22/3/A/2011

JUDGMENT

of 12 April 2011

Ref. No. SK 62/08*

In the Name of the Republic of Poland

The Constitutional Tribunal, in a bench composed of:

Wojciech Hermeliński – Presiding Judge

Marek Kotlinowski

Piotr Tuleja

Sławomira Wronkowska-Jaśkiewicz

Marek Zubik – Judge Rapporteur,

Grażyna Szałygo – Recording Clerk,

having considered, at the hearing on 12 April 2011, in the presence of the complainant, the Sejm, the Public Prosecutor-General and the Polish Ombudsman, joined constitutional complaints submitted by Mr Marek Pawłowski, in which he requested the Tribunal to examine the conformity of:

1) Article 6(2) of the Act of 26 July 1991 on Personal Income Tax (Journal of Laws - Dz. U. of 2000 No. 14, item 176, as amended), in the version in force in the years 1996-2001, insofar as it results in unjustified differentiation with regard to taxes paid by particular categories of taxpayers who have their children and families to support as well as discrimination against some of them, to Article 2, Article 18, Article 32 and Article 71(1) of the Constitution of the Republic of Poland

2) Article 6(4) and (5) of the Act referred to above in point 1, in the version in force in the years 1996-2001, insofar as they result in unjustified differentiation with regard to taxes paid by particular categories of taxpayers who have their children and families to support as well as discrimination against some of them, to the Preamble, Article 2, Article 4, Article 7, Article 8, Article 18, Article 31(1) and (2),

* The operative part of the judgment was published on 26 April 2011 in the Journal of Laws - Dz. U. No. 87, item 492.

Article 32, Article 33, Article 48, Article 64(2), Article 71(1), Article 84 and Article 87(1) of the Constitution of the Republic of Poland,

adjudicates as follows:

Article 6(4) and (5) of the Act of 26 July 1991 on Personal Income Tax (Journal of Laws - Dz. U. of 2010 No 51, item 307, No. 57, item 352, No. 75, item 473, No. 105, item 655, No. 149, item 996, No. 182, item 1228, No. 219, item 1442, Nr 226, item 1475 and 1478 and No. 257, item 1725 as well as of 2011 No. 45, item 235) **- as amended by the Act of 2 December 1994 amending certain acts which regulate taxation and certain other acts** (Journal of Laws - Dz. U. of 1995 No. 5, item 25) **as well as the Act of 21 November 1996 amending the Act on Personal Income Tax** (Dz. U. No. 137, item 638), **as well as the Act of 9 November 2000 amending the Act on Personal Income Tax and certain other acts** (Journal of Laws - Dz. U. No. 104, item 1104) **- are consistent with the principle of appropriate legislation, arising from Article 2 of the Constitution of the Republic of Poland as well as with Article 32(1) of the Constitution, and are not inconsistent with Article 33 and Article 48 of the Constitution.**

Moreover, the Tribunal decides:

pursuant to Article 39(1)(1) and Article 39(1)(2) of the Constitutional Tribunal Act of 1 August 1997 (Journal of Laws - Dz. U. No. 102, item 643, of 2000 No. 48, item 552 and No. 53, item 638, of 2001 No. 98, item 1070, of 2005 No. 169, item 1417, of 2009 No. 56, item 459 and No. 178, item 1375 as well as of 2010 No. 182, item 1228 and No. 197, item 1307), **to discontinue the proceedings as to the remainder.**

STATEMENT OF REASONS

[...]

III

The Constitutional Tribunal has considered as follows:

1. The subject and scope of the review.

1.1. The constitutional complaints under consideration regard the payment of personal income tax on preferential terms. The normative basis for that was Article 6(2), (4) and (5) of the Act of 26 July 1991 on Personal Income Tax (Journal of Laws - Dz. U. of 2010 No. 51, item 307, as amended; hereinafter: the Personal Income Tax Act). During the period taken into account in the complaints, the content of the said provisions was amended twice.

In the years 1996-1997, challenged Article 6(2), (4) and (5) of the Personal Income Tax Act, as amended by the Act of 2 December 1994 amending certain acts which regulate taxation and certain other acts (Journal of Laws - Dz. U. of 1995 No. 5, item 25), read as follows:

para 2: “Married couples, subject to the tax liability referred to in Article 3(1), who own joint marital property and who remain in that relationship throughout the tax year, may, however, at the request expressed in the joint annual tax return, be taxed jointly on the sum total of their incomes, determined in accordance with Article 9(1), having previously deducted, separately by each of the spouses, the amounts specified in Article 26; in that case, the tax is assessed in the name of both spouses at the double amount of the tax calculated on half of the joint income of the spouses; incomes (revenues) on which lump-sum tax is paid shall be excluded from the sum total of those incomes”.

para 4: “With respect to single parents who, in the course of the tax year, bring up underage children or children, regardless of their age, for whom, in accordance with separate regulations, a nursing allowance was received, the tax may be assessed, at the request expressed in the annual tax return, at the double amount of the tax calculated on half of the income of the said parent. The provisions of paragraph 2, second sentence, and paragraph 3 shall apply appropriately”.

para 5: “A single parent shall mean a parent or legal guardian who is single and who brings up his/her children single-handedly: an unmarried woman, an unmarried man, a divorcee, a widow or a widower”.

By the Act of 21 November 1996 amending the Act on Personal Income Tax (Journal of Laws - Dz. U. No. 137, item 638), which entered into force on 1 January 1997, the said provisions were amended and remained binding until 31 December 2000:

para 2: “Married couples, subject to the tax liability referred to in Article 3(1), who own joint marital property and who remain in that relationship throughout the tax year,

may, however, at the request expressed in the joint annual tax return, be taxed jointly on the sum total of their incomes, determined in accordance with Article 9(1), having previously deducted, separately by each of the spouses, the amounts specified in Article 26 and Article 26a; in that case, the tax is assessed in the name of both spouses at the double amount of the tax calculated on half of the joint income of the spouses; incomes (revenues) on which lump-sum tax is paid shall be excluded from the sum total of those incomes".

para 4: "With respect to single parents who, in the course of the tax year, bring up:
1) underage children;
2) children, regardless of their age, for whom, in accordance with separate regulations, a nursing allowance was received;
3) children of up to 25 years of age attending schools, referred to in the regulations concerning the schooling system, or in the regulations concerning higher education, if in the course of the tax year those children did not receive any income, with the exception of income tax exempt income, a dependent's pension and income in the amount not giving rise to the obligation to pay tax
- the tax may be assessed, at the request expressed in the annual tax return, at the double amount of the tax calculated on half of the income of the said parent. The provisions of paragraph 2, second sentence, and paragraph 3 shall apply appropriately".

para 5: "A single parent shall mean a parent or legal guardian who is single and who brings up his/her children single-handedly: an unmarried woman, an unmarried man, a divorcee, a widow or a widower".

