

Decision

dated 12 January 1995 (K. 12/94)

The Constitutional Tribunal sitting with the bench composed of the Chairman Andrzej Zoll, and Judges: Zdzisław Czeszejko-Sochacki, Tomasz Dybowski, Lech Garlicki, Stefan Jaworski (Reporting Judge), Krzysztof Kolasiński, Wojciech Łączkowski, Ferdynand Rymarz, Janusz Trzcіński, Wojciech Sokolewicz, Błażej Wierzbowski, Janina Zakrzewska.

(...)

held

(...)

article 6, section 5 of the Act dated 2 December 1994 on Amending Some Acts Regulating the Principles of Taxation and Other Acts and Amending the Manner of Calculating Deductions for Housing Needs in the 1995 Fiscal Year by Maintaining the Amount of Deductions from Taxable Income at the 1994 Level Due to the Actual Housing Cost Incurred as set forth in article 26, section 1, sub-sections 5b,c,d,e and f of the Personal Income Tax Act dated 26 July 1991 (Journal of Laws, 1993, Number 90, Item 416, as amended) conforms with article 1 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 39, Item 184).

Reasoning

(...)

IV

The jurisdiction of the Constitutional Tribunal has been consequently based on the assumption that statutory law in the Republic of Poland should be in agreement with theoretical and even model criteria and values of the democratic rule of law derived from article 1 of the Constitution of the Republic of Poland maintained in force (W. Sokolewicz – *The rule of law its features and criteria*, BSE, August 1992).

But judicial practice to date has proven that to implement the principles of a state ruled by law when Poland is undergoing qualitative changes in political, social and economic relations is not an easy task. These relations have been, and remain, subject to legal regulation. The requirement of certainty of law or the protection of acquired rights would speak in favor of keeping them in force. Both these factors are elements of maintaining confidence in the State and building that confidence is an inherent feature of the rule of law. But the pressure on changing the status quo, on adapting the law to the altered environment is so strong and socially justified that it calls for rapid legal changes, and even a revision of certain legal situations in the sphere of acquired rights. This situation opens a venue for possible evolution of attitudes toward optimization of the rule of law in the process of its development. (K. Działocha – *The rule of law in the conditions of substantial changes of the legal system*, Państwo i Prawo, Number 1, 1992, p. 17 and 19).

In reference to the analysis on the allegation of unconstitutionality of article 6, section 5, the Constitutional Tribunal has stated that the manner of review of a normative act by the Tribunal is not determined by a petition but by the none contained in article 2 of the Constitutional Tribunal Act. Under article 2 the scope of review of the challenged norm covers the content of the act, the competence of an organ to issue the act, and its conformity with the legal procedure provided for its issuance.

2. Having analyzed article 6, section 5 the Constitutional Tribunal came to the conclusion that it is a normative entity, in its essence, for the 1995 fiscal year. a part of the norm in article 26, section 3 of the Personal Income Tax Act. As stated in point 11 the norm described in article 26, section 3 creates the taxpayer's right to deduct the sum spent on housing investments, calculated according to a „moving” normative indicator, which, as the Finance Minister points out – may be favorable or unfavorable in a given year to the taxpayer – from taxable income. when the law is in force. Article 6, section 5 derogates (only) for 1995 from article 26, section 3 the part establishing the principle of determining on an annual basis – according to a legally determined indicator – the cost of building flats in the third quarter of the previous fiscal year, the basis for deducting costs from taxable income. In other words, article 6, section 5 of the amendment actually suspends this indicator in 1995 at the 1994 level without resorting to the procedure provided for in article 26, section 11.

In connection with the applied technique of amending that norm, the question of its constitutionality comes to mind. First, one has to consider what derogation means as well as the norm in article 6, section 5. The notion of derogation is agreed upon in theory as depriving a legal norm of its binding force by another norm, expressly in a derogation clause stating an implied derogation of specific provisions or by entry into force of the new provisions regulating given social relationships differently. (J. Bogucka, S. Bogucki – *on derogation and related notions*, Państwo i Prawo Number 6, 1992, p. 80). It is a basic requirement for applying this legislative methodology that that these norms are not established at the same time, and a later norm is not of lower rank than the previous one. (J. Nowak, Z. Tabor – *Introduction to jurisprudence*, Warszawa 1993, p. 154). Therefore, when the lawmaker applies a legislative methodology, however undesirable, which does not expressly derogate earlier norms (derogation clause), it cannot be qualified as unconstitutional and inconsistent with the rule of law.

