding interpretation" used in article 13, section 1 of the Constitutional Tribunal Act denotes the subject matter and the purpose of the petition which the authorized entities submit to the Constitutional Tribunal; it does not, in turn, specify the Constitutional Tribunal's power, for the power to make a universally binding interpretation was ascribed to it by the other provisions mentioned.

In conjunction with the so determined contents of article 13, section 1 of the Constitutional Tribunal Act, a problem arose on whether the Commissioner for Citizens' Rights singled out the relevant provision as he/she was guided by – as can be deduced from his/her petition – the intent for the Constitutional Tribunal to explicate a series of aspects linked to the meaning of the normative phrase „the universally binding interpretation of statutes made by the Constitutional Tribunal." The Constitutional Tribunal in resolving this problem acknowledged that even though the issue of the Constitutional Tribunal's power was captured inappropriately in the reasoning of the petition, that the contents of article 13, section 1 of the Constitutional Tribunal Act nevertheless authorize it to interpret the aforementioned normative phrase since the lawmaker used this phrase in article 13, section l as if for the benefit of the applicants while its meaning is the same in article 33a, section 1 of the constitutional provisions remaining in force and in article 5 of the Constitutional Tribunal Act.

The Constitutional Tribunal when interpreting the provision singled out by the Commissioner for Citizens' Rights in article 13, section 1 of the Constitutional Tribunal Act acknowledged it to be appropriate to take into consideration the contents of the provisions in

two further sections of this article which are procedural in nature in contrast to the first section, but where their contents are of significant importance for the provision under interpretation located in article 13, section 1 of the Constitutional Tribunal Act.

2. As stated above, article 13, section 1 of the Constitutional Tribunal Act is a norm which stipulates which entities may submit a petition to the Constitutional Tribunal to establish the universally binding interpretation for the provisions of the statutes they have indicated. These entities were listed in the form of a closed list which means that other entities do not hold this power (first hypothesis of this resolution). The circle of entities authorized to submit a petition to make a universally binding interpretation is much narrower than the circle of entities enumerated in article 22 and article 23, section 1 of the Constitutional Tribunal Act, which are authorized to submit petitions for the Constitutional Tribunal to assert the conformity of legislative statutes with the Constitution and other normative acts with the Constitution or a legislative act.

The set of provisions cited here leads first to the conclusion that the will of the lawmaker was to curtail the opportunities to launch the procedure aiming to establish the universally binding interpretation of provisions, and only with respect to provisions with a statutory rank. One may also deduce from the foregoing that the entities who received this power should make use of it reticently, restricting themselves to instances of interpretational difficulties which are particularly gross or momentous for practice and which, on account of the social good, need to be resolved rapidly and cannot wait for the interpretation to be established which would be shaped over the course of the collection of normal decisions made by the bodies applying the law (known as an operative interpretation). At the same time, one must have in mind that every interpretation made by the Constitutional Tribunal under the course prescribed in article 13, section 1 of the Constitutional Tribunal Act petrifies to a great degree the provisions undergoing interpretation, thereby curtailing the normal development of the interpretation made by the bodies applying the law; this also supports the idea that this form of interpretation should not be abused.

Second, the conclusion flows from the set of provisions cited above that the Constitutional Tribunal may not at its own initiative establish a universally binding interpretation of the provisions of a statute and it is herein that the provision in article 13, section 1 differs from the provision in article 22, section 2 of the Constitutional Tribunal Act pertaining to reviewing the constitutionality of the interpretation effected by the Constitutional Tribunal, which review may be conducted by the Constitutional Tribunal at its own initiative.

