

Judgment

dated 29 April 1998 (K. 17/97)

Constitutional Tribunal sitting with the bench composed of the Chairman Lech Garlicki, Zdzisław Czeszejko-Sochacki, Krzysztof Kolasiński (Reporting Judge), Ferdynand Rymarz and Błażej Wierzbowski.

(...)

held

1) article 27, sections 5, 6 and 8 of the Act dated 8 January 1993 on the Goods and Services Tax and the Excise Tax (Journal of Laws, Number 11, Item 50; amended: Number 28, Item 127, Number 129, Item 599; 1994, Number 132, Item 670; 1995, Number 44, Item 231, Number 142, Item 702, Number 142, Item 703; 1996, Number 137, Item 640; 1997, Number 44, Item 431, Number 111, Item 722, Number 123, Item 780, Number 137, Item 926, Number 141, Item 943, Number 162, Item 1104), to the extent to which the foregoing permits the application of the administrative sanction defined by the statute above and accountability for revenue misdemeanors to the same person for the same deed as an „additional fiscal liability” contravenes article 2 of the Constitution of the Republic of Poland.

2) The aforementioned provisions are otherwise consistent with article 2 of the Constitution of the Republic of Poland.

3) article 27, sections 5, 6 and 8 of the aforementioned Act conform with article 45, section 1 of the Constitution of the Republic of Poland.

Reasoning

(...)

III

(...)

The devolvement to the taxpayers of the activities of computing and making settlements on taxes is based on the premise of confidence in taxpayers. This confidence entails not only the issue of the integrity of taxpayers but also the exercise of due diligence in computing the amount of these liabilities.

A fiscal system based on tax declarations where irregularities would not have any negative consequences for the taxpayer besides instances when it would be proven in court proceedings that the taxpayer committed a criminal revenue offence would not motivate the taxpayer to demonstrate initiative in explaining the doubts which may accompany the filling out of the tax declaration. This would rather lead one to interpret these doubts in one's own favor. To counteract this attitude, fiscal systems based on the principle of setting the amount of the fiscal amount due by the taxpayer itself envisage fiscal sanctions for understating the amount of tax due, in proportion to the degree of understatement. As the Minister of Finance has explained, they are envisaged *inter alia* in French, Belgian and American law.

The sanctions for understating the fiscal amount due in the declaration filled out by the taxpayer, applied automatically, by the power of the statute by rights of the taxpayer's objective guilt are first and foremost of a preventive nature. They aim to convince taxpayers that the honest and conscientious filling out of the tax declaration is in their interest. For the disclosure of an error in a declaration yields the duty of remitting a higher amount of the difference between the tax due and the tax declared. The preventive significance of this duty

has been indicated by the stipulation in article 27, sub-section 7 of the challenged Act, which releases from the duty of remitting the higher amount of the difference between the tax declared and the tax due – a taxpayer who corrects the error in the declaration on its own and who remits the difference to make up for the understatement of the tax at any time preceding the day on which a revenue audit is undertaken.

The fact that the challenged provisions concern only the tax on goods and services and the excise tax is something that should be emphasized. The sale of goods and the gratuitous rendering of services as well as the import and export of goods and / or services are subject to this taxation according to article 2 of the challenged Act. In contrast to the income tax incumbent upon all citizens the goods and services tax and the excise tax concern first and foremost entities conducting economic activities. These entities can be expected to demonstrate professionalism in making fiscal settlements. The additional tax liability set by the treasury office or the revenue audit body at the statutorily specified level – 30% of the amount of the understated fiscal liability or the overstatement of the amount of tax accrued does not retain a direct relationship with criminal and revenue accountability. Even if an additional fiscal liability is accumulated with criminal and revenue accountability, it does not encumber as a rule the same entities. For additional fiscal liabilities are a burden on entities conducting economic activities which are legal persons. In turn, only natural persons bear criminal and revenue liability for criminal and revenue offences and misdemeanors.

The threat of an additional fiscal liability is supposed to incline entities conducting economic activities to exercise care over proper organization to handle the operations of this entity in terms of fiscal settlements. In turn, the persons conducting the fiscal settlements for the entity on which the fiscal liability under discussion rests bear criminal and revenue accountability.

Accepting the stance of the Minister of Finance that the additional fiscal liability envisaged in the challenged provisions concerns not only natural persons who also bear criminal and revenue accountability, but also legal persons and organizational units without legal person status, and persons conducting economic activities, it is difficult to perceive that the „additional fiscal liability” is also imposed upon natural persons. The „additional fiscal amount due” as understood by the challenged provisions is only a tax nominally, but in essence it is an administrative sanction. For it is not incumbent upon the taxpayer by virtue of the sale of goods or gratuitously rendering services or conducting some other type of economic activity, but where it is imposed upon a taxpayer for improper tax computation.

V

Nor is the view of the Minister of Finance convincing about the permissibility of applying similar sanctions several times for the same deed. This also concerns the mentioned example of the liability of a driver for traffic misdemeanors. Accepting a ticket releases the driver from liability for the same misdemeanor before the court of misdemeanors.

The administrative sanction of imposing an additional fiscal liability upon a taxpayer is a convenient instrument for fiscal audit bodies to immediately mete out a penalty to a taxpayer computed as statutorily prescribed, if irregularities in the fiscal declaration are asserted while bypassing criminal revenue proceedings, without engaging in an investigation of whether these irregularities concurrently constitute a misdemeanor perpetrated by the taxpayer or some other person who is accountable for properly submitting the fiscal declaration for the taxpayer which is a legal person or some other organizational unit.

The administrative accountability of a taxpayer which is not a natural person whereby it can be burdened with the additional fiscal liability envisaged in the challenged provisions is

not competitive with the criminal and revenue accountability borne by natural persons. This problem, however, is seen differently with reference to individual taxpayers. A taxpayer who filed an incorrect tax declaration can be charged as a rule with some degree of negligence in filing the declaration which suffices to place the charge of having committed a criminal and revenue misdemeanor.

In these instances there is an intersection of administrative accountability and accountability for revenue misdemeanors. The administrative accountability under discussion takes into account only the interests of the State Treasury, but without taking into account the taxpayer's interests to any degree whatsoever. The course for applying this sanction is reminiscent of the ticket giving proceeding, although it does differ in that it is applied not only to natural persons but also to organizational units, and not only for revenue misdemeanors but for the very violation of the taxpayer's specific duties.

Despite these differences between the compared proceedings they fill similar functions. Just as in the cases dealing with minor infractions of the law ascertained by authorized bodies, it makes it possible to handle the case immediately, whereby it lightens the burden on the decision-making bodies with jurisdiction so that they do not have to review a large volume of minor cases, which enables them to concentrate on graver cases, thereby substantially contributing to reducing the costs of proceedings. The legal regulation of the taxpayer's accountability should however take into account the interest of the punished party, just as in the case of the accountability for tickets, whereby it shall be released from bearing possible liability before the financial bodies handing down a decision on the same deed.

The application of an administrative sanction termed by the challenged act as an „additional fiscal liability” and accountability for revenue misdemeanors in proceedings before the financial bodies handing down decisions against the same person for the same deed violates the rule of law expressed in article 2 of the Constitution. For the accumulation of administrative accountability and accountability for revenue misdemeanors constitutes an expression of excessive fiscalism whereby it does not take into account, to any degree whatsoever, the interest of the taxpayer who bore the administrative penalty indicated.