

JUDGEMENT
of 4 April, 2001
Ref. No. K. 11/00*

The Constitutional Tribunal, in a bench composed of:

Janusz Trzcinski – Presiding Judge
Jerzy Ciemniewski
Zdzisław Czeszejko-Sochacki
Lech Garlicki
Stefan J. Jaworski – Judge Rapporteur
Wiesław Johann
Krzysztof Kolasiński
Biruta Lewaszkiwicz-Petrykowska
Andrzej Mączyński
Janusz Niemcewicz
Jadwiga Skórzewska-Łosiak
Jerzy Stępień
Marian Zdyb,

Joanna Szymczak – Recording Clerk,

having considered, at a hearing on 4 April 2001, an application of the Commissioner for Citizens' Rights, in the presence of duly authorised representatives of the parties to the case at hand: the applicant, the Sejm of the Republic of Poland, and the Public Prosecutor-General, to determine that:

1. Article 36 paragraph 1 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 787) does not conform to Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

2. Article 37 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 78 with subsequent amendments) in the scope in which this provision applies to the not yet enforced valid court decisions issued before entering into force of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances (Journal of Laws – Dz.U. No. 122, item 1317) does not conform to Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

3. Article 2 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances, in the scope in which this provision allows the application of the previous principles of executing court judgements issued in eviction cases to the not yet enforced valid court decisions issued before entering into force of this Act, does not conform to Article 71 paragraph 1, Article 72 paragraph 1 and Article 75 paragraph 1 of the Constitution of the Republic of Poland

a d j u d i c a t e s a s f o l l o w s :

* The sentencing part of the judgement was published in the Journal of Laws – [Dziennik Ustaw] - Dz.U. No 32 item 386

1. Article 2 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances, (Journal of Laws – Dz.U. No. 122, item 1317) in connection with Article 37 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 787; amended: No. 162 item 1119; 1999 No. 111 item 1281; 2000 No. 3 item 46, No. 5 item 67, No. 83 item 946, No. 88 item 988, No. 95 item 1041) in the scope in which it permits starting or conducting execution against persons referred to in Article 36 paragraph 4 of the Act on Renting Lodgings and Housing Allowances in its wording given in Article 1 subparagraph 1 of the cited Act of December 15, 2000, in relation to whom a valid judgement, issued before this Act entered into force, adjudicated the obligation to vacate the lodging held on the grounds of a legal title, do not conform to Article 30 and Article 71 paragraph 1 of the Constitution of the Republic of Poland.

2. Article 2 of the Act of 15 December 2000, mentioned in subparagraph 1 of the judgement, is not in non-conformity to Article 72 paragraph 1 and Article 75 paragraph 1 of the Constitution.

Furthermore, on the grounds of Article 39 paragraph 1 subparagraph 2 and paragraph 2 of the Constitutional Tribunal Act, *i t d e c i d e s*:

to discontinue the proceedings in connection with the withdrawal of the application concerning Article 36 paragraph 1 of the Act on Renting Lodgings and Housing Allowances in its version as before the amendment of 15 December 2000 (Journal of Laws – Dz.U. No. 122, item 1317).

Statement of Reasons:

I

1. On 25 April 2000, the Commissioner for Citizens' Rights submitted an application to the Constitutional Tribunal to determine the non-conformity of Article 37 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, further referred to as the Act on Renting Lodgings (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 787; amendments in No. 162 item 1119; 1999 No. 111, item 1281; 2000 No. 5 item 67) in the scope in which this provision allows carrying out eviction judgements in situations where an alternative lodging was not indicated to the person obliged and the person obliged cannot satisfy with his/her own resources his/her housing needs under Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

On 15 November 2000, the Commissioner for Citizens' Rights submitted a written statement of claim to the Constitutional Tribunal in which he extended his previous application of 25 April 2000 and motioned to determine the non-conformity of Article 36 paragraph 1 of the Act on Renting Lodgings of July 2, 1994, (consolidated text of 1998, Journal of Laws – Dz.U. No. 120 item 787; amended: No. 162 item 1119; 1999 No. 111 item 1281; 2000 No. 3 item 46, No. 5 item 67, No. 83 item 946, No. 88 item 988; further referred to as the Act on Renting Lodgings) to Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

In his written statement of 20 February 2001, the Commissioner for Citizens' Rights withdrew his application concerning Article 36 paragraph 1 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, and upheld his application concerning Article 37 of the Act on Renting Lodgings and Housing Allowances in the scope in which this provision

applies to the not yet enforced valid court judgements issued before the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances, (Journal of Laws – Dz.U. No. 122, item 1317) entered into force.