The norm stipulating the permissibility for establishing the universally binding interpretation of statutes by the Constitutional Tribunal only in response to petitions filed by the entities authorized by the power of article 13, section 1 has in particular one consequence whereby the Constitutional Tribunal is bound by the scope of the petition which defines the subject matter of the interpretation, i.e. the statute indicated, a provision thereof or a set of provisions, as well as the interpretation difficulties (interpretation issues) referring to the statute indicated or a part thereof. In conjunction with the foregoing, one should recall that in paragraph 29, sub-sections 1 and 2 of the resolution adopted by the full bench of the Constitutional Tribunal dated 23 June 1993 in the matter of the Bylaws for the Activities of the Constitutional Tribunal there is a requirement to specify in the petition the statute or a specific provision therein, whose interpretation is being requested by the applicant, while in sub-section 2 – the requirement „to indicate the motives justifying the establishment of the interpretation." These motives should be understood precisely as defining the doubts pertaining to the comprehension of the provision indicated or the set of constitutional

provisions, in other words, precisely indicating the interpretation problem referring to this provision (these provisions).

In turn in sub-section 3 of the cited § 29 Bylaws for the Activities of the Constitutional Tribunal, there is a requirement for the petition to contain a „proposal on the interpretation expected by the applicant." Attention should be drawn to the fact that the requirements indicated (naturally besides specifying the provisions whose interpretation is desired by the lawmaker) as included in the internal Bylaws of the Activities of the Constitutional Tribunal are not statutory orders by nature and are not binding upon the applicants. They serve to explain the applicant's position which constitutes a certain type of assistance in the Tribunal's considerations; however, it is not bound by the applicant's stance in terms of the direction of the interpretation. In its heretofore practice the Constitutional Tribunal has deemed it to be sufficient for the applicant to indicate the doubts or to present the existing interpretation discrepancies instead of having to present its own precise proposed interpretation.

3. The nature, scope and manner of applying the Constitutional Tribunal's powers to establish the universally binding interpretation of statutes is specified in article 33a, section 1 in fine constitutional provisions and in article 5 and 13 of the Constitutional Tribunal Act. To understand this regulation correctly, one should be guided by the reading of the enumerated provisions, their statutory context and the system-related objective of the institution for the universally binding interpretation of statutes.

The institution of the universally binding interpretation of statutes was also known to the previous system order, but its current understanding and petition must comply with the currently binding system principles and in particular to the democratic rule of law (article 1 of the cited constitutional provisions) and to the separation of powers (article 1 of the cited Constitutional Act dated 17 October 1992 r.).

In a democratic State ruled by law carrying out the principle of the separation of powers whose legislation institutes the court path for ruling on specific „disputes over the law" – ones which appear against the backdrop of factual states as well as those ones which pertain to the creation of the 1aw – the courts, examining individual cases, interpret the legal provisions. The court interpretation is carried out in the context of a given unit case subject to review by a court „for the benefit" of this case (the Polish theory of law sometimes names this type of interpretation „operative" interpretation in contrast to the

„abstract" interpretation conducted in e.g. the sciences or in the statements of the bodies authorized to interpret the provisions for the benefit of various matters). By referring to a concrete case under review the entity conducting the operative interpretation may incorporate in its comprehension all of the important legal grounds and the grounds associated with the social and the axiological context of this concrete case. Such an interpretation is not legally binding upon the bodies making decisions in other cases (in keeping with the principle of judicial independence and subjecting a judge only to the statutes); however, it may in fact exert an impact on the way in which the provisions under interpretation are understood and applied in other cases in the future. In practice, the range and intensity of this impact depend especially on the location of a given judiciary body, the extent of its cognition and the manner in which the decision is published. In this manner the courts, just like the science of law, make a significant contribution to grounding the proper meaning of the provisions of law in the legal community and in the social consciousness, and thus to the development of the fundamental components of legal thinking, e.g. in terms of the axiology of the system of law or the rules of interpretation. Under the rule of law in a state founded on the separation of powers and in one that respects the independence of judges and their subordination solely to statutes, operative court interpretation is therefore an imperative component of the court

process for applying the law while also being one of the momentous and indispensable factors in the development of the legal culture on the basis of which the provisions of law are created, interpreted and applied. Striving for a consensus of opinions in the legal community and uniform comprehension of the legal provisions in keeping with the objective rules of interpretation is naturally linked to opening up to various rational arguments with the readiness to examine views under the influence of such arguments or in conjunction with the evolution of the socio-cultural context. It is therefore natural that in a democratic State ruled by law the development of legal thinking, especially in understanding the basis system principles or the rules for interpreting and applying the law should proceed as a discussion which cannot be resolved by interpretation statutes whose binding force would be spread over the matter entrusted to the court for it to adjudicate. In conjunction with the foregoing, the extent of the risk of error in interpretation is also minimized; errors in operative interpretation only exert effects in a single case.

