134/11/A/2012

JUDGMENT

of 12 December 2012

Ref. No. K 1/12*

In the Name of the Republic of Poland

The Constitutional Tribunal, in a bench composed of:

Andrzej Rzepliński – Presiding Judge
Stanisław Biernat
Zbigniew Cieślak
Maria Gintowt-Jankowicz
Mirosław Granat
Wojciech Hermeliński
Marek Kotlinowski
Teresa Liszcz – Judge Rapporteur
Małgorzata Pyziak-Szafnicka
Stanisław Rymar
Piotr Tuleja
Sławomira Wronkowska-Jaśkiewicz
Andrzej Wróbel
Marek Zubik,

Krzysztof Zalecki – Recording Clerk,

having considered, at the hearing on 12 December 2012, in the presence of the applicant, the Sejm and the Public Prosecutor-General, an application by the First President of the Supreme Court to determine the conformity of:

* The operative part of the judgment was published on 28 December 2012 in the Journal of Laws - Dz. U. No. 115, item 1510.

Articles 22 and 23 of the Act of 22 December 2011 amending certain acts related to the implementation of the Budget Act (Journal of Laws - Dz. U. No. 291, item 1707) to:

− Article 2 in conjunction with Article 88(1) and (2) of the Constitution,

− Article 2 in conjunction with Article 178(2) of the Constitution,

− Article 2 in conjunction with Article 219(1) and (2) as well as Article 221 of the Constitution,

− Article 64(1) and (2) in conjunction with Article 31(3) of the Constitution, as well as

− Article 178(2) in conjunction with Article 216(5) and Article 220(1) of the Constitution,

adjudicates as follows:

Articles 22 and 23 of the Act of 22 December 2011 amending certain acts related to the implementation of the Budget Act (Journal of Laws - Dz. U. No. 291, item 1707)**:**

a) are consistent with Article 2, Article 64(1) and (2) in conjunction with Article 31(3), Article 88(1) as well as Article 178(2) of the Constitution of the Republic of Poland,

b) are not inconsistent with Article 88(2), Article 216(5), Article 219(1) and (2), Article 220(1) as well as Article 221 of the Constitution.

STATEMENT OF REASONS

[...]

III

The Constitutional Tribunal has considered as follows:

1. The subject of the application, the applicant's allegations, higher-level norms for the review, as well as constitutional issues.

1.1. The subject of the application submitted by the First President of the Supreme Court (hereinafter: the applicant) comprises Articles 22 and 23 of the Act of

22 December 2011 amending certain acts related to the implementation of the Budget Act (Journal of Laws - Dz. U. No. 291, item 1707; hereinafter: the amending Act related to the implementation of the Budget Act). The said provisions respectively stipulate that in 2012 the basis for determining the amounts of basic remuneration for common court judges and – indirectly – for administrative court judges, as well as the judges of the Supreme Court, and – indirectly – the judges of the Supreme Administrative Court (hereinafter altogether: judges' remuneration) is average remuneration in the second quarter of 2010 (hereinafter: the remuneration in 2010) published by the President of the Central Statistical Office of Poland, who acts pursuant to Article 20(2) of the Act of 17 December 1998 on old-age and disability pensions from the Social Insurance Fund (Journal of Laws - Dz. U. of 2004 No. 39, item 353, as amended).

The challenged provisions have a direct impact on the amounts of remuneration granted to judges, as the provisions of statutes regulating the rights and duties of judges – Article 91(1c) of the Act of 27 July 2001 – the Law on the Organisational Structure of Common Courts (Journal of Laws - Dz. U. No. 98, item 1070, as amended; hereinafter: the Act on the Organisational Structure of Common Courts) and Article 42(2) of the Act of 23 November 2002 on the Supreme Court (Journal of Laws - Dz. U. No. 240, item 2052, as amended; hereinafter: the Act on the Supreme Court) – establish the rule that the basis for determining the amounts of basic remuneration for judges in a given year is average remuneration in the second quarter of the previous year (hereinafter: remuneration in the second quarter), and if it was lower than the remuneration from the year prior to that (i.e. "the year preceding the previous year"), then the previous amount is assumed as the said basis. The legislator's decision means that in 2012 the basis for determining the amounts of basic remuneration for judges is the remuneration in 2010, and not – according to the general rule – the remuneration in 2011.

As a side remark, it should be noted that a freeze in the said remuneration concerns not only the remuneration of common court judges and of the judges of the Supreme Court (as well as of administrative court judges and of the judges of the Supreme Administrative Court), which has been covered by the application, but also the remuneration of the judges of the Constitutional Tribunal, with regard to which the said provision of the amending Act related to the implementation of the Budget Act(Article 21) has not been challenged.

1.2. The applicant raises two kinds of allegations in the context of the challenged regulation, namely: procedural (formal-legislative) ones and substantive ones. The first type of the allegations concerns the non-conformity to:

− Article 2 in conjunction with Article 88(1) and (2) of the Constitution, which consists in the unjustified shortening of the minimal period of *vacatio legis*,

− Article 2 in conjunction with Article 219(1) and (2) as well as Article 221 of the Constitution, which consists in infringing the principle of appropriate legislation, by failure to fulfil the substantive premisses of enacting the challenged provisions set out in the Act of 27 August 2009 on Public Finances (Journal of Laws - Dz. U. No. 157, item 1240, as amended; hereinafter: the Act on Public Finances), which is manifested in the lack of reliable justification as well as non-compliance with the procedure for enacting such a change.

The substantive allegations raised by the applicant comprise the non-conformity of the challenged provisions to:

− Article 2 in conjunction with Article 178(2) of the Constitution, due to the fact that the principle of protection of acquired rights as well as the principle of protection of citizens' trust in the state and its laws have been infringed arbitrarily,

− Article 64(1) and (2) in conjunction with Article 31(3) of the Constitution, which consists in an infringement of judges' property right to increased remuneration, and at least the maximally formed legitimate expectation of such a right,

− Article 178(2) in conjunction with Article 216(5) and Article 220(1) of the Constitution, which consists in the obligation to provide judges with remuneration consistent with the dignity of their office and the scope of their duties.

1.3. The Constitutional Tribunal deems that it is unnecessary to define all higher-level norms for the review which have been indicated by the applicant, since most of them were the subject of extensive jurisprudence and they are well-known to the participants in the review proceedings, as their written statements may suggest. In such circumstances, the Constitutional Tribunal, in principle, merely mentions the most important findings in the course of providing the reasoning for its ruling, and thus briefly defines only rarely indicated higher-level norms for constitutional review.

Article 88(1) of the Constitution establishes a principle within the meaning of which the condition for the coming into force of statutes, regulations and enactments of local law shall be the promulgation thereof, which weighs in favour of the public character

of law as well as is necessary due to the legal fiction of the widespread knowledge of the law (*ignorantia iuris nocet*). The said promulgation is the publication of the text in the Journal of Laws (previously – in print; nowadays – in an electronic form). Within the meaning of Article 88(2) of the Constitution, the principles of and procedure for promulgating normative acts shall be specified by statute. This statute is the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts (Journal of Laws - Dz. U. of 2011 No. 197, item 1172, as amended; hereinafter: the Act on the Promulgation of Normative Acts), which regulates the entirety of principles governing the publication of legal acts.

Chapter X of the Constitution opens with Article 216, which covers provisions concerning public finances, and its paragraph 5 establishes a prohibition against contracting loans or providing guarantees and financial sureties, as a result of which a national public debt (hereinafter: a public debt) would exceed the three-fifths of the value of the annual gross domestic product (hereinafter: the GDP). Thus, the constitution-maker's intention is that the maximally admissible ratio of public debt to GDP amounts to 60 % (hereinafter: the constitutional debt limit). The aim of that constitutional regulation is to counteract an excessive debt on the part of the state, which prevents an increase in a budget deficit in subsequent budget years and enhances the economic credibility of Poland at international level. The established prohibition is addressed to public authorities that have the power to contract loans or provide guarantees and financial sureties, and in particular to the Council of Ministers and the National Bank of Poland, and indirectly to the Parliament, as it may not enact bills which result in burdening the state with a public debt that exceeds the constitutional debt limit.

Article 219(1) and (2) of the Constitution stipulates that "the Sejm shall adopt the state budget (…) by means of a Budget Act", and a relevant statute shall specify "the principles of and procedure for preparation of a draft state budget, the level of its detail and the requirements for a Budget Bill, as well as the principles of and procedure for implementation of the Budget Act". The budget of the state is the state's financial plan which estimates the total revenue and expenditure of the state. The Budget Act consists of a normative part and an accounting one; in the part concerning expenditure, it specifies limits that are not to be exceeded, and in the part that concerns revenue – it presents merely forecast. The constitution-maker has decided that issues concerning the drafting of a state

budget shall be regulated by a separate statute, which has already been done in the Act on Public Finances.

Article 220(1) supplements the regulation set out in Article 216(5) of the Constitution, stating that "the increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the Budget Bill". The purpose of that regulation is to maintain a balanced budget, i.e. state expenditure is covered by state revenue. However, paragraph 2 indicates that the constitution-maker provides for the existence of a state deficit.

The Constitutional Tribunal has emphasised a number of times that Article 216 and Article 220 of the Constitution, in conjunction with Article 1 thereof, require that maintaining a balanced budget as well as sound public finances should be regarded as constitutionally protected values (as stated, e.g., in the judgments of: 4 December 2000, Ref. No. K 9/00, *Collection of the Tribunal's Jurisprudence* (OTK ZU) No. 8/2000, item 294 and 27 February 2002, Ref. No. K 47/01, OTK ZU No. 1/A/2002, item 6). Also, the Constitutional Tribunal has deemed that counteracting an excessive debt also constitutes a value that is subject to protection (the judgment of 4 May 2004, Ref. No. K 40/02, OTK ZU No. 5/A/2004, item 38) and has stressed that all those values are placed very high in the hierarchy of constitutional goods, as the ability of the state to take action and solve its various problems depends on the implementation of those values in public life (as stated, e.g., in the ruling of 30 November 1993, Ref. No. K 18/92, OTK in the years 1986-1995, Vol. IV, item 41, as well as in the judgments of: 17 December 1997, Ref. No. K 22/96, OTK ZU No. 5−6/1997, item 71; and 24 November 2009, Ref. No. SK 36/07, OTK ZU No. 10/A/2009, item 151).

In the opinion of the Constitutional Tribunal, the necessity to maintain a balanced budget and sound public finances outlines the boundaries of exercising social rights and guarantees provided for in the Constitution (as stated, e.g., in the judgment of 7 September 2004, Ref. No. SK 30/03, OTK ZU No. 8/A/2004, item 82), and at the same time constitutes a premiss that may, on its own, justify restricting the said rights and guarantees. In the view of the Constitutional Tribunal, "in times of recession (...) the state may be forced to change binding legal regulations to be less advantageous, by adjusting the scope of the exercise of social rights to economic conditions" (as stated, e.g., in the

judgments of: 22 June 1999, Ref. No. K 5/99, OTK ZU No. 5/1999, item 100; and 24 April 2006, Ref. No. P 9/05, OTK ZU No. 4/A/2006, item 46).

Due to the need to maintain a balanced budget and the state's ability to fulfil its obligations, the Constitutional Tribunal has permitted both interference in the realm of acquired rights (as stated, e.g., in the above-cited judgment in the case K 9/00, as well as in the judgments of: 9 April 2002, Ref. No. K 21/01, OTK ZU No. 2/A/2002, item 17; and 20 January 2010, Ref. No. Kp 6/09, OTK ZU No. 1/A/2010, item 3), and the enactment of provisions which allow for detrimental interference in the content of established legal relations (as stated, e.g., in the above-cited judgment in the case K 22/96), as well as rules for the adjustment of social insurance benefits that are less beneficial (as stated, e.g., in the judgments of: 22 October 2001, Ref. No. SK 16/01, OTK ZU No. 7/2001, item 214; and the above-cited judgment in the case P 9/05). The Constitutional Tribunal has assigned primacy to the maintenance of a balanced budget over the protection of acquired rights, in the context of the temporary elimination of the indexation and adjustment of remuneration in the public sector (see: the above-cited ruling in the case K 18/92 and the judgment of 17 November 2003, Ref. No. K 32/02, OTK ZU No. 9/A/2003, item 93), the suspension of an increase in the remuneration of employees of state tertiary-education institutions (the judgment of 18 January 2005 in the case K 15/03, OTK ZU No. 1/A/2005, item 5), the restriction of veterans' rights (the judgment of 9 March 2004, Ref. No. K 12/02, OTK ZU No. 3/A/2004, item 19), the suspension of the payment of social insurance benefits awarded due to work-related accidents and occupational illnesses (the judgment of 31 January 2006, Ref. No. K 23/03, OTK ZU No. 1/A/2006, item 8), the restriction of rights guaranteed in the previous old-age and disability pension system (the judgment of 20 November 2001, Ref. No. SK 15/01, OTK ZU No. 8/A/2001, item 252) as well as the restriction or elimination of tax relief (the ruling of 12 January 1995, Ref. No. K 12/94, OTK in the years 1986-1995, Vol. VI, item 2, and the above-cited judgment in the case K 47/01), as well as the transitional restriction of subsidies for political parties (the above-cited judgment in the case Kp 6/09).

Article 221 of the Constitution stipulates that the right to introduce legislation concerning a Budget Bill, an Interim Budget Bill, amendments to the Budget Act, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers. The Constitutional Tribunal has already emphasised (the judgment of 9 November 2005, Ref. No. Kp 2/05, OTK ZU

No. 10/A/2005, item 114) a very strong systemic position of the Council of Ministers as regards running the financial economy, which arises from the provisions of the Constitution as regards the exclusiveness of the Council's right to introduce legislation concerning a Budget Bill, as set out in Article 220(1) (prohibition against increasing a budget deficit by the Sejm in a way which would exceed the level provided in the Budget Bill) and as provided for in Article 219(4) in conjunction with Article 146(4)(6) (the exclusive power of the Council of Ministers as regards running the financial economy and supervising the implementation of the state budget on the basis of the Budget Act). The mere submission of a Budget Bill is both the right and obligation of the Council of Ministers; the exclusiveness of that power vested in the Council of Ministers arises from the fact that the Council runs the state economy and supervises the implementation of the Budget Act, for which it is responsible to the Sejm (which passes a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers). Moreover, it has a number of technical measures as well as access to expertise which determine the preparation of a draft of that extremely complex legal act which is of fundamental significance for the functioning of the state.

1.4. In the present case, a few constitutional issues have arisen, namely:

− whether the incidental suspension (for one year) of an increase in the amounts of judges' remuneration to maintain them at the level from the year 2010 (a freeze) - which entails that the actual value of the remuneration will decrease (due to inflation), with the unchanged amounts - constitutes an infringement of the guarantee that judges are granted remuneration consistent with the dignity of their office and the scope of their duties, as stated in Article 178(2) of the Constitution;

− whether unbalanced public finances – i.e. a situation where the ratio of public debt to GDP exceeds 50 % and action is being taken to curb the excessive deficit – may constitute a premiss of the temporary suspension of an increase in the amounts of judges' remuneration (a freeze in the remuneration);

− whether it may be assumed that there has existed judges' property right to increased remuneration, or at least there has existed the maximally formed legitimate expectation of that right, since the day of the publication of a communiqué about the amount of average remuneration in the second quarter of the previous year by the President of the Central Statistical Office of Poland;

− whether the enactment of statutes related to the implementation of the state budget (statutes related to the implementation of the Budget Act) should be governed by the same rules as those applied to the enactment of the Budget Act;

− as well as whether – in the circumstances of enacting the challenged provisions – it is justified to shorten the period of *vacatio legis* to one day.

2. Rules for determining the amounts of judges' remuneration.

2.1. Judges constitute the only professional group in Poland with regard to which the Constitution guarantees the right to remuneration that is "consistent with the dignity of their office and the scope of their duties" (Article 178(2) of the Constitution). The said provision sets a certain necessary standard - although in a way that is not very precise - which must be respected by the legislator when he sets statutory rules for determining the amounts of judges' remuneration (the judgment of the Constitutional Tribunal of 4 October 2000, ref. no. P 8/00, OTK ZU No. 6/2000, item 189). The said norm constitutes a special guarantee of protection of judges' remuneration at the constitutional level, which limits the admissibility of the legislator's interference in the way the amounts of the said remuneration are determined. At the same time, Article 178(2) of the Constitution is not so much a guarantee of judges' remuneration, as a unique kind of employees, but it is rather an element of the organisational structure of courts – an essential substantive guarantee of judges' independence. Indeed, this is not a coincidence that the said regulation has been placed in the direct vicinity of a provision establishing the principle of judges' independence (Article 178(1) of the Constitution).

The most important aspect of judges' remuneration that is consistent with the dignity of their office is that the way of determining the amounts of that remuneration could be based on objective and measurable premisses and could work by statute – in a sense "automatically", without any need to take evaluative decisions in that respect which could constitute an instrument of pressure exerted on judges. Also, what is obviously important is the very amount of the said remuneration which should guarantee the financial security of a judge and his/her family, compensate strict restrictions on undertaking another economic activity as well as enhance the prestige of his/her office. In the view of the Tribunal, the amounts of the said remuneration should be significantly higher than the amount of average remuneration in the country.

An objective mechanism for determining the amounts of judges' remuneration that meet the above requirements has been functioning since 2009, as a result of an agreement

among the representatives of all the three branches of government, under the auspices of the President of the Republic of Poland, and relevant regulations were included in the Act on the Organisational Structure of Common Courts, the Act on the Supreme Court, the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws - Dz. U. No. 102, item 643, as amended) as well as the Act of 21 August 1997 – the Law on the Organisational Structure of Military Courts (Journal of Laws - Dz. U. of 2012 item 952, as amended).

The system of remuneration of all judges is based on the same rules and has been singled out from the system of the remuneration of other employees of the public sector. In that system, the amount of the remuneration of a given judge depends on the following objective premisses: a position held by a given judge, seniority (overall and in a given position as a judge) as well as extra-judicial functions performed within the judiciary. The said system does not contain any discretionary elements in the form of awards or bonuses which could depend on the evaluation of the results or quality of work provided by a judge, and could constitute an instrument of pressure exerted on him/her.