On 3 March 2000, the consolidated text of the Act was published (Journal of Laws - Dz. U. of 2000 No. 14, item 176).

Pursuant to the Act of 9 November 2000 amending the Act on Personal Income Tax and certain other acts (Journal of Laws - Dz. U. No. 104, item 1104), which went into force on 1 January 2001, challenged Article 6(2), (4) and (5) of the Personal Income Tax Act read as follows:

para 2: "Married couples, subject to the tax liability referred to in Article 3(1), who own joint marital property and who remain in that relationship throughout the tax year, may, however, subject to paragraph 8, at the request expressed in the joint annual tax return, be taxed jointly on the sum total of their incomes, determined in accordance with Article 9(1), having previously deducted, separately by each of the spouses, the amounts specified in Article 26; in that case, the tax is assessed in the name of both spouses at the double amount of the tax calculated on half of the joint income of the spouses; incomes

(revenues) on which lump-sum tax is paid in accordance with the principles laid down in this Act shall be excluded from the sum total of those incomes".

para 4: "With respect to single parents who, in the course of the tax year, bring up:
1) underage children;
2) children, regardless of their age, for whom, in accordance with separate regulations, a nursing allowance was received;
3) children of up to 25 years of age attending schools, referred to in the regulations concerning the schooling system, or in the regulations concerning higher education, if in the course of the tax year those children did not receive any income, with the exception of income tax exempt income, a dependent's pension and income in the amount not giving rise to the obligation to pay tax;
- the tax may be assessed, subject to paragraph 8, at the request expressed in the annual tax return, at the double amount of the tax calculated on half of the income of the said person, with a view to Article 7; incomes (revenues) on which lump-sum tax is paid in accordance with the principles laid down in this Act shall be excluded from the sum total of those incomes".

para 5: "A single parent shall mean one of the parents of a child or a legal guardian who brings up the child single-handedly if this person is: an unmarried woman, an unmarried man, a divorcee, a widow or a widower; a person who has been separated from his/her spouse on the basis of a court order pursuant to relevant provisions; or a married person, if his/her spouse has been deprived of parental rights or have been subject to the penalty of deprivation of liberty".

Generally, the normative content of the provisions – with regard to the constitutional issue raised by the complainant – has remained unchanged throughout that time.

1.2. The basic principle of personal income taxation is that a tax is levied on incomes earned by individuals. At the same time, the legislator provided that a personal income tax rate depends on the amount of taxable income. At present, the model of personal income taxation that is applied in Poland is the so-called progressive taxation. In most general terms, it consists in dividing a taxable income into particular amounts. These amounts are used for calculating the tax, on the basis of different tax rates. The sum of the tax calculated on the basis of each of the amounts equates with the amount of the tax due. Thus, if the income level of a given taxpayer exceeds one of the tax brackets set out in Article 27 of the Personal Income Tax Act (currently there are two brackets), then the

amount exceeding the given bracket is subject to a higher tax rate. As to the remainder (i.e. as regards the amount of income that falls within the scope of the first bracket), the tax is paid according to the basic rate. Hence, the said progressive taxation does not affect taxpayers whose incomes do not exceed the amount provided for in Article 27 of the Personal Income Tax Act with regard to the first tax bracket.

However, the legislator has specified certain exceptions to the general rules of personal income taxation. This includes, *inter alia*, taking into account the family situation of taxpayers when determining the amount of the tax, and consequently their ability to pay. This is manifested in special rules for paying personal income tax by married couples and single parents, set out in Article 6 of the Personal Income Tax Act, and those taxpayers are free to benefit from them, after meeting certain requirements specified in that provision. The said taxation on preferential terms is based on the so-called family quotient.

When spouses are taxed jointly, as provided for in Article 6(2) and (3) of the Personal Income Tax Act, they add up their incomes (having previously deducted - separately by each of the spouses - the amounts specified in Article 26 and Article 26a of the Personal Income Tax Act); they determine an amount that constitutes half of their joint income, and on the basis of that amount (constituting half of their joint income), the amount of the tax is calculated and then multiplied by two. The same method the legislator has provided for single parents, but they calculate their tax on the basis of the amount constituting half of the joint income of a single parent and his/her child.

The above method of calculating the tax is very beneficial for spouses if one of them has no income or his/her income is relatively low, whereas the other spouse earns a considerable income which is taxed progressively.

In the case of single parents, the payment of the tax on the basis of "the family quotient" is beneficial, as their incomes are also taxed progressively.

Therefore, in the two cases, resorting to joint taxation (i.e. being taxed jointly with one's spouse or child) makes it possible to avoid or alleviate the effects of progressive taxation on that amount of income which exceeds the basic tax bracket, specified in Article 27 of the Personal Income Tax Act. The said solutions constitute departures from the principle of universal taxation, with all the ensuing consequences for the interpretation of the provisions that provide for such a tax relief, within the meaning of Article 217 of the Constitution.

1.3. As it follows from the *petitum* of the constitutional complaints, the complainant has not requested the Tribunal to rule that Article 6(2), (4) and (5) of the Personal Income Tax Act are unconstitutional in their entirety. He has merely challenged the effect of alleged unjustified differentiation and discrimination arising from those provisions, in the context of taxation of taxpayers who provide for their children, but do not live with them, when juxtaposed with married taxpayers who may be taxed jointly and taxpayers who live with their children and take care of the children on the day-to-day basis, but do not support them financially.

Consequently, the constitutional issue in the present case consists in determining whether the right to pay tax on preferential terms, as set out in Article 6(4) and (5) of the Personal Income Tax Act, may also be exercised by a parent who provides for his/her child, but does not take care of the child on the day-to-day basis, and the child lives and is brought up by the other parent.

2. The admissibility of the Tribunal's substantive review of the constitutional complaint.

2.1. At every stage of its review proceedings, the Tribunal examines whether none of negative procedural premisses occurs, as they result in the discontinuation of the proceedings. This concerns all preliminary issues, as well as formal premisses, which are common to review proceedings commenced by way of constitutional complaint, application or question of law. The substantive review of the allegations raised in the constitutional complaint depends on the fulfilment of all requirements for the complaint's admissibility (see the decision of 1 March 2010, Ref. No. SK 29/08, OTK ZU No. 3/A/2010, item 29, point II.2. and the jurisprudence cited therein). Also, it should be stressed that a bench adjudicating in a given case is not bound by the stance presented in a disposition or decision issued by the Tribunal as part of preliminary proceedings (see the decision of 30 June 2008, Ref. No. SK 15/07, OTK ZU No. 5/A/2008, item 98, point II.1).