On 26 March 2001, the Commissioner for Citizens' Rights supplemented his position set forth in his written statement of 20 February 2001, and applied for the determination of the non-conformity of Article 2 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances (Journal of Laws – Dz.U. No. 122, item 1317) in the scope in which this provision allows the application to the not yet enforced valid court decisions, issued before this Act's entering into force, of the previous principles of executing court decisions in eviction cases, to Article 71 paragraph 1, Article 72 paragraph 1 and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

In the substantiation of his position challenging the conformity of Article 37 to the Constitution, the Commissioner for Citizens' Rights refers to the received complaints whose authors point to the fact that court executive officers, acting on the grounds of court decisions, undertake execution activities and remove families, often with small children, from their lodgings without offering them any alternative lodgings. According to the Commissioner for Citizens' Rights, the Supreme Court adopted in its resolutions of 8 December 1995 (*Ref. No III CZP 171/95*, Collection of Supreme Court Civil Department's decisions – OSNC of 1996, vol. 5, item 64), of 6 February 1996 (*Ref. No III CZP 7/96*, OSNC of 1996, vol. 5 item 68) and 7 February 1997 (*Ref. No III CZP 120/96*, OSNC of 1997, vol. 6-7, item 69) a justified position that the provision of §151 paragraph 1 of the ordinance of the Minister of Justice, dated 9 March 1968, and formally not abolished yet, concerning the activities of the court executive officers (Journal of Laws – Dz.U. No. 10, item 52 with subsequent amendments) under which the execution of an eviction from an lodging can be carried out only after the court executive officer makes sure that the debtor has an alternative lodging to move in or that he can return to the lodging he lived in so far, cannot be applied to the execution of court decisions ordering to vacate lodgings subject to the provisions of the Act on Renting Lodgings and Housing Allowances. In its resolutions of 22 December 1997 (...) and 3 December 1998, the Supreme Court expanded its position on the absence of grounds for the application of §151 paragraph 1 of the ordinance of the Minister of Justice also to forms of holding lodgings other than renting, such as the co-operative title for the lodging and lending.

Furthermore, the Commissioner for Citizens' Rights points to the fact that the judicial decisions of the Constitutional Tribunal and the Supreme Court confirm the view that under the currently valid provisions, the debtor cannot effectively seek a welfare lodging from the municipality in a situation when the court did not grant him/her a title for this lodging on the grounds of Article 36 paragraph 1 of the Act on Renting Lodgings and Housing Allowances in its previous text.

2. The Public Prosecutor-General, in his letter of 26 July 2000, assumed a position that Article 37 of the Act on Renting Lodgings and Housing Allowances is not in non-conformity to Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland. This provision is of procedural significance and is used in executive proceedings. The intention of this provision is to ensure a minimum protection to the evicted person and it has been adopted for humanitarian reasons. It pertains to executive proceedings carried out to vindicate the obligation confirmed by the valid court sentence equipped with the enforcement clause. It follows out of the nature of these proceedings that the protection of the creditor's rights must be given priority over the protection of the debtor's rights. Protection of the debtor cannot lead to the non-performance of court sentence since this would undermine the constitutional principle of a state ruled by law and jeopardise confidence in the administration of justice. The implementation of rights resulting from the provisions indicated as models of constitutional review must not be done at

the cost of the creditors whose rights enjoy a priority of protection before the rights of the debtors. According to the Public Prosecutor-General, the constitutionality of the provision in question cannot be evaluated in separation from the regulation by law concerning renting of lodgings, since the legislator included in this regulation by law some substantive provisions, the purpose of which is putting into effect of the citizens' rights and duties of the public authorities mentioned in Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution.

In a letter of 13 December 2000, the Public Prosecutor-General presented an additional opinion in connection with the written statement of the Commissioner for Citizens' Rights expanding the scope of the latter's application dated 25 April 2000. The Public Prosecutor-General agreed with the applicant that Article 36 paragraph 1 of the then being in force Act on Renting Lodgings did not conform to Article 71 paragraph 1 of the Constitution of the Republic of Poland because the interpretation of Article 36 paragraph 1 of the Act in its pre-amendment text led to a conclusion that it did not provide sufficient guaranties putting into effect the rights of families being in difficult social and material circumstances and mentioned in Article 71 paragraph 1 of the Constitution.

The Public Prosecutor-General in a letter of 19 March 2001, submitted an additional position concerning the written statement of the Commissioner for Citizens' Rights of 20 February 2001. Having agreed that the transitional provision of the Article 2 of the Act of 15 December 2000, does not pertain to the unfinished executive proceedings, the Public Prosecutor-General stresses that the identification of conditions qualifying for receiving a welfare lodging takes place during the examination of a civil law case and only the court is authorised to decide whether this eligibility exists or not. For this reason, in the opinion of the Public Prosecutor-General, the objection of the Commissioner for Citizens' Rights shall be deemed addressed to the wrong provision, since no findings significant for the solution of the case can be made at the stage of executive proceedings.

3. In a letter of November 16, 2000, Marshal of the Sejm shared the position of the Commissioner for Citizens' Rights that Article 37 of the Act on Renting Lodgings and Housing Allowances did not conform to Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland in the scope in which it allows eviction without providing a welfare lodging and the person obliged cannot satisfy his/her housing needs from his/her own resources.