As pointed out above, the lawmaker has employed in the case at hand, in the form of a law, the technique of changing only one crucial element of the norm still in force. In 1995 the lawmaker practically suspended the procedure of calculating the indicator of normative costs, subject to deduction from taxable income. This provision's limited scope of application – by its transient nature, justifies the legislative methodology in the lawmaker's opinion. This technique has been applied many times in the past e.g. by suspending revaluation of salaries in budgeting (considered by the Constitutional Tribunal in P. 1/94).

Without assessing legislative methodology the Constitutional Tribunal refers to its own view expressed in case P. 1/94 that the violation of a legislative methodology does not automatically result in the unconstitutionality of a provision issued in this manner.

It is worth noting that the amended and the amending statutes cover the same matter and have the same binding force. In the Polish legal system all statutes enjoy the same binding force, therefore a later law is capable of interfering with practically no limitations with earlier statutes, including their modification, derogation or suspension. Any other arrangement of statutes would require an explicit constitutional basis (K. 2/94). The Constitutional Tribunal has stressed that the Polish system of law does not know the notion of „budgetary sphere” statutes. It comes from media jargon and has no legal bearing. In the system of the sources of law, „budgetary sphere” law is an ordinary law enjoying the same binding effect as any other law. Thus the objection raised by the petitioner's applicant alleging the unconstitutionality of suspending binding norms and regulations in the „budgetary sphere” is not proper.

The above technique is necessary when one wants to eschew budget „loading” – a procedure giving rise to fundamental constitutional doubts in light of the Small Constitution.

Introducing occasional changes in the tax system by a law other than a fiscal law justifies their conformity with the Constitution (P.1 /94, K. 6/94).

3. When it comes to the substance of article 6, section 5 the Constitutional Tribunal takes the view that the principle of the legislative authority's exclusive competence, as set forth in article 20, sentence one of the Small Constitution, is a fundamental element of the democratic rule of law (article 1 of the provisions of the Constitution of the Republic of Poland maintained in force) and of the separation of powers (article 1 of the Small Constitution). According to this constitutional order the creation of legal principles for the taxation system belongs to the legislative authority. Structuring state revenue is indeed a constitutional imperative stemming from article 20, article 22, sections 1 and 2, and article 52, section 2, sub-section 5 of the Small Constitution. The legislative authority has a wide array of choices between different constructions of tax liabilities, executing state economic policy in varied ways, specified in taxation policy manifest in the content of these regulations (K. 8/93 and Number K. 1 /94). The legislative body is authorized to issue statutes fitting the adopted political and economic objectives, and this kind of power is of particular importance at a time of system transformations (K. 7/93) It is then the parliament's task to shape tax policy in such a way that the tax system ensures regular revenue enabling the State to spend its resources as planned, and at the same time, positively affects the economic, social and collective behaviors of the taxpayer. The parliament is responsible to its constituents for the choice of these objectives and methods of action.

Securing a balanced budget is a constitutional value, as the State's ability to act and resolve many problems depends on it (K. 18/92).

However, the freedom of the legislative authority is limited by constitutional principles and provisions, and by the duty to respect the values protected by these principles and provisions, however, in doubt the presumption should be for constitutionality of the statutes, and to rebut this presumption it would be necessary to prove a discrepancy between the law and the Constitution (K. 1/94). The Constitutional Tribunal has no jurisdiction to verify the feasibility or aptness of a legislative body, but only whether in establishing statutes the parliament has conformed with the norms, principles and values established in the Constitution.

In examining the disputed provisions, the Constitutional Tribunal considered in detail whether article 6, section 5 negatively affects any of the rights protected by the Constitution, or whether it violates the fundamental principles of the democratic rule of law, and, that it does not contravene the essence of the tax system provided for by the Constitution.

The Constitutional Tribunal is of the opinion that the freedom of the legislative authority in forming the tax system should be harmonized with an obligation of rigorous compliance with constitutional principles governing the issuance and implementation of statutes concerning taxation. The constitutional requirement of fair and proper procedure emanates from these very principles.