2.2. In the first place, it should be considered whether it is admissible to adjudicate in the present case, due to the fact that the challenged provisions have ceased to have effect.

Pursuant to Article 39(1)(3) of the Constitutional Tribunal Act (Journal of Laws - Dz. U. No. 102, item 643, as amended; hereinafter: the Constitutional Tribunal Act), the Tribunal shall, at a sitting in camera, discontinue proceedings if a normative act has ceased

to have effect to the extent challenged prior to the delivery of a ruling by the Tribunal. An exception to this is set out in Article 39(3) of the Constitutional Tribunal Act, which rules out the discontinuation of proceedings due to the fact that a given normative act has ceased to have effect if issuing a ruling on the normative act is necessary for protecting constitutional rights and freedoms.

The Constitutional Tribunal has, on numerous occasions, expressed the view that a provision is binding as long as individual acts which apply the law may be issued on the basis of that provision. One speaks of a normative act ceasing to have effect, as a premiss of discontinuing proceedings, when the challenged provision may no longer be applied to an actual situation (see the judgment of 31 January 2001, Ref. No. P 4/99, OTK ZU No. 1/2001, item 5, point III.3).

In the opinion of the Constitutional Tribunal, the provisions referred to in the three constitutional complaints under examination in the present case may still be applied by administrative courts as the basis of assessing the legality of actions undertaken by tax authorities, which justifies subjecting them to constitutional review.

2.3. Due to the fact that at the hearing the complainant withdrew the allegations concerning Article 6(2) of the Personal Income Tax Act, which provided for a mechanism of filing a joint tax return by spouses, the Constitutional Tribunal is obliged to discontinue the proceedings within that cope, on the basis of Article 39(1)(2) in conjunction with Article 39(2) of the Constitutional Tribunal Act.

2.4. In order to resolve the case, it is necessary to determine whether the infringement of the complainant's constitutional rights and freedoms was caused by a legislative act or by an act which applied the law. It should be borne in mind that, pursuant to Article 79 of the Constitution, a constitutional complaint is a complaint about a provision (a normative act), and not about the application thereof in an individual case. Therefore, the Tribunal has no jurisdiction to review whether provisions were properly applied in specific cases, even if the application of those provisions resulted in infringing the individual's constitutional rights and freedoms.

The Constitutional Tribunal has on a number of occasions emphasised that the actual content of provisions is, in fact, formulated only in the course of the application thereof. As the Constitutional Tribunal has stressed, if "a particular interpretation of a provision of a statute has become well-established in an obvious way and, in particular, if

it has unambiguously and authoritatively been manifested in the jurisprudence of the Supreme Court or the Supreme Administrative Court, then it should be regarded that the provision – in the course of its application – has acquired the content which the highest judicial instances of our country have recognised therein" (the judgment of 28 October 2003, Ref. No. P 3/03, OTK ZU No. 8/A/2003, item 82, point IV.2 and the jurisprudence cited therein). Such an approach entails that the actual meaning that a given provision has acquired in social reality is subject to constitutional review (see the judgment of 8 May 2000, Ref. No. SK 22/99, OTK ZU No. 4/2000, item 107, point III.5). For that reason, it is apt to state that, in the course of a constitutional review, it is a norm derived from a particular provision or provisions that is reviewed, and not the mere wording of the provisions.

With regard to the cases of the complainant, the Supreme Administrative Court concluded that the content of Article 6(4) and (5) of the Personal Income Tax Act raises no doubt. In the opinion of the Supreme Administrative Court, 'single-handedly' in the context of the above provisions denotes 'without the participation of others', and the term 'to bring up the child' means 'by providing financial support, to ensure that the child's full mental and physical development is reached'. The Tribunal notes that assigning such meanings to the said provisions complies with the way they are commonly understood in the Polish language.

The above interpretation of Article 6(4) and (5) of the Personal Income Tax Act is consistent in jurisprudence, which is confirmed by the statement of reasons for the decision of 11 October 2010, ref. no. II FPS 3/10, issued by the Supreme Administrative Court with regard to an application in which the Polish Ombudsman requested the Court to issue a resolution, on the basis of Article 15(1)(2) of the Act of 30 August 2002 – the Law on Proceedings Before Administrative Courts (Journal of Laws - Dz. U. No. 153, item 1270, as amended), in order to clarify legal provisions the application of which resulted in discrepancies in the jurisprudence of administrative courts. The Supreme Administrative Court refused to issue the said resolution, recognising that – both on the day the application was filed as well as on the day of issuing the above-mentioned decision – there were no discrepancies in the jurisprudence of the Supreme Administrative Court as regards the interpretation and application of the provisions of Article 6(4) and (5) of the Personal Income Tax Act. Making reference to numerous judgments that had been issued hitherto (e.g. the judgments of the Supreme Administrative Court of: 20 October 2006, Ref. No. II FSK 1266/05; 20 October 2006, Ref. No. II FSK 1267/05; 24 November 2006, Ref. No.

II FSK 1474/05; 30 November 2006, Ref. No. II FSK 1452/05, II FSK 644/06, II FSK 1549/05, II FSK 1534/05, II FSK 1548/05; 6 May 2008, Ref. No. II FSK 617/07 and II FSK 371/07; 30 June 2009, Ref. No. II FSK 279/08), the Supreme Administrative Court explicitly confirmed that Article 6(4) and (5) of the Personal Income Tax Act should be interpreted in the way that Article 6(4) granted a single parent the right to pay personal income tax on preferential terms, and Article 6(5) of the said Act specified the group of people who, due to their marital or actual status, might be regarded as single parents. By contrast, paragraph 5 may not be interpreted in the way that every person who has children and is single qualifies as a single parent within the meaning of the Personal Income Tax Act. This would result in creating a new tax relief that is not provided for in the Personal Income Tax Act. A requirement which needs to be met in order to pay the above-mentioned tax on preferential terms, as regulated in Article 6(4) of the said Act, entails that a parent or legal guardian must be the person who actually brings up the child, by taking care of the child's material needs and his/her emotional development. In order to benefit from the tax relief referred to in Article 6(4) of the Personal Income Tax Act, a given taxpayer not only must be of a certain marital status, but also must bring up the child as a single parent. Justification for the introduction of the tax relief makes it clear that the legislator addressed it to persons who take care of children's daily needs as single parents (i.e. without the participation of another parent) and who do so personally.

Taking into account the consistency of jurisprudence as regards Article 6(4) and (5) of the Personal Income Tax Act, it should be deemed that a legal norm derived therefrom – in accordance with which the right to pay personal income tax on preferential terms which are specified in Article 6(4) of the said Act is only granted to such a person (a parent or legal guardian) who looks after the child on a daily basis, and not to a person who financially supports the child without providing day-to-day care – may be subject to review conducted by the Constitutional Tribunal.