The issue of the universally binding interpretation made by the Constitutional Tribunal appears differently.

One may derive several conclusions about the legal nature, scope and effects of applying the institution of the universally binding interpretation of statutes by the Constitutional Tribunal from article 33a, section 1 of the constitutional provisions and from the provisions cited above making up its system context.

First, not every interpretation made by the Constitutional Tribunal has the nature of a universally binding interpretation. In conjunction with discharging a function which is strictly rulemaking in nature (enumerated in article 33a, section 1 of the constitutional provisions), the Constitutional Tribunal interprets the Constitution, statutes and basic normative acts which has a certain amount of similarity to the court operative interpretation (taking into consideration the peculiar nature of the decisions made by the Constitutional Tribunal as a `court of law"). In turn, establishing the universally binding interpretation of statutes is a separate power vested in the Constitutional Tribunal; the special course for applying the constitutional institution under discussion corresponds to this separateness, specified – in keeping with article 33a, section 6 of the constitutional provisions – in an ordinary act (currently: in article 13 of the Constitutional Tribunal Act).

Second, the subject of the statements made by the Constitutional Tribunal with the nature of the establishment of a universa0y binding interpretation of statutes may only be provisions with statutory rank, while the contents of these statements should boil down to establishing the comprehension of these provisions. It must be accepted that the „statutes" as understood by article 33a, section 1 in fine, article 5 and article 13 of the Constitutional Tribunal Act are also lawmaking acts introducing norms to the system of law with the rank of ordinary statutes, equivalent in the hierarchy of the sources of law to statutes. The Constitutional Tribunal in the case whose file number is W 3/89 (Collection of the Constitutional Tribunal's Decisions,1990, Item 26) permitted the establishment of a binding interpretation of the provisions of the PKWN regulation, and thus a lawmaking act which is not a statute in a formal sense but which, in rank, is equal to a statute in the hierarchy of the sources of law. Similarly, one should accept the jurisdiction of the Constitutional Tribunal in respect to the universally binding interpretation of regulations by power of statute, which may be issued by the Council of Ministers according to article 23 of the Constitutional Act dated 17 October 1992. This jurisdiction, after all, entails the establishment of the interpretation of regulations by the power of the statutes issued previously by the State Council (the third hypothesis of the resolution).

Third, the Constitutional Tribunal establishes the universally binding interpretation of statutes acting as a judiciary body separate and independent from the legislative authority. In light of the separation of powers (article 1 of the Constitutional Act dated 17 October 1992) the interpretation established by the Constitutional Tribunal is not and cannot be the creation of legal norms but the establishment of the proper comprehension of the legal norms expressed in statutory provisions in keeping with the constitutional principles while applying the rules of interpretation accepted in a legal culture embracing the democratic rule of law. The Tribunal when interpreting provisions, takes into consideration, like other courts, their linguistic, system, social and axiologic context as well as the purpose of the provisions. Both Polish and foreign literature is extensive on this topic and the Tribunal has it in mind. In the collection of the decisions made by the Constitutional Tribunal the axiological context plays an important role. For the Constitutional Tribunal is obliged, especially in the system context, to have constitutional provisions in mind, which refer to the values by which the society is guided to a much greater degree than other provisions. Not only the values stated in the constitutional provisions are an indication for the Constitutional Tribunal. The constitutional provisions do not always specify in full the values which have become a road sign for the lawmaker Hence the Constitutional Tribunal is obliged to take into consideration the values which have not yet been stated directly in the constitutional provisions when interpreting provisions.

In its interpretation the Constitutional Tribunal does not take anything away nor does it add anything to the system of binding legal norms; it only asserts the contents of these norms. Hence one may speak of the „declaratory" and not lawmaking nature of the interpretation carried out by the Constitutional Tribunal. The constitutional separation of powers obligates it to do so as it excludes the Constitutional Tribunal from playing a lawmaking role.