Also, in the theory of law there is a consensus that public interest dominates fiscal law. Binding elements appear here both at the substantive and procedural levels. Of particular importance in the process of creating tax law are legal guarantees for protection of individual interest (R. Mastalski: *Constitutional Tribunal judgments in tax matters and the Polish tax system*, „Państwo i Prawo, Number 4/1993, pp. 7-8).

The Constitutional Tribunal believes that fiscal law, which regulates the economic activity of citizens and thus the basis of their subsistence, their safety net and the reasons underpinning many decisions on property in particular, should embody guarantees of

individual rights with special status. The Constitutional Tribunal holds the view that in the process of issuing tax regulations a legislative body must not violate the fundamental principles of the rule of law, including the non-retroactive effect of law, the provision of a suitable adjustment period, the protection of equitably acquired rights and the inviolability of the tax system during the fiscal year.

To enable citizens to discharge their tax liabilities scrupulously, it is necessary to establish and implement appropriate legal regulations in a manner utterly consistent with the above requirements (K. 1/94).

The Constitutional Tribunal believes that passing and implementing law should not become another trap for citizens. Citizens should be able to arrange their business with faith that they do not make themselves liable for legal effects, unforeseeable at the time of decision-making and taking action, and that their legal actions and their consequences shall later be recognized by the legal system (K. 1/94).

The Constitutional Tribunal stated that article 6, section 5 of the amendment did not repeal the requirement concerning passing statutes nor did it violate constitutionally protected values, particularly the protection of equitably acquired rights. The Tribunal has maintained its position presented in its judgment in case K. 1/94 on the admissibility of limiting rights acquired equitably by citizens. Such limitation is allowed if supported by some other public interest protected by the Constitution and with a procedure in place to allow the interested parties to adjust to a given situation and appropriately dispose of their rights.

As stressed above, the introduction of this provision to fiscal law – with which all the participants of the proceedings concur – was caused by limited state resources. Article 6, section 5 is of incidental and transient nature and subject to numerous and serious changes introduced in an amendment dated 2 December 1994 to the Personal Income Tax Act. To some degree it is also a part of policy pursued by the incumbent parliament and government.

Article 26, section 3 and article 6, section 5 of the amendment, albeit a part of the legal system, is not strictly a levy – imposing tax liabilities. This provision does not impose any new obligations on prospective taxpayers, nor does it extend the scope of existing obligations. It creates, however, certain privileges for those taxpayers who finance housing investments with their income. Taxpayers investing in this way are entitled to deduct certain sums from their taxable income in a given fiscal year. The deduction is vested upon the effect of fiscal law (over several years) and may not exceed the ceiling specified in article 26, section 3 in connection with article 26, section 11. Thus there was neither a breach nor a limitation of acquired rights in the preceding period when this law was in force. This provision effectively suspended the deduction's appreciation for only one fiscal year, which could have occurred after 1 January 1995. The lawmaker has not changed, however, the principles of applying a deduction where it was effectively received by the taxpayers. The disputed provision of article 6, section 5 effectively postpones until 1996 a possible increase of such deduction, the amount of which shall be determined under article 26, section 3.

In essence, article 26, section 3 is an instrument of state policy exploiting financial tools favorable for investing (in this case) in housing. For this reason, as the Prosecutor General rightly observes, such right may not be considered on the same level as many social rights and even their expectations. The lawmaker taking into account, among others, the financial resources of the State may apply varied instruments and regulations aimed at the realization of adopted goals.

The lawmaker may then – while observing the constitutional principles of passing law – both extend the rights provided in article 26 of fiscal law and promote other directions in taxpayers' activities, as well as limit or even repeal these rights.

4. (...) As of 12 January 1994 one cannot find in the challenged provision any signs of breaching the principle forbidding the retrospective effect of law. This norm shall be applied only after the end of the 1995 fiscal year. In reference to persons commencing and continuing construction investments acquiring the goods described in article 26, section 1, sub-section 5, letters c and d, this means that if the expenses are higher than the ceiling set for 1994 and exceed the taxpayer's annual income, then the difference between the 1994 limit and the amount of the ratio determined for the third quarter of 1995, the taxpayer shall be entitled to make a deduction from next year's income (article 26, section 9). This situation does not irrevocably deteriorate the taxpayers' situation. (...)