The mechanism for determining the amounts of judges' remuneration has been regulated in Article 91(1c) of the Act on the Organisational Structure of Common Courts and Article 42(2) of the Act on the Supreme Court. It determines the remuneration of a judge as the product of a multiplier that has been specified by statute (which amounts from 2.05 to 3.23 for common court judges and administrative court judges, depending on position held by a given judge, and in the case of the judges of the Supreme Court and the Supreme Administrative Court – 4.13 in its basic amount or 4.75 in the amount increased due to promotion) as well as a multiplicand – the basis for determining basic remuneration in a given year i.e. average remuneration in the second quarter, published in a communiqué by the President of the Central Statistical Office in the Official Gazette of the Republic of Poland - *Monitor Polski*. Such a correlation between judges' remuneration and average remuneration (in the place of earlier reference to average remuneration in the public sector) – safeguards it against the a decrease in purchasing power related to inflation, thanks to the mechanism of a certain automatic increase in the basic remuneration and function allowances – guaranteeing that the amounts of judges' remuneration will change *in plus* in the case of the good economic situation of the state. By contrast, in the event of the deterioration of the economic situation and a decrease in average remuneration, the legislator has provided that the amounts of judges' remuneration are to stay at the same level (Article 91(1d) of the Act on the Organisational Structure of Common Courts as well

as Article 42(3) of the Act on the Supreme Court). The said mechanism is a reaction to the request of 23 July 2008 put forward by the Sejm Committee on Justice and Human Rights as well as an element of systemic changes that aim at the implementation of Article 178(2) of the Constitution; the mechanism refers rules for determining the amounts of judges' remuneration to an objective index and makes that process independent from interference of the executive and legislative branches.

The basis for determining the amounts of remuneration for judges in 2012, arising from the challenged provisions, is PLN 3197.85. This entails that in common courts the lowest basic remuneration – which is granted to a district court judge without any extra-judicial functions in his/her first years of work – is the gross amount of PLN 6555.59, whereas the highest remuneration is the gross amount of PLN 15 188.19 – and is received by the judges of the Supreme Court and the Supreme Administrative Court after seven years of work (who are provided "a rate increased due to promotion").

An increase in the amounts of judges' remuneration occurs in the case of promotion to a higher position, which entails applying a higher multiplier, but also without any change in position, when the multiplier slightly increases after the lapse of 5 years of working in the same position (the successive rates of basic remuneration). That "horizontal" financial promotion is delayed by 3 years in the event of punishing a judge on disciplinary grounds or if s/he has overlooked a breach of law twice (the procedure set out in Article 40 of the Act on the Organisational Structure of Common Courts) or has been reprimanded twice (the procedure set out in Article 37(4) of the said Act).

Apart from basic remuneration, a given judge receives a seniority allowance (1 % of the basic remuneration for every year of service, beginning with the end of the 5^{th} year, the maximum amount being 20 %; Article 91(7) of the said Act), but the years of service that entitle a judge to receive the right to the allowance comprise the entire period of employment in different employment establishments.

A judge that performs extra-judicial functions in the judicial system - which are enumerated in the resolution of the Minister of Justice of 23 June 2009 on extra-judicial functions and function allowances granted to judges (Journal of Laws - Dz. U. No. 104, item 866, as amended) – is eligible to receive a function allowance calculated by taking the same basis as for the calculation of the basic remuneration, with the use of appropriate multipliers (from 0.15 for a head of a department in a district court up to 1.1 for the president of a court of appeal). In the case where a given judge performs several extra-

judicial functions, a judge is entitled to one function allowance in the highest amount which may be increased by 10 up to 50 %).

Judges have the right to additional annual remuneration (the so-called thirteenth salary), in accordance with general rules set out for the employees of the public sector (the Act of 12 December 1997 on additional annual remuneration for the employees of the units of the public sector, Journal of Laws - Dz. U. No. 160, item 1080, as amended) as well as for a jubilee gratuity (ranging from 100 % to 400 % of the amount of remuneration), awarded on the occasion of successive "round" anniversaries of employment, and the periods of service that determine the acquisition of the right to gratuity comprise all previous periods of employment.

It should be stressed that no social insurance contributions are paid from the amounts of judges' remuneration (Article 91(9) of the Act on the Organisational Structure of Common Courts), which are deducted from the salaries of all employees, with the exception of prosecutors (the contributions amount to: 9.76 % of remuneration as a half of an old-age pension contribution in the universal system for old-age and disability pensions, financed by the insured, 1.5 % of remuneration as part of the insured person's contribution to disability insurance as well as the entire amount of 2.45 % of remuneration towards medical insurance; Article 16(1), (1b) and (2) as well as Article 22(1) of the Act of 13 October 1998 on the Social Insurance System, Journal of Laws - Dz. U. of 2009 No. 205, item 1585, as amended). Therefore, judges' remuneration is merely affected by an income tax and medical insurance contributions (in the amount of 9 % of basis for calculating the amount of remuneration), which means that a judge who earns the same gross salary as a person who is not a judge earns 13.71 % more a month than that person.

2.2. After the end of service as a judge, i.e. after, in principle, attaining the age of 65 (in some circumstances, after attaining the age of 55 by women and 60 by men), or due to illness or infirmity which prevents him/her from discharging the duties of the office (if this has been determined by a medical practitioner from the Social Insurance Fund who has deemed that a given judge is incapable of fulfilling his/her duties), such a judge shall, in principle, proceed to retirement (Article 180(3)-(5) of the Constitution). A judge may also proceed to retirement if, without any reason, s/he has not agreed to examination by a medical examiner from the Social Insurance Fund as well as due to illness or paid leave of absence for recuperation s/he did not serve as a judge for a period of one year. A judge may also retire where there has been a reorganisation of the court system or changes have

been made to the boundaries of court districts, provided that the judge has not been allocated to another court.

A judge who has retired due to organisational changes in the court system is entitled, until attaining the age of 65, to a pension that would be equivalent to the remuneration received at the last position (after the attainment of retirement age in a broad sense, the said pension is decreased to 75 % of the basic remuneration and seniority allowance, received at the last position occupied before the retirement).

Judges who have retired after attaining retirement age or due to illness or infirmity are entitled to a pension in the amount of 75 % of the basic remuneration and seniority allowance, received at the last position occupied before the retirement (Article 100(2) of the Act on the Organisational Structure of Common Courts). The pension of a retired judge is raised "automatically", adequately to the amount of the basic remuneration of judges in service.

A special regulation of pensions received by retired judges is included in the regulation of the Minister of Justice of 16 October 1997 on the specific rules for determining the amount and payment of old-age pensions and family allowances to retired judges and prosecutors as well as to their families (Journal of Laws - Dz. U. No. 130, item 869).

Judges who are to retire are entitled to a one-time retirement gratuity in the amount of the last remuneration for the period of 6 months (Article 100(4) of the Act on the Organisational Structure of Common Courts).

In the event of a retired judge's death, his/her family members who are eligible to receive a pension for surviving relatives within the meaning of the provisions of the Act on old-age and disability pensions from the Social Insurance Fund; they are entitled – depending on the number of eligible persons – to a pension for surviving family members in the amount between 85 % to 95 % of the basis for calculation of remuneration (i.e. an old-age pension which was assigned to a given judge or which would have been assigned).

If judges have not acquired the right to retire due to ending their service (e.g. because they have relinquished their position or have been removed from the office), they may apply for old-age or disability pension benefits from the Social Insurance Fund on general terms, and the remuneration paid out to them during the period of service is reduced by an appropriate amount due to unpaid contributions.

As a consequence of the entry into force of the challenged provisions, in 2012 the basis of determining the amounts of judges' remuneration is average remuneration in 2012, and not – in compliance with a general rule – the remuneration in 2011. As it has already been mentioned, the said basis amounts to PLN 3197.85 (the communiqué of 10 August 2010 on the amount of average remuneration in the second quarter of 2010 issued by the President of the Central Statistical Office, Official Gazette of the Republic of Poland – *Monitor Polski*, No. 57, item 774; hereinafter: the communiqué of the Central Statistical Office in 2010), and not PLN 3366.11 (the communiqué of the Central Statistical Office of 9 August 2011 on the amount of average remuneration in the second quarter of 2011, Official Gazette of the Republic of Poland - *Monitor Polski*, No. 71, item 708; hereinafter: the communiqué of the Central Statistical Office of 2011), and thus it is lower by PLN 168.26. This entails that – for instance – there would be a difference of PLN 344.93 in the gross monthly amount of remuneration in the case of a district judge, who is entitled to the first rate of basic remuneration, and a difference of PLN 799.24 in the gross monthly amount of remuneration, in the case of a justice of the Supreme Court who has been granted the increased rate due to promotion.

3. The assessment of the situation of public finances and the impact of that situation on the enactment of the amending Act related to the implementation of the Budget Act.

3.1. The Constitutional Tribunal has no formal powers nor relevant instruments to – in a sense, with a legal effect – determine the financial situation of the state and, depending on such determination, weigh in favour of the legitimacy or illegitimacy (understood as sufficiency or insufficiency of justification) of the legislator's activity, which is to affect the assessment of the constitutionality of the challenged regulations. In such conditions, the Constitutional Tribunal must make use of generally available official information and indexes.

The economic situation of the state, which both affects its domestic situation as well as its international position, is evaluated by various methods; the one of them which is most applied, and – as indicated in Article 216(5) of the Constitution – recognised by the legislator, is to determine the ratio of public debt (the long-term liabilities of the public finance sector increased by a budget deficit from the subsequent years) to GDP (the total market value of goods and services produced within the territory of a given country during a year). The said method makes it possible to determine – in relation to the GDP – the level

of the state's expenditure on servicing its liabilities (*inter alia* loans, the buyout of securities, and payable liabilities) as well as shows the state's capacity (or the lack thereof) as regards covering its current expenditure. Although it is assumed that the ratio of public debt to GDP should be as low as possible, there is no common "safety limit" that would be the same for all countries, as the said ratio is affected by numerous factors, *inter alia* by the structure of the GDP, the level of the economic development of the state, or the economic situation in the region and the world.

Undoubtedly, crossing a certain debt threshold, which leads to a situation where the state is obliged to incur increasingly high expenditure due to interest on contracted loans, implies a high risk and undermines its economic prospects. The excessively high level of a public debt results in the slower development of the state, thus leading to stagnation, and at times even to recession. In order to prevent such negative situations, which result from excessive debt, the constitution-maker has specified the constitutional debt limit; and to avoid the risk of exceeding the said debt limit, the legislator has additionally established two debt thresholds, the crossing of which leads to the implementation of relevant procedures by state authorities. The legislator has deemed that the first debt threshold shall be a situation where the ratio of public debt to GDP exceeds 50 % (hereinafter: the first debt threshold), whereas the second one shall be a situation where the said ratio exceeds 55 % (hereinafter: the second debt threshold).

3.2. The Constitutional Tribunal notes that – even by relying on official indexes – it finds it difficult to categorically assess the state of Polish public finances, and in particular a threat posed to the balanced state budget that constitutes a vital constitutional value, which is relevant for the assessment of the conformity of the challenged regulations to the Constitution. This stems, for instance, from the fact that the index which is so fundamental for the assessment of the financial situation of the state, namely the ratio of public debt to GDP, varies in the case of Poland, depending on the way it is calculated. Calculated on the basis of "the national methodology", the index was 53.5 % in 2011 (the announcement of the Minister of Finance issued on 22 May 2012 and concerning the amounts referred to in Article 38 of the Act on Public Finances, the Official Gazette of the Republic of Poland - *Monitor Polski*, item 355); however, when calculated on the basis of "the EU methodology", it was 56.4 % (the said value was submitted to the European Commission by the President of the Central Statistical Office - a central administrative authority of the state that is competent in the realm of statistics – by way of fiscal

notification; http://www.stat.gov.pl/gus/5840_1377_PLK_HTML.htm). The said difference is crucial, since the second debt threshold has been established at the level of 55 %. As it can be noted, it is the way of calculating that may determine whether the second debt threshold has been crossed or not. On the one hand, the Constitutional Tribunal has no jurisdiction to assess which methodology for calculating the ratio of public debt to GDP is more correct; nor does it have instruments to deem that any of them is incorrect. On the other hand, however, it may not ignore disturbing conclusions which arise from the value of the ratio of public debt to GDP, as calculated in accordance with "the EU methodology".

There is no doubt that the Polish public debt has been increasing, which has been caused by numerous factors, both domestic ones (related to the economic policies of the state), as well as international ones (arising from the situation in Europe and the world, for some time referred to as "the economic crisis"). The said tendency has become stronger in the last few years, which has resulted in a situation where Poland has been covered by a procedure provided for in Article 126 of the Treaty on the Functioning of the European Union, which is referred to as the procedure of an excessive government deficit. The Economic and Financial Affairs Council (hereinafter: the Ecofin Council) issued the Council Decision of 7 July 2009 on the Existence of an Excessive Deficit in Poland, *OJ L 202, 4.8.2009*). As it has been stated in *The Convergence Programme. Update 2011* of April 2011, in accordance with the recommendation of the Ecofin Council, Poland should put an end to the excessive deficit situation "in a credible and sustainable manner" by 2012; Poland has already taken various actions towards correcting the excessive deficit (for more details see pp. 12-15 of *The Programme*). At the same time, it should be noted that the assessment of the macroeconomic situation made it possible to assume in the Multiannual Financial Plan of the State for the years 2011-2014 (annex to the resolution no. 36 of the Council of Ministers of 5 April 2011 updating the Multiannual Financial Plan of the State for the years 2011-2014, the Official Gazette of the Republic of Poland - *Monitor Polski*, No. 29, item 324) that, in the coming years, the second debt threshold would not be crossed, and that, in fact, the ratio of public debt to GDP would fall to the level below the first debt threshold.

The above-mentioned excessive debt procedures, which are implemented in the event of crossing successive debt thresholds (50 % and 55 %), have been regulated in Article 86 of the Act on Public Finances. The provision specifies actions which the

Council of Ministers is obliged to take in such circumstances. For instance, when a public debt crosses the first debt threshold in the previous year, the Council of Ministers should adopt a Budget Bill where the ratio of a budget deficit to state revenue will not be higher than in the previous year (Article 86(1)(1) of the Act on Public Finances). In the event of crossing the second debt threshold, the scope of obligations assigned to the Council of Ministers is much greater, as *inter alia* a Budget Bill may provide for a budget deficit only in a certain situation, must provide for a freeze in the remuneration of the employees of the public sector and must limit the adjustment of the amounts of old-age and disability pensions (Article 86(1)(2) of the Act on Public Finances). Undoubtedly, the enactment of draft state budgets that will fulfil the requirements of the Act on Public Finances – in the case of crossing the said debt thresholds – requires the Council of Ministers to take various, often socially unpopular, measures which are described as austerity measures.

3.3. According to the explanatory note for the draft version of the challenged amending Act related to the implementation of the Budget Act (the Sejm Paper No. 29/ 7th term), the aim of the amending Act is to prevent a further increase in a public debt, so as to prevent the potential risk of crossing the second debt threshold in 2012.

The author of the amending Bill related to the implementation of the Budget Act - the legislator followed suit in that respect - deemed it indispensible to take a number of measures that were to prevent exceeding the level of a state budget deficit specified in the Budget Bill, which comprised, *inter alia*, the following:

− a freeze in company social benefits funds (Article 1 of the amending Act related to the implementation of the Budget Act) as well as in social benefits funds for soldiers and the functionaries of the Police, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service, the Central Anticorruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service and the Penitentiary Service (Articles 35 and 36 of the amending Act related to the implementation of the Budget Act),

− tightening up the tax system by means of more specified rules for rounding off the taxable amount and the amounts of taxes (which leads to the elimination of the so-called tax-free savings accounts, which are actually exempted from tax; Article 4 of the amending Act related to the implementation of the Budget Act),

− an increase in some rates of excise duty (Article 11 of the amending Act related to the implementation of the Budget Act),

− a freeze in: remuneration for persons holding managerial positions in state institutions (Article 5 of the said amending Act related to the implementation of the Budget Act); remuneration granted on the basis of the statute concerning the maximum remuneration rates for management staff in state-owned companies (Article 6 of the said amending Act); remuneration for the judges of the Constitutional Tribunal, the judges of the Supreme Court and common-court judges (Articles 21-23 of the said amending Act), as well as prosecutors (Article 20 of the said amending Act),

− a freeze in all remuneration in the units of the public finance sector (excluding teachers), and thus the remuneration of the employees of the organs of state authority, supervisory and law enforcement authorities, courts and tribunals as well as other institutions, such as for example: executive agencies, state earmarked funds, or the Polish Academy of Sciences (Article 24 of the said amending Act),

− a change in the terms of refunding the costs of commute to the place of service in the case of the functionaries of the Penitentiary Service (Article 14 of the said amending Act).

It should be emphasised that the above-mentioned austerity measures, provided for in the said amending Act, correspond to other actions of the Government and the Parliament, which aim at balancing out public finances, such as for instance, to:

− introduce a restrictive expenditure rule i.e. one that curbs an increase in discretionary expenditure and new expenditure that have been specified by law to the level of the inflation rate increased by 1 %,

− enhance the system for managing the liquidity of the state budget, which consists in the obligation to allocate free cash to the account of the Minister of Finance by the units of the public finance sector,

− determine the ultimate expenditure rule (the principle that an increase in the state expenditure for public tasks may not exceed the medium-term growth rate of the GDP), supporting the stability of public finance,

− introduce multiannual planning, also in the units of local self-government,

− introduce the requirement to balance out (or generate a surplus in) the current entries of budgets allocated to the units of local self-government (current expenditure may exceed current revenue increased by a budget surplus, only by an amount that arises from covering current expenditure with funds from non-repayable foreign subsidies),

− devise an additional rule for balancing out the financial outcome of the activity of

local self-government,

− increase proceeds from dividends,

− obtain revenue from auctioning greenhouse gas emission rights,

− freeze the personal income tax scale,

− limit the possibility of deducting VAT on the purchase of cars modified to serve as delivery cars, and eliminate the possibility of deducting input tax in respect of fuel for those cars,

− eliminate tax relief on fuel biocomponents in the context of excise duty, and increase the rates of excise duty on diesel fuel and cigarettes,

− introduce a tax on the extraction of certain types of ore,

− implement an automatic traffic monitoring system,

− decrease the amounts of national supplementary direct payments,

− reform the old-age pension system – by decreasing the amount of contributions transferred by the Social Insurance Institution to open pension funds,

− aim at the gradual introduction of the same higher retirement age and limit the possibility of early retirement,

− decrease the amount of the funeral expenses allowance.

3.4. An estimated amount of savings resulting from a freeze in the remuneration of both judges and prosecutors is approximately PLN 140 million; indeed, as pointed out by the applicant, the estimated amount does not even constitute one per mille of the state budget. In accordance with the estimates presented by the Minister of Finance, based on the 2012 Budget Bill (the Sejm Paper No. 4694/6th term), savings from a freeze in judges' remuneration will amount to PLN 93.8 million, whereas state revenue is estimated to reach PLN 292.8 billion and state expenditure to be PLN 327.8 billion. This means that the said savings will constitute circa 0.3203‰ of state revenue and 0.2861‰ of state expenditure (respectively: 0.032 % and 0.029 %).