In establishing the universally binding interpretation of statutes the Constitutional Tribunal deciphers the interpretational doubt presented to it. This means that as a result of the unclear, imprecise or incomplete formulation of the provisions of statutes, their contradiction in the linguistic plane or similar phenomena, the interpreter has (or may have) difficulties with recognizing the actual meaning of the legal norm or with selecting between several mutually „competitive" ways of comprehending them. These types of doubts – sometimes referred to as „interpretation gaps" – are a type of side effect, unintended by the lawmaker, of legislative activity. This type of „interpretation gap" should be distinguished from the „interpretation gaps" consciously left by the lawmaker associated with e.g. the usage of general clauses or non-specific phrases referring to extralegal criteria and evaluations which will be made concrete in keeping with the intentions of the lawmaker in the process of applying the law. It is manifest that to the extent to which the second type of „interpretation gaps" has purposefully been left by the lawmaker to the bodies applying the law, the Constitutional Tribunal should not establish the universally binding interpretation of general clauses.

The interpretation established in the resolution adopted by the Constitutional Tribunal is a legal interpretation in the sense that it is made by exercising the power granted by law to interpret legal provisions for the benefit of other entities and it induces effects defined by law. In comparison with other instances of legal interpretation, the interpretation established in the resolutions adopted by the Constitutional Tribunal has a particular feature and an exceptional legal rank that is not held by any other types of legal interpretation whatsoever since a norm with constitutional rank ascribed universally binding force to the legal interpretation effected by the Constitutional Tribunal. In the current legal state the Constitutional Tribunal when interpreting statutes (both a universally binding and an operative interpretation) is not bound by the legal interpretation established by other bodies while these bodies when making any and all interpretations are bound by the universally binding interpretation established in a

resolution of the Constitutional Tribunal. On account of the universally binding force of a resolution of the Constitutional Tribunal, the bodies applying the law, if there are differences between the Constitutional Tribunal's interpretation and the one made by another body, are obliged to accept the prevalence of the universally binding interpretation made by the Tribunal. This means that no entity may refer to some other understanding of a provision besides the one singled out in a resolution adopted by the Constitutional Tribunal. This concerns entities obliged to abide by a given norm and the bodies established to apply it (the first hypothesis of the resolution).

4. The most complex and the most debatable topic up until now is indubitably the issue of the temporary validity („action”) of the interpretation established in a resolution adopted by the Constitutional Tribunal under the course of article 13 of the Constitutional Tribunal Act and the closely-related issue of this interpretation's impact on the legal relationships in existence before the Tribunal's resolution is adopted and the problem of making it public in the Journal of Laws. The Constitutional Tribunal has taken the position that it is not possible to talk about an initial and a final moment of validity for the interpretation established by the Tribunal in the same sense that one speaks of the initial and final moment of validity for a legal provision. If a provision comes into force or if it is repealed we are dealing with a specific change in the legal normative system. The rules of legislative methodology necessitate the creation of law in such a way that both the moment when a new regulation comes into force and the moment when a current regulation loses its binding force are precisely defined. Hence the theory of law and the lawmaker developed criteria enabling one to assert an explicit or an implicit derogation. With a resolution adopted by the Constitutional Tribunal establishing an interpretation, things are totally different since – as was emphasized above – it only establishes what the proper understanding (consistent with the accepted rules of interpretation adopted in the legal order) is for the provisions interpreted by the Tribunal and it does not contribute new content to the normative legal system. The contents of a legal norm – assuming that the provisions undergoing interpretation have the same reading and that the factors for determining how they are understood have not changed – are the same from the date when the statute comes into force, for the entire period of its validity, i.e. before a resolution is adopted by the Constitutional Tribunal, at the time when it is adopted, on the date of its publication and subsequent to this date (the first hypothesis of this resolution).