At this point, it should be emphasised that despite amendments to Article 6(4) and (5) of the Personal Income Tax Act that were introduced in the years 1996-2001, within the scope dealt with in the constitutional complaints, the same legal norm was actually in force. Although the legislator amended the context of the above provisions of the Personal Income Tax Act, by extending the scope ratione personae of preferential terms, from the very beginning the content of 'single-handedly' and 'to bring up the child' in the wording of Article 6(4) and (5) of the said Act should not cause more than usual doubts as regards interpretation.

2.5. The Constitutional Tribunal states that the complainant's allegation which has been raised in the *petitum* of the constitutional complaint of 7 May 2007 and which also arises from the statement of reasons for the other constitutional complaints – namely, that the challenged provisions have infringed "the right to be subject to the law based on the principle of subsidiarity in the strengthening the powers of citizens and their communities, the law enacted by elected representatives of the Nation (...) as well as the right to the protection of (...) property rights", which are referred to in the Preamble, Article 2, Article 4, Article 7, Article 8, Article 31(1) and (2), Article 32, Article 64(2), Article 84 and Article 87 of the Constitution – focuses on proving that tax authorities and administrative courts supposedly arrived at an erroneous interpretation, and also that the Supreme Administrative Court failed to provide the interpretation of the provisions of the Personal Income Tax Act which would be compliant with the Constitution. In fact, the said allegation does not concern so much the unconstitutionality of the legal provisions as the improper – in the complainant's view – judicial activity of the Court. The allegation formulated this way is not subject to review by the Constitutional Tribunal. Indeed, review proceedings before the Tribunal may not be transformed into a peculiar form of an extraordinary measure aimed at appealing against court judgments, as this would entail that the Tribunal would administer justice and exercise judicial supervision over other courts.

Moreover, the Constitutional Tribunal notes that this way the complainant has not proved what subjective rights arise from the indicated higher-level norms for constitutional review, and in particular from the Preamble, Article 4, Article 7, Article 8, Article 84 or Article 87 of the Constitution as well as which of them have been infringed in the complainant's case. Being the systemic principles of the state, the said provisions are mainly addressed to the legislator. In principle, no subjective rights of the individual arise therefrom. As a result, they may not constitute an effective basis of a constitutional complaint. The complainant has not proved that the provisions challenged by him infringed his property rights referred to in Article 64(2) of the Constitution; nor has he explained why and in what sense Article 84 of the Constitution was infringed.

Taking the above into consideration, the Tribunal has decided to discontinue the proceedings within the scope specified above on the basis of Article 39(1)(1) of the Constitutional Tribunal Act, on the grounds that issuing a judgment is inadmissible.

3. The principle of universal and fair taxation.

Pursuant to Article 84 of the Constitution, everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute. The provision manifests, *inter alia*, the universal character of the obligation to pay taxes. In its previous jurisprudence, the Constitutional Tribunal has stressed a number of times that the legislative branch of government enjoys far-reaching freedom with regard to shaping the tax system, which includes the possibility of choosing among various constructs of tax liabilities. The legislator has even more freedom as regards tax reliefs and allowances, as the subject and scope thereof are determined by social and economic factors, and not solely by legal factors. Nevertheless, allowing departures from the principle of universal taxation must be justified by social and economic objectives which are reflected in the system of constitutionally protected value (see the judgment of 9 May 2005, Ref. No. SK 14/04, OTK ZU No. 5/A/2005, item 47, point III and the jurisprudence cited therein).

The system of taxation should implement the principle social justice, derived from Article 2 of the Constitution. On the one hand, the principle implies the above-mentioned universality, which is manifested in an obligation to cover the cost of common needs by everyone, to the extent this is possible; on the other hand, justice manifests itself in equality, which entails that the burden of taxation is properly distributed, proportionally to the taxpayer's ability to pay (see R. Mastalski, "Konstytucyjne granice opodatkowania", [in:] *Księga XX-lecia orzecznictwa Trybunału Konstytucyjnego*, M. Zubik (ed.), Warszawa 2006, p. 560).

One of the most important criteria determining the scope of the taxpayer's ability to pay is his/her family situation. Indeed, it is obvious that "a taxpayer supporting his/her spouse financially will satisfy fewer needs from a given income than a taxpayer who is single, and likewise a taxpayer providing for children will cater to fewer needs than a childless taxpayer (see H. Litwińczuk, "Polskie prawo podatkowe w świetle standardów międzynarodowych", [in:] *Obywatel – jego wolności i prawa*, B. Oliwa-Radzikowska (ed.), Łódź 1998, pp. 268-269). Therefore, solutions that take into account the family situation of the taxpayer justify the introduction of departures from the principle of universal taxation, as persons who provide for children are in a different situation than persons who have no children (see W. Wójtowicz, "Problem „prorodzinności" podatku dochodowego od osób fizycznych", [in:] *Konstytucja – ustrój – system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl*, T. Dębowska-Romanowska, A. Jankiewicz (eds.), Warszawa 1999, pp. 415-416). This also stems from the principle of fair taxation.

As the Constitutional Tribunal once stated, "when determining the amount of personal income tax, one should take into account not only a given taxpayer's income, but also his/her ability to pay, after taking into consideration indispensable expenditure incurred by the taxpayer when providing for his/her family (the judgment of 7 June 1999, Ref. No. K 18/98, OTK ZU No. 5/1999, item 95, point IV.3 as well as see the judgment of 4 May 2004, Ref. No. K 8/03, OTK ZU No. 5/A/2004, item 37, point III.2.4).

However, the sole circumstance of providing for a minor, although it implies increased expenditure, does not necessitate granting preferential terms to a parent as regards taxation. Indeed, this should be contingent, *inter alia*, on the amount of the income of a taxpayer providing for children. The legislator's choice of criteria within the scope of which the principle of fair taxation will be implemented, due to the family situation of the taxpayer and thus his/her ability to pay personal income tax, may not be isolated from other constitutional values particularly protected by the legislator.

4. The Protection of the family in the Constitution and taxation solutions.

4.1. A considerable part of the allegations about the challenged regulations is related to a broadly understood status of the family, and in particular assistance provided to single-parent families by means of family-friendly tax solutions. The assessment of the constitutionality of Article 6(4) and (4) of the Personal Income Tax Act primarily requires the reconstruction of the constitutional model and scope of protection provided to families by the state.