However, the Constitutional Tribunal states that the small scale of budget savings that can be obtained may not be put forward as a significant argument against certain budget cuts, including a freeze in remuneration. It should be pointed out that most budget entries (and thus potential savings) – when discussed in isolation – may appear insignificant in relation to the entire state budget; nevertheless, the sum of numerous single examples of savings may be of significance for the situation of the entire state budget. As the Constitutional Tribunal has already noted, the fact that particular legal solutions "do

not entail making significant budget savings, may not lead to the conclusion that they do not contribute to the implementation of a constitutional value such as maintaining a balanced budget" (as stated in the above-cited judgment in the case K 23/03).

4. An analysis of the allegations concerning procedural issues.

At the beginning the Constitutional Tribunal has chosen to analyse the allegations concerning procedural issues, since if they proved to be valid, the challenged provisions of the amending Act related to the implementation of the Budget Act would have to be regarded as unconstitutional, and the analysis of substantive allegations would be unnecessary.

4.1. The first procedural allegation is the non-conformity of the challenged allegations to Article 2 in conjunction with Article 88(1) and (2) of the Constitution, which consists in the unjustified shortening of the period of *vacatio legis*.

4.1.1. The requirement to maintain an appropriate period of *vacatio legis* – the period when a given legal act has been published but has not yet entered into force – falls within the scope of the principles of appropriate legislation and follows from the principle of protection of citizens' trust in the state and its laws, and its aim is to guarantee that the addressees of the act has time to adjust to amended regulations and to make appropriate decisions as regards further action (e.g. the judgments of: 15 December 1997, Ref. No. K 13/97, OTK ZU No. 5−6/A/1997, item 69 and 4 January 2000, Ref. No. K 18/99, OTK ZU No. 1/2000, item 1). With reference to different regulations, different periods of *vacatio legis* will be appropriate; the examination of constitutionality within that scope takes place on a case-by-case basis. The appropriateness of "*vacatio legis*" should be examined in the context of whether it is possible for addressees to become familiar with new provisions and take adequate action based on that knowledge (the judgment of 11 September 1995, Ref. No. P 1/95, OTK ZU No. 1/1995, item 3). The final assessment depends on the entirety of circumstances, including the subject and content of new regulations, as well as the group of addresses of the new regulations (as stated in: the judgment of 20 December 1999, Ref. No. K 4/99, OTK ZU No. 7/1999, item 165 and the judgments cited therein with the reference numbers K 23/03 and Kp 6/09).

A general rule is introduced by the Act on the Promulgation of Normative Acts, which in principle provides for the 14-day period of *vacatio legis* (Article 4(1) of the said Act). However, the legislator is granted certain margin of freedom in that respect; in

certain circumstances, he may completely refrain from establishing *vacatio legis*, as the requirement to maintain it does not have an absolute character. What justifies the legislator's freedom when it comes to maintaining the period of *vacatio legis*, and even the omission thereof, is "an important public interest which may not be reconciled with the individual's interest" (the judgment of 2 March 1993, Ref. No. K 9/92, OTK in the years 1986−1995, Vol. IV, item 6). Moreover, a departure in that respect is possible in other extraordinary circumstances, when a constitutional principle weighs in favour of that (the judgment of 24 May 1994, Ref. No. K 1/94, OTK in the years 1986-1995, Vol. V, item 10). The Constitutional Tribunal has stressed that a public interest manifests itself in the need to protect the stability of the financial interests of the state and the maintenance of a balanced budget (the judgment of 16 June 1999 P 4/98, OTK ZU No. 5/1999, item 98 and the above-mentioned judgment in the case K 32/02).

The assessment of the constitutionality of maintaining an appropriate period of *vacatio legis* must be carried out by considering if potential addressees have a possibility of becoming familiar with the content of drafted regulation already at the stage of legislative proceedings; different assessment should be carried out with regard to regulations introduced at the last stages of legislative process; and also, there should be different evaluation of a situation where persons concerned hear about the legislator's intentions in advance and may in practice begin to adjust to the new regulation right after it has been enacted by the Parliament", even before the promulgation of the act in question (the above-cited judgment with the reference number K 23/03).

4.1.2. Pursuant to its Article 41, the amending Act related to the implementation of the Budget Act, which shall enter into force in its main part (which comprises the challenged provisions) as of 1 January 2012, was enacted on 22 December 2011, and published in the Journal of Laws on 30 December 2011. Actual circumstances – the dates of the enactment and publication of the said amending Act as well as its entry into force entailed that the actual period of "*vacatio legis*" was very short, and amounted to only one day (which was Saturday – a non-working day). However, it should be pointed out that the calendar of legislative work was determined by parliamentary elections that took place in 2011, and the ensuing reconstruction of the government that affected the time-limit for submitting a Budget Bill to be discussed by the Parliament, as well as the draft version of the challenged amending Act related to the implementation of the Budget Act.

The Constitutional Tribunal states that the amending Act related to the implementation of the Budget Act introduces changes into the legal order which are necessary for the enactment of the Budget Act, as they determine the level of revenue and expenditure of the state. As the applicant aptly stated, in his procedural letter of 18 July 2012 (p. 10), without changes introduced by the said amending Act, it would have been impossible to enact a Budget Act of a particular content. Since a given Budget Act – regardless of the date of its enactment and publication – is binding throughout the entire budget year (the 2012 Budget Act of 2 March 2012, published on 15 March 2012, Journal of Laws - Dz. U. item 273, entered into force "on the day of its publication" and took effect "as of 1 January 2012"), changes provided for in the amending Act related to the implementation of the Budget Act also had to be introduced at the beginning of this year. In other words, the enactment of a relatively balanced state budget for the current year – which was undoubtedly in the public interest – required the entry into force of the amending Act related to the implementation of the Budget Act as of 1 January 2012.

In the opinion of the Constitutional Tribunal, the legislator took such action because of the necessity to safeguard the stability of public finances and to maintain a balanced budget. The legislator introduced the challenged legal changes when the state was in financial difficulties, and there was a need for quick and effective decisions aimed at balancing out the state budget as well as for other austerity measures. Given a vital public interest which consisted in the necessity to maintain a balanced state budget and to prevent an excessive budget deficit, the legislator had greater regulatory freedom as regards setting a period of adjustment (as stated in the above-cited judgment in the case Kp 6/09).

The Constitutional Tribunal finds it justified to make additional reference to the issue whether the addressees of the amending Act – i.e. judges – were aware of the fact that in 2012 the amounts of their remuneration were to be frozen at the level from the year 2010. In the applicant's opinion, shared by the Public Prosecutor-General, the short period of *vacatio legis* made it impossible for judges to react and adjust to the changed legal situation. The Constitutional Tribunal states that judges constitute a professional group whose knowledge of the law is proficient and they are – because of their duties – familiar with drafted legislation. The plans to freeze judges' remuneration (and originally even to change the mechanism for determining the amounts thereof) were publicly known already in the second quarter of 2011. What is more, they were announced to judges by the National Council of the Judiciary of Poland, which – by its resolutions of 13 May 2011

nos. 1378/2011 and 1379/2011 – motioned for summoning up meetings for the representatives of circuit court judges and judges from courts of appeal for 4 and 5 July 2011. What this implies is that the issue of a potential freeze in judges' remuneration was well-known to judges almost 6 months before the enactment of the challenged provisions, which was early enough for anyone who wished to take any action in that regard to make their decisions. The Marshal of the Sejm aptly argued that the applicant had indicated no actions which judges were supposed to take in order to make adjustments to the changed legal order. In such circumstances, the shortening of the period of *vacatio legis*, though it should be criticised, may not be regarded as inconsistent with Article 2 of the Constitution.

As regards the allegation about the non-conformity of the challenged regulation to Article 88(1) and (2) of the Constitution, which was indicated in conjunction with other higher-level norms for the review, the Constitutional Tribunal rules that the said amending Act is consistent with Article 88(1) of the Constitution, for it was properly promulgated, and that it is not inconsistent with Article 88(2) of the Constitution, which makes no reference to rules determining *vacatio legis*, but it merely delineates the scope of matters referred by the constitution-maker to be regulated by ordinary statute.

4.2. Another procedural allegation is that the challenged provisions are inconsistent with Article 2 – which expresses the principle of appropriate legislation – in conjunction with Article 219(1) and (2) as well as Article 221 of the Constitution. The said non-conformity is alleged to arise from the non-fulfilment of substantive premises concerning the enactment of the challenged provisions, which have been specified in the Act on Public Finances, as well as from non-compliance with the enactment procedure which should be the same for the challenged provisions – in the applicant's opinion – as the one for the enactment of the Budget Act.

4.2.1. As regards the non-fulfilment of substantive premises concerning the enactment of the challenged provisions, the applicant has argued that they were enacted without sufficient justification – in other words, that, in the context of the situation of public finances, they were not necessary, and thus inadmissible. Indeed, Article 86 of the Act on Public Finances specifies circumstances – the case of crossing the second debt threshold – in which the Council of Ministers is obliged to take certain measures, including a freeze in the remuneration of the employees of the public sector. Since the said debt threshold has not yet been crossed, then taking such measures is inconsistent with the

Constitution. To sum up, the applicant concludes that the provisions of the Constitution indicated as higher-level norms for the review prohibit the Council of Ministers and the legislator from taking austerity measures and remedial actions in advance, i.e. so as to avoid the deterioration of public finances.

The Constitutional Tribunal does not share the view presented above. It is the obligation of public authorities to be concerned with the situation of public finances, including the ratio of public debt to GDP, as this to a large extent determines the economic situation of the state. To empahsise that obligation, the constitution-maker has established the constitutional debt limit; in addition, the legislator, who considers various threats, has additionally provided for two lower debt thresholds. Crossing the thresholds entails that the Council of Ministers and the legislator need to take certain measures; however, this does not imply that a situation where the thresholds have not been crossed rules out the taking of the said measures, or that taking such measures in advance is prohibited by the Constitution. The Constitutional Tribunal has no doubt that the following two sayings – originally formulated in the field of medicine, but also relevant to other fields – are true: the one ascribed to Hippocrates -"*morbum evitare quam curare facilius est*" (prevention is better than cure), and Ovid's "*principiis obsta, sero medicina paratur"* (resist beginnings; the prescription comes too late when the disease has gained strength by long delays).

The reality of European countries shows that, due to the lack of public finance reform, in some of them the ratio of public debt to GDP has exceeded – at times, considerably – 100 %, and their situation, widely analysed in the recent months, confirms the validity of the sayings cited above. Certainly, taking preventive measures and remedial actions early leads to better effects and allows for the achievement of set objectives at a lower expense (both for the state and for society) than idle waiting for successive debt thresholds to be crossed, which then requires taking harsher measures. Appropriate action can and, in the view of the Constitutional Tribunal, should be taken adequately early, as means of prevention. In the above-indicated judgment in the case K 40/02, the Constitutional Tribunal has clearly underlined that: "although a national public debt in 2002 did not yet exceed 50 % of the GDP, the legislator, relying on the political assessment of a threat to the balance of public finances, could introduce extraordinary legal instruments" (the case concerned restricting the autonomy of local self-government as regards its expenditure, but the statement itself is still valid in the context of the present case).

To recapitulate: Polish law requires that certain measures need to be taken in the case of crossing successive debt thresholds, but it does not prohibit taking those actions earlier in order to prevent the crossing of the debt thresholds.

In these circumstances, the Constitutional Tribunal states that the challenged regulations in that respect are consistent with Article 2 of the Constitution. It also points out that none of the other provisions of the Constitution, indicated as higher-level norms for the review in the context of the analysed allegation (Article 219(1) and (2) as well as Article 221 of the Constitution) may not be regarded as referring to the challenged Act. The first one imposes an obligation on the Sejm to adopt a state budget in an appropriate form i.e. by means of a Budget Act; therefore, it does not concern the challenged Act at all. The second one could be indicated if the subject of the review was the Budget Act itself (and not the amending Act related to the implementation of the Budget Act). The third provision specifies a closed list of statutes which could be introduced solely by the Council of Ministers. The constitution-maker has not included statutes related to the implementation of the Budget Act. In this context, the Constitutional Tribunal underlines that the basis of legislative activity is the so-called general legislative competence of the legislator to regulate all matters selected by him (Article 10(2) and Article 95(1) of the Constitution). At the same time, Article 221 of the Constitution, regarding several types of statutes, constitutes an exception to a general principle established in Article 118 of the Constitution. Since there is the principle which states that "*exceptiones non sunt extendendae*" (exceptions must be interpreted in a restrictive manner), one may not deem that the right to introduce legislation as regards statutes related to the implementation of the Budget Act is the exclusive power of the Council of Ministers. In the present case, this is actually irrelevant, for the challenged amending Act related to the implementation of the Budget Act was introduced by the Council of Ministers.

In these circumstances, the Constitutional Tribunal states that the indicated higher-level norms for the review are inadequate in the context of the challenged provisions, and the said provisions are not inconsistent with the norms.

4.2.2. The Constitutional Tribunal deems it necessary to refer to the applicant's claims that, even in the case of crossing the second debt threshold, interference in judges' remuneration would not be admissible (p. 14 of the application), and that Article 86(1)(2)(a), second indent, in conjunction with Article 139(2) of the Act on Public

Finances "does not apply to judges, despite the fact that it is applicable to the other employees of all types of courts (i.e. administrative and service staff)".

In the opinion of the Constitutional Tribunal, judges' remuneration is covered by Article 86(1)(2)(a), second indent, of the Act on Public Finances. In certain circumstances, the said provision provides for a freeze in the remuneration of the employees of the public sector (more precisely: a Budget Bill may not provide for "an increase in remuneration" granted to those employees), including the employees of the institutions enumerated in Article 139(2) of the said Act, which comprise *inter alia*: the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court (together with voivodeship administrative courts), the National Council of the Judiciary and common courts. The applicant has put forward a thesis that "an increase in remuneration" does not refer to judges, as the said increase must be construed in the light of the Act of 23 December 1999 on remuneration in the public sector as well as on amendments to certain other acts (Journal of Laws - Dz. U. No. 110, item 1255, as amended; hereinafter: the Act on Remuneration). Therefore, it should be considered: first of all, whether, in the context of the Act on Public Finances, the term "an employee" comprises judges; secondly, whether judges fall within the category of the public sector; and thirdly, what the phrase "an increase in remuneration", as used in that provision, denotes.

As regards the first issue – namely, whether judges may be considered to be employees within the meaning of the Act on Public Finances – it should be stated that, pursuant to Article 55(1) and (3) of the Act on the Organisational Structure of Common Courts and Article 21 of the Act on the Supreme Court, common court judges and the judges of the Supreme Court are appointed to hold judicial offices by the President of the Republic of Poland; within the meaning of Article 65(1) of the Act on the Organisational Structure of Common Courts (and Article 26(1) of the Act on the Supreme Court); "the service relationship" of a judge shall be effective beginning from the date of delivery of the official notification on his/her appointment. However, the authors of commentaries on Article 68 of the Act of 26 June 1974 – the Polish Labour Code (Journal of Laws – Dz. U. of 1998, No. 21, item 94, as amended; hereinafter: the Labour Code) unanimously draw attention to the fact that, although the legislator mentions "appointing judges", this is the so-called illusory appointment, and the employment relationship of this professional group displays all characteristics of an employment relationship based on nomination (as stated, e.g., in *Kodeks pracy. Komentarz*, L. Florek (ed.), Warszawa 2011; K. Jaśkowski,

E. Maniewska, *Kodeks pracy. Komentarz. Ustawy towarzyszące z orzecznictwem*, Kraków 2002). In the light of the above-mentioned provisions of statutes regulating the rights and duties of judges as well as the provisions of the Labour Code, it is assumed in the doctrine and jurisprudence that judges are employees ("An employee" is a person employed on the basis of an employment agreement, appointment, election, nomination or a cooperative employment agreement – Article 2 of the Labour Code). They fulfil their duties for remuneration, working in a given court as an employment establishment, and are subordinate – in a very limited scope (the so-called autonomous subordination) – to their superiors (Article 79 and Article 106a of the Act on the Organisational Structure of Common Courts). Undoubtedly, due to their status of holders of judicial offices, it would be more appropriate to speak here of a public-law service relationship which links judges with the state; however, in the light of the binding provisions, the Constitutional Tribunal finds no grounds to state that the term "an employee" used in the Act on Public Finances does not comprise judges.

As regards the second issue, i.e. judges being part of the public sector, there is no doubt about that. Pursuant to its Article 4(1)(1), the Act on Public Finances is applicable to "the units of the public sector", which include – within the meaning of its Article 9(1) – *inter alia* courts and tribunals. In accordance with Article 112(1) of the Act on Public Finances, expenditure recognized in the state budget is primarily allocated for financing the functioning of the organs of public authority, supervisory and law enforcement authorities, as well as courts and tribunals, and the state budget comprises sections concerning, *inter alia*, courts and tribunals (Article 114 of the Act on Public Finances). The regulation of 4 December 2009, issued by the Minister of Finance, on the classification of budget entries and the indication of the recipients of funds (Journal of Laws – Dz. U. No. 211, item 1633, as amended) provides for the following budget sections: 04 – the Supreme Court, 05 – the Supreme Administrative Court, 06 – the Constitutional Tribunal as well as 15/00 – Common Courts (with further division into the Ministry of Justice − 15/01 and eleven courts of appeal – 15/02-15/12).

Public funds (Article 3 of the Act on Public Finances) are allocated for public spending (Article 6(1)(1) of the Act on Public Finances) which may be incurred for purposes and in amounts specified in the Budget Act (Article 44(1)(1) of the Act on Public Finances). Pursuant to Article 39(1) of the Act on Public Finances, the said spending is classified in sections, chapters and articles, and those issues are regulated in detail by the

regulation of 2 March 2010, issued by the Minister of Finance, on the detailed classification of income, spending, revenue and expenditure as well as foreign funds (Journal of Laws - Dz. U. No. 38, item 207, as amended). The regulation provides for section 751 – "the offices of the main organs of state authority, supervision, law enforcement and the judiciary" (which comprises *inter alia* chapters: 75102 – "main organs of the judiciary", 75104 – "National Council of the Judiciary") as well as section 755 – "the judicial system" (which includes *inter alia* chapters: 75502 – "common courts", 75503 – "military courts" and 75514 – "the National School of Judiciary and Public Prosecution"). Provided in the regulation, § 403 comprises "Remuneration for judges, prosecutors as well as judicial officials awaiting nominations and trainees", which specifies – as it has been explained – „remuneration and other work benefits paid out to (…) employees – due to the existing employment relationship or service relationship" (and, in particular, basic remuneration, allowances, bonuses, and jubilee gratuities). An analysis of Annex 2 to the 2012 Budget Act of 2 March 2012 (Journal of Laws - Dz. U. item 273), entitled "Remuneration in the units of the public sector in 2012", indicated in part 37 ("Justice"), in section 755 ("Judicial System"), that funds for remuneration for persons not covered by the multiplier systems of remuneration exceeds PLN 120 million (p 251), whereas funds allocated for the remuneration of the "functionaries" of the judicial system exceeds the amount of PLN 1.2 billion (p. 304); funds for the remuneration of judges delegated to the Ministry of Justice are singled out in a separate category (p. 308).