Since that is the case there are no grounds for the publication of the Tribunal's resolution establishing the universally binding interpretation to be linked to the initial date of „universally binding force” or the „general validity” of this interpretation. To the contrary, it is right to acknowledge that the general validity of the interpretation established by the Constitutional Tribunal is linked by time with the existence of the legal norm whose contents are explained by the Tribunal's resolution. Hence, the publication of the Constitutional Tribunal's resolution in the Journal of Laws mentioned in article 13, section 3 of the Constitutional Tribunal Act is informational in nature and is not related to the question of the universally binding force of the interpretation made by the Constitutional Tribunal. The duty of publishing various types of information in official promulgation bodies is a frequent phenomenon. One such body for obligatorily releasing specific information is *inter alia* the Monitor Polski. The rank of these resolutions – according to the Constitutional Tribunal decided that the resolutions of the Constitutional Tribunal entailing binding interpretations in keeping with the norm expressed in article 13, section 3 of the Constitutional Tribunal Act shall be placed in the Journal of Laws coupled with the fact that they only concern the interpretation of constitutional provisions (the first hypothesis of the resolution).

On account of the „replacement” and „declaratory” nature of the interpretation of a resolution adopted by the Constitutional Tribunal, the rule *lex retro non agit is* not applicable

by its very nature (*ex definitione).* A separate question – which is reviewed in the next section of this reasoning – is the issue of correcting or tolerating the legal relationships shaped on the grounds of a different understanding of the legal norm from the one established in the Tribunal's resolution from before a resolution is published in the Journal of Laws.

The assertion that the value of the general validity of the interpretation established by the Constitutional Tribunal is linked by time to the legal existence of the norm whose meaning is explained by the interpretation requires some commentary. Namely, accepting the distinction between legal provisions as fragments of the texts of legislative statutes and legal norms as the contents of these provisions, one must arrive at the conclusion that over the duration of a given provision's validity, with the same reading ascribed by the lawmaker, it may have the same unwavering normative contents from the time when it comes into force for the duration of its validity or the contents thereof may undergo modification (evolution) along with amendments to other delimiting factors in its understanding besides how it reads. For the comprehension of the contents of a legal provision is demarcated not only by its reading but also by the contents of the other legal provisions exerting an influence on how the provision under interpretation is understood (within the framework of system interpretation), as well as by non-statutory delimiting factors, such as the accepted rules of interpretation, the axiology underpinning a given legal order, the purpose and the functions of a given regulation in the context of current social, economic, cultural and other similar relationships. In considering a petition to establish the universally binding interpretation of a specific provision (specific provisions) the Constitutional Tribunal investigates in particular, whether from the date when this provision came into force (as it currently reads) such amendments to its system or non-statutory context took place and which would justify the recognition that over the duration of a given provision's validity, a change in how it is understood occurred even though its reading has not been modified. If the Constitutional Tribunal does not stipulate otherwise, then it must be accepted that the universally binding interpretation in its resolution refers to the period from the very outset when this provision became binding (from the day when it came into force) unless the Constitutional Tribunal indicates in its resolution another relevant initial moment (the first hypothesis of the resolution).

„A provision coming into force" should be understood in this context to denote the day from which the provision subject to interpretation by the Tribunal is binding in the reading to which the Tribunal's resolution refers, except that one must remember that the non-essential amendments to a given provision are not meaningful from the point of view of the interpretational doubt underlying the Tribunal's interpretation (e.g. editorial amendments which do not have any substantive meaning, changes to its numbering or changes in that portion of the provision to which the Tribunal's interpretation does not make reference).

A similar understanding should be referenced to the issue of an interpretation's period of validity after the resolution is adopted by the Constitutional Tribunal and is published in the Journal of Laws. Since this interpretation is vested with the force of general validity, as long as the provision is binding in the reading to which the Constitutional Tribunal's resolution refers (or in a reading which has been amended only in an unimportant manner) – so far as the Constitutional Tribunal does not establish some other interpretation – the interpretation of this provision will continue to be binding which was most recently established by the Tribunal, regardless of possible changes to its context. For the valor of the general validity of the interpretation set forth in a resolution of the Constitutional Tribunal precludes the ability of the addressees of a given norm to establish its interpretation independently in a manner diverging from the Tribunal's interpretation. In the reasoning of the resolution dated 2 October 1991 (W. 6/91) the Constitutional Tribunal stated the view that the universally binding interpretation of statutes by the nature of things petrifies the provisions subject to such

interpretation bringing to a conclusion the normal development in the practice of their application by the bodies founded to do so. the „petrifaction" mentioned herein is present insofar as the universally binding interpretation of a provision established by the Constitutional Tribunal may only be altered for the duration of its validity if the Tribunal re-establishes the interpretation – duly amended – of the same provision.

