

Decision

dated 29 March 1994 (K. 13/93)

The Constitutional Tribunal sitting with the bench composed of the Chairman, Andrzej Zoll and Judges: Lech Garlicki, Wojciech Łączkowski (Reporting Judge), Ferdynand Rymarz and Błażej Wierzbowski:

held

article 1, sub-section 18 letters a) and b) in connection with article 17 of the Act dated 6 March 1993 on Amending Some Acts on the Principles of Taxation and Other Acts (Journal of Laws, Number 28, Item 127) is – within the scope concerning the suspension of the revaluation of the tax base – inconsistent 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 84, Item 426) – as it violates the ban against the retrospective effect of law and because it was issued during the fiscal year it covered, thereby without the required period of time between its publication in the Journal of Laws and the commencement of the fiscal year.

Reasoning

(...)

1. The Constitutional Tribunal has stated that there is no doubt about the violation of the „ban against the retrospective effect of law.” The challenged article 1 of the Act dated 6 March 1993, while clearly worsening the taxpayer’s situation, came into force three and a half months before the act did. This was specified by article 17, sub-section 2 of this statute. In its jurisprudence the Constitutional Tribunal has established the stance that the violation of the non-retroactive effect of law contravenes the stability of law and the maintenance of confidence in the State as it may be concluded from article 1 of the constitutional provisions upheld by the Small Constitution.

Even if the Constitutional Tribunal is not of the opinion that the non-retroactive effect of law is strict, a diversion from it should be an absolute exception guarded by many conditions. These conditions were set forth e.g. in a decision dated 29 January 1992 (K. 15/91).

In the case at hand the conditions discussed in Constitutional Tribunal decisions cannot justify a diversion from the non-retroactive effect of law. They are not new. They were known to the lawmaker as far back as in 1992 as evidenced in the resolution of 17 October 1992 issued by the Sejm on the principles of social and economic policy for 1993 (Monitor Polski, Number 35, Item 247) providing, among others, a diversion from the revaluation of 1993 tax brackets, and, due to the above resolution, a failure to realize the delegation for the Minister of Finance granted in article 27, section 4 of the Personal Income Tax Act dated 26 July 1991. Based on this provision the Minister of Finance was obliged to provide the income tax scale for 1993 by 15 November 1992 taking into account the increase of the above mentioned tax brackets. The Minister of Finance failed to perform this obligation, and on 16 April of the next year (1993) the law in question was passed. Notwithstanding whether the financial situation of the State required amending of the Personal Income Tax Act, one has to state that such a situation has been known earlier to the lawmaker. Therefore the rules contained in the provisions in questions could have been introduced at the proper time, that is before the commencement of the fiscal year (before 1 January 1993). Anyway, the challenged draft was submitted to the Sejm as early as 21 November 1992.

In this situation one has to state that the rule forbidding the retrospective effect of law was violated, which contravenes article 1 of the constitutional provisions. The violation of the Constitution is all the more severe in that it concerns fiscal law as pointed out many times by the Constitutional Tribunal in its previous decisions.

2. The question of for how long these provisions have been illegal is related to whether such illegality covers only the period from 1 January 1993 until 16 April 1993 (date of publication of the Journal of Laws) or, is it absolute, that is, does it refer to all of 1993. The first possibility is supported by the Prosecutor General, however, his arguments seem to speak in favor of the second possibility. Also, the analysis of the issue made from the point of view of fiscal law absolutely supports the unconstitutionality of these provisions (without time limits). Personal income tax is a tax paid against income generated during a fiscal year, congruent with the calendar year. This means that the settlement of tax liabilities may take place only the next calendar year. Therefore the representative of the Sejm, the Prosecutor General and representatives of the Ministry of Finance were right in pointing to the difficulty of dividing a tax year into separate periods – in this case into two periods: from 1 January to 16 April 1993 and from 17 April to 31 December 1993. A tax is levied on total income gained in a given fiscal year regardless of the date on which the income was received by a taxpayer. These are the difficulties in dividing a tax year into separate periods with different tax brackets caused by amending tax provisions with retrospective effect so that the new rules could be in force uniformly for the whole year. This constitutes one of the arguments justifying the hypothesis that changes in taxes paid annually may not be introduced during a given fiscal year but in the previous year. Irrespective of the above rather technical reason the Constitutional Tribunal took into account a more important reason resulting from the constitutional rule of stability of law and maintaining confidence in the State, which is an all important matter in fiscal law. The point is that citizens should be able to decide their business in relation to taxes before the tax year has begun. It also has to be taken into account that in tax matters the power of the State is particularly strong. For this reason the Constitutional Tribunal agreed with the Commissioner for Citizens' Rights that legal safeguards of individual interests are of particular importance in tax law, both substantive and procedural. It should be required then that tax legislation concerning taxes paid annually be adopted not only with respect to a rule forbidding the retrospective effect of law but also that a reasonable *vacatio legis* be provided in a year preceding a given fiscal year. The taxpayers should be given time to adjust their decisions to taxes due in a next fiscal year. Taking taxpayers by surprise in the course of a fiscal year contravenes article 1 of the constitutional provisions upheld by the Small Constitution.