As regards the third issue – the interpretation of the term "an increase in remuneration – it is unclear why the applicant interprets it only in the light of the Act on Remuneration, i.e. as one referring only to statutory adjustment (Article 4(1) of the said Act) or "raising the amounts of remuneration" (Article 8 of the said Act) by applying "the average annual remuneration increase index", which do not actually refer to judges. In the opinion of the Constitutional Tribunal, there are no grounds to state that the Act on Public Finances, providing for "an increase in remuneration" in its Article 86(1)(2)(a), second indent, requires a freeze only in remuneration that is adjusted in accordance with rules set out in the Act on Remuneration. The aim of austerity procedures, which are necessary in the case of crossing the second debt threshold, is to balance out the state budget and to prevent an increase in the ratio of public debt to GDP; one of the measures applied here is the freeze in the public sector remuneration, regardless of the way of determining their amounts.

To conclude, the Constitutional Tribunal states that, despite their unique and constitutionally established status, judges are regarded as employees in the context of the binding law and belong to the public sector, and Article 86(1)(2)(a), second indent, in conjunction with Article 139(2) of the Act on Public Finances also concerns their remuneration.

4.2.3. With reference to the (modified) allegation that the procedure for enacting the amending Act related to the implementation of the Budget Act was inappropriate – as the applicant has argued that the said amending Act should have been enacted in accordance with the same procedure as the Budget Act – the Constitution Tribunal maintains its argument, presented in point 4.2.1 *in fine* of part III of this statement of reasons, that the indicated higher-level norms for the review – Article 219(1) and (2) as well as Article 221 of the Constitution – are inadequate. And since they are inadequate, they may not be used to negatively assess the conformity of the challenged regulation to Article 2 of the Constitution.

The Constitutional Tribunal finds no grounds to accept the applicant's claim (p. 10 of the letter of 18 July 2012) that rules for enacting the Budget Act and statutes related to the implementation of the Budget Act are the same. The constitution-maker has not established an obligation to draft and enact statutes related to the implementation of the Budget Act in accordance with the same rules as those governing the drafting and enactment of the Budget Act; the lack of such a provision rules out the possibility of declaring the said amending Act related to the implementation of the Budget Act, which was enacted in accordance with the procedure for ordinary statutes, to be unconstitutional. It is true that the enactment of statutes related to the implementation of the Budget Act is usually a prerequisite for the enactment of the Budget Act. Yet, this fact may not be used as an argument determining that the same rules should be used for the said statutes as those applied to the Budget Act, which is regarded by the Constitution as an exception.

4.3. At the hearing, it was raised that the draft version of the challenged provisions had not been properly consulted with the Council of the Judiciary (this had been pointed out by the Public Prosecutor-General in his written statement). However, the Constitutional Tribunal has not examined that allegation, as it was not raised by the applicant, who was competent in that regard.

5. The analysis of substantive allegations

5.1. The most important substantive allegation raised with regard to the challenged provisions is the infringement of Article 178(2) in conjunction with Article 216(5) and Article 220(1) of the Constitution, i.e. the non-fulfilment of the obligation to provide judges with remuneration consistent with the dignity of their office and the scope of their duties. The starting point of an analysis of that allegation should be the constitutional status of judges.

5.1.1. In the context of the Constitution, the special status of judges needs to be recognised; the said status should be considered, "above all, in the light of general constitutional assumptions (...) as well as their specification arising for courts from Article 45 of the Constitution. Special rights granted to judges - including the fact that they shall not be removable, the guarantee of appropriate working conditions and remuneration as well as restrictions as to removing them to other positions - (...) ensure the implementation of those constitutional principles and norms, and in particular the principle of independence of courts and judges". What is vital "(...) constitutional provisions (...) do not introduce personal «privileges» for a certain group of public officials, which are primarily aimed at protecting the interests of that group. These are provisions which should be considered, in the first place, in respect of their institutional aspects, i.e. in the light of the intention to ensure the actual observance of the most important constitutional principles concerning the administration of justice and the organisational structure of courts. Therefore, this is about (...) legal norms within the scope *ratione materiae*, although obviously (...) certain subjective rights arise therefrom which are enjoyed by persons holding the office of judge. However, from the functional point of view, this is not about personal rights the primary aim of which would be to protect the interests of certain persons (or professional groups) and which, in that case, could be comparable with the constitutional rights and freedoms of persons and citizens, arising from chapter II of the Constitution". The above assertions, included in the statement of reasons for the judgment of 7 November 2005, ref. no. P 20/04 (OTK ZU No. 10/A/2005, item 111), remain entirely relevant in the context of the present case.

The Constitution of 1997, which is currently binding, places special emphasis on the status of judges, by explicit reference to "the dignity of the office". In some other provisions of the Constitution, there is also the term of the dignity of the office, but it merely concerns reconciling other public duties with the said dignity of the office (respectively by the following officials: the President of the Supreme Chamber of Control

− Article 205, the Polish Ombudsman – Article 209, the President of the National Bank of Poland − Article 227, and the members of the National Council of Radio Broadcasting and Television – Article 214). Only the constitutional regulations included in Article 178(2), with reference to common court judges and the judges of the Supreme Court, as well as in Article 195(2), with regard to the judges of the Constitutional Tribunal, concern the dignity of the office in the context of the judges' financial situation. It may be stated that the constitution-maker has provided for a number of offices to be "dignified" and for certain restrictions to be imposed on holding those offices; however, only one office – the office of judge – has been granted the constitutional guarantee of working conditions and remuneration that are consistent with the dignity of that office.

'The dignity of the office' is a term that lacks sufficient specificity and is very difficult to define, and therefore the Constitutional Tribunal has made reference in its jurisprudence to the definition of the term 'dignity' included in the dictionaries of Polish (the decision of 22 March 2000, Ref. No. P 12/98, OTK ZU No. 2/2000, item 67), which state that: "dignity means «a sense of one's own value, self-esteem; honour, pride»". The Constitutional Tribunal has adopted a definition in accordance with which the dignity of the office implies the awareness of the value of the office and respect for it, shown both by persons that hold the office as well as other persons, and then more generally by entire society; the said term also comprises a sense of pride in one's membership in the group of persons that hold the office.

The special dignity of the office of judge directly arises from the Constitution, but it has also been made more specific by statutes, *inter alia* by the wording of the vow taken by every judge that s/he will "loyally serve the Republic of Poland, safeguard the law, diligently fulfil duties related to the office of judge, administer justice in compliance with legal provisions, by maintaining impartiality and (...) in accordance with conscience, as well as preserve confidential information protected by the law, and base conduct on the principles of dignity and integrity" (Article 66 of the Act on the Organisational Structure of Common Courts). The provisions of statutes regulating the rights and duties of judges oblige judges – during the years of their service as judges as well as at other times – to safeguard the dignity of their office and to avoid anything that could bring disgrace on the dignity of judges or could weaken trust in their impartiality (Article 82(2) of the Act on the Organisational Structure of Common Courts and Article 37(2) of the Act on the Supreme Court). They need to be persons of irreproachable character (Article 61(1)(2) of the Act on

the Organisational Structure of Common Courts and Article 22(1)(2) of the Act on the Supreme Court), may not contract another service or labour relationship (Article 86 of the Act on the Organisational Structure of Common Courts and Article 37 of the Act on the Supreme Court), and above all they are to display conduct that is consistent with the dignity of the office, also after they have retired (Article 104(1) of the Act on the Organisational Structure of Common Courts), and they take disciplinary responsibility for any misconduct that undermines the dignity of the office (Article 107 of the Act on the Organisational Structure of Common Courts and Article 52(1) of the Act on the Supreme Court).

Pursuant to "The Collection of Principles of Professional Ethics for Judges", adopted by the National Council of the Judiciary of Poland (annex to the resolution no. 16/2003 of 19 February 2003), all judges are bound by special obligations and restrictions concerning both their judicial activity (the administration of justice) as well as their private lives, for a judge should always be a person of integrity, dignity and honour as well as a person who has a sense of obligation. Also, judges should display good morals and they must not use their status and professional prestige for their own interests or the interests of third parties. It is their obligation to preserve the authority of the office, act for the good of the court they serve and the entire judicial system, as well as not to undermine the systemic position of the judiciary. In addition, judges should also require immaculate conduct and observance of the principles of professional ethics from other judges, and they must not turn a blind eye to any reprehensible conduct on the part of other judges.

It should be stated that high prestige that should be assigned to judges, in the interest of the state and civil society, *inter alia* arises from requirements that are to be met by those aspiring to hold the said office. What needs to be emphasised is the fact that access to the office of judge – i.e. to exercise judicial authority – is limited by the requirement of particular education, unlike in the case of the executive and legislative branches of government, as well as by moral requirements ("irreproachable character"). Obviously, there are numerous occupations, professions and functions, not only public ones, which are permitted only to persons with particular education and qualifications; however, it should be stressed that, in the context of the representatives of the legislative and executive branches, the legislator has not specified any requirements as to education. In the case of judges, however, the said requirements are particularly strict, as they comprise not only the requirement of tertiary education in the field of law, but also the

requirement of undergoing legal training for trainee judges and passing an examination for trainee judges, which is commonly regarded as one of the most difficult ones in public service. Although the above requirements do not need to be met by persons mentioned in Article 61(2) of the Act on the Organisational Structure of Common Courts (e.g. professors of law or law scholars with the Polish academic degree of *doktor habilitowany*, and representatives of other legal professions), the achievement of the second academic degree or the award of the academic title, or possibly the performance of one of the legal professions, undoubtedly, entails fulfilling restrictive requirements as to qualifications.

The above-mentioned circumstances lead to the conclusion that the dignity of the office of judge should primarily be a derivative of the prestige of judges, which is based on their high professional and moral qualifications. It is because of those qualifications that the constitution-maker has granted judges the power to exercise judicial authority in the name of the Republic of Poland (Article 174 of the Constitution); to ensure the proper functioning of that branch of government, he has guaranteed its independence from the other branches (Article 173 of the Constitution); as regards judges, he has made them independent and subject only to the Constitution and statutes (Article 178(1) of the Constitution).

The Constitutional Tribunal has maintained the view expressed in the above-mentioned decision in the case P 12/98 that "«the dignity of the office» must be implemented in a multi-faceted way, primarily by such administration of justice that would enhance the image of the court as impartial, fair and independent".

5.1.2. The Constitutional Tribunal stresses that "the dignity of the office" of judge may be relatively easily evaluated in the context of professional prestige ("the top legal profession") or social prestige (in the form of opinion polls on the public's trust in the representatives of various professions or polls on the most desirable careers among students), but, in the financial aspect, the said term is completely immeasurable and impossible to capture by means of economic indicators.

The Constitutional Tribunal states that the direct estimation of the amount of remuneration that would be consistent with the dignity of the office of judge is impossible. In particular, the said amount may not be estimated on the basis of financial needs of judges, as such needs would be difficult to indicate. However, it is possible to specify certain criteria that should be taken into account in the course of determining the amount of remuneration consistent with the dignity of the office of judge.

The Constitutional Tribunal has emphasised before that Article 178(2) of the Constitution comprises not only a positive requirement imposed on the legislator to specify the amounts of judges' remuneration at a level consistent with the dignity of their office, but also a prohibition against the adoption of regulations that would lead to a clash between judges' remuneration and "the dignity of their office", which could, for instance, take the form of the discretionary determination of the amounts of remuneration for particular judges by administrative authorities.

The Constitutional Tribunal has specified minimum requirements which - pursuant to Article 178(2) of the Constitution – should be met by statutory regulations determining the amounts of judges' remuneration (in particular, in the above-mentioned judgment in the case P 8/00 and in the judgment of 18 February 2004, ref. no. K 12/03, OTK ZU No. 2/A/2004, item 8). The amounts of judges' remuneration should: first of all – be determined by reference to average remuneration in the public sector and significantly exceed the amount of that remuneration; secondly – in the long term, show a steady increase at least at the same level as average remuneration in the public sector; thirdly – in the event of budget difficulties –be particularly protected against detrimental fluctuations.

Nevertheless, the Tribunal has clearly allowed in those judgments for a freeze in judges' remuneration. It has pointed out that judges' remuneration constitutes a category that is permanently linked with the state budget, and the determination thereof as well as the evaluation of modifications to the amounts of the said remuneration may not take place in isolation from the budgetary situation of the state, and thus from public finances. The Tribunal has ruled out the view that, regardless of the financial situation of the state, the amounts of judges' remuneration should be successively and regularly increased, since such an obligation may not be derived from Article 178(2) of the Constitution. However, it has made a reservation that even "a significant deterioration in the situation of public finances" may not justify a proportional decrease in the amounts of judges' remuneration, which are particularly protected in the Constitution, and it indicated that "the only exception (...) could be the necessity to introduce modifications to the amounts of the said remuneration, due to the implementation of remedy procedures in the case where a public debt exceeds three-fifths of the value of the annual gross domestic product" (the above-indicated judgment in the case K 12/03).

5.1.3. The issue of determining the amounts of judges' remuneration is of significance for their status. It is generally believed that appropriately high remuneration

constitutes one of the guarantees of judges' independence, since it allows judges to easily fulfil their duties without any concern for their own financial situation or the situation of their families. The issues of guaranteeing appropriate measures for funding the judiciary, and thus the amounts of judges' remuneration, were addressed *inter alia* in the Resolution No. 60/1989 of 24 May 1989, and the Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges (adopted by the Committee of Ministers on 13 October 1994), as well as in the European Charter on the statute for judges (adopted on 10 July 1998). The aim of the mentioned acts of the Council of Europe is to assist the governments of the Member States in guaranteeing the highest level of competence, independence and impartiality of judges.

The Council of Europe has stressed a number of times that the amounts of judges' remuneration constitute an essential element which guarantees the independence and impartiality of judges. The said Recommendation of the Committee of Ministers comprises principles concerning the independence, efficiency and role of judges. Within the meaning of Principle III: "Proper conditions should be provided to enable judges to work efficiently", and, in particular, by: "ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities"; and it has been explained in the relevant commentary that remuneration should sufficiently compensate for the burden of responsibilities, whereas the Member States should create actual opportunities for promotion as well as should increase the amounts of judges' remuneration.

By contrast, the European Charter on the statute for judges stipulates, in its point 6.1., that: "Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and (...) their behaviour within their jurisdiction, thereby impairing their independence and impartiality". Relying on these two documents, the Constitutional Tribunal states that the guarantee of powers, independence and impartiality of judges – *inter alia* by the proper way of shaping their remuneration – is generally regarded as a European standard with which the legislation and, above all, practice of the Member States should comply.

Providing judges with appropriate remuneration must also be considered in the context of Article 45(1) of the Constitution, as it constitutes the guarantee of a public interest which consists in ensuring that everyone has the right to a fair hearing of his/her

case by an impartial and independent court. In a democratic state ruled by law, what guarantees and determines law and order (the rule of law) is the appropriate functioning of the judicial system, and – as formulated by the constitution-maker – it is fully possible only when judges' working conditions and the amounts of their remuneration are consistent with the dignity of their office and the scope of their duties.

The Constitutional Tribunal has on a number of occasions addressed the issue of the independence of judges and factors that affect it, stating *inter alia* (in the ruling of 8 November 1994, ref. no. P 1/94, OTK in 1986-1995, Vol. V, item 37) that: "the material independence of judges has always been treated in the doctrine as an essential element which enhances the guarantee of their judicial independence". However, the Tribunal has stressed that although one should not ignore links between the financial situation of judges and their independence, it is impossible to "derive a simple correlation between the principle of judges' independence and the financial status of judges", since "formulating that issue in the categories of a simple correlation would undermine both judges as citizens and the authority of the state. Indeed, this would lead to the conclusion that a judge who is insufficiently paid ceases to be independent, and such a conclusion would be unfair and damaging". The above does not contradict the obvious fact that judges – having very limited possibilities of taking up another economic activity (Article 86 of the Act on the Organisational Structure of Common Courts) – should be provided with remuneration at an appropriate level by the state, which is justified by increased needs that stem from duties assigned to judges (Article 82 and Article 82a of the Act on the Organisational Structure of Common Courts). Undoubtedly, judges should participate in social and cultural life, as they need to know issues that are vital for society, as they deal with the representatives of society at hearings. Their obligation is to continuously improve their qualifications, which entails incurring considerable expenses. There is no doubt that the financial needs of judges and their families should be satisfied at an appropriate level, as nowadays the prestige of a person, and indirectly – the prestige of the position s/he holds, also depends on his/her financial situation.

5.1.4. In Article 178(2) of the Constitution, the constitution-maker has underlined the significance of judges' working conditions and their remuneration. He has considered them to be significant enough to be protected by a special guarantee at the constitutional level. The Constitutional Tribunal has held that Article 178(2) of the Constitution does not have a merely declarative character and may constitute a higher-level norm for a review

with regard to provisions on remuneration, "and in some – particularly drastic – situations, it may become (...) a basis for ruling the said provisions unconstitutional". Determining the level and components of judges' remuneration is however the task of the legislator, who is required to regulate judges' remuneration at a level that is consistent with the dignity of their office and is prohibited from establishing norms that would lead to a clash between judges' remuneration and "the dignity of their office". As it has already been indicated in the above-mentioned decision in the case P 12/98, this could take the form of the discretionary determination of the amount of remuneration with regard to particular judges or the form of an unexpected decrease in the amounts of judges' remuneration. In the same ruling, however the Constitutional Tribunal has stressed that "it has not been established to determine the amounts and components of judges' remuneration. The role of the Tribunal may only boil down to declaring the unconstitutionality of regulations that would be inconsistent with the legal content of Article 178(2)".

However, what the Constitutional Tribunal has also regarded as obvious is that "it must always take account of the complete constitutional context of issues it examines, and thus it must refer, *inter alia*, to such values as a balanced budget (...) and also it must be aware that citizens may not take the consequences of the economic failures of their state".

The Constitutional Tribunal points out that the issue of judges' remuneration has been analysed extensively in the above-mentioned judgments in the cases P 8/00 and K 12/03.