According to the Marshal of the Sejm, the envisaged under Article 71 paragraph 1 of the Constitution obligation of the State to take care of the family's welfare in its social and economic policy and the obligation to extend special assistance to families being in difficult social and material circumstances, especially families with many children and single-parent families, is not implemented because most evictions from lodgings are adjudicated when these families cannot afford to pay the rent and other costs related to using their lodgings. Furthermore, the fact that executive proceedings are undertaken against families with children is not in conformity to the principle of the protection of the rights of the child set forth in Article 72 paragraph 1 of the Constitution and to the obligations of the Republic of Poland resulting from the Convention on the Rights of the Child, of which Poland was one of the initiators.

The Marshal of the Sejm also stated that the Article 75 paragraph 1 of the Constitution of Poland includes not only a directive addressed to the public authorities but also a minimum level of civil rights protection – not subject to diminishing by an ordinary act – in the scope of the right to a lodging, while the discussed Article 37 not only does not counteract homelessness, but is a sheer source of its intensification.

II

At the hearing, the representative of the applicant modified the application by giving it the following wording: Article 2 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances, (Journal of Laws – Dz.U. No. 122, item 1317) in the scope in which it allows its application to the not yet enforced valid eviction decisions issued before this Act's entering into force, and Article 37 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 78 with subsequent amendments) in the judicial decisions understood as a provision permitting the execution of eviction decisions without the necessity to provide the evicted person and his/her family with a welfare lodging outside the protection period, in the scope in which this provision applies to the not yet enforced valid decisions issued before the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances entered into force, does not conform to Article 30, Article 71 paragraph 1, Article 72 paragraph 1, and Article 75 paragraph 1 of the Constitution of the Republic of Poland.

In relation to the purport of his original application, the Commissioner for Citizens' Rights expanded the scope of constitutional supervision by adding Article 30 of the Constitution which speaks of the natural, inalienable dignity of a human being that is a source of its freedoms, human rights, and civil rights. In the opinion of the Commissioner for Citizens' Rights, the removal from an lodging (eviction to „nowhere”) of persons who cannot be blamed for being unable to satisfy their housing needs with their own resources and cannot afford paying the costs of using their lodgings, also infringes Article 30 of the Constitution as it guaranties the inviolability of the human dignity. However, in the remaining scope he upheld the points made in the written applications and relating to the unconstitutional character of the legal provisions challenged by the Commissioner for Citizens' Rights.

The Sejm representative acknowledged that provisions challenged by the Commissioner for Citizens' Rights also in their modified version presented at the hearing did not conform to the indicated constitutional models. The Sejm fully shared the points made by the Commissioner for Citizens' Rights and amended the Act on Renting Lodgings and Housing Allowances, specifically its Article 36. The new provision obligates the court to *ex officio* consider the evicted person's right to welfare lodgings. Furthermore, the Act defines situations in which the court unconditionally adjudicates providing welfare lodgings. This is the case with disabled persons, legally incapacitated children, and persons living in poverty. In Article 2 of the amendment, the Sejm included a principle according to which the new provisions are applied, if they are beneficial to the tenants whose cases were started under the formerly valid provisions but were not yet closed with a valid court decision. By introducing this transitional provision, the Sejm intended to ensure protection to those citizens who cannot satisfy their housing needs with their own resources. In the opinion of the Sejm, the hitherto applied eviction „to nowhere” infringes the respective constitutional provision and defies the human dignity referred to in the Article 30 of the Constitution.

However, undertaking decisions concerning these problems, the Sejm evidently skipped provisions dealing with circumstances of persons against whom valid eviction decisions were put into effect under new provision these persons are unconditionally eligible to get a welfare lodging.

The Public Prosecutor-General also shared the opinion of the Commissioner for Citizens' Rights on the non-conformity of Article 2 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances, to the Constitution in the scope in which it allows the application to the not yet enforced valid court decisions, issued before this Act's entering into force, of the previous principles of executing these decisions. The Public Prosecutor-General considered the consequences of the adjudication of the

unconstitutionality of Article 2 of the amending Act by the Constitutional Tribunal. He specified the ensuing legal problems and analysed ways to solve them.

The Public Prosecutor-General believes that since the Commissioner for Citizens' Rights had withdrawn the challenged Article 36 of the Act (in its pre-amendment text), the Constitutional Tribunal shall not adjudicate on the matter.

As regards Article 37 of the Act on Renting Lodgings and Housing Allowances, the charge of unconstitutionality is not justified, especially in matters related to eviction judgements adjudicated but not put into effect.