4.2. The provisions of the Constitution do not define the notion of 'the family', although the status of this fundamental and natural social unit is set by a number of provisions of the Constitution. In the first place, what should be pointed out is the principle of subsidiarity, arising from the Preamble to the Constitution, which strengthens the rights of the communities of citizens, i.e. also determines the role of the family in society (see L. Garlicki, comment 3 on Article 18, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, L. Garlicki (ed.), Warszawa 1999-2005, pp. 1-2), then Article 18 – which provides that the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland, as well as Article 33(1) of the Constitution (the principle of equal rights of men and women in family life), Article 47 of the Constitution (the legal protection of family life), Article 48(2) of the Constitution (the protection of

parental rights), Article 48(1), first sentence, and Article 53(3) of the Constitution (the principle that parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions), Article 71 of the Constitution (the protection of the good of the family as well as the right of families and mothers to special assistance from public authorities), Article 48(1), second sentence, Article 65(3), Article 68(3), Article 72 of the Constitution (the protection of the rights of the child), Article 64 and Article 21 of the Constitution (the right of succession), Article 23 of the Constitution (the emphasis of the role of family agricultural holdings).

The lack of a definition of the family in the Constitution – even in the context of ongoing social changes – does not make it impossible to reconstruct the said notion. First of all, one should refer to its linguistic meaning. 'The family' – strictly speaking – is a union of parents, usually married, and children. By contrast, 'a single-parent family' is a family where one of parents is absent (see *Słownik Języka Polskiego PWN*). In the context of the provisions of the Constitution, there is no reason to depart from the generally accepted meanings of notions which have evolved in the Polish language.

In the light of the provisions of the Constitution, 'the family' should therefore be construed as a lasting union of two or more persons, comprising at least one adult and a child, based on emotional and legal ties as well as frequently based on blood relations. The family may be 'a two-parent family', which includes 'a family with several children', or 'a single-parent family'. The 'two-parent family' comprises two adults who share a household and who are bound by emotional ties, as well as their own child (children) who are raised by them. The 'single-parent family' consists of one adult and a child (children) being raised by him/her (see e.g. L. Garlicki, comment 4 on Article 71, [in:] *Konstytucja*…, p. 2; M. Dobrowolski, "Status prawny rodziny w świetle nowej Konstytucji Rzeczypospolitej Polskiej", *Przegląd Sejmowy* No. 4/1999, p. 24).

What is more difficult to define in the light of the Constitution is the category of *de facto* relationships in which children are raised. On the one hand, those relationships do not fall under the category of marriage; on the other hand, they are not excluded from the protection arising from Article 71(1) of the Constitution. However, the Tribunal has concluded that, in the context of the present case, there is no need to resolve that issue.

4.3. The protection of the family implemented by public authorities must take into account the model of the family presented in the Constitution, i.e. a lasting union of a man and a woman, aimed at motherhood and responsible parenthood (*vide*: Article 18 of the

Constitution). The objective of constitutional regulations pertaining to the status of the family is to entrust the state, and in particular the legislator, with the obligation to take measures which "strengthen family ties among people constituting a family, and especially between parents and children as well as between spouses" (the judgment of 18 May 2005, Ref. No. K 16/04, OTK ZU No. 5/A/2005, item. 51, point III.4). This also concerns tax solutions which are aimed at implementing the family-friendly policy of the state (cf. P. Smoleń, "Trudności i wątpliwości na tle tzw. prorodzinnej polityki państwa" [in:] *Problemy i kontrowersje związane z opodatkowaniem dochodów osób fizycznych*, B. Kucia-Guściora, P. Smoleń (eds.), Lublin 2008, pp. 22-23). However, such solutions may not even indirectly result in undermining the permanence of family ties, by means of measures which would favour situations where children are brought up by one of their parents, or by two parents who live without marriage, which legally regulates relations between those persons (see M. Zubik, "Podmioty konstytucyjnych wolności, praw i obowiązków", *Przegląd Legislacyjny* Issue No. 2/2007, p. 41). It is worth noting that, in its judgment of 18 May 2005, ref. no. K 16/04, which concerned an allowance paid out to single parents in addition to a family benefit, the Constitutional Tribunal ruled that the provisions of the Act of 28 November 2003 on Family Benefits (Journal of Laws - Dz. U. No. 228, item 2255, as amended) which specified the group of persons eligible to receive the allowance were unconstitutional. The allowance was granted to a parent of a certain marital status (an unmarried woman, an unmarried man, a person who has been separated from his/her spouse on the basis of a legally effective court order, a divorcee, a widower or a widow) who submitted a statement that the other parent was not bringing up the child. As the Tribunal explained, the content of the challenged provisions of the Family Benefits Act caused some couples to fake the breakdown of family life in order to receive certain financial gain, thus actually weakening family ties between parents and children as well as between spouses.

Special assistance should be provided by the state to families in difficult material and social circumstances, and in particular to those with many children or a single parent, which follows from Article 71(1) of the Constitution. However, this special assistance, which goes beyond the scope of ordinary assistance granted to the other families (see the judgment of 15 November 2005, Ref. No. P 3/05, OTK ZU No. 10/A/2005, item 115, point III.3), should be interpreted comprehensively i.e. in the context of all measures taken by public authorities for the sake of families in difficult circumstances, and not merely in the context of tax solutions in the form of e.g. the payment of personal income tax on

preferential terms. Measures aimed at assisting families in difficult material and social circumstances have been specified, above all, in the Act of 12 March 2004 on Social Welfare (Journal of Laws - Dz. U. of 2009 No. 175, item 1362, as amended). They have also been provided for in the Personal Income Tax Act in the form of tax reliefs and allowances for taxpayers bringing up children.

4.4. Out of constitutional regulations concerning the status of the family, the complainant indicated that the challenged provisions infringed the principle of subsidiarity, expressed in the Preamble to the Constitution, as well as Article 18, Article 48 and Article 71(1) of the Constitution. His allegations amount to two issues: the challenged provisions infringed his family's right to be provided special assistance by the state and his right to be regarded as a parent bring up his son in the context of tax law.

Article 18 of the Constitution stipulates that marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

Pursuant to Article 48(1), parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his/her freedom of conscience and belief and also his/her convictions. By contrast, paragraph 2 provides that limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.

In accordance with Article 71(1), the state, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

4.5. The Constitutional Tribunal states that Article 18 of the Constitution, indicated in a general way, as well as the principle of subsidiarity, arising from the Preamble to the Constitution, may not constitute higher-level norms for review proceeding commenced by way of constitutional complaint, since they do not create autonomous subjective rights, but they express the principles and objectives of the state policy addressed to the legislator. As, in the case of the above-mentioned provisions, it is generally impossible to derive a subjective right of the individual which could be directly exercised, the provisions may not also be regarded as an effective higher-level norm for review proceedings that are strictly

related to the constitutional protection of rights and freedoms within the scope of a constitutional complaint.