In the first one, the Tribunal has stated, *inter alia*, that "the judicial system will function properly when judges' working conditions and their remuneration will be adequate to the dignity of the office of judge and the scope of his/her duties". However, since expenditure related to the activity of judicial authorities is naturally linked to the state budget, then it is the task of the democratically mandated legislator to specify what components and amounts of remuneration will be "appropriate" to the dignity of the office and the scope of duties of judges, but, at the same time, will not infringe other constitutional values, and in particular they will not undermine the balanced budget of the state. The examination of the constitutionality of the legislator's decisions in that regard falls within the scope of the jurisdiction of the Constitutional Tribunal.

In the latter of the two judgments indicated above, the Constitutional Tribunal has held, *inter alia*, that judges constitute the only professional category where working conditions and remuneration are the subject of an explicit constitutional regulation, and the

structure of the Constitution indicates that the said elements make up the systemic position of judges, which is to create actual and appropriate bases and guarantees of fulfilling their judicial function, which plays a fundamental role in a democratic state ruled by law. The Constitutional Tribunal has stated that judges' remuneration goes beyond the scope of the "work – remuneration" relation, and has a special constitutional aspect which distinguishes it from all other types of remuneration in the public sector, as it is directly linked to the perception of the said profession in the light of the dignity and independence of judges. For this reason, the legislator has been entrusted with special obligations to determine the amounts of such remuneration and to create guarantees to safeguard them, and the said issues should be considered in the context of the general good interest of the judicial system, construed as the entirety of conditions and characteristics determining the capacity of courts to issue objective and fair rulings.

Although the Constitutional Tribunal has underlined that "in the case of judges, proper (...) working conditions and remuneration (...) must be rendered as a systemic institution that serves the good of the state"; at the same time, the Tribunal has pointed out that judges' remuneration constitutes "a category that is permanently linked with the state budget, and the determination thereof as well as the evaluation of modifications to the amounts of the said remuneration may not take place in isolation from the budgetary situation of the state, and thus from public finances". The Constitutional Tribunal has categorically stated that "the level of judges' remuneration should be specified in such a way that it should take account of requirements for granting judges' remuneration «consistent with the dignity of their office and the scope of their duties», on the one hand, and the real possibilities of the state budget, on the other". However, it has made the reservation that even considerable deterioration of public finances would not justify a proportional decrease in the said remuneration, which could only occur in the case of exceeding the constitutional debt limit. Since the applicant has made reference to a dissenting opinion submitted to that judgment by one of the judges of the Constitutional Tribunal, the Constitutional Tribunal points out that dissenting opinions – in the light of Article 68 of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws - Dz. U. No. 102, item 643, as amended) – manifest the lack of agreement on the part of a member of the bench adjudicating in a given case as to the ruling (or the statement of reasons for the ruling) arrived at by a majority of the bench, and thus it in no way binds the Constitutional Tribunal when it adjudicates in other cases.

In the light of the above, the Constitutional Tribunal holds the view that the amounts of judges' remuneration should be as large and resilient to fluctuations as possible, but that does not entail that, regardless of the budgetary situation, they must successively increase until the moment of the drastic imbalance of the budget, which – as determined by the constitution-maker – entails exceeding the constitutional debt limit. In accordance with the previous jurisprudence of the Constitutional Tribunal, it should be noted that the exceeding of the constitutional debt limit allows for decreasing the amounts of judges' remuneration (i.e. a step that is much more drastic than a freeze). By contrast, the applicant's theses lead to the conclusion that the amounts of judges' remuneration must increase in an unchanged way, irrespective of the situation of public finances, but – in the event of exceeding the said limit – they may be decreased. Such a bad situation has not yet occurred as regards public finances (the exceeding of the constitutional debt limit), and therefore it is hard to anticipate whether a considerable decrease in the amounts of judges' remuneration would be regarded as consistent with the Constitution.

5.1.5. The Constitutional Tribunal has deemed that Article 178(2) of the Constitution is not a source of judges' subjective rights. The point of the provision is not to protect the interests of particular persons holding judicial offices, but to impose an obligation on the state as regards specific action, namely granting judges remuneration that meets certain requirements.

That is the obligation of the legislative and executive branches with regard to the third branch of government, which - despite the fundamental role it plays in a state ruled by law – has no impact on the shape of the state budget and the amount of funds that are allocated for its functioning. The obligation of the first two branches of government, arising from Article 178(2) of the Constitution, is to create such a mechanism for granting remuneration to judges which would eliminate any doubts as to the amount of their future income and would rule out any manipulation in that regard. The said mechanism should be stable and – without the emergence of particularly important and constitutionally legitimate reasons – its functioning must not be disturbed. The Constitutional Tribunal has also drawn attention to the principle of cooperation between the public powers, which arises from the Preamble to the Constitution, which with reference to the determination of judges' remuneration should primarily be manifested in a dialogue between the executive and legislative branches, on the one side, and constitutionally authorised representation of the judiciary, i.e. the National Council of the Judiciary of Poland, on the other.

The reason for enacting the challenged regulation was the necessity to protect the threatened balance of the state budget which, in itself, constitutes an autonomous constitutional value that is a prerequisite for the state's ability to act and fulfil its duties.

The necessity to protect and preserve the said balance – *inter alia* by preventing a public debt from becoming excessive – arises from the entirety of regulations included in chapter X of the Constitution as well as its Article 1, which stipulates that the Republic of Poland shall be the common good of all its citizens.

The Constitutional Tribunal has stressed on a number of occasions that the state of public finances and protection against excessive debts incurred by public entities are interests that are granted particular constitutional protection, and "the said interest is placed so high in the hierarchy of constitutional values that it is safeguarded with a constitutional restriction, i.e. an absolute prohibition against an excessive public debt" (as stated in: the above-mentioned judgment in the case K 40/02). In the judgment of 26 November 2001, ref. no. K 2/00 (OTK ZU No. 8/2001, item 254), the Tribunal has also formulated the requirement of "harmonious reconciliation" of constitutional values, taking account of the priority character of a balanced state budget and the stability of public finances.

In the present case, the Constitutional Tribunal has to weigh two constitutional values, namely: judges' remuneration consistent with the dignity of their office, being an essential guarantee of judges' independence, which, in turn, is of fundamental significance for the proper functioning of the third branch of government; as well as the balance and stability of public finances, which are prerequisites of the proper functioning of the entire state. In the circumstances of a serious threat to the balance of the state budget and the adoption by the executive and legislative branches of an extensive programme aimed at rescuing public finances, the Constitutional Tribunal recognises that primacy should be assigned to the principle of protection of a balanced state budget, and accepts a freeze in judges' remuneration that is (incidental) introduced only for a limited period.

The Constitutional Tribunal considers it necessary to emphasise that – despite the thesis put forward by the applicant (pp. 2 and 20 of the application) – a freeze, i.e. no increase in remuneration, may not be regarded as tantamount to "a decrease" in the said remuneration. The lack of an increase is not a decrease, and it is irrelevant that – due to inflation, and "the continuing fall in the purchasing power of money as well as the related increase in prices" – there is a certain decrease in the purchasing power of judges (in accordance with the communiqué of the President of the Central Statistical Office, dated

13 January 2012, the Official Gazette of the Republic of Poland – *Monitor Polski*, item 23, the total average annual consumer price index in 2011 in relation to 2010 was 104.3 %). The said circumstance is of significance, as – according to the well-established line of jurisprudence of the Constitutional Tribunal (e.g. the above-mentioned judgments in the cases P 8/00 and K 12/03) – a decrease in the strict sense of the word, i.e. a decrease in the amounts of judges' remuneration by the legislator, is admissible only in a situation where the ratio of public debt to GDP exceeds the constitutional debt limit.

The Constitutional Tribunal recognises that one-time, incidental lack of an increase in the amounts of judges' remuneration (by 5.26 % − this is the difference between the remuneration in the second quarter of 2010 and 2011) – which, as it has been emphasised above, is not tantamount to a decrease introduced by a normative regulation (and is admissible only after exceeding the constitutional debt limit) - obviously constitutes a deterioration in judges' conditions of pay (as it will negatively affect the amounts of judges' remuneration in the subsequent years, and also it is reflected in pay for retired judges). However, it does not change the mechanism for determining the amounts of judges' remuneration and does not result in a situation where, due to a freeze in judges' remuneration, the said remuneration would cease to be consistent with the dignity of their office and the scope of their duties. Withholding an increase in the amounts of the said remuneration is similar in its effects to the lack of remuneration adjustment or to the lack of indexation of remuneration in the public sector in general, as well as the indexation of other benefits, and in particular old-age and disability pensions.

The Constitutional Tribunal has, on a number of occasions, allowed for the lack of adjustment of various benefits, due to the financial difficulties of the state, by holding the view that, for instance, the Act of 23 December 1999 on remuneration in the public sector as well as on amendments to certain other acts (currently Journal of Laws - Dz. U. of 2011 No. 79, item 431, as amended) "does not guarantee, in an unconditional way, that the employees of the public sector will be granted an annual increase in remuneration of a certain amount. (...) the amounts of remuneration of that social group are directly determined by the budgetary situation of the state. (...), one should provide for a risk of restricting a potential increase in remuneration, in the case of negative forecast concerning factors that determine the budgetary situation of the state".

In another judgment, the Constitutional Tribunal has stated that "the drastic imbalance of the state budget may constitute grounds for the restriction or temporary

elimination of indexation in the case of the remuneration of employees in the public sector", which, however, "should not lead to the unfair distribution of the burden ensuing from the economic recession and the imbalance of the state budget to particular professional groups" (the ruling of 29 January 1992, ref. no. K 15/91, OTK in 1986-1995, Vol. III, item 8). Moreover, the Constitutional Tribunal has emphasised that: "one may not speak of employees' subjective right to automatic adjustment of their remuneration and (...) of the acquisition of such a right by the employees of the public sector. In such a context, there is not even a legitimate expectation of such a right, not to mention a maximally formed legitimate expectation. Provisions that permit remuneration adjustment, although they take account of the financial situation of employees, they do not directly create individual subjective rights and they primarily constitute requirements set for the organs of the state as regards managing funds for remuneration for the employees of the public sector (the above-cited judgment in the case K 32/02).

The Constitutional Tribunal holds the view that a threat of a drastic deterioration in public finances (assessed on the basis of exceeding the second debt threshold) allowed the legislator to introduce an incidental freeze in judges' remuneration. The minimum standard set in Article 178(2) of the Constitution has not been infringed, as the amounts of the said remuneration still remain significantly higher than average remuneration in the country. At the same time, it should be underlined that the amounts of judges' remuneration have been increased regularly for the last few years, whereas the remuneration of all the employees of the public sector as well as the remuneration of Sejm Deputies and Senators have been frozen for a long time.

In the light of the above-mentioned statements, the Tribunal concludes that the challenged provisions of the amending Act related to the implementation of the Budget Act have not infringed Article 178(2) of the Constitution.

5.1.6. With regard to Article 216(5) and Article 220(1) of the Constitution, indicated as higher-level norms for the review that are to be read in conjunction, the Constitutional Tribunal states that they outline rules for running the financial economy of the state. The constitution-maker has assumed that both a budget deficit (the excess of state expenditure over state revenue in the state budget, specified in the Budget Act – Article 113(1) of the Act on Public Finances) as well as a public debt are relatively common nowadays, but they are accepted only up to a certain level the exceeding of which is highly disadvantageous for the state.

Both Article 216(5) and Article 220(1) of the Constitution prohibit public authorities that are responsible for contracting loans and providing guarantees and financial sureties from taking action which would result in exceeding the constitutional debt limit (Article 216(5) of the Constitution). These provisions are also addressed to the Sejm, which may not increase a budget deficit provided for in a Budget Bill (Article 220(1) of the Constitution). However, they definitely do not entail that there is a prohibition against austerity measures that are to prevent exceeding the constitutional debt limit (in addition to which the legislator has established debt thresholds) or a prohibition against taking the said measures before crossing successive debt thresholds. In the light of the views presented above as regards the admissibility of taking remedy measures by the legislator, even before crossing the second debt threshold (and definitely before exceeding the constitutional debt limit), the said provisions – indicated as higher-level norms for the review that are to be read in conjunction – are declared, by the Tribunal, to be inadequate in the present case.

5.2. Another substantive allegation is that the challenged provisions have infringed Article 2 in conjunction with Article 178(2) of the Constitution, due to an arbitrary infringement of the principle of protection of citizens' trust in the state and its laws as well as the principle of protection of acquired rights.

5.2.1. The principle of protection of citizens' trust in the state and its laws is a component of the principle of a democratic state ruled by law and obliges the organs of the state to enact and apply the law in such a way that it would not become a trap for the citizen, who should be able to make plans and arrangements in the full confidence that s/he would not face any legal consequences that could not be predicted at the moment of decision-making, and that his/her actions are consistent with the binding law as well as in the future they will also be recognised by the legal order. New regulations adopted by the legislator may not surprise their addressees, who should have time to adjust to changing regulations and to make decisions as to a further course of action without any hurry or pressure (see e.g. the ruling of 3 December 1996, ref. no. K 25/95, OTK ZU No. 6/1996, item 52, as well as the judgments of: 15 February 2005, ref. no. K 48/04, OTK ZU No. 2/A/2005, item 15, 30 May 2005, ref. no. P 7/04, OTK ZU No. 5/A/2005, item 53 and 27 January 2010, ref. no. SK 41/07, OTK ZU No. 1/A/2010, item 5). In accordance with the said principle, the legislator should not make empty promises as well as should not suddenly back out of promises that have already been made or rules that have been set (as stated, e.g., in the above-cited ruling in the case K 25/95 and the judgment of

26 January 2010, ref. no. K 9/08, OTK ZU No. 1/A/2010, item 4). In the view of the Constitutional Tribunal, the legal security of the individual requires that s/he should have a chance of "making decisions about what action to take based on possibly full knowledge of grounds for the activity of the organs of the state as well as of legal consequences which may be brought about by the actions of the said organs and the individual" (as stated in the above-cited judgment in the case K 48/04). On the other hand, the individual must always be aware that a change in social or economic conditions may require not only a change in the binding law, but also the immediate entry into force of new legal regulations (as stated in: the above-cited judgment in the case P 7/04 and the judgment of 7 February 2006, ref. no. SK 45/04, OTK ZU No. 2/A/2006, item 15).

5.2.2. The Constitutional Tribunal states that the issue of surprising judges with a freeze in their remuneration and the issue of time for possible adjustment have been discussed as part of the analysis of the procedural allegation which concerned the insufficient period of *vacatio legis* (point 4.1.2. *in fine* in part III of this statement of reasons), and therefore the Constitutional Tribunal deems that it is redundant to repeat that argumentation.

The Constitutional Tribunal confirms that the legislator should not unexpectedly change set rules which concerned increasing the amounts of judges' remuneration, which are safeguarded with special constitutional guarantees; however, the Tribunal deems that judges – as all other citizens – must take into account that the social and economic situation of the state may require changes in the binding law, including provisions concerning their remuneration. One should recognise that the legislator did not change the set rules, as the mechanism for increasing the amounts of judges' remuneration remains unchanged. In these circumstances, the Constitutional Tribunal states that the incidental regulation adopted only for a specified period does not infringe the principle of protection of citizens' trust in the state and its laws.

5.2.3. The applicant holds the view that the right to remuneration in an increased amount - which constitutes a derivative of average remuneration in the second quarter of 2011 - was acquired by judges on the date of the publication of the communiqué issued by the Central Statistical Office in 2011, but the exercise of that right was possible from 1 January 2012, and the revocation of that right, ensuing from a freeze in remuneration, infringes the principle of protection of acquired rights. In case this right is not recognised by the Tribunal, the applicant has stated that certainly from then on there existed the

maximally formed legitimate expectation of the right, whereas the challenged provisions – in his opinion – have ruled out such an expectation, by arbitrarily freezing judges' remuneration, which justifies the allegation about the infringement of acquired rights.

In the context of infringing the said right or the maximally formed legitimate expectation of the right, the Constitutional Tribunal, above all, draws attention to the fact that there is no constitutional right to remuneration of a certain amount in the context of judges. First of all, Article 178(2) of the Constitution has been included in chapter VIII of the Constitution, which regulates the systemic position of courts, and not in its chapter II, which concerns the rights and freedoms of persons and citizens; secondly, it contains the wording "judges shall be provided with remuneration" (and not "judges shall have the right to remuneration"). This means that the said provision does not establish a subjective right granted to judges (which has already been mentioned in point 5.1.5 in part III of this statement of reasons), but the obligation of the state – i.e. of the executive and legislative branches of government – which consists in providing judges with appropriate remuneration so as to create conditions for proper functioning and independence from these two branches of government. The subjective right of a judge to remuneration of a certain amount arises from an ordinary statute.

The Constitutional Tribunal does not share the applicant's view as to the fact that since the publication of the communiqué issued by the Central Statistical Office, there had been a subjective right (claim) granted to judges as regards appropriately increased remuneration, with the deferred possibility of exercising it – until 1 January 2012. Judges' right to increased remuneration emerged on neither the day of the publication of the communiqué, nor on any other day prior to 1 January 2012. Indeed, attention should be drawn to the fact that, in the context of the Polish Labour Code, remuneration is provided for work that has been performed (Article 80, first sentence, of the Labour Code) and – if it is paid out once a month – it is paid after the work is done, forthwith after its full amount is determined, but no later than within the first 10 days of the following month (Article 85(2) of the Labour Code). Due to the lack of other provisions in the Act on the Organisational Structure of Common Courts and the Act on the Supreme Court, it may not be assumed that judges' remuneration is governed by other rules. In the light of the above, the Constitutional Tribunal deems that judges' right to remuneration, in an amount that arises from the provisions of law, emerges after a given judge has worked for a certain period (usually one calendar month), which is not changed by the occasional practice of paying

out remuneration before the end of a calendar month. In such a situation, the right to remuneration for January (and subsequent months) in 2012 has been acquired by judges after having worked throughout that month, and the amount of that remuneration was determined at a given point in time by legal provisions, including those of the challenged amending Act related to the implementation of the Budget Act. If the said Act had not introduced a freeze in judges' remuneration, each of them would acquire the right to increased remuneration (calculated by taking account of a higher basis) after working for full successive calendar months in 2012.

5.2.4. A different stance has been taken by the Constitutional Tribunal on the existence of the legitimate expectation of judges' right to increased remuneration. The legitimate expectation of a right is a legal situation where the "first signs" of a future right have already emerged, i.e. when at least one statutory premiss of acquiring a certain subjective right has been fulfilled, but at the same time at least one of the other premisses has not been met (as stated in J. Kuropatwiński, *Ekspektatywa powstania wierzytelności w polskim prawie cywilnym*, Bydgoszcz 2006, *passim*). A special category of legitimate expectations is constituted by maximally formed legitimate expectations. The Constitutional Tribunal has defined maximally formed legitimate expectations in its jurisprudence as temporary rights which exist in a situation "where all fundamental statutory premisses of acquiring rights under a given statute have been met", "and what is missing is just the last stage which determines the definite acquisition of a subjective right by an expectant person" (as stated in: the judgment of 24 October 2000, Ref. No. SK 7/00, OTK ZU No. 7/2000, item 256).