III

The Constitutional Tribunal has considered the following:

A.1. During the period when Article 36 was valid in its pre-amendment text, the situation of families evicted on the grounds of court decisions without providing a welfare lodging to them has become a burning social problem. On the basis of materials gathered by the Ministry of Justice it was established that the total of 9,382 eviction decisions were put into effect in 1999, of these 2,511 debtors agreed to leave the lodgings, 1,751 received welfare lodgings, and 5,120 evictions were carried out without providing an alternative lodgings to the debtors. (*Letter from Acting President of the Housing and Town Development Office Piotr Mync, dated 8 December 2000, Ref. No. GM-2/022/194/2000*).

As regards the years 1994-1998, the National Council of Court Executive Officers in Warsaw released the following data on evictions carried out from lodgings and commercial premises:

1)	evictions to alternative and welfare lodgings	5,105
2)	evictions „to nowhere”	6,656
3)	other evictions (to premises other than mentioned above)	488
4)	amicable vacation of lodging by the debtors	3,538
5)	on-going proceedings	9,956
6)	pending cases	2,301

(Letter from the National Council of Court Executive Officers in Warsaw, dated March 31, 1999, Ref. No. PBM-15 – 196-99).

According to the Commissioner for Citizens' Rights, who has received many complaints from persons obliged by valid court judgements to vacate their lodgings, most evictions were adjudicated because families could not afford to pay the rent and other charges resulting from using their lodgings. This situation encouraged the Commissioner for Citizens' Rights to apply to the Constitutional Tribunal to investigate the constitutionality of all the provisions of the Act which, in his opinion, allowed to evict those people from their lodgings without the necessity to provide them a welfare lodging.

Also the Marshal of the Sejm pointed to the fact that evictions are adjudicated against people who are in difficult material circumstances, cannot find a job, have children and, for reasons beyond their control, cannot pay their rent and the related costs. The evicted families often not only have no money to pay the rent, but they also have no money to buy food and basic clothing. In such cases, adjudicating the eviction „to nowhere” makes those people homeless and, as a result, they are deprived of an opportunity to live in dignity (*Letter from Marshal of the Sejm dated November 16, 2000*).

The challenged Article 36 paragraph 1 of the Act on Renting Lodgings and Housing Allowances provided that „the court, considering the way in which the lodging was hitherto used by the tenant, his/her special material and family circumstances, may rule in its judgement ordering vacation of the lodging that the tenant is eligible for a welfare lodging. In

such cases, the municipality is obliged to provide the welfare lodgings.” The ambiguous purport of this provision in relation to tenants’ rights to a welfare lodging caused many discrepancies in the common court decisions. This induced the Supreme Court to express its opinion on the interpretation of the obligation, resulting from this provision, of the court scrutinising lodging vacationing suits, particularly the obligation to solve the question whether the court was *ex officio* obliged to examine the right of the persons obliged to leave the lodging to receive a welfare lodging. In its resolution of 15 March 1995, Ref. No. III CZP 23/95, the Supreme Court decided that „on the grounds of Article 36 paragraph 1 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances (Journal of Laws – Dz.U. No. 105 item 509), the court may, also *ex officio*, rule in its judgement ordering vacation of the lodging, that the tenant is eligible for a welfare lodging” (Supreme Court Civil Chamber decisions – OSN Izba Cywilna, 1995, vol. 7-8, item 105). In its resolution of 22 May 1996, the Supreme Court presented an opinion that „the court *ex officio* examines whether there are conditions to adjudicate tenant’s eligibility for a welfare lodging. Including a negative decision on the above eligibility in the verdict ordering the vacation of the lodging is redundant” (Supreme Court Civil Chamber decisions – OSN Izba Cywilna, 1996, vol. 9, item 120). The Supreme Court took a comprehensive approach to this complex matter in its resolution adopted by a bench composed of seven judges on 19 May 2000, Ref. No. III CZP 4/00. The Supreme Court stated: „in actions seeking the vacation of rented lodgings, the defendant tenant is to indicate conditions under Article 36 of the Act of 2 July 1994 on Renting Lodgings (...) making him/her eligible for a welfare lodging. The court undertakes an *ex officio* initiative to take evidences only in special situations (Article 32, second sentence of the Code of Civil Procedure). If these conditions are established, the court should adjudicate the eligibility for a welfare lodging.”

The special situations mentioned above are, according to the Supreme Court, „such exceptional situations where materials of a case suggest that evictions under Article 32 paragraph 1 item 2 of the Act on Renting Lodgings and Housing Allowances (delays in paying rent or utility charges) involve elderly people, the disabled, and families with many children. These may be cases where the cause of eviction is poverty resulting from a particularly difficult job and family circumstances of the former tenant, and the abandoning to cushion the consequences of the adjudicated eviction by providing a welfare lodging cannot be reconciled with moral and social considerations (...). The absence of a decision on the issue of former tenant’s eligibility for a welfare lodging does not deprive him/her of the entitlement to appeal. The defendant may challenge the verdict as a whole on the grounds that the court, while recognising the action seeking the vacation of the lodging without adjudicating the eligibility of the evicted to a welfare lodging (...) passed a judgement that breaches the law” (Supreme Court Civil Chamber decisions – OSN Izba Cywilna, 2000, No. 11, item 195, vol. 2, 9-10).

