

Decision

dated 11 April 1994 (K. 10/93)

The Constitutional Tribunal sitting with the bench composed of the Chairman, Wojciech Łączkowski, and judges: Zdzisław Czeszejko-Sochacki, Leon Garlicki, Stefan Jaworski, Janina Zakrzewska (Reporting Judge)

held

article 6 of the Personal Income Tax Act dated 26 July 1991 (uniform text: Journal of Laws, 1993, Number 90, Item 416 with later amendments) **within the scope of its binding force maintained after its repeal, in reference to a tax liability for 1993 is inconsistent with article 67 section 2 of the constitutional provisions upheld by article 77 of the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and on Local Self government** (Journal of Laws, Number 84, Item 426)

Reasoning

(...)

(...) The assessment of constitutionality of article 6, section 6 of the Personal Income Tax Act requires at the outset a determination of a time limit within which these provisions should remain in force. Article 6, section 6 was introduced pursuant to the Act dated 6 March 1993 with retrospective effect from 1 January 1993. Under article 1, sub-section 1b and article 11 of the Act dated 16 December 1993 amending some statutes regulating taxation principles and some other statutes (Journal of Laws, Number 134, Item 646) article 6, section 6 of the Personal Income Tax Act was repealed effective 1 January 1994. The provision which has repealed article 6, section 6 of the Personal Income Tax Act maintained its binding force in the period of 1 January – 31 December 1993.

Because of this fact the normative act has not lost its binding force, which, according to article 4, section 2 of the Constitutional Tribunal Act, is a prerequisite to discontinue a legal proceeding. In particular the loss of binding force by article 6, section 6 was not the result of repealing the aforementioned provision as of 1 January 1994. The law is in force only when such a notion has been referred to a specific situation and specific point of time. In other words, a provision is binding in a given system of law, if it can be applied in a situation set in the past, present or in the future. A provision loses its binding force in a situation when it cannot be applied, and only then it is possible to state it has lost its binding force under article 4, section 2 of the Constitutional Tribunal Act. With this assumption it has to be said that article 6, section 6 is still applied. It constitutes one of the elements of a legal norm requiring the tax authorities to execute tax liabilities for 1993 from single parents. It also determines the content of the tax liability of single parents who have not paid their taxes for 1993. It means that a premise is missing to discontinue legal proceedings under article 4, paragraph 2 of the Constitutional Tribunal Act (for this reason the Tribunal has not shared the position taken by the Prosecutor General in the proceeding)

2. In its considerations of substantive-law the Constitutional Tribunal has stated that different treatment of single parents by setting a 2.5 million [old] zloty threshold in order to be able to use a mode of tax calculation, should be assessed first and foremost from the point of view of the constitutional principle of equality.

The constitutional principle of equality has been many times the subject matter of Constitutional Tribunal jurisdiction. It was generally formulated by the Constitutional Tribunal in its judgment P. 2/87 when it stated that the principle of equality is observed when

each citizen can become the addressee of each norm granting particular civil rights. Therefore one must not differentiate between citizens using criteria which have led to the emergence of closed categories of different legal status. The above statement was developed *inter alia* in judgment U. 7/87, in which the Constitutional Tribunal declared that equality requires that subjects bearing the same important characteristics be treated equally. Equality also means acceptance of different treatment of different subjects by the law. It results from the fact that equal treatment by the law of the same subjects in certain respects, means differential treatment of the same subjects in other respects. In its judgment K. 6/89 the Constitutional Tribunal underlined the connection between equality and justice, and decided that differentiation in law is admissible to the degree that it is justified. The close relationship between justice and equality was stressed many times in Constitutional Tribunal decisions. (among others in judgments K. 3/89, K. 1/90, K. 7/90, K. 1/91, K. 8/98). Also, the Tribunal recognized that for a proper determination of a normative content of the constitutional principle of equality it should be emphasized that equality assumes the existence of a common and critical feature justifying equal treatment of citizens (judgment U. 9/90). This latter statement had an important influence on assessing the constitutionality of legal provisions challenged by the Commissioner for Citizens' Rights.