In the view of the Constitutional Tribunal, as of the date of the publication of a communiqué about the amount of average remuneration in the second quarter of 2011, issued by the President of the Central Statistical Office, judges have acquired the maximally formed legitimate expectation of the right to remuneration calculated on the basis of the amount specified in the communiqué. Indeed, on that date, it was possible to precisely calculate the amount of remuneration to be paid out to every judge after 1 January 2012. Except for the requirement that a judge's employment relationship had to be ongoing, no action needed to be taken by a given eligible person or a given employment establishment for the said right to be acquired. At the same time, it should be emphasised that judges maintain their legal status, in principle, until the end of their lives, although at some point they retire from active service, (unless they themselves give up the status of a

retired judge, or they commit acts that result in their loss of the office or in the revocation of their right to retire). Hence, unlike in the case of a typical employment relationship, judges do not need to be concerned about losing their jobs, thus their acquisition of the right to increased remuneration was only a matter of time (the arrival of 1 January 2012). What deprived judges of the maximally formed legitimate expectation was the entry into force of the challenged provisions.

Maximally formed legitimate expectations are, in principle, granted the same protection as acquired subjective rights. The principle of protection of acquired rights amounts to a prohibition against the arbitrary revocation or restriction of rights which have been vested in the individual. The principle guarantees that justly acquired subjective rights as well as maximally formed legitimate expectations are subject to protection (as stated, e.g., in the above-cited judgments in the cases K 5/99 and SK 45/04 as well as the judgment of 3 March 2011, Ref. No. K 23/09, OTK ZU No. 2/A/2011, item 8). However, it does not follow from the said principle that "everyone may always trust that the legal regulation of his/her rights and obligations will not be changed to his/her disadvantage in the future. Evaluation depends here on the content of changes introduced by the legislator and the way they are introduced, taking account of the entirety of circumstances and the constitutional system of values" (the judgments of 28 April 1999, Ref. No. K 3/99, OTK ZU No. 4/1999, item 73 and 13 March 2000, Ref. No. K 1/99, OTK ZU No. 2/2000, item 59). None of property rights, and hence none of the legitimate expectations of those rights, is absolute in character, and the legislator may impose restrictions on them, but each such restriction is to be verified in the light of constitutional values that justify the imposition thereof. The issue of assessing the constitutionality of a particular solution, from the point of view of the principle of protection of justly acquired rights, has been thoroughly analysed in the above-mentioned judgment in the case K 32/02. The Constitutional Tribunal has stated, *inter alia*, that the protection of acquired rights is not absolute in character, for "it is possible to have (...) departures from that principle, but the assessment of the admissibility of the departures may be carried out in the context of a specific situation, taking account of the entirety of circumstances. What may justify an infringement of the principle of protection of acquired rights is, in particular, a need to guarantee the implementation of another value that is vital for the legal system, even though this value may not be directly and explicitly referred to in constitutional provisions".

The principle of protection of acquired rights does not prohibit the legislator from introducing changes into legal provisions, even if those changes were to worsen the situation of the addressees of a given law (the judgment of 22 December 1997, Ref. No. K 2/97, OTK ZU No. 5−6/1997, item 72), provided that another constitutional value which should be assigned primacy in given circumstances weighs in favour such changes. Such values are, in particular, the need to maintain a balanced budget and prevention of an excessive public debt, which have been mentioned here a number of times (as stated, e.g., in the above-cited judgment in the cases K 22/96 and Kp 6/09, as well as the judgments of: 4 December 2000, Ref. No. K 9/00, OTK ZU No. 8/2000, item 294 and 9 April 2002, Ref. No. K 21/01, OTK ZU No. 2/A/2002, item 17). What follows from the assessment of public finances presented in point 3 of part III of this statement of reasons is that the challenged provisions were enacted when the state was in serious budget difficulties which posed a threat to the balance of public finances. In order to restore the balance, the Government and the Sejm took remedial actions which comprised the challenged freeze in judges' remuneration that had been introduced only for one year and as the last case of such a freeze, already after several years of no remuneration adjustment for other employees of the public sector as well as for Senators and Sejm Deputies. In these circumstances, the Constitutional Tribunal has deemed that depriving judges of the legitimate expectation of increased remuneration in the year 2012 was justified by the need to maintain a balanced state budget.

5.3. Yet, another substantive allegation concerns the infringement of Article 64(1) and (2) in conjunction with Article 31(3) of the Constitution caused by restricting judges' property right to remuneration.

5.3.1. Protection that arises from Article 64(1) and (2) of the Constitution covers all property rights that are vested in the individual, including the right of ownership and the right of succession. The open-ended wording of the provision indicates that the constitution-maker has provided a constitutional guarantee for an extensive catalogue of property rights (as stated in the judgment of 3 October 2000, Ref. No. K 33/99, OTK ZU No. 6/2000, item 188). The protection of property rights consists not only in preventing and eliminating actual actions that make it impossible for eligible persons to exercise rights which are vested in them, but also in shaping the content of the rights in such a way that would limit the danger of one-sided undermining of the economic essence of the rights (as stated in: the above-cited judgment in the case K 33/99). However, the obligation to

provide everyone with equal protection of property rights is not absolute in character – the legislator may diversify the scope or measures of protection, but such action needs to be rationally justified, must be proportionate and has to be based on other constitutionally protected values (as stated, e.g., in: the judgment of 21 December 2005, Ref. No. SK 10/05, OTK ZU No. 11/A/2005, item 139).

The principle of proportionality – established in Article 31(3) of the Constitution – specifies premisses which restrict the exercise of constitutional rights and freedoms. Some of them are formal in character (as they concern the statutory form of the introduction of restrictions), whereas others are substantive (since they regard the essence of introduced restrictions). A substantive premiss is that such a restriction is necessary in a democratic state to ensure its security and public order, to protect the natural environment, health or public morals, or to safeguard the freedoms and rights of other persons. An assessment whether constitutional requirements for restricting rights and freedoms are met is carried out by means of "the test of proportionality", which provides answers to the following questions: firstly, whether a given introduced regulation will bring about intended results; secondly, whether it is indispensible for the protection of a public interest; and thirdly, whether its effects are proportional to burdens imposed on citizens (as stated, e.g., in: the judgment of 12 January 2000, Ref. No. P 11/98, OTK ZU No. 1/2000, item 3). Also, the Constitutional Tribunal has pointed out that stricter standards for introducing restrictions refer to personal and political rights, whereas more lenient standards – to economic and social rights (as stated, e.g., in: the judgment of 26 April 1995, Ref. No. K 11/94, OTK in 1986-1995, Vol. VI, item 12).

The Constitutional Tribunal points out that there is no abstract subjective right to remuneration of a certain amount or to a remuneration increase. The determination of the way to calculate the amount of remuneration (the definition of a multiplicand and multipliers in legal acts that are universally binding) is a constitutive element of the employment relationship of a judge, but it does not create a property right to remuneration of a certain amount, but merely the legitimate expectation of that right. Also, it certainly does not mean that the right to remuneration is acquired by a judge, as an employee, regardless of the fulfilment of other conditions, and in particular the performance of work during a given period. Obviously, *in concreto* – i.e. with reference to a particular judge (as well as every employee) who has worked for a full month – a subjective right emerges which is subject to constitutional protection; thus, if s/he received no remuneration, or

received it in an amount which differed from the one specified in legal provisions, then s/he would be entitled to an appropriate claim.

5.3.2. Pursuant to Article 1 of the Constitution, the Republic of Poland shall be the common good of all its citizens – this includes judges, Sejm Deputies, persons that hold managerial positions in state institutions, all the employees of the public sector as well as other persons, regardless of their economic activity - who are equal in their rights and obligations as regards the common good, i.e. Poland, (the Preamble to the Constitution). In the above-cited ruling in the case P 1/95, the Constitutional Tribunal has deemed that "the guarantee function of provisions (...) may not (...) consist in the fact that citizens should not take the consequences of the economic failures of their state", and "then the legislator faces (...) the problem of fair distribution of the effects of those failures to particular groups of citizens". At this point, it should be brought to attention that the remuneration of Sejm Deputies and Senators as well as the remuneration of persons that hold managerial positions in state institutions have been frozen for many years now; a similar situation is the case as regards the remuneration of all the employees of the public sector (including the remuneration of administrative staff in the judicial system), which last time increased in 2008, and thus was adjusted to the inflation rate in 2007 (Article 15(4) of the 2008 Budget Act of 23 January 2008, Journal of Laws - Dz. U. No. 19, item 117). It should be emphasised that the total inflation rate in 2008-2011 was 14.6 %, which reflects a decrease in the purchasing power of remuneration that was frozen during that period. Also, it is worth noting that the amounts of judges' remuneration are to be increased in 2013 (will no longer be frozen); by contrast, pursuant to the 2013 Budget Bill, the other amounts of remuneration in the public sector will still remain frozen (Article 13(1)(3) of the 2013 Budget Bill), which entails that their purchasing power will continue to decrease (the inflation rate forecast in 2012, and specified in Article 18 of the 2012 Budget Act, was 2.8 %, but it may not be ruled out that the actual inflation rate will be higher – according to some forecast, it may exceed 3.5 %).

The Constitutional Tribunal states that the employees of courts (and more generally – all the employees of the public sector) experience the effects of the inflation rate at least in the same way as judges. Their amounts of remuneration are, in general, considerably lower than those of judges (not to mention the fact that social insurance contributions are deducted from their remuneration), which is obviously justified, but which also suggests that the applicant's argumentation – that their amounts of remuneration may be subject to

freezing without any restrictions (pp. 13-16 of the application), whereas the amounts of judges' remuneration should increase, regardless of the state of public finances, except for the case of exceeding the constitutional debt limit – should be approached critically. In this context, an incidental, one-time freeze in judges' remuneration may not be regarded as infringing Article 64(1) and (2) of the Constitution, and in particular the principle of equal protection of property rights regardless of their scope ratione personae, as expressed in Article 64(2), since for several years – due to the existence of a special constitutional guarantee – judges' remuneration has been much more protected than the remuneration of all the other employees and functionaries of the public sector.

5.4. The Constitutional Tribunal has deemed that the challenged regulation – which introduces a freeze in judges' remuneration for one year – is consistent with the Constitution. However, the Tribunal states that the said solution is declared to be constitutional due to the fact that its application is incidental and that the financial difficulties of the state pose a threat to a balanced state budget, which constitutes a constitutional value that competes with values set out in Article 178 of the Constitution. At the same time, the Tribunal emphasises that Article 178(2) in conjunction with Article 1 of the Constitution delineates boundaries that the legislator may not cross as regards judges' remuneration, and if he crossed them, the Constitutional Tribunal could not accept that.

By establishing the obligation to provide judges with appropriate working conditions and remuneration consistent with the dignity of their office and the scope of their duties – as set out in Article 178(2) of the Constitution, next to provisions expressing the principle of judges' independence, the legislator deemed that the said appropriate conditions and remuneration are necessary for judges to properly fulfil their duties, i.e. to administer justice (adjudicate). The legislator's intention was not to safeguard the individual interests of persons holding judicial offices, but to ensure that the judiciary would function in a proper way, which is a prerequisite for the implementation of the rule of law. On the basis of Article 178(2) of the Constitution, it is impossible to derive judges' subjective rights to remuneration of a certain amount or detailed legal solutions concerning their remuneration, but it is possible on the basis of the said Article – due to the character of the office and special duties – to set boundaries that must not be crossed by the legislative and executive branches, when they determine the amounts of judges' remuneration. The said boundaries, or "provisional requirements", concerning judges' remuneration consistent with the dignity of their office and the scope of their duties have

been set out in the jurisprudence of the Constitutional Tribunal for many years. The bench adjudicating in the present case accepts that line of jurisprudence.

The "provisional requirements" that must not be breached are as follows:

- the amounts of judges' remuneration should be determined in a way that would exclude all discretion – in the context of the whole professional group (on the part of the executive branch of government) as well as with regard to particular judges (i.e. it is inadmissible to correlate the amount of their remuneration with the individual evaluation of their work);
- the amount of remuneration granted to a judge, including a judge who begins his/her career in a district court, should considerably exceed the amount of average remuneration in the public sector;
- in the long term, judges' remuneration should show an upward trend that would not be weaker than a similar trend concerning average remuneration in the public sector;
- when the state is in a difficult budgetary situation, the amounts of judges' remuneration should be granted better protection against excessively negative changes than the amounts of remuneration provided to other employees and functionaries of the public sector;
- it is inadmissible to decrease the amounts of judges' remuneration by normative legal acts, except for a situation specified in Article 216(5) of the Constitution (i.e. the case of exceeding the constitutional debt limit).

This judgment of the Constitutional Tribunal may not be construed as acceptance of the practice of freezing the amounts of judges' remuneration, which implies a decrease in their real value, and thus a deterioration in the financial situation of judges. In a democratic state ruled by law, based on the tri-division of powers, it is not admissible for one of the branches of government (the judiciary) to be weakened by the other branches, even as regards the standard of living, as this could entail making the judiciary dependent on the other branches and could result in undermining its authority.

A freeze in judges' remuneration may be tolerated only in exceptional cases, in view of other constitutional values, and in particular – as in the present case – due to the difficult budgetary situation of the state, when the said freeze is part of a broader austerity programme. On no account may the said freeze become regular practice. Obviously, it is

not possible to establish strict rules in that respect, for instance, to prohibit the legislator from freezing the amounts of judges' remuneration for the next two years, or to permit the said freeze no more frequently than once every specified number of years. Such regulations must be evaluated on a case-by-case basis, by taking account of the social and economic determinants as well as the entire normative context; the outcome of such evaluation should result from weighing constitutional values. Indeed, it should be emphasised that a freeze in judges' remuneration is admissible only in view of other constitutional values, and may not be a "disciplinary" measure – even if only implied or suggested, as this might be concluded from certain opinions presented by some representatives of the executive branch.

For these reasons, the Constitutional Tribunal has adjudicated as in the operative part of the judgment.

Dissenting Opinion
of Judge Mirosław Granat
to the Judgment of the Constitutional Tribunal
of 12 December 2012, Ref. No. K 1/12

Pursuant to Article 68(3) of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws - Dz. U. No. 102, item 643, as amended), I submit a dissenting opinion to the judgment of the Constitutional Tribunal of 12 December 2012 (ref. no. K 1/12).

I hold the view that:

1. The norm expressed in Article 178(2) of the Constitution does not concern a given judge as a person, or a unique kind of an official or functionary. The said norm concerns *the office of judge*. *The office of judge* and a judge (as well as, in general, an office *and* an official) do not mean the same.

These are not identical categories. Therefore, the said provision refers to the remuneration of a judge as a unique kind of an official or functionary (and thus, it does not concern his/her subjective right to remuneration). There would be no point in introducing a norm addressed in this way into the Constitution. It would be justified to pose a question why the constitution-maker has not dealt with the remuneration of other vital professions (e.g. why he mentions nothing about the remuneration of a prosecutor, police officer or surgeon). Article 178(2) of the Constitution concerns the dignity of the office of judge and safeguards for it, and not judges and their prosperity. In my opinion, this explains the reason why that provision is taken into account in the doctrine of law, despite the fact that it is apparently presented there as original (there is no similar regulation in constitutions of other states). It is one of the more well-known provisions of the Polish constitutional law in the world (cf. e.g. lectures on constitutional law by J. Waldron).

The Constitution of the Republic of Poland refers to *the office of judge*, and makes no reference to other crucial professions, since the scope of *the dignity of the office of judge* comprises independence. *The dignity of the office of judge* is inherently related to independence. Independence is a quality that distinguishes the dignity of the office of judge from the most prestigious offices (e.g. the dignity of the office of the President of the Republic of Poland, the dignity of the office of the Prime Minister or another important official or specialist). Independence is an integral aspect of *the dignity of the office of*

judge. *The dignity of the office* of judge comprises a unique feature that is absent in other offices and positions, i.e. the said independence. Independence is part of the definition of *the dignity of the office* of judge, as referred to in Article 178(2) of the Constitution. The office of judge, due to its independence, constitutes an office in which the public repose special (utmost) confidence. Without independence, the dignity of the office of judge is of no relevance. There is the following correlation between *the dignity of the office of judge* and independence, namely: the dignity of the office does not only imply independence, but it also requires that one needs to be independent (independence is a component thereof). In order to express a relation between *the dignity of the office of judge* and independence, several more descriptions may be provided, but each time one draws the same conclusion that independence is a necessary component of *the dignity of the office of judge*.

Therefore, the remuneration of a given judge is to safeguard *the dignity of the office of judge*. The fact that the constitution-maker emphasises '*the dignity of the office*' results in 'remuneration consistent [therewith]', construed as a safeguard for that office.

2. In this judgment, the Tribunal formulated the constitutional issue in a different way. Remuneration referred to in Article 178 of the Constitution is to safeguard the living standards of judges and the dignity of their office, i.e. the dignity of a judge requires "remuneration consistent [therewith]". I take a different stance on that matter. The dignity of a judge, whose characteristic is independence, requires the said remuneration.

In the present case, the Tribunal's reasoning seems to rely on the assumption that remuneration contributes to the dignity of a judge, that the dignity of a judge requires substantial remuneration, and that such remuneration contributes to *the dignity of the office* of judge. Taking such an approach, *the dignity of an official* leads to *the dignity of the office* of judge. This is a far-reaching misunderstanding. What may follow from that assumption is a conclusion that "a person who earns the most is the most dignified" or that "dignity depends on remuneration", etc. In this case, the Tribunal has not undertaken the effort to distinguish between *the dignity of the office* of judge and the dignity of a judge. It has not defined these categories in a precise way. It has not placed sufficient emphasis on *the dignity of the office* of judge. These terms are interrelated, but – as I have mentioned – not identical. For the interpretation of Article 178 of the Constitution, it is fundamental to draw a precise distinction between *an office* and *an official*.

3. In the light of Article 178 of the Constitution, remuneration consistent with *the dignity of the office of judge* is not set by the state budget, but by the principle of independence. In the Constitution, *the dignity of the office* is related to judges' independence, and may not be determined solely by the state budget. In a sense, everything depends on the state budget; without funds from the state budget, courts could not function, and there will be no protection of constitutional rights and freedoms, etc. My point is that even a very modest state budget does not give the executive branch the right to change the amounts of judges' remuneration. In the context of Article 178 of the Constitution, the main issue for the constitution-maker is judges' independence, and not the amount of remuneration considered from the point of view of the principle of a balanced state budget or the principle of social justice.

