

Judgment of 8<sup>th</sup> November 2000, [SK 18/99](#)  
**TUITION FEES FOR STUDIES**

<b>Type of proceedings:</b> <b>Constitutional complaint</b> <b>Initiator:</b> A natural person	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Authorising State higher education institutions to impose fees for educational services other than teaching on full-time studies <small>[Higher Education Institutions Act 1990: Article 23(2) point 2]</small>  Competence of the senate of a higher education institution to issue a regulation of studies (at least 5 months prior to the beginning of the academic year) <small>[Ibidem: Article 144(1)]</small>  Competence of the dean to remove a student from the list of students in circumstances defined in the regulation of studies <small>[Ibidem: Article 148]</small>  Authorising State higher education institutions to impose fees for extramural, evening and external studies <small>[Regulation of the Council of Ministers on the Principles of Financial Management at Higher Education Institutions 1991: § 8 point 2]</small>  Authorising the rector to specify the types of courses for which fees are payable and the level of such fees <small>[Ibidem: § 9(2)]</small>	Rule of law Proportionality of limitations on constitutional rights and freedoms Legal reservation (exclusivity of statutes) in relation to the aforementioned limitations Prohibition on limitations interfering with the essence of rights and freedoms Principle of equality Right to education Free of charge education in State schools (in principle) <small>[Constitution: Articles 2, 31(3), 32(1), 70(1) and (2)]</small>

Article 70(2) of the Constitution states that education in public schools shall be free of charge, whilst permitting statute to impose fees for “certain educational services” provided by State higher education institutions. The interpretation of this provision raised doubts following the emergence in the 1990’s of a practice whereby State higher education institutions offered – alongside free of charge courses where applicants for the limited places were selected on the basis of an entrance examination – courses (usually having the same curriculum as free of charge courses) for which fees were imposed. Paid studies are organised as evening or extramural courses (in the latter case, classes usually take place on Saturdays and Sundays in between longer, two-week breaks).

Higher education institutions justify the widespread provision of paid courses on the basis that the State subsidies they receive do not enable them to fulfil all of their functions.

The Tribunal was presented with the opportunity to clarify certain problems concerning the interpretation of Article 70(2) of the Constitution as a result of two constitutional complaints, considered jointly

in the judgment summarised herein, lodged by Mr. J. B., a former student of extramural studies at the University of Wrocław.

These complaints were lodged as a result of two decisions of the University authorities in the complainant's individual cases. First, on the basis of a decision by the rector, Mr. J.B. was refused a waiver of tuition fees. The administrative court dismissed a complaint against this decision on the basis that the complainant had not exhausted all available administrative means of challenging the decision – he could have appealed against the decision to the Minister of National Education. Second, on the basis of a decision by the dean, Mr. B. was removed from the list of students. This decision was reviewed, and upheld, by the rector. The administrative court dismissed a complaint against the rector's decision, considering it to be consistent with the law.

The constitutional complaint challenged various provisions of the Act, the Regulation and the internal acts of the University organs representing the legal bases upon which the disadvantageous decisions were taken in the complainant's cases (cf. the Tribunal's ruling).

The complainant alleged that the challenged provisions introduce the principle of payment for all types of non-full-time studies, contrary to Article 70(2) of the Constitution. Accordingly, within higher education institutions, paid studies become the norm and free of charge studies become the exception. It was argued that the scope of paid courses within State higher education institutions exceeds beyond the concept of "certain educational services" within the meaning of Article 70(2) of the Constitution.

The complainant also alleged an infringement of the constitutional principle of equality (Article 32(1)) and the right to education (Article 70(1)) in connection with the legislator's failure to respect the constitutional requirements for limiting the enjoyment of constitutional rights and freedoms (Article 31(3)) which should have been observed when introducing tuition fees in State higher education institutions. Having decided to limit the constitutional right to education, it was incumbent upon the legislator to provide a clear statutory definition of the scope of educational services for which it is permissible to charge fees.