What really differentiates taxpayers is *inter alia* being a single parent. Treating single parents differently from other tax payers is totally justified. Their situation is typically worse which justifies their preferential treatment. In light of the above determinations concerning equality, the Tribunal has declared that differentiation between citizens based on the criterion of being a single parent conforms with article 67, section 2 of the upheld constitutional provisions. The lawmaker, however, took differentiation a step further by dividing families without one parent according to their income per family member. In this way, excluded from preferential treatment are single parents whose income per person is in excess of 2.5 million zloty. But creating such differentiation is not justified. The Constitutional Tribunal agreed with the Commissioner for Citizens' Rights that 2.5 million zloty per person of income does not allow one to classify a family as affluent. The additional threshold makes the situation worse for single parent families as compared to other families which are allowed to use similar preferential taxation regardless of their income.

The Tribunal decided that the threshold of 2.5 million zloty violates constitutional equality by an unjustified differentiation between single parents and by making matters worse for single parents families as compared to other families.

Equality and justice in taxation should be observed with particular meticulousness. This is the area where the power of the State is particularly strong. The taxpayer has extremely little influence upon the content of legal relationships in taxation. Therefore the lawmaker should use the utmost care in order to apply equal principles to all. The Constitutional Tribunal has stated that to restore a state in conformity with the Constitution it is necessary to remove from the legal system only article 6, section 6 of the Personal Income Tax Act. In this way the unjust criterion of differentiation among taxpayers shall be liquidated, but the preferential treatment of taxation for single parents maintained.

3. The Constitutional Tribunal has not found article 6, section 6 to be in breach of article 79 of the constitutional provisions upheld by article 77 of the Constitutional Act dated 17 October 1992 on the Mutual Relationships between the Legislative and Executive Branches of the Republic of Poland and on Local Self government (Journal of Laws, Number 84, Item 426). It is the view of the Constitutional Tribunal that article 79 as much as any other provisions contained in constitutional acts has a normative nature therefore it results in certain obligations of the State, including an obligation of the legislative branch to form the content of the statutes it issues accordingly. It has to be assumed that organs of state have a discretion

in choosing their actions and regulations as they see fit for the realization of a given directive. For the legal principle contained in article 79 of the constitutional provisions to be fully realized, it is necessary, in the analysis of the law in question to adopt as a criterion of tax reduction the amount of income per household member. Therefore the amendment of the Personal Income Tax Act would consist of not only a privilege for single parents but also of a total change of the tax deduction system, having pro-family character. The rule of protecting a family, evident from article 79 has a directional character and may serve as a basis for assuming that the provisions of law are unconstitutional only when acts issued later, in a longer period of time, contradicted an imperative of developing civil rights. Detailed conditions for regarding a given law unconstitutional based on a directional norm have already been formulated by the Constitutional Tribunal (e.g. in case K. 1/88), in a similar way as the limits of Tribunal jurisdiction in deciding the cogency of decisions made (e.g. in cases K. 2/89, K. 3/92).

On the grounds of the Personal Income Tax Act there are no prerequisites allowing one to hold its nonconformity with article 79 of the constitutional provisions. From the time when it came into force it has not embodied any pro-family solutions. Thus the amendment made in March of 1993 constitutes progress as compared to the previous situation. The criticism expressed toward legal provisions contained in a petition of the Commissioner for Citizens, Rights, and particularly the lack in the existing law of tax solutions protecting the family, have to remain in the sphere of wishful thinking. The above objection should be considered not from the point of view of nonconformity of legislative actions with the Constitution, but as a political category (execution of the proper state tax policy). In this last case the lawmaker cannot not be accused of violating the Constitution. It is not the task of the Constitutional Tribunal to judge the substance of a tax policy. The Tribunal expresses its view only when the way such policy is implemented constitutes also a violation of the law, which, here. is not the case. (...)