By contrast, as regards a norm arising from Article 71(1) of the Constitution, a constitutional complaint may possibly indicate the second sentence of that provision as a higher-level norm for constitutional review (see the judgment of 11 November 2005, P 3/05, point III.3). The first sentence is not a source of subjective rights, but - similarly to Article 18 of the Constitution and the principle of subsidiarity – it indicates the direction which the constitution-maker has deemed desirable for state authorities to take. Although Article 71(1), second sentence, of the Constitution may make it possible to reconstruct a subjective right, when determining the extent to which it will be "used" in a constitutional complaint, one should also take into account Article 81 of the Constitution, pursuant to which rights set out, *inter alia*, in Article 71(1) may be asserted subject to limitations specified by statute.

The subjects of the right arising from Article 71(1), second sentence, of the Constitution are families "in difficult material and social circumstances". The constitution-maker has deemed that families which are most likely to find themselves in such circumstances are those with many children or a single parent. The wording of the provision indicates that the two premisses of difficult circumstances - material and social ones – must occur together; therefore, not every family with many children or a single parent has the right to special assistance from public authorities. The right set out in Article 71(1), second sentence, of the Constitution may be claimed – within the scope of social policy outlined by the legislator – by the members of a family which is entitled to the said right. In the case of single-parent families, these are: a parent or legal guardian who brings up the child, as well as the child brought up by such an adult. However, in every instance, the provision is to protect the bringing up of children. Therefore, it does not constitute an autonomous basis of claims made by adults who do not bring up children.

With regard to the present case, the Constitutional Tribunal states that the complainant is not the subject of the right referred to in Article 71(1), second sentence, of the Constitution. Neither the complainant nor the courts questioned the fact that his involvement in bringing up his child primarily amounted to his fulfilment of the obligation to pay child support and the visits he paid to the child at an agreed time. He did not take care of the child on the day-to-day basis; nor did he participate in the daily process of bringing up the child. Thus, he may not effectively rely on Article 71(1), second sentence, of the Constitution as the basis of protection to be granted to him by the state.

In such a case, the review proceedings within the scope set out above are subject to discontinuation, pursuant to Article 39(1)(1) of the Constitutional Tribunal Act, on the grounds that issuing a judgment is inadmissible.

4.6. Bringing up the child by providing for him/her is parents' basic obligation towards the child, and at the same time it is a broader right justifiably expected by the child from his/her parents. By contrast, public authorities should provide assistance to the child when persons obliged to provide for the child are – due to their material and social circumstances – unable to fulfil their legal obligation (*vide:* Article 72(2) of the Constitution). Indeed, the state's involvement in the realm of social welfare should not lead to the atrophy of parental obligations. At the same time, such perception of personal obligations between family members and public authorities guarantees the proper interpretation of the meaning of and the idea behind the principle of subsidiarity.

As the Tribunal pointed out in its judgment concerning the advance payment of child support, the bringing up of the child may not be perceived only as tantamount to the fulfilment of the obligation to pay child support, which constitutes the basic obligation of a parent (and at times also the obligation of other persons toward the child). Therefore, it is not sufficient to provide for the child's needs, without taking other actions aimed at shaping proper emotional and physical relations between the child and his/her community, if a parent is to be regarded as a person who brings up the child (cf. the judgment of 23 June 2008, Ref. No. P 18/06, OTK ZU No. 5/A/2008, item 83, point III.4.4.1).

Parents' obligation to pay child support arises from Article 133 of the Act of 25 February 1964 - the Family and Guardianship Code (Journal of Laws - Dz. U. No. 9, item 59, as amended; hereinafter: the Family and Guardianship Code). Being the manifestation of family solidarity, the obligation exists regardless of parental authority and custody over the child. Moreover, it stems from the constitutional provisions, and primarily reflects parents' obligation to be involved in rearing their children, as set out in Article 48(1) of the Constitution. However, the obligation to pay child support, understood in such a broad way, may not constitute the basis of deriving a right to tax reliefs or taxation on preferential terms, which constitute departures from the principle of universal taxation (*vide:* Article 84 of the Constitution).

4.7. In the view of the Constitutional Tribunal, there is no normative link between the payment of personal income tax in accordance with the rules set out in Article 6(4)

and (5) of the Personal Income Tax Act and Article 48(1) of the Constitution, which indicates the aspects of the child's upbringing construed as imparting and reinforcing certain convictions, values as well as social, moral and ethical principles (see P. Sarnecki, comment 4 on Article 48, [in:] *Konstytucja…*, p. 1). Hence, the possibility of being taxed jointly with the underage child, which is available to the parent who takes care of the child, does not affect the scope of parental rights of the other parent. These are two separate issues.

4.8. In the opinion of the Constitutional Tribunal, correlating taxation on preferential terms, as set out in Article 6(4) and (5) of the Personal Income Tax Act, with the fact of taking actual care of the child, and not merely with the fulfilment of parental obligations, is also justified by other constitutional aspects. Solutions which provide for various tax reliefs, even if they result from the principle of fair taxation, may not create an opportunity for faking the breakdown of family ties or constitute a reason for not getting married solely because of potential financial gain for taxpayers. In particular, this concerns situations where parents earning high salaries will gain no measurable profits from marriage, but the payment of personal income tax on terms provided for in Article 6(4) and (5) of the Personal Income Tax Act will allow at least one of them to pay a lower amount of the tax. Consequently, this may lead to creating fictional single-parent families solely for tax reasons (see the judgment of 18 May 2005, Ref. No. K 16/04, point III.4).

Taking the above into account, the Tribunal states that Article 6(4) and (5) are not inconsistent with Article 48 of the Constitution as well as are consistent with the principle of fair taxation, derived by the complainant from Article 2 of the Constitution.

5. The allegation that the principle of equality and the prohibition of discrimination have been infringed.

5.1. The complainant has alleged that Article 6(4) and (5) of the Personal Income Tax Act infringe Article 32(1) and (2) as well as Article 33(1) and (2) of the Constitution. In the view of the complainant, the infringement of the principle of equality and – as he put it – "the right to non-discrimination" consists in the fact that the norm derived from the challenged provisions is to prevent the possibility of alleviating progressive taxation, and thus deteriorates the situation of the complainant and his family in comparison with the situation of married people and other single parents who live with their children.

Article 32(1) of the Constitution expresses the principle of equality before the law and the principle of enacting non-discriminatory law. Article 33(1) of the Constitution provides that men and women shall have equal rights in family, political, social and economic life in the Republic of Poland. Also, Article 33(2) stipulates that men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honours and decorations.