Similar arguments were raised as regards provisions governing removal from the student list on the basis of non-payment of tuition fees. In the complainant's opinion, he was deprived of the right to education in contravention of the requirements contained in Article 31(3) of the Constitution, since his removal from the student list occurred on the basis of an act of a sub-statutory rank, in the absence of any important public interest justification and in a manner which infringed the essence of the right to education. The decisions in this case were adopted, *inter alia*, on the basis of rector's orders, whereas Article 93(2) of the Constitution prohibits public authorities from using orders as the basis for decisions in citizens' cases.

The complainant also referred to the principle of legal certainty and the sufficient specificity of legal provisions, as derived from the rule of law principle (Article 2). He also challenged the conformity of provisions of the Council of Ministers' Regulation 1991 with Article 92(1) of the Constitution, specifying the requirements for enacting regulations.

## RULING

1. Article 23(2) point 2 of the Higher Education Institutions Act 1990, understood in a way which authorises State higher education institutions – in order to guarantee access to education in forms other than free of charge studies, representing the principal type of studies – to introduce tuition fees for studies, to the extent and to the level that necessary expenses connected with these studies are not financed from public resources, conforms to Article 32(1) and Article 70(1) and (2) of the Constitution and **is not inconsistent** with Article 31(3) of the Constitution.

2. Article 144(1) and Article 148 first sentence of the aforementioned Act conform to Article 2 and Article 70(1) and (2) and **are not inconsistent** with Article 31(3), Article 32(1) and Article 65(1) of the Constitution.

3. § 8 point 2 of the Council of Ministers Regulation on the Principles of Financial Management at Higher Education Institutions 1991 conforms to Article 70(1) and (2) of the Constitution and **is not inconsistent** with Article 31(3) of the Constitution.

4. § 9(2) of the aforementioned Regulation conforms to Article 70(1) and (2) of the Constitution and **is not inconsistent** with Article 31(3) of the Constitution.

*The Tribunal discontinued the proceedings on the basis of Article 39(1) point 1 and Article 39(2) of the Constitutional Tribunal Act 1997 – given the inadmissibility of adjudication – insofar as reviewing the conformity of:*

*1) Article 30 of the aforementioned Act (authorising the Council of Ministers to issue a Regulation on the Principles of Financial Management at Higher Education Institutions) and the aforementioned provisions of this Regulation with Article 92(1) of the Constitution,*

*2) Article 144(1) and Article 148 first sentence of the aforementioned Act with Article 92(1) and Article 93(2) of the Constitution,*

*3) Article 161 second sentence of the aforementioned Act (possibility to challenge certain administrative decisions in student matters before the administrative court) with Article 45(1) and Article 77(2) of the Constitution,*

*4)-8) challenged provisions of the acts of the organs of the University of Wrocław governing the regulation of studies and imposition of tuition fees for studies with the provisions of the Constitution indicated by the complainant.*

## PRINCIPAL REASONS FOR THE RULING

1. The right to education guaranteed in Article 70 of the Constitution, which finds its corollary in the appropriate duties of public authorities, in essence constitutes a guarantee of the availability and universality of education, as opposed to the free of charge nature thereof. The principle that education in public schools shall be without payment (Article 70(2)) is merely one of the elements of this right. When interpreting Article 70(2)-(5), account must be taken of their secondary, instrumental character vis-à-vis the principle expressed in the first sentence of this Article. Particular guarantees should be interpreted in such a way as to ensure their mutual conformity.
2. The guarantee of free of charge education in public higher education institutions is not absolute and unrestricted. An interpretation of Article 70(2) may not lead to the conclusion that anyone fulfilling the formal requirements for studying at a higher education institution shall be guaranteed the right to education without payment. Only such persons having fulfilled the additional – objective and unambiguously defined – requirements prescribed by the recruitment procedure of each individual higher educa-

tion institution may be considered as beneficiaries of the right to free of charge education.