As the above-presented statistical data show, the protection mechanism of Article 36 of the Act – even when the highly restrictive Supreme Court’s interpretation was applied – did not offer a sufficient barrier protecting against executive proceedings against tenants obliged to leave their lodgings and infringed the fundamental constitutional standards.

2. The negative evaluation of the legislation in force up to nowadays has persuaded the legislator to introduce a radical change in the existing law. In line with Article 1 of the Act of 15 December 2000 on Changes to the Act on Renting Lodgings and Housing Allowances (Journal of Laws – Dz.U. No. 122, item 1317) Article 36 of the Act of 2 July 1994 (consolidated text of 1998, Journal of Laws – Dz.U. No. 120, item 787; amended: No. 162 item 1119; 1999 No. 111 item 1281; 2000 No. 3 item 46, No. 5 item 67, No. 83 item 946, No. 88 item 988, No. 95 item 1041) received the following wording:

„Article 36. 1. In a court sentence ordering the vacating of an lodging, the court adjudicates the eligibility or ineligibility for a welfare lodging enjoyed by the persons involved. The obligation to provide a welfare lodging belongs to the municipality which is geographically appropriate for the lodging to be vacated.

2. If in the court judgement two or more persons are eligible under paragraph 1, the municipality is obliged to provide them with at least one welfare lodging.

3. The court, *ex officio* investigating whether there are conditions for providing a welfare lodging, adjudicates on the eligibility of persons referred to in paragraph 1, considering the way in which they have so far used the lodging and their special material and family circumstances.

4. The court cannot adjudicate the ineligibility for a welfare lodging to:

- 1) a pregnant women,
- 2) an under-aged, a disabled in the meaning of the Act of 29 November 1990 on Social Aid, an incapacitated person
– and to persons taking care of such persons and living together with them,
- 3) persons satisfying the conditions defined by the municipal council’s resolution referred to in Article 5, paragraph 3 and Article 30,

unless these person can live in an lodging other than the one they have used so far.

5. The court may, with the reservation of paragraph 4, adjudicate the non– eligibility for a welfare lodging, particularly when the order to vacate the lodging results from causes described in Article 33 paragraphs 2 and 3.

6. When adjudicating the eligibility for a welfare lodging, the court orders to suspension of execution of vacating the lodging until the municipality offers a renting contract for a welfare lodging.”

The amendment introduced significant modifications to the formerly legal situation being in force. The legislator clearly expanded both the material conditions for receiving a welfare lodging and procedural guaranties protecting the evicted persons against carrying out the verdict until the time when the municipality offers a welfare lodging renting contract.

Under the present legislation, the court is obliged in cases involving lodging vacation, to examine *ex officio* whether there are conditions justifying providing a welfare lodging and to adjudicate the eligibility or ineligibility for a welfare lodging.

Article 36 paragraph 4 specifies the categories of subjects to whom the legislator grants the unconditional eligibility for a welfare lodging and the court cannot fail to adjudicate their eligibility for a welfare lodging unless they can live in another lodging, this meaning that in no case they will be left without a place to live in. At the same time, the amended text of Article 36 paragraph 1 implies that like under the previous order, the legislator assumes also the existence of such a category of persons obliged (with the exclusion of those mentioned in Article 36 paragraph 4) to whom the court will adjudicate the ineligibility for a welfare lodging. The purport of this provision seems to suggest that the eligibility for a welfare lodging is enjoyed only by persons who, in the opinion of the court, are in special family and material circumstances and who have used their lodging in a proper way so far. However, establishing conditions qualifying for a welfare lodging is always done during the examination of civil law cases and only the court is competent to adjudicate the eligibility or ineligibility.

This new standard of protection was provided by the legislator for the future and for the people against whom action was started but not closed before entering into force of the Act (that is, before 31 December 2000). It should also be assumed, that while adjudicating the ineligibility for a welfare lodging, the courts will consider the social and material circumstances of the persons obliged and whether they can move into another lodging. As a

result of such a court proceeding, the sentence ordering to vacate the lodging will not mean the eviction „to nowhere.”

However, the Constitutional Tribunal states that this protection is unavailable to those persons obliged who have received an eviction sentence. According to Article 2 of the Act, its provisions are applicable to „proceedings on-going but not closed before the entering into force of the Act...” In relation to those persons, the defectiveness of the former Article 36 paragraph 1 noticed by the legislator was not corrected, hence the persons who under the currently valid provisions are unconditionally protected on the grounds of Article 36 paragraph 4 as meeting the statutory criteria of eligibility for a welfare lodging, namely pregnant women, under-aged, disabled, incapacitated, and persons taking care of them and living together with them, may be evicted without the necessity of providing them another lodging to move in.