5.2. In the jurisprudence of the Constitutional Tribunal, it has been well-established that the constitutional principle of equality consists in the equal treatment of all subjects of rights and obligations (addressees of legal norms) that share one common characteristic, without introducing any differentiation which could either favour or discriminate against some of them. Equality also implies that it is admissible when different subjects of rights and obligations (addressees of legal norms) that do not share the said common characteristic are treated differently by the law. The said principle does not mean that "the rights of all individuals are identical (equivalent)" (see the decision of 24 October 2001, Ref. No. SK 10/01, OTK ZU No. 7/2001, item 225, point II.2). The above interpretation of the principle of equality is also justified by the principle of social justice (see the ruling of 29 September 1997, Ref. No. K 15/97, OTK ZU No. 3-4/1997, item 37, point IV.1).

5.3. When assessing a given regulation in the light of the principle of equality, in the case where actual inequalities have arisen out of the content or application of the provision, it should primarily be determined whether we at all deal with identical subjects of rights and obligations; then it should be established on the basis of what characteristic the differentiation has been introduced into the legal situation of the addressees of a given norm; finally, it should be considered whether the said differentiation is justified (see the judgment of 16 December 1997, Ref. No. K 8/97, OTK ZU No. 5-6/1997, item 70, point III.2).

Taxation on preferential terms provided for in Article 6(2) and (3) of the Personal Income Tax Act is addressed to persons who are married. Spouses may resort to it regardless of whether they have children or how many children they have. Hence, joint taxation of married couples is sometimes regarded as favourable not so much to families as to married persons (see P. Smoleń, *Trudności*…, p. 22). Granting spouses the right to be taxed jointly stems from the fact that marriage, apart from being a spiritual and physical

union, constitutes also an economic union, which is manifested in maintaining a joint household, and income earned by spouses is spent on their joint needs, including the upbringing of their children. One should bear in mind that spouses' right to be taxed jointly depends, *inter alia*, on whether they have joint marital property.

By contrast, taxation on preferential terms provided for in Article 6(4) and (5) of the Personal Income Tax Act is addressed to an individual (single) parent who lives with his/her child in a joint household and whose is responsible for taking care of the child on the day-to-day basis. The preferential terms are granted because of the child who lives with the parent (regardless of whether it is the child's mother or father) and, as it has been indicated earlier, are autonomous in relation to the obligation to pay child or spousal support. The solution is meant to compensate the single parent for the burden of bringing up the child on his/her own.

5.4. The complainant has failed to satisfactorily prove that the principle of equality and the prohibition of discrimination have been infringed by the challenged provisions.

Firstly, there is no constitutional basis for the view that there exists a universal right granted to taxpayers to "alleviate progressive taxation". On the contrary, it follows from Article 84 of the Constitution that there is a universal obligation to pay taxes, taking into consideration the taxpayer's ability to pay. Moreover, being subject to such an obligation reflects the principle of fair taxation, derived from Article 2 of the Constitution, as well as care for the common good (Article 1 of the Constitution), within the meaning of which everyone should participate in the common tasks of the state, according to his/her abilities. The legislator specified an obligation to pay taxes which lies with individuals, where the object of taxation is the individual income of the taxpayer. The amount of tax due, calculated on the basis of a progressive taxation scale, primarily depends on the amount of earned income. In principle, a person who earns a higher income, i.e. whose income level exceeds a certain tax bracket set by statute, pays a higher tax rate on that surplus. Any departures from the above criteria must be justified by the objectives and values set out in the Constitution.

Therefore, if the complainant has based his allegations on the fact that he was to fulfil the universal obligation to pay taxes, although his ability to pay was lower than that of other taxpayers due to his expenditure on his child, then the burden of proving the unconstitutionality of those solutions in a thorough way lies with the complainant. This is even more necessary as the complainant's income exceeded the basic tax bracket and thus

was subject to progressive taxation. However, he has not challenged any other regulations of the Personal Income Tax Act which would allow him to lower the amount of income that is subject to a higher tax rate.

Secondly, since equality before the law implies the necessity to guarantee equal treatment of subject sharing the same relevant characteristic, one should bear in mind that married persons and single parents belong to two different categories, and their legal and actual situations differ considerably. Consequently, the Tribunal finds no infringement of the principle of equality and no discrimination against a parent whose child is brought up outside marriage and who fulfils his/her obligation to pay child support, but does not look after the child in comparison with parents taking care of their children on the day-to-day basis, i.e. bringing them up, as well as in comparison with married couples. Indeed, the parental obligation to support children financially may not constitute a basis for automatic derivation of the right to exemptions from the principle of universal taxation in the context of personal income tax.

5.5. The challenged provisions of the Personal Income Tax Act do not introduce – as a premiss of acquiring the right to be taxed jointly with the underage child – the criterion of gender. On the contrary, the content of Article 6(4) and (5) unambiguously indicates that the eligible taxpayer may be either the child's mother or father, provided that they meet the requirements set out in that provision. At this point, it is irrelevant that in practice it is usually the child's mother and not the father that looks after the child. Indeed, the said issue belongs to the realm of biological facts and determinants. However, the assessment of both above-mentioned circumstances falls outside the scope of jurisprudence of the Constitutional Tribunal.

At this point, the Constitutional Tribunal states that Article 6(4) and (5) of the Personal Income Tax Act are consistent with Article 32(1) as well as are not inconsistent with Article 33 of the Constitution. As regards the remainder - i.e. the review of Article 6(4) and (5) of the Personal Income Tax Act in the light of Article 32(2) of the Constitution – due to the insufficient proof of discrimination, the Tribunal has decided to discontinue the proceedings, pursuant to Article 39(1)(1) of the Constitutional Tribunal Act, on the grounds that issuing a judgment is inadmissible.

6. The insufficient specificity of the provisions on personal income tax

6.1. Despite the fact that the *petitum* of each of the constitutional complaints contains no allegation that the principle of appropriate legislation, arising from Article 2 of the Constitution, has been infringed, such an allegation is raised in the statements of reasons for the complaints, as well as in the opinions submitted by the Polish Ombudsman and the Public Prosecutor-General. Taking the above into account, the Tribunal has deemed it justified to examine also that allegation.

6.2. In the view of the complainant, the definition of 'a single parent', included in Article 6(5) of the Personal Income Tax Act lacks sufficient precision; namely, it does not clearly follow from the term 'a single parent', used by the legislator in Article 6(5), whether the phrase merely denotes a particular category of taxpayers or whether the said term also indicates the premisses of acquiring the right to calculate personal income tax in accordance with the rules specified in Article 6(4) of the said Act. As a result of the alleged insufficient precision of the challenged provisions, tax authorities, and subsequently administrative courts, were supposed to adopt an interpretation of the provisions on personal income tax which not only differed from the complainant's interpretation but was also inapt. Consequently, the complainant was ordered to pay tax arrears and accrued interest, which depleted his funds.