The argument concerning a balanced state budget does not convince me in the present case. The point is not that I undermine the importance of that value, but that the lawgiver uses the argument carelessly. Freezing judges' remuneration, he simultaneously increases the amounts of remuneration for other groups (on a scale that considerably exceeds the costs of the regulation of judges' remuneration). In particular, an example of one of large professional groups that has been granted an increase in the amounts of remuneration illustrates certain arbitrariness on the part of the executive branch. The said arbitrariness of that branch of government in its approach to judges' remuneration consistent with the dignity of their office may be indicated by the fact that it has been announced that in 2013 there will be no freeze in judges' remuneration, but in turn the remuneration of other groups will be subject to freezing. I perceive this as authoritarianism on the part of the executive branch. Naturally, I do not intend to deprive any professional groups of increases in remuneration. I do not claim that "they do not deserve them". What I wish to emphasise once again is the arbitrary character of actions taken by the executive branch.

4. What I oppose even more is the fact that judges' independence has been considered to be subordinate with regard to considerations related to social justice. I mean here argumentation that judges "are not in the worst situation" (others earn less). I find this argument even more difficult to accept than the argument concerning a balanced state budget. Weighing *the dignity of the office* of judge against social justice, and this is how the Tribunal weighs those values in the present case, leads to a situation where the norm expressed in Article 178(2) of the Constitution becomes empty. The Constitutional

Tribunal, as one weighing judges' independence against considerations related to social justice, does not make a good impression. In that context, social justice is of secondary importance. Indeed, social justice is related to the allocation of the state budget funds, which is carried out by the executive branch. Judges' independence may not be lower in the hierarchy of values than social justice. The reasoning of the Tribunal is the following: *independence is important, but social justice must be respected*. I wish to underline this one again that judges' independence and the dignity of the office of judge must be constructed irrespective of considerations related to social justice. Indeed, this is the meaning of Article 178 of the Constitution. The aim of Article 178(2) is to separate judges' remuneration from "social justice". The said conclusion does not entail that the amounts of judges' remuneration must exceed the amount of average remuneration several times, etc. Judges' remuneration must be made moderate in a certain way (e.g. the amounts of judges' remuneration in the United States are relatively inconsiderable, but are determined in accordance with fixed rules).

5. To recapitulate, it should be emphasised that the unconstitutionality of Articles 22 and 23 of the Act of 22 December 2011 amending certain acts related to the implementation of the Budget Act (Journal of Laws - Dz. U. No. 291, item 1707; hereinafter: the amending Act related to the implementation of the Budget Act) arises from two reasons that are interrelated.

Firstly, if Article 178 of the Constitution is interpreted in such a way that its focal point is a judge as a person, official or unique functionary, and not the dignified office of judge, then the issue of judges' remuneration is closely related to the state budget and its structure. It is related to the amounts of remuneration in the public sector. Thus, Article 178(2) of the Constitution becomes defunct, as its content is each time determined by the legislator, and in fact – by the executive branch, which controls the Parliament. One year one interpretation prevails, and in another year another interpretation is favoured.

The assertion that the challenged regulations included in Articles 22 and 23 of the amending Act related to the implementation of the Budget Act are consistent with Article 178(2) of the Constitution results in a situation where the said provision becomes merely an ornament. It is devoid of meaning. The Tribunal has rendered its meaning to be relative. One does not know the meaning and content of that constitutional norm.

In my view, it should have been stated, in accordance with the applicant's argumentation, that Articles 22 and 23 of the amending Act related to the implementation of

the Budget Act are inconsistent with Article 178(2) of the Constitution. Still, there are perhaps other constitutional arguments which would allow one to consider the suspension of remuneration adjustment in 2012.

Secondly, by ruling the challenged provisions to be constitutional, the Tribunal permits that no regulations will be introduced as regards future dealing with the dignity of the office of judge on the part of the legislator and the executive branch in the context of "appropriate conditions for work and remuneration consistent with the dignity of their office and the scope of their duties". It does not follow from the judgment of the Constitutional Tribunal on what values the legislator should rely to prevent the one-time application of the amending Act of 2011 from arising solely from the intention of the executive branch. In order to legitimise a freeze in remuneration, "the incidental character" of the said regulation would have to be somehow justified and institutionalised. The absolutely unique terms of determining remuneration for 2012 would have to be specified. Otherwise, one has no guarantee of protection against "one-time application". Argumentation related to the economic crisis, as the constitutional argumentation of the Tribunal, would have to be particularly well-defined. The Tribunal should show certain safeguards which would protect the office of judge against degradation. In a sense, judges lose their independence if their remuneration becomes dependent on the state budget and considerations related to social justice. In the light of the Constitution, in ordinary circumstances, independence is more important than economic values, and judges' independence must not be sacrificed for the sake of maintaining a balanced state budget.

Dissenting Opinion
of Judge Wojciech Hermeliński
to the Judgment of the Constitutional Tribunal
of 12 December 2012, Ref. No. K 1/12

Pursuant to Article 68(3) of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws - Dz. U. No. 102, item 643, as amended; hereinafter: the Constitutional Tribunal Act), I submit a dissenting opinion to the judgment of the Constitutional Tribunal of 12 December 2012 (ref. no. K 1/12).

I have reservations as regards both formal findings concerning the scope of adjudication made by the Constitutional Tribunal as well as the Tribunal's substantive evaluation of Articles 22 and 23 of the Act of 22 December 2011 amending certain acts related to the implementation of the Budget Act (Journal of Laws - Dz. U. No. 291, item 1707; hereinafter: the amending Act related to the implementation of the Budget Act).

In my opinion, the operative part of the judgment in this case should read as follows:

– Articles 22 and 23 of the amending Act related to the implementation of the Budget Act are inconsistent with Article 2 in conjunction with Article 178(2) of the Constitution, due to the fact that they infringe the standards of appropriate legislation in the context of judges' remuneration, i.e. they interfere with that realm without sufficient justification and without a required opinion of the National Council of the Judiciary of Poland at the stage of parliamentary work;

– as to the remainder, the review proceedings should have been discontinued on the basis of Article 39(1)(1) of the Constitutional Tribunal Act.

I justify my dissenting opinion in the following way:

1. The scope and methodology of the adjudication.

1.1. In the statement of reasons for my dissenting opinion, I would like to focus on substantive issues; however, two formal reservations need to be signalled.

Firstly, the First President of the Supreme Court (hereinafter: the applicant, the First President of the Supreme Court) has indicated, in his letters, three basic higher-level norms for the review (Article 2, Article 64(1) and (2) as well as Article 178(2) of the

Constitution) as well as numerous higher-level norms for the review that are to be read in conjunction (Article 31(3), Article 88(1) and (2), Article 178(2) – which also appears as an autonomous higher-level norm for the review, Article 216(5), Article 219(1) and (2), Article 220(1) as well as Article 221 of the Constitution). By contrast, in the operative part of its ruling, the Constitutional Tribunal has treated all these regulations as separate higher-level norms for the review (with the exception of Article 31(3) of the Constitution, for the obvious reason that the said provision is, in its nature, a subsidiary provision - cf. e.g. the judgment of 19 October 2010, Ref. No. P 10/10, OTK ZU No. 8/A/2010, item 78).

I hold the view that such reconstruction of the scope of the allegation constitutes an infringement of the principle that the Constitutional Tribunal conducts its review proceedings solely upon application (cf. Article 66 of the Constitutional Tribunal Act). The result of it is also the distortion of the applicant's intention and the reduction of some of its allegations to absurdity (indeed, the assessment of the adequacy of higher-level norms arising from single provisions of the Constitution may differ from the assessment of higher-level norms for the review that are interrelated in the Constitution).

Secondly, the Constitutional Tribunal has not conducted a formal review of the application of the First President of the Supreme Court. This is important, as – in my opinion – the application lacks justification for the allegations concerning the non-conformity of the challenged regulation to:

– Article 88(2) of the Constitution (the statutory regulation of enacting legal acts) as a provision that is to be read in conjunction with Article 2 of the Constitution,

– Article 220(1) of the Constitution (prohibition against the Sejm's adoption of a budget deficit exceeding the level provided in the Government's draft state budget) as a provision to be read in conjunction with Article 178(2) of the Constitution,

– Article 221 (the right to introduce legislation concerning a Budget Bill shall belong exclusively to the Council of Ministers) as a provision to be read in conjunction with Article 2 of the Constitution.

Hence, the proceedings in that regard should have been discontinued pursuant to Article 39(1)(1) in conjunction with Article 32(1)(4) of the Constitutional Tribunal Act on the grounds that issuing a ruling was inadmissible. By contrast, the Constitutional Tribunal has deemed that the above-mentioned higher-level norms for the review are autonomous and has ruled that they are inadequate.

1.2. In my opinion, reservations included in the application submitted by the First President of the Supreme Court may be divided into two groups:

The first one comprises formal reservations regarding the infringement of the principle of appropriate legislation, construed in a broader sense, by Article 22 and Article 23 of the amending Act related to the implementation of the Budget Act in the context of judges' remuneration.

– the lack of appropriate justification of the solutions applied,

– failure to adhere to requirements concerning the form and the enactment procedure,

– too short period of *vacatio legis*,

– failure to adhere to the rules for promulgating normative acts.

An additional formal allegation that – in my opinion – should have been considered by the Constitutional Tribunal was the non-compliance on the part of the Parliament with the requirement to consult the amending Bill with the National Council of the Judiciary of Poland. This was pointed out in a letter by the Public Prosecutor-General. Although this was not discussed by the applicant, it should be considered *ex officio* as part of the obligation to examine "the procedure required by provisions of the law to promulgate [a normative act]", within the meaning of Article 42 of the Constitutional Tribunal Act (in that regard, I agree with the stance presented by the Constitutional Tribunal (full bench) in the judgment of 28 November 2007, ref. no. K 39/07, OTK ZU No. 10/A/2007, item 129). In this case, this seems especially apt, as the said allegation falls within the scope of the reservations put forward by the First President of the Supreme Court as regards the correctness of the legislative procedure, and the indicated judgment in the case K 39/07 also concerned the obligation to consult all legal acts that regard judges with the National Council of the Judiciary (as a side remark, it may be indicated that the Constitutional Tribunal has not explained reasons for departing from previous jurisprudence in its statement of the reasons for the judgment in the present case – cf. point 4.3 part III of the said statement of reasons).

I hold the view that, with regard to all formal allegations, a proper higher-level norm for the review is Article 2 in conjunction with Article 178(2) of the Constitution. Indicated by the applicant in this context, Article 88(1) as well as Article 219(1) and (2) of the Constitution have an auxiliary character and they constitute the context of adjudication

rather than direct higher-level norms for the review that are to be read in conjunction, and which are to be taken into account in the operative part of the judgment.

The second set of the reservations comprises substantive reservations which entail that Articles 22 and 23 of the amending Act related to the implementation of the Budget Act have infringed:

– the principle of protection of justly acquired rights,

– the principle of protection of citizens' trust in the state and its laws,

– the right to the protection of property rights,

– the obligation to grant judges remuneration that is consistent with the dignity of their office and the scope of their duties.

In this case, I consider the following to be proper higher-level norms for the review: Article 2 in conjunction with Article 178(2), Article 64(1) and (2) in conjunction with Article 31(3) as well as Article 178(2) in conjunction with Article 216(5) of the Constitution.

It should be noted that there is a certain vital correlation between the two sets of the allegations.

First of all, in the case where it is determined that the regulations under examination do not meet the standards of appropriate legislation, a substantive review of the regulations is not necessary. The point of the application, which is to eliminate unconstitutional provisions from the legal system, is achieved – and from that point of view, the assessment of substantive allegations should be regarded as useless within the meaning of Article 39(1)(1) of the Constitutional Tribunal Act. Indeed, as it has been indicated by the Constitutional Tribunal, "there is no gradation of the unconstitutionality of provisions, and the number of higher-level norms for the review with which a given legal norm is inconsistent, does not determine varied legal effects" (the judgment of 21 March 2001, Ref. No. K 24/00, OTK ZU No. 3/2001, item 51, thesis maintained with regard to proceedings that have been commenced as part of a subsequent review in the judgment of 26 June 2001, ref. no. U 6/00, OTK ZU No. 5/2001, item 122).

Moreover, confirmation of the aptness of formal allegations put forward by the applicant may also considerably hinder assessing the aptness of his substantive allegations. In particular, in the case of adjudication that Articles 22 and 23 of the amending Act related to the implementation of the Budget Act have been enacted without proper justification, it is impossible to verify whether they meet the requirements concerning the

admissibility of restrictions imposed on constitutional rights and freedoms (cf. Article 31(3) of the Constitution, in particular as regards the principle of necessity and the principle of proportionality in a strict sense, i.e. prohibition against excessive interference). The lack of complete information on the *ratio legis* of the solutions under examination, significantly hinders determining whether reasons for the introduction thereof infringe the constitutional principle of protection of citizens' trust in the state and its laws, the principle of protection of justly acquired rights and the requirement to provide judges with remuneration consistent with the dignity of their office and the scope of their duties.

For the above reasons, it should be assumed that in the case of issuing a ruling declaring unconstitutionality due to the infringement of the principles of appropriate legislation by Articles 22 and 23 of the amending Act related to the implementation of the Budget Act, proceedings on the substantive examination of the said provisions should be discontinued on the basis of Article 39(1)(1) of the Constitutional Tribunal Act (cf. a similar conclusion in point 4 *ab initio* in part III of the statement of reasons for the judgment).

2. The non-conformity of the challenged provisions to the standard of appropriate legislation in the context of judges' remuneration.

2.1. The applicant's allegations indicated above in the light of the principle of appropriate legislation, to a large extent, have an autonomous character, and thus they require a separate analysis.

2.2. First of all, one should address the reservations expressed by the applicant as to the lack of proper justification for Articles 22 and 23 of the amending Act related to the implementation of the Budget Act. The said assessment may not – in my opinion – amount merely to examination whether the challenged provisions have been enacted due to the necessity to implement austerity procedures that aim at decreasing a public finance deficit (cf. point 4.2.1 in part III of the statement of reasons for the draft judgment). In the context of the principle of appropriate legislation, the said allegation should also be examined in a broader context: carrying out or neglecting activities which indicate that the legislator analysed the advantages and drawbacks of the challenged solution in comparison with other alternative solutions. The said review should be formal in character (and should only be limited to determining if there were circumstances indicating that a thorough analysis preceded the enactment of the solutions), as the Constitutional Tribunal has no jurisdiction to assess whether the decision taken by the legislator is apt or optimal.

I agree with a majority of assumptions as to the possibility and limits of the legislator's interference with judges' remuneration, presented in the statement of reasons for the ruling of the Constitutional Tribunal (cf., in particular, "provisional requirements" mentioned in point 5.4 *in fine* in part III of the statement of reasons for the judgment). What does not raise my reservations is the fact that the Constitution (including its Article 178(2) of the Constitution) does not rule out the possibility of modifying the amounts of judges' remuneration, together with a decrease in the said amounts or – as in the case of Articles 22 and 23 of the amending Act related to the implementation of the Budget Act– the purchasing power of the remuneration. Undoubtedly, what may be a sufficient and autonomous premiss of applying that kind of solutions is the fact of exceeding the level of a national public debt indicated in Article 216(5) of the Constitution (the said view was presented by the Constitutional Tribunal in the judgment of 18 February 2004, Ref. No. K 12/03, OTK ZU No. 2/A/2004, item 8). I also agree with a majority of the bench adjudicating in the present case that disadvantageous modifications of the rules for determining the amounts of judges' remuneration are admissible also in other extraordinary situations, and in particular as part of reforms that prevent a significant deterioration in the financial situation of the state (cf. permitting the application of the preventive austerity measures with reference to local self-government whose financial situation is also, to a certain extent, protected constitutionally - the judgment of 7 October 2003, Ref. No. K 4/02, OTK ZU No. 8/A/2003, item 80). However, the said type of solutions must have a unique character and must respect the minimal standards arising from Article 178(2) of the Constitution (cf. the judgments of: 4 October 2000, Ref. No. P 8/00, OTK ZU No. 6/2000, item 189, and 18 February 2004, Ref. No. K 12/03, OTK ZU No. 2/A/2004, item 8), and the introduction thereof requires detailed justification.

The application of the above principles in parliamentary work, which resulted in the enactment of Articles 22 and 23 of the amending Act related to the implementation of the Budget Act, is, no doubt, evaluated by me negatively.

A more in-depth analysis of the legislative process (also at the pre-parliamentary stage, due to the special role of the Council of Ministers in the context of adopting a Budget Bill – cf. Article 220(1) and Article 221 of the Constitution), and of the stances presented in this case by the Minister of Finance and the Marshal of the Sejm, leads to a conclusion that the enactment of Articles 22 and 23 of the amending Act related to the implementation of the Budget Act was not preceded by the thorough consideration of the

pros and cons of those solutions; nor were they compared with other ways of curtailing public expenditure. This is confirmed, *inter alia*, by the following circumstances:

– the issue of the constitutionality of judges' remuneration was raised at the plenary sittings of the Sejm by Deputies (cf. Verbatim Record from the 2nd sitting of the Sejm, 1 December 2011, pp. 10 and 30 as well as Verbatim Record from the 2nd sitting of the Sejm 3, 14 December 2011, pp. 7-8) as well as at the meeting of the Public Finance Committee by the First President of the Supreme Court (cf. Bulletin No. 32/VII of the term of the Sejm from the meeting of the Sejm's Public Finance Committee, 1 December 2011, pp. 10-11);

– parliamentary work on the Bill was carried out extremely quickly – the amending Bill related to the implementation of the Budget Act (the Sejm Paper No. 29/7th term of the Sejm) was submitted to the Sejm on 24 November 2011; the first reading of the Bill was held on 1 December 2011; on the same day, the Public Finance Committee issued its opinion on the Bill; The second reading took place on 14 December 2011, and the third one on 16 December 2011; the vote on the Senate's amendments was held on 22 December 2011. This ruled out an in-depth analysis of the proposed solutions;

– justification behind the challenged solution provided in the explanatory note for the amending Act related to the implementation of the Budget Act was limited to the indication that: "the provisions of this Act will lead to a freeze in the systemic adjustment of remuneration for judges and prosecutors only in 2012, due to the financial difficulties of the state. The above proposal falls within the entirety of changes related to a freeze in remuneration in the public sector that aim at maintaining a balanced state budget which constitutes a constitutional value which is a prerequisite for the state's ability to act and fulfil its duties" (cf. the Sejm Paper No. 29/7th term of the Sejm, p. 4 of the explanatory note for the Bill).