It should be stressed here, that under the present legislation, it would be difficult to set aside valid decisions of eviction and executory documents with a writ of execution (i.e., eviction judgements with the enforcement clause) without a clear intervention of the Constitutional Tribunal, only on the grounds that the legal provisions have been amended in the scope in which it was provided for by the amending Act. Consequently, there is justified concern about the effectiveness of the application for resuming the proceedings or action against the execution (compare provisions of Article 840 of the Code of Civil Procedure, Article 403 §2 of the Code of Civil Procedure).

The above-described situation induces to the consideration of whether exclusion of the prescribed by the amended Article 36 protection standard for persons referred to in paragraph 4 of this Article enjoying unconditional right to a welfare lodging can be reconciled with the models of review indicated by the applicant: with the principle of inviolability of human dignity set forth in the Article 30 of the Constitution, the principle that families in difficult material and social circumstances are eligible for special assistance from public authorities, mentioned in Article 71 paragraph 1 of the Constitution and the rights of the child guaranteed by Article 72 paragraph 1 of the Constitution of the Republic of Poland.

At the hearing, the applicant pointed to Article 30 of the Constitution as a model of review for the provisions he was challenging. The Constitutional Tribunal represents the position that essential protective consequences result from the cited model of constitutional principle of inviolability, respect, and protection of human dignity.

The concept of human dignity cannot be reduced to only one semantic aspect. It may appear in various contexts and sink into various political, philosophical, and religious ideas. (P. Dutkiewicz, *Problem aksjologicznych podstaw prawa we współczesnej polskiej filozofii i teorii prawa [The problem of the axiological foundations of law in contemporary Polish philosophy and theory of law]*, Kraków, 1996).

The constitution-makers gave a constitutional sense to human dignity by making it a point of reference for the system of values on which the Constitution is based and, at the same time, the foundation of the whole legal order in Poland (the Constitutional Tribunal pointed to it in its *Judgement of 23 March, 1999, K. 2/98*).

The Preamble to the Constitution stresses that the implementation of the Constitution should be accompanied by care taken to preserve the natural dignity of a human being. Therefore, dignity cannot be understood as a feature or package of rights granted by the state. For it is primary in relation to the state and, as a consequence of this fact, the legislator as well as legislative bodies must respect the purport of the concept of dignity of every human being.

This purport is most closely associated with the constitutional status of the individual, hence Article 30 that opens Chapter II of the Constitution says that: „the inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons

and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.”

Being the source of the individual’s rights and freedoms, the concept of dignity determines the manner of their understanding and implementation by the state. The ban on violating human dignity is unconditional and applies to everybody. Yet, the obligation to respect and protect dignity was imposed on the state’s public authorities. As a consequence, any activities of the public authorities should on the one hand allow for the existence of a certain autonomy within which the person can find an all-round social fulfilment and, on the other hand, these activities must not lead to creating legal situations or facts depriving the individual of his/her sense of dignity.

A premise for respecting human dignity understood in this way is, among other things, the existence of certain material minimum guaranteeing the individual a possibility to self-reliant functioning in society and giving every individual an opportunity for a full personal development in the surrounding cultural environment and civilisation.

In the light of the above, the Constitutional Tribunal is of the opinion that the absence of minimum guarantees for subjects referred to in Article 36 paragraph 4 of the Act cannot be reconciled with the principle of respect and protection of human dignity set forth in Article 30 of the Constitution.

The provision of Article 71 paragraph 1 of the Constitution of the Republic of Poland, indicated by the applicant as another constitutional model, provides that: „the State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances – particularly those with many children or a single parent – shall have the right to special assistance from public authorities.” The Constitutional Tribunal can see the complexity of the protective functions of Article 71. First of all, it should be noted that the right set forth by Article 71 of the Constitution cannot be a direct basis for the citizen’s claims. Under Article 81 of the Constitution, this right can be claimed within limits defined by the act. At the same time, however, the Constitutional Tribunal shares a view expressed in the law doctrine of the Constitution of the Republic of Poland that infringement of the constitutional provision determining the aims of activities carried out by public authorities takes place, among other situations, when „the legislator wrongly interprets the provision of the Constitution defining a goal or task for the public authorities, especially by adopting a law prescribing means that could not lead to achieving that goal...” (J. Trzcíński, *Commentary on Article 79 paragraph 1 of the Constitution of the Republic of Poland, Konstytucja Rzeczypospolitej Polskiej. Komentarz, [The Constitution of the Republic of Poland. Commentary], vol. I, Warszawa 1999*). Inability to pay the rent for an lodging is clearly a symptom of difficult material circumstances and losing a lodging puts the family in difficult, if not tragic, social situation.

While implementing the disposition of the provision of Article 71 paragraph 1 of the Constitution, the legislator should provide a legal framework for handling this situation by, among other things, enabling the eligible persons to obtain special assistance from public authorities.