6.3. The Constitutional Tribunal has emphasised a number of times that the principles of appropriate legislation manifest the general principle of protection of citizens' trust in the state and its laws, and thus constitute one of the characteristics of a state ruled by law. Imprecise provisions create a framework for the organs of public authority which are responsible for applying the law, which must replace the legislator within the scope of those matters that he has regulated imprecisely. As the Constitutional Tribunal has stressed, "by means of imprecise wording of provisions, the legislator may not leave the organs of public authority which are responsible for applying the law with excessive freedom as regards determining, in practice, the scope ratione personae and ratione materiae of restrictions on the individual's constitutional rights and freedoms" (the judgment of 22 May 2002, Ref. No. K 6/02, OTK ZU No. 3/A/2002, item 33, point III.3).

What follows from the well-established jurisprudence of the Constitutional Tribunal is that not every case, but merely the aggravated ambiguity of a provision – i.e. one which is impossible to eliminate by means of established methods of interpretation – may constitute the basis of ruling the said provision to be unconstitutional. By contrast,

excessive casuistry may result in the deformation of the idea of a state ruled by law (see the decision of 27 April 2004, Ref. No. P 16/03, OTK ZU No. 4/A/2004, item 36, point III.3). The Constitutional Tribunal, in the bench adjudicating in the present case, shares that view. Moreover, the Tribunal wishes to point out that requiring excessive regulation and separate definitions of terms, particularly if they have well-established meanings in the Polish language, has nothing in common with the guarantee requirement of specificity of provisions, and is in fact contrary to that provision.

6.4. The challenged provisions that regulate the definition of a single parent as well as the premisses of acquiring the right to pay personal income tax on preferential terms, despite the fact that at the initial stage of the application of the provisions there were discrepancies in interpretation in voivodeship administrative courts, have with time acquired uniform content, confirmed by the consistent line of jurisprudence of the Supreme Administrative Court. A certain margin of discrepancy in interpretation of provisions, including the provisions of tax law, constitutes a natural and indispensable element of each legal system, in particular if this concerns a provision which is relatively shortly applied in legal relations. However, until it is possible to derive, from the provisions, a legal norm of consistent content arrived at in particular by means of a linguistic interpretation, then there is no need to determine the unconstitutionality of the provisions in the light of the principle of specificity of law, arising from Article 2 of the Constitution.

Tax authorities and administrative courts relied on a linguistic interpretation to determine the content of a legal norm, deeming that a single parent is a parent who takes care of the day-to-day needs of the child, and not a person who merely fulfils his/her legal obligation to pay child support and, to a small extent, participates in the other aspects of bringing up the child. Such content has also been assigned to the challenged norm in the jurisprudence of the Supreme Administrative Court. Thus, the meaning of the statutory term ‘a single parent’ has been defined in the same way as it is understood in the Polish language.

Moreover, the Constitutional Tribunal wishes to emphasise that the alleged “imprecision” of the definition set out in Article 6(5) of the Personal Income Tax Act is merely illusory also for other reasons. The said provision only specifies in more detail the characteristics of a single parent, i.e. his/her marital status or circumstances (the absence of the other parent). However, it does not define the meaning of ‘bringing up a child as a single parent’, which entails that the phrase has to construed in accordance with its

dictionary, generally accepted meaning. This what the Supreme Administrative Court has done, deriving the legal norm that is the subject of this review from the challenged provisions.

The complainant's allegation of "incomprehensibility" raised with regard to Article 6(4) and (5) of the Personal Income Tax Act stems not so much from the defective legislative construction of the provisions, as from the subjective assumptions concerning the interpretation of the term 'bringing up a child', narrowed down by the complainant to one, material aspect.

At the same time, the complainant incorrectly claims that term 'bringing up a child' is tantamount, in the context of Article 6(4) of the Personal Income Tax Act, to providing financial means. In the complainant's opinion, such an interpretation may be assumed on the basis of Article 6(4)(3) of the Personal Income Tax Act. The provisions concern the terms of paying personal income tax by a single parent who takes care of the child under 25 if the child continues his/her education. In the view of the complainant, with regard to the child of that age, there is no legal obligation to take care of the child, but merely to pay child support, which – in his opinion – is of relevance for the interpretation of the entire Article 6(4) of the Personal Income Tax Act. However, the Constitutional Tribunal wishes to note that the wording of that provision indicates that the provision is autonomous in relation to other situations regulated in the remaining points of Article 6(4) of the Personal Income Tax Act. This ensues from the fact that when the child attains majority, parents are no longer burdened with the obligation to provide care, i.e. bring the child up in the strictest sense of the phrase, and have only financial obligations which are aimed at helping the child to become self-sufficient. Reference to Article 6(4)(3) of the Personal Income Tax Act, made by the complainant, may therefore be regarded merely as a misunderstanding, especially that the provision could not even have been applied in the complainant's circumstances. During the period which is relevant for the complaints, he provided for his child who was a minor, and not over 18, and attended school.

What also confirms the correctness of the thesis that, in the light of Article 6(4) and (5), 'bringing up the child' may not be regarded as tantamount to 'providing for the child' is the Act of 2000 amending the Personal Income Tax Act. In the amending Act, the legislator extended the category of persons eligible to pay personal income tax on preferential terms set out in Article 6(4) of the Personal Income Tax Act to include persons who are married, but who may not rely on their spouses to help out with providing day-to-day care for their children, as their spouses have been deprived of parental rights or have

been subject to the penalty of deprivation of liberty. In such cases, the parent that does not provide the care, i.e. do not bring up the child, is still obliged to pay child support, thus providing the child, and at times also the spouses – the other parent of the child, with financial means.

In his practice of paying personal income tax, the complainant failed to take into account the above-mentioned legislative amendments. What is even more astonishing is that, being a professional attorney, despite the straightforward wording of the challenged provisions, he applied the interpretation of the provisions of the Personal Income Tax Act which was beneficial to him, overlooking their linguistic meaning, and on such basis he made constitutional claims.

In this context, the Constitutional Tribunal concludes that Article 6(4) and (5) are consistent with Article 2 of the Constitution.

7. Final remarks.

The Constitutional Tribunal recognises the problem which triggered the submission of the constitutional complaints in the case under examination. However, the Tribunal cannot replace the legislator. In order to address the problem which became the basis of the complaint in the present case, the legislator himself would probably have to construct a new model of preferential terms concerning the payment of personal income tax, which would take into account particular cases where a parent earning considerable income and providing for the child may not benefit from the right to pay personal income tax on preferential terms, and where the other parent of the child who brings up the child may not exercise the said right either, as s/he does not earn any income. Resolving that problem exceeds the possibilities arising from the assessment of the provisions challenged in the constitutional complaints as well as goes beyond the scope of the jurisdiction of the Constitutional Tribunal. Thus, the above remarks do not affect the final assessment of the challenged regulation.

For the above reasons, the Tribunal has adjudicated as in the operative part of the Judgment.