The foregoing position – combining the assumption about the „declaratory" nature of the interpretation established by the Constitutional Tribunal while ensuring the interpretation established by the Constitutional Tribunal as the universally binding interpretation of the necessary authority, as well as ensuring the certainty of the binding legal state does not signify support for what is known as the static theory of interpretation, as it assumes that the entities authorized by the power of article 13, section 1 of the Constitutional Tribunal Act may submit a petition to the Tribunal to reestablish the universally binding interpretation of this same provision if the applicant refers to a change in the context of this provision substantiating a different way of understanding it (the fifth hypothesis of this resolution).

The Commissioner for Citizens' Rights drew attention (in conjunction with sub-section 5 of the petition's petitum) to the fact that the binding force of the interpretation established by the Tribunal continues after the forfeiture of binding force by the provision which has been interpreted – over the period when the repealed provision is still applied to certain cases. Having agreed with the applicant's view the Constitutional Tribunal indicated that such a conclusion is entailed in a certain way in sub-section 1 of the substantiation to this resolution. For the Constitutional Tribunal's interpretation is binding if the provision of the statute subject to interpretation is binding proprio vigore or if the norm expressed therein is still binding and is applied (to a specific extent) by the power of the rules of interim law after the provision has formally been repealed.

In the considerations portrayed the Constitutional Tribunal retracted from the sentiment expressed in the reasoning for the resolution dated 9 December 1992 (W. 13/91), as a real loophole existed in the law where there was an absence of a statutory regulation on the time range for the operation of the universally binding interpretation of a statute made by the Tribunal. At that time, one of the judges of the Constitutional Tribunal spoke out against that opinion in a dissenting opinion (see Collection of the Constitutional Tribunal's Decisions, 1992, Part II, pp. 153-155). In light of the considerations portrayed, the Constitutional Tribunal has currently come to the conviction that the claim of existence of a loophole in the law in this degree is not substantiated (to which the author of the dissenting opinion drew attention at the time).

5. The acknowledgement that a resolution of the Constitutional Tribunal adopted under the course of article 13 of the Constitutional Tribunal Act has binding force with reference to the time before this resolution was adopted and published in the Journal of Laws (as a rule, from the day when the interpreted provision comes into force) does not in and of itself pre judge the position on the possible correction or tolerance of the legal relationships previously shaped on the basis of another understanding of the legal norm besides the one established in the Tribunal's resolution.

The operation of the law, especially in a democratic State ruled by law, is founded on the premise that all the addressees of a binding legal norm – and thus the entities obliged to abide by it and the bodies founded to apply it -are familiar with its proper contents (i.e. the fiction of general familiarity with the law) and that no one may evade the negative consequences of violating this norm on the basis that he/she was not familiar with this norm or that he/she understood it erroneously (ignorantia iuris nocet). Under the premise that the universally binding interpretation of statutes established by the Constitutional Tribunal does