On the grounds of the existing provisions on renting lodgings, these persons cannot effectively claim welfare lodgings from the municipality in a situation where the court in its sentence did not provide them the right to such a lodging on the grounds of the formerly being in force Article 36 paragraph 1.

In the Article 4 of the Act on Renting Lodgings it is provided that satisfying the housing needs of self-governed communities is the municipalities’ own task. It should be noted, however, that as the Constitutional Tribunal stated in its judgement Ref. No. K. 4/95, „this provision does not provide conditions for constructing a right by virtue of which a citizen of a municipality could claim satisfying his housing needs” (Constitutional Tribunal’s decisions –

OTK, 1995, part II, item 27). According to Article 5 paragraph 2 of the Act on Renting Lodgings, in cases specified by the Act, the municipality provides alternative or welfare lodgings. This provision was expanded in Article 28, paragraph 1 of the Act, which says that „a welfare lodging renting contract may be concluded with a person whose housing needs are not satisfied and who is living in poverty, hence his/her monthly income does not allow renting an lodging on general principles. A contract for renting a welfare lodging is concluded also when the law obligates the municipality to do so.” The principle adopted in Article 30 of the Act is that: „the municipal council identifies the persons referred to in Article 28 paragraph 1, with whom renting contracts should be concluded in the first place as well as the rates to be paid for renting these lodgings.” It needs to be stressed here, that under the Supreme Court’s resolution of 30 April 1997, Ref. No. III CZ P 13/77 (Supreme Court Civil Department’s decisions – OSNC, 1997, vol. 8, item 104) Article 28 paragraph 1 first sentence of the Act on Renting Lodgings does not justify a claim from a person mentioned in this provision seeking the municipality’s obligation to conclude a welfare lodging renting contract.

However, such a claim would be possible, if the court adjudicated the tenant’s eligibility for a welfare lodging. Furthermore, in line with the formerly valid paragraph 2 Article 36, the eligible person would enjoy a priority in getting a welfare lodging.

Thus, if the result of the application of Article 2 of the Act is that persons mentioned in the amended Article 36 paragraph 4 lose their lodgings because of their difficult material circumstances and, under the court decision, are getting no alternative lodging instead, it is justified to state that this provision does not conform at least to the constitutional model described in Article 71 paragraph 1.

As regards the principle of protection of the rights of the child set forth in Article 72 paragraph 1 of the Constitution of the Republic of Poland, these rights are not limited by provisions of Article 81 of the Constitution of the Republic of Poland. Under Article 72 paragraph 1 of the Constitution, „The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.” On the grounds of the Convention on the Rights of the Child adopted by the Republic of Poland (Journal of Laws – Dz.U., 1991, No. 120, item 526 with amendments) the Polish State obliged itself under Article 3 paragraph 1 of the Convention, to ensure that any measures involving children and undertaken by, among other institutions, the legislative bodies, the protection of the interests of the child will be given a priority. The Constitutional Tribunal notes that the cited models of review do not directly refer to the legal and actual situation of persons referred to in Article 36 paragraph 4. Neither the guaranties mentioned in the Article 72 paragraph 1 of the Constitution nor the obligations imposed by Convention consist in burdening public authorities with the obligation to solve such social problems as the discussed circumstances of persons mentioned in Article 36 paragraph 4.

The Tribunal does not see the non-conformity of Article 2 of the Act of 15 December 2000 on Amendments to the Act on Renting Lodgings and Housing Allowances, to Article 75 paragraph 1 of the Constitution of the Republic of Poland. The indicated provision of the Constitution says that: „Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.” Without going into solving doctrinal disputes whether Article 75 can be treated as a constitutional model of review at all, the Constitutional Tribunal points to the fact that the cited constitutional provision is inadequate to ensure protection to those subjects. The provision discussed does not specify the criteria of counteracting homelessness or any legal measures serving this purpose. It should be noted, however, that the absence of an

adjudication establishing the eligibility for a welfare lodging does not mean that an evicted person will not be able to use shelters, homeless centres or other welfare premises available for the homeless, which are provided and operated by public authorities to prevent homelessness.

Having ruled that Article 2 of the cited Act does not conform to Article 72 paragraph 1 and Article 75 paragraph 1, the Constitutional Tribunal wanted to say only that these provisions would have no significant meaning for the solution of this matter.

By no means this opinion should be understood in such a way that the Constitutional Tribunal has found that both, Article 72 paragraph 1 and Article 75 paragraph 1 cannot stand for a constitutional model to make applications to the Constitutional Tribunal at all. The above opinion also does not prejudice the scope of rights offered to the citizen by Article 72 paragraph 1 and Article 75 paragraph 1 of the Constitution or the scope of obligations of public authorities.