3. State higher education institutions are not merely competent, but are also obliged, to realise the principle of universal access to higher education through all forms of studies – including free of charge studies as the principal type, as well as other forms.
4. When undertaking additional educational activities in the sphere of paid studies, a State higher education institution, being entrusted with public assets, should still fulfil the functions and tasks connected with realising an individual's constitutional right to education and the related duties of public authorities concerning the universality of, and equal access to, education. A State higher education institution may not transform into a commercial institution, undertaking economic activities on the basis of competition with private higher education institutions, fully subordinate to market rules and focused on profit. In setting the level of fees for educational activities, the necessary costs of studying at a particular institution or on a particular course should play a fundamental role, ensuring that students of paid studies receive an equal standard and an equal diploma to students of full-time studies. Under no circumstances may fees apply to that sphere of didactic activities of a State higher education institution which is fully covered by public funds.
5. Differentiating the legal situation of students on free of charge studies and paid studies, in consequence of Article 23(2) point 2 of the Higher Education Institutions Act 1990, does not infringe the principle of equal treatment (Article 32 of the Constitution) provided that the introduction of tuition fees for studies has the objective of ensuring access to education to the greatest number of students.
6. The constitutional principle of equal treatment presupposes that students of State higher education institutions should, regardless of their type of studies, be guaranteed equal possibilities to obtain academic grants and social assistance. Principally, they should benefit from the same standard of education guaranteed by appropriate organisation of studies and allocation of teaching staff to lessons.
7. The autonomy of higher education institutions, granted by Article 70(5) of the Constitution, should be understood as encompassing the constitutionally protected freedom of research and education within the framework of the existing legal order. In particular, it means that the Constitution presupposes the existence of internal acts of such institutions (both State and private) and acknowledges that such acts, if in accordance with the law, may regulate the rights and obligations of students. Specifically, higher education institutions have the right to remove from the student list any person who fails to fulfil the requirements envisaged by these acts.
8. From the perspective of the constitutionally protected autonomy of higher education institutions (Article 70(5)), a Council of Ministers Regulation endowing a rector with the competence to set the level of fees for certain educational courses in any given academic year may not be considered as incompatible with Article 70(2) of the Constitution, which allows statute to require payment for certain educational services provided by State higher education institutions.
9. When internal acts of higher education institutions (such as senate resolutions or rector's orders) merely constitute the actualisation or concretisation of the provisions of a

statute and executive instruments enacted on the basis of that statute, the legal position of students is regulated not by the acts of higher education institutions but by the aforementioned sources of universally binding law. In such a situation, the acts of higher education institutions do not have normative character, which precludes the Tribunal's competence (cf. the final part of the ruling, above).

10. The constitutional guarantee of the autonomy of higher education institutions precludes the possibility of treating organs of higher education institutions as organs of public authority, insofar as regards matters concerning their core activity. Nevertheless, important constitutional grounds exist for treating these relationships as similar to administrative-legal relations.
11. From the perspective of the constitutional protection of a citizen's trust in the State, it must be concluded that the absence of instructions, or misleading instructions, on how to appeal against, or challenge, a decision of the rector in an individual case (Article 107 § 1 of the Administrative Procedure Code) has legal consequences for the addressee. In particular, such a rector's decision possesses characteristics of a "final decision", within the meaning of Article 79(1) of the Constitution.
12. According to Article 79 of the Constitution, it is impermissible within the constitutional complaint procedure to review the internal and hierarchical conformity of sources of law insofar as this is not directly related to the complainant's constitutional rights and freedoms.
13. The subject of a constitutional complaint may be a legal norm which infringes constitutional rights and freedoms, but not a defective application of this norm.

#### Provisions of the Constitution and the Constitutional Tribunal Act

##### Constitution

**Art. 2.** The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

**Art. 31.** [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 32.** 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.  
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**Art. 45.** 1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

**Art. 65.** 1. Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute.

**Art. 70.** 1. Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute.

2. Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.

3. Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.

3. Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute.

4. The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute.

**Art. 77.** [...] 2. Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.

**Art. 79.** 1. In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

**Art. 92.** 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

**Art. 93.** [...] 2. Orders shall only be issued on the basis of statute. They shall not serve as the basis for decisions taken in respect of citizens, legal persons and other subjects.

#### **CT Act**

**Art. 39.** 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

- 1) if the pronouncement of a judicial decision is superfluous or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;
- 3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.

2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.