not add anything and that it does not take anything away from the contents of the binding legal norms, and that its binding force (the value of general validity) also refers to the time before the adoption and publication of the relevant resolution by the Constitutional Tribunal in the Journal of Laws, the circumstance that an entity obliged to abide by a given norm or a body founded to apply it was guided in its behaviors or conventional statutes, decisions or judgments by an understanding of this norm inconsistent with the Constitutional Tribunal's interpretation published at a later time, does not constitute in and of itself justification for these behaviors or acts. The fact that there may be doubts in interpretation when understanding some provisions does not constitute general acquiescence for arbitrariness in interpretation with reference to the provisions of the statutes which have not been subject to interpretation by the Constitutional Tribunal nor general acquiescence for such arbitrariness before the issuance and publication of the relevant resolution of the Tribunal. This general assertion, however, does not exclude the tolerance by the legal order of a certain margin of interpretational discrepancy in the operation of the law (in the behaviors of the entities obliged to abide by legal norms and in the actions of the bodies founded to apply them) – on account of the other values protected by this order. Just as there cannot be general acquiescence for arbitrariness in interpreting statutes, one cannot generally exclude a certain „margin of justification" for interpretational discrepancies on account of particular circumstances. Insofar as interpretational doubts occur frequently in the operation of the law – especially laws which are amended numerous times and which have a plethora of detailed statutory regulations; where, in conjunction with the foregoing, interpretational discrepancies appear even between legal authorities, the requirement for everyone to decide on all interpretational doubts in an identical fashion would be impossible to fulfill. Under such an assumption, after all, the institution of the universally binding interpretation of statutes by the Constitutional Tribunal would be dispensable. It serves precisely to remove those real interpretational doubts associated with the appearance of „interpretational gaps" as a sort of side effect of legislative activity unintended by the lawmaker. Thus although the hypothesis about the validity of the interpretation established in a resolution of the Constitutional Tribunal commencing at the time when the resolution is adopted or published in the Journal of Laws is incorrect, the moment when the interpretation is conveyed to the addressees of the legal norm – by publication in the Journal of Laws – may indubitably be an important turning point in evaluating behaviors inconsistent with this interpretation. Namely, from the time when the Tribunal's interpretation is conveyed to the addressees of the legal norm, actions inconsistent with the contents of the norm established by the Tribunal must always encounter the same disapproval from the law as with actions in contradiction with a statute. In turn, actions inconsistent with this legal norm in its proper (correct) understanding established in binding fashion by the Constitutional Tribunal carried out under a different understanding of this norm before the relevant resolution is adopted by the Tribunal and before it is conveyed to the addressees of the norm must be subject to a more complicated evaluation, where the practical consequences of such actions must be determined while taking into consideration other circumstances.

One of the aspects of this general topic – albeit not the only one – touched on by the Commissioner for Citizens' Rights is the issue of stirring legally binding court rulings and final administrative decisions as well as other legal acts in a situation when they were issued or effected pursuant to a legal norm understood differently from its proper understanding, which is later established in a binding fashion in the relevant resolution of the Constitutional Tribunal. The applicant rightly observes that this problem cannot be resolved on the foundation of the interpretation of the provisions set forth in the Constitutional Tribunal Act, for it is necessary to reach for the proper procedures for applying the law *(inter alia to* the Administrative Proceedings Code, the Civil Proceedings Code, the Criminal Proceedings

Code as well as former provisions). The proper provisions set out elsewhere besides the Constitutional Tribunal Act govern the permissibility, scope and course for correcting the effects of statutes of applying the law effected before the date of publication of the resolution adopted by the Constitutional Tribunal inconsistently with the understanding of the provision specified in the said resolution (the second hypothesis of the resolution). The detailed contents of the proper provisions are not the subject matter of the considerations of the Constitutional Tribunal in this case. It is worth observing, however, that the provisions duly governing the procedures usually enact qualified grounds for stirring a legally binding decision (i.e. not every material, legal or procedural defect constitutes grounds to stir such a decision).

Some of the provisions defining the qualified grounds for stirring a legally binding decision or final decision entail imprecise terms leaving a certain amount of „interpretational gaps" intended by the lawmaker to the bodies applying the law, where they must be explained while taking into account all the circumstances surrounding a given case. These terms include in particular „gross violation of law," which is an element for regulating the grounds for stirring legally binding court rulings by way of extraordinary appeal in civil cases (article 417 § 1 of the Civil Proceedings Code) and asserting that final administrative decisions are null and void (article 156 § l, sub-section 2 of the Administrative Proceedings Code). The petition of a norm understood inconsistently with its proper understanding as established in binding fashion in a subsequent resolution of the Constitutional Tribunal may also be qualified as a derogation towards the law while deciding whether the derogation was a „gross violation of the law" depends on circumstances which cannot be precisely defined in abstracto; this must be done by the body applying the law.