B.1. In relation to the alleged non-conformity to the earlier-cited constitutional models of Article 37 of the Act of 2 July 1994 on Renting Lodgings and Housing Allowances, the Constitutional Tribunal states that the provision of Article 37 of the Act in question is of a procedural character and is applied in the execution procedure intended to accomplish the execution of a valid court sentence the enforcement clause. The meaning of this provision is different from the one the applicant tries to give to it. It has a meaning of a guaranty for the evicted persons and it means only that within the period determined by this provision, eviction judgements cannot be put into effect if the eviction is not to a lodging provided by the creditor. The normative purport pointed to by the applicant is, according to the Constitutional Tribunal, part of the former Article 36, so it was justified to see a constitutional discrepancy in the absence of a regulation of the legal situation of persons mentioned above in the transitional provision of the amending Act's Article 2 which did not solve this issue.

The Tribunal stated that observance of the law by all its addressees is an important component of the principle of a democratic state ruled by law set forth in Article 2 of the Constitution of the Republic of Poland. This principle also comprises the right to the fair trial (*compare Judgement of 7 January 1992, K. 8/91* and a number of subsequent ones) that would become void if court decisions were not put into effect. The introduction by Article 37 of the Act on Renting of a winter-time eviction moratorium does not undermine the principle of enforcement of court decisions but is dictated by humanitarian reasons and is meant to guarantee a minimum protection to the evicted persons to whom no alternative lodging to move in was indicated.

Furthermore, we should emphasise that under democratic system of government of the Republic of Poland, in line with the principle of the separation of powers set forth in Article 10 and the provisions of the Chapter VIII of the Constitution the judicial power is a constitutionally separated power whose activity is based on law and is vested with competence to adjudicate on cases and disputes emerging during the process of law enforcement. The lack of possibility to carry out court decisions would infringe the foundations of the functioning of the judicial power.

The court's administration of justice is also a guaranty of respecting the constitutional rights of an individual, including the rights of all parties of legal relationship and, in the renting sphere, the rights of both, the owners and the tenants. The protection of debtors, in this case tenants, whose difficult economic situation prevents them from paying the rent and other fees involved, cannot lead to deprive the owners of their title for the property. This would infringe the essence of this right and would run counter to the provision of Article 31 paragraph 3 of the Constitution.

Without effective court protection, the rights understood in this way would become a sheer declaration of the intentions of the constitution-makers. However, it is the problem of the state how it is going to ensure a minimum protection to tenants living in poverty, whether by way of housing allowances or a real access to welfare lodgings.

Court decisions ordering eviction from lodgings are put into effect by court executive officers who follow practices described by the provisions of the Code of Civil Procedure, in particular Article 1046 §1-3 of the Code of Civil Procedure, with limitations specified in Article 37 of the Act on Renting Lodgings. The court executive officer is not supposed to investigate whether the person obliged is eligible for a welfare lodging or to evaluate the correctness of the court judgement. The court executive officer's duty is to effectively put into effect the valid court sentence and this does not rule out the right of the debtor to make complaints during the execution procedure, especially to make a charge that the judgement being enforced is deprived of the enforcement clause.

The decision whether to provide an alternative welfare lodging to the evicted person belongs to the court, while the legislator imposed on the court the obligation to include a clear statement in its judgement on whether the person obliged is or is not eligible for a welfare lodging and, in the case of persons mentioned in Article 36 paragraph 4 of the amended Act, to make a positive adjudication concerning the right to a welfare lodging, if the persons involved cannot live in an lodging other than the one used so far.

It should also be noted that when amending Article 36 paragraph 1, the legislator left Article 37 unchanged thus stressing its subordinate, executory character in relation to the subject-matter provisions of Article 36.

In the context of the principle of enforcing the valid court decisions understood this way, the complaints concerning Article 37 of the Act on Renting are not justified. The purports of this provision implies only that court decisions ordering the eviction are not put into effect throughout a specified period of time. Undermining the constitutionality of this provision would annul the enforcement of court decisions issued in cases concerning lodging renting and it would undermine the principle of democratic state ruled by law.

Meanwhile, the Constitutional Tribunal stated that in a situation that has emerged when the Act of 15 December 2000 entered into force, the constitutional defectiveness of Article 2 of this Act stands in a close relation to Article 37 of the Act on Renting Lodgings in the sense that the joint application of these provisions makes the enforcement of eviction decisions possible with violation of the justified interests of persons mentioned in Article 36 paragraph 4 of this Act. The proclamation of unconstitutionality of these provisions in the scope indicated in the conclusion of the decision may provide these persons with legal grounds for effective reversal of both, the valid eviction judgement and the enforcement clause.

C. The Commissioner for Citizens' Rights withdrew the application for the examination of the constitutionality of Article 36 in its text before the amendment. According to the principle of faculty to dispose the application, which is followed in proceedings before the Tribunal, the withdrawal of the application obligates the Constitutional Tribunal to discontinue the proceedings on the grounds of Article 39 paragraph 1 subparagraph 2 in connection with paragraph 2 of the Constitutional Tribunal Act.

For reasons described above, the Constitutional Tribunal passes the judgement that was stated in the introduction.