

Judgment of 29<sup>th</sup> October 2003, [K 53/02](#)  
**AMBIGUOUS AMENDMENT OF PROVISIONS ON SEA PORTS**

<b>Type of proceedings:</b> <a href="#">Preliminary review of an Act</a> <b>Initiator:</b> President of the Republic of Poland	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
<b>Legal provisions under review</b>		<b>Basis of review</b>
Sea Ports and Harbours Amendment Act 2002: Article 1 point 3 and Article 1 point 5, read in conjunction with Article 6		Rule of law Principle of proportionality Legal reservation (i.e. exclusivity of statutes) in relation to tax law [Constitution: Articles 2, 31(3) and 217]

The President of the Republic of Poland, acting in accordance with the procedure laid down in Article 122(3) of the Constitution, referred an amendment of the Sea Ports and Harbours Act 2002 (which was presented for the President’s signature) to the Constitutional Tribunal for adjudication on its conformity with the Constitution.

The first of the provisions challenged by the President – Article 1 point 3 of the amendment – made reference to Article 11 of the amended Act and was comprised of two parts. Firstly, the “hitherto wording” of Article 11 (a reduced rate of real property tax on ports and harbours) was entitled section 1 of Article of the amended Act. Secondly, a new Article 11(2) was added (concerning the subjects liable to pay the tax). The President noted that Article 11 of the amended Act in its original wording had been repealed by another amending statute, the Local Taxes and Fees Amendment Act 2002, which had been already signed by the President. The rationale of Local Taxes and Fees Amendment Act 2002 was to consolidate all provisions on tax exemptions and deductions, hitherto scattered amongst many statutes. The factual events leading to this case arose, therefore, as a result of the failure to co-ordinate modification of the same legal provisions by two separate amending Acts that had been debated and adopted by Parliament concurrently and subsequently presented for the President’s signature. It was unclear whether the amendment challenged by the President would reinstate the binding force of Article 11 or, as a result of its repeal by the Local Taxes and Fees Amendment Act 2002, whether the challenged Act’s amendment of Article 11 should be treated as being irrelevant. The President asserted that this infringed the principles of appropriate legislation and protection of trust in the State and its laws, which stem from the rule of law principle (Article 2 of the Constitution). Since the substance of the provisions concerned real property tax, the applicant also challenged the conformity of the provision in question with the constitutional rules governing the enactment of tax provisions (Article 217 of the Constitution).

Furthermore, the President challenged the modifications introduced by Article 1 point 5 of the amendment (detailed competence and budgetary issues relating to port and harbour management and the collection of port fees) in light of the date of its entry into force, as provided by Article 6 of the amending

Act. In this aspect of the claim, the President also cited Articles 2 and 217 of the Constitution as the basis of review.

In both cases the applicant also indicated Article 31(3) of the Constitution (the requirements of statutory regulation and proportionality in enacting limitations on constitutional rights and freedoms) as a further constitutional basis of review

#### RULING

**1. Article 1 point 3 of the amendment of 23<sup>rd</sup> November 2002, insofar as it entitles the hitherto wording of Article 11 of the Sea Ports and Harbours Act 2002 as section 1, does not conform to Articles 2 and 217 of the Constitution for reason of insufficient clarity and is not inconsistent with Article 31(3) of the Constitution.**

**2. Article 1 point 3 of the aforementioned amendment, insofar as it adds section 2 to Article 11 of the amended Act, and Article 1 point 5, read in conjunction with Article 6 of the aforementioned amendment, conform to Articles 2 and 217 of the Constitution and are not inconsistent with Article