– the Sejm Deputies received no additional material that could allow them to evaluate the legitimacy of the proposed changes in the context of judges' remuneration (and, in particular, whether the said decision was really necessary and unavoidable) or, alternatively, to reject that solution and obtain savings in other ways than from a freeze in judges' remuneration (cf. Article 220(1) of the Constitution); in particular, the Sejm Paper No. 29/7th term of the Sejm did not include the opinion of 16 November 2011 by the National Council of the Judiciary of Poland, No. WOK-020-101/11, which had been issued at the stage of consultations with various ministries and the public as regards the said Bill;

also the content of the Bill was not discussed even in one sentence in the explanatory note for the Bill (it was only stressed that the National Council of the Judiciary was informed about "the possibility of providing an opinion on the Bill" as well as was informed that the Bill had been published in the Public Information Bulletin – cf. the Sejm Paper No. 29/7th term of the Sejm, pp. 24 and 25 of the explanatory note for the Bill);

– draft solutions eventually included in Articles 22 and 23 of the amending Act related to the implementation of the Budget Act were not evaluated in respect of their constitutionality - despite reservations raised by the National Council of the Judiciary and the First President of the Supreme Court as well as certain Sejm Deputies (cf. the resolutions of 13 May 2011 No. 1378/2011 and 1379/2011 issued by the National Council of the Judiciary as well as the opinion of 16 November 2011 No. WOK-020-101/11 issued by the Council with regard to the Bill; The Verbatim Record from the 2nd sitting of the Sejm on 1 December 2011, pp. 10 and 30, Bulletin No. 32/7th term of the Sejm from the meeting of the Public Finance Committee o the Sejm held on 1 December 2011, p. 11) – neither by the Legislative Committee (cf. Article 34(8) of the resolution of the Sejm of the Republic of Poland dated 30 July 1992 - the Rules of Procedure of the Sejm of the Republic of Poland (Official Gazette – *Monitor Polski*, M. P. of 2009 No. 5, item 47, as amended), nor by Sejm legislators or external experts;

– the only substantive "opinion" presented to the Sejm Deputies during the course of legislative work was a short and improvised speech delivered by a legislator from the Sejm at a meeting of the Public Finance Committee (i.e. not at a plenary sitting of the Sejm), where he generally stated that maintaining the amounts of judges' remuneration at the level from the previous year, in principle, did not infringe Article 178(2) of the Constitution and that such solutions might also be introduced as part of preventive measures, before crossing the third debt threshold set out in Article 216(5) of the Constitution (cf. Bulletin No. 32/7th term of the Sejm from the meeting of the Public Finance Committee held on 1 December 2011, p. 12);

– the issue of judges' remuneration was only analysed briefly during the work on the amending Bill related to the implementation of the Budget Act; the meeting of the Public Finance Committee was held on only one day and focused on the proper form of the regulation (amendments to the provisions of statutes regulating the rights and duties of judges or the amending Act related to the implementation of the Budget Act), and substantive reservations raised by the First President of the Supreme Court were

disregarded by the legislator from the Sejm as well as the representative of the Ministry of Finance, who – as "evidence" of the constitutionality of the analysed provisions – mentioned the fact of including a freeze in the remuneration of the judges of the Constitutional Tribunal in the financial plan submitted to the Minister of Finance by the President of the Constitutional Tribunal (cf. cited Bulletin No. 32/7th term of the Sejm from the meeting of the Public Finance Committee, pp. 11-12, as well as the Deputy Rapporteur's approving analysis of the views presented by the said legislator and the Minister of Finance at the stage of the second reading of the Bill during the plenary sitting – Verbatim Record from the third sitting of the Sejm on 14 December 2011, pp. 7-8).

All the above circumstances indicate that the necessity and legitimacy of a freeze in judges' remuneration were not analysed in a way which was sufficiently thorough, by taking account of guidelines arising from Article 178(2) of the Constitution and the jurisprudence of the Constitutional Tribunal that had arisen in the context of that provision (cf. in particular, the above-cited judgments in the cases P 8/00 and K 12/03).

While assessing that fact, one should take account of several legal and actual factors that additionally reinforce the necessity of thorough consideration and detailed justification of the decision to freeze judges' remuneration on the part of the legislator. Apart from the reservations raised by the National Council of the Judiciary and the First President of the Supreme Court, one may, *inter alia*, enumerate the following:

– the fact that the challenged provisions have introduced a significant departure from the principles that were binding from the entry into force of the Act of 20 March 2009 amending the Law on the Organisational Structure of Common Courts and certain other acts (Journal of Laws – Dz. U. No. 56, item 459; hereinafter: the amending Act of 20 March 2009), with the active participation of judges and the National Council of the Judiciary, for the purpose of implementing Article 178(2) of the Constitution in "a more complete way than so far" (cf. the Sejm Paper No. 1461/6th term of the Sejm, p. 1 of the explanatory note for the Bill); introduced by the amending Act of 20 March 2009, the reform of rules for determining the amounts of judges' remuneration was aimed at separating the economic basis of performing such duties from arbitrary and *ad hoc* political decisions; thus, even temporary suspension of the application of the rules should be regarded as a last resort;

– the previous practice of the inviolability of the rules for determining the amounts of judges' remuneration even in the cases of a freeze in remuneration in the public

sector (also in worse economic situations than the moment of enacting the challenged provisions), from which – taking account of Article 178(2) of the Constitution – persons concerned could rightly draw a conclusion that the amounts of their remuneration are relatively better protected against economic fluctuations than the amounts of remuneration of other functionaries or employees in the public sector;

– the selective character of the solutions under examination – indeed, the said freeze did not include – also without detailed justification in the amending Act related to the implementation of the Budget Act – teachers employed in schools and education institutions run by the organs of the government administration (in 2012, the total amount of increase in their remuneration is to reach 3.8 %), soldiers and police officers, and – under certain other conditions – the functionaries of the Border Guard, the State Fire Service, the Government Protection Bureau, and the Penitentiary Service (cf. the Opinion of the Minister of Finance on the financial effects of a possible ruling by the Constitutional Tribunal, dated 12 March 2012, p. 6, Article 13(1)(2) and Article 13(2) as well as Article 42(1) of the 2012 Budget Act of 2 March 2012, Journal of Laws - Dz. U. item 273, as well as p. 20 of the explanatory note of the amending Bill); unlike in the case of judges, the amounts of remuneration granted to the said professional groups are not regulated in the Constitution, and are not safeguarded by any special rules;

– the insignificant amount of savings resulting from a freeze in judges' remuneration in comparison with the scale of the state budget - in accordance with the estimates presented by the Minister of Finance in the above-mentioned letter of 12 March 2012, the said savings will amount to PLN 93.8 million, whereas state revenue is estimated to reach PLN 292.8 billion and state expenditure to be PLN 327.8 billion (cf. the Sejm Paper No. 4694/6th term of the Sejm). In other words, the said savings will constitute circa 0.3203‰ of state revenue and 0.2861‰ of state expenditure (respectively: 0.032 % and 0.029 %); (cf. point 3.4 in part III of the statement of reasons for the judgment);

– the fact that the legislator neither considered nor applied more effective measures to curtail the state deficit - for instance, by applying methods indicated in the Council Recommendation to Poland with a view to bringing an end to the situation of an excessive government deficit (the Economic and Financial Affairs Council (hereinafter: the Ecofin Council) limited its recommendations to pointing out the need to reform the government sector and the local self-government sector, indicating that the consolidation

of public finances and far-reaching reforms should comprise, in particular, the realm of social insurance of farmers, disability pensions as well as early retirement pensions);

– the enactment of the challenged provisions not in a situation of the constitutionally specified financial difficulties of the state (cf. Article 216(5) of the Constitution - a national public debt exceeding three-fifths of the value of the annual gross domestic product), but as part of preventive austerity programmes that are regulated only at the statutory level and that are introduced in relatively better economic circumstances (a state deficit at the level exceeding the first debt threshold – 50 % of the GDP and approximation towards the second one – 55 % of the GDP – cf. Article 86 of the Act of 27 August 2009 on Public Finances, Journal of Laws – Dz. U. No. 157, item 1240, as amended).

Despite the occurrence of the above-mentioned circumstances, during the legislative process, the necessity to enact Articles 22 and 23 of the amending Act related to the implementation of the Budget Act was neither justified in detail, nor analysed in comparison with other possible solutions that could be applied, and which would not concern judges' remuneration. In my opinion, this constitutes an infringement of the principle of appropriate legislation in the context of judges' remuneration (Article 2 in conjunction with Article 178(2) of the Constitution).

2.3. Secondly, what should be analysed is the allegation that there was no consultation with the National Council of the Judiciary of Poland as regards the final version of the amending Bill related to the implementation of the Budget Act insofar as it concerned judges' remuneration.

I have no reservations as to the facts established, by a majority of the bench adjudicating in this case, with regard to the scope and forms of involvement of the National Council of the Judiciary during legislative work that led to the enactment of Articles 22 and 23 of the amending Act related to the implementation of the Budget Act. I am inclined to agree that the National Council of the Judiciary effectively expressed its opinion on the substance of solutions adopted eventually in the said provisions at the pre-parliamentary stage, i.e. in the resolution of 16 November 2011 no. WOK-020-101/11, although eventually they were expressed in a different form (the National Council of the Judiciary took a stance on a freeze in judges' remuneration in the amended provisions of statutes regulating the rights and duties of judges that indicated a specific amount, and the

provisions were ultimately adopted as part of the amending Act related to the implementation of the Budget Act, with reference to the communiqué of 10 August 2010 issued by the President of the Central Statistical Office, the Official Gazette of the Republic of Poland – *Monitor Polski*, item 57, item 774).

I definitely cannot agree with the thesis put forward by the representatives of the Sejm in these review proceedings, namely that the requirement to obtain an opinion on the regulation from the National Council of the Judiciary was fulfilled if the Council took its stance at the stage of the Government's legislative work, and the main elements of the regulation did not change in a way that would render the content of the opinion outdated. This would mean an assumption that, in the situation under examination, the Sejm was "exempted" from the obligation to obtain the Council's opinion at the stage of parliamentary work, and the Council had fulfilled its constitutional obligation to safeguard the independence of courts and judges (cf. Article 186(1) of the Constitution), which I cannot accept.

To begin with substantive arguments for the necessity to consult the Bill with the National Council of the Judiciary by the Parliament, it should be noted that not all doubts raised by the Council with regard to the final version of the Bill could have been expressed by that institution at the stage of the Government's work. This concerns not only reservations as to the legislator's implementation of the principle of appropriate legislation (i.e. formal irregularities), but also the substance of the challenged regulation. For instance, the Council could not have predicted in accordance with which procedure the amending Act related to the implementation of the Budget Act would be enacted (i.e. could not have raised an allegation as to the choice of the inappropriate procedure, similarly to the allegation raised in these proceedings by the applicant in his second letter of 18 July 2012). Also, the Council had no possibility of assessing the effects of regulating the rules for determining the amounts of judges' remuneration in the amending Act related to the implementation of the Budget Act, since in the Bill submitted to the Council, at the stage of the Government's work, the said regulations were planned to be included in the provisions of statutes regulating the rights and duties of judges, and its incorporation into the text of the said amending Act was recommended by the Public Finance Committee after the first reading of the Bill (cf. the above-cited Bulletin No. 32/7th term of the Sejm).

Regardless of the above, I hold the view that the Sejm was obliged to request the National Council of the Judiciary to express its opinion, and it was not exempted from that

obligation due to the conviction that the Council "must have had information" from other sources (e.g. the media) about work that was being carried out. What is more, the Parliament was obliged to coordinate legislative work in such a way that the adoption of an appropriate resolution by the National Council of the Judiciary and its consideration by the Deputies were possible at the initial stage of work on the said Bill (as well as at subsequent stages if the analysed regulations were to be changed). As it has been indicated in the previous jurisprudence of the Constitutional Tribunal, the Council's right to express an opinion on bills concerning the independence of courts and judges is a basic instrument of fulfilling the role of that institution, and failure to obtain the said opinion or action aimed at making it actually impossible for the Council to adopt a relevant resolution may constitute an autonomous premiss that a given legislative procedure is defective (cf. Article 186(1) of the Constitution as well as the judgments of: 24 June 1998, Ref. No. K 3/98, OTK ZU No. 4/1998, item 52 and 28 November 2007, Ref. No. K 39/07, OTK ZU No. 10/A/2007, item 129).

Yet, as it follows from the letter of 16 November 2012 submitted by the Marshal of the Sejm and included in the case file, this was regarded as unnecessary due to the fact that the content, ultimately included in Articles 22 and 23 of the said amending Act, was preserved intact (N.B. The said argumentation may not, however, be accepted due to the above-mentioned change as regards placing the challenged solutions, which does affect the interpretation thereof). As a result, the National Council of the Judiciary was not requested to present its opinion on the final version of the said Bill in writing (despite the fact that in its opinion of 16 November 2011 *in fine*, issued at the stage of the Government's work, the Council had clearly expressed such an intention), and its representatives were not even invited to the plenary sittings of the Sejm and the meetings of the Public Finance Committee. Due to the collegial character of the Council, the said irregularity in legislative proceedings may not be rectified by the fact that the First President of the Supreme Court took part in one of the meetings of the Public Finance Committee, as the Council's opinion on Articles 22 and 23 of the amending Act related to the implementation of the Budget Act should take the form of a resolution, and the First President of the Supreme Court represented the Supreme Court at the said meeting, and not the National Council of the Judiciary.

Additionally, attention should be drawn to the fact that the timetable of the legislative work (regardless of external determinants arising from the special character of

statutes related to the implementation of the Budget Act), in practice, considerably hindered the adoption of a relevant resolution by the National Council of the Judiciary at the stage where such an opinion could have had an actual impact on the planned regulation. Given that in Poland provisions are, in fact, analysed and formulated in the Sejm committees mainly at the initial stage of legislative work, this should have occurred before the end of deliberation by the Public Finance Committee after the first reading of the Bill (i.e. before a report was adopted, which took place on 1 December 2011). By contrast, as it has been mentioned, the amending Bill related to the implementation of the Budget Act (the Sejm Paper No. 29/7th term of the Sejm) was submitted to the Sejm on 24 November 2011, and its first reading was held on 1 December 2011 and on the same day it was submitted to the Public Finance Committee for deliberation, which finished its work after three hours by adopting a relevant report (cf. the Sejm Paper No. 41/7th term of the Sejm). Taking into consideration the time for the exchange of correspondence, this would mean that the Council would have had to issue its opinion within a few days (the Public Finance Committee finished its work after the first reading after eight calendar days from the date of receipt of the Bill by the Sejm). Even with due diligence on the part of the Council, this should be regarded as impossible for organisational reasons.

Therefore, I hold the view that, in the present case, the Parliament's failure to obtain the Council's opinion on Articles 22 and 23 of the amending Act related to the implementation of the Budget Act constitutes an infringement of the principle of appropriate legislation in the context of judges' remuneration (Article 2 in conjunction with Article 178(2) of the Constitution), and that fact should have been recognised *ex officio* by the Constitutional Tribunal on the basis of Article 42 of the Constitutional Tribunal Act. Indeed, the acceptance of the above-mentioned procedure applied to enact the challenged provisions would imply a departure from the previous jurisprudence and the Tribunal's actual approval of reprehensible and repetitive practice of ignoring the obligation to consult the National Council of the Judiciary on the part of the Parliament, as regards matters concerning courts and judges. In my view, it is inadmissible for the Sejm to assess whether formal consultation with the Council and the official invitation of its representatives to meetings of Sejm committees and plenary sittings are in a given case necessary or not. Regardless of the circumstances of a particular case, the Council's exercise of its power in that regard may not be dependent on the will of any organ of public authority, as it is autonomous in character and is clearly stated in Article 186(1) of the

Constitution. Once again, it should be emphasised that consultation with the Council concerning a given bill must be formal and actual in character as well as must be carried out in accordance with required procedures (which implies, in particular, the exchange of relevant documents) and within specified time-limits (that make it possible for the Council to adopt a resolution, and for the Sejm to provide the Sejm Deputies with the resolution at an appropriate stage of legislative proceedings). The Council is a specialised constitutional body and may not be regarded as an ordinary entity "concerned" with the course of legislative work, which may obtain information about planned solutions from the Sejm's Internet website or the media. Indeed, adopting a resolution by the Council with regard to a bill and for the purpose of legislative work constitutes a basic instrument of fulfilling the Council's obligation to "safeguard the independence of courts and judges" (cf. Article 186(1) of the Constitution), which is necessary for the fulfilment of the Council's constitutional role.

2.4. However, I agree with the Constitutional Tribunal that the other allegations raised by the applicant are not worth considering, namely as regards:

– the inappropriate form and procedure for the regulation,

– too short period of *vacatio legis*,

– failure to adhere to the rules for promulgating normative acts.

In that context, I accept – with minor reservations - the arguments put forward by the Constitutional Tribunal in its statement of reasons (cf. point 4 in part III of the statement of reasons for the judgment). I find it admissible to regulate temporary rules for determining the amounts of judges' remuneration in the amending Act related to the implementation of the Budget Act and to enact the said Act in accordance with the procedure provided for ordinary statutes. Also, the promulgation of the said Act in the Journal of Laws one day before it was to enter into force – although it is drastically short – in the context of this case, in my opinion, fulfils the minimal constitutional standard.

However, the above conclusion has no impact on the effect of the said judgment that I have proposed; indeed, for the declaration of the unconstitutionality of the regulations under examination, it suffices to prove that at least one of the applicant's allegations is valid.

3. The conclusion and effects of the ruling.

For the above reasons, I hold the view that Articles 22 and 23 of the amending Act related to the implementation of the Budget Act should be regarded as inconsistent with Article 2 in conjunction with Article 178(2) of the Constitution and, as to the remainder, the review proceedings should have been discontinued on the basis of Article 39(1)(1) of the Constitutional Tribunal Act.

In the situation under analysis, the Sejm has *per facta concludentia* deemed that the mere usefulness of Articles 22 and 23 of the amending Act related to the implementation of the Budget Act, as regarded the constitutional obligation to maintain a balanced budget (cf. Article 220 of the Constitution) – without the detailed justification and thorough consideration of alternative solutions – might justify the departure from the principles of appropriate legislation (Article 2 of the Constitution), even in the context of matters that are particularly safeguarded by the Constitution, i.e. judges' remuneration (cf. Article 178(2) of the Constitution). However, the Constitution should be applied as a whole – its provisions have equal status as regards their legal effect, and the implementation of one of them may not completely exclude the binding force or application of the other provisions (cf. the above-mentioned judgment in the case P 10/10 as well as in the previous jurisprudence indicated therein).

For the above reasons, I have deemed it necessary to submit this dissenting opinion.