Since the topic at hand is one which goes way beyond the interpretation of article 13 of the Constitutional Tribunal Act, the Constitutional Tribunal does not consider it to be expedient to respond in detail to the sentiment expressed in sub-section 3 of the petitum in the petition filed by the Commissioner for Citizens' Rights that the Tribunal's resolution, issued by the means of article 13 of the Constitutional Tribunal Act, may constitute the basis to reinstate proceedings pursuant to the relevant norms and according to the principles envisaged by these norms. It is only worth noting that it is agreeably accepted in legal writings and in the collection of court decisions that the provisions of the relevant statutes defining the grounds for reinstating proceedings which have been concluded in a legally binding fashion should be interpreted strictly and that it is not permissible to interpret them more broadly. This principle also refers to article 31, section 1 of the Constitutional Tribunal Act which defines the independent basis for reinstating court proceedings (separate from the grounds specified in the statutes governing court proceedings) because the legally binding decision concluding a proceedings was issued by applying the legal provision which later as a result of a decision made by the Constitutional Tribunal was repealed or amended in part or in full. The provision quoted here cannot be applied according to the principle of similarity to the collision between a legally binding court decision and the universally binding interpretation established later by the Constitutional Tribunal of the provision constituting the basis of this decision.

In turn, it is necessary to concur with the opinion of the Commissioner for Citizens' Rights expressed in sub-section 4 of the petition's petitum; the conclusion with these contents is implicitly included in sub-section 1 of the substantiation to this resolution. 6. Since the Commissioner for Citizens' Rights and the Prosecutor General acknowledged that

the issues formulated in sub-section 7 of the petitum in the petition submitted by the Commissioner for Citizens' Rights, decided in sub-section 4 of this resolution, is a controversial problem, one must keep in mind that neither the reading of the constitutional and statutory provisions governing the institution of the universally binding interpretation of statutes nor the reading of article 13, sub-section 3 and the other provisions of the Supreme

Court Act dated 20 September 1984 (Journal of Laws, 1990, Number 26, Item 153 with subsequent amendments, hereinafter: „Supreme Court Act”) constitutes a restriction or exclusion of the Constitutional Tribunal's power to establish the universally binding interpretation of statutes in a circumstance in which a prior resolution adopted by the Supreme Court under the course prescribed by article 13, sub-section 3 of the Supreme Court Act concerned the same interpretational issue or if the Supreme Court refused to issue such a resolution. In addition, since the institution of the universally binding interpretation of statutes is constitutional in rank, and since the law ascribes qualified legal force – the value of general validity – to the Constitutional Tribunal's resolutions establishing such an interpretation, there are no grounds whatsoever to recognize a restriction or exclusion of the Tribunal's power in the circumstances mentioned.

Functional concerns additionally support the foregoing stance. The entity authorized to submit a petition to establish. the universally binding interpretation pursuant to article 13, section 1 of the Constitutional Tribunal Act may aim to „strengthen” the role of the interpretation established by the Supreme Court in the circumstances mentioned by outfitting it with the value of general validity (a Constitutional Tribunal resolution is indispensable to do this) or to „break” the interpretation established by the Supreme Court on the grounds of the Constitutional Tribunal establishing a different interpretation with universally binding force; in the latter instance, the applicant should state especially fastidious legal argumentation in favor of the interpretation differing from the one adopted by the Supreme Court.

One cannot agree with the allegation stating that in a situation in which the meaning of a given provision has already been explicated in a resolution adopted by the Supreme Court under the course of action laid out in article 13, section 3 of the Supreme Court Act, the principle entitled *clara non sunt interpretanda* should be applied. No provision of law at the constitutional or statutory rank creates this type of constraint for the powers of the entitled applicants and of the Constitutional Tribunal. It is something different that the Constitutional Tribunal as a rule acknowledges in exceptional instances that a problem of interpretation explicated by the Supreme Court pursuant to article 13, sub-section 3 of the Supreme Court Act requires further explanation. Since the evaluation of this issue carried out by the Supreme Court is not binding on the Constitutional Tribunal, in such an instance we would be dealing with a difference of evaluation between the Supreme Court and the Constitutional Tribunal, and not with an exclusion of applying the Tribunal's powers on account of the stance previously taken by the Supreme Court (fourth hypothesis of the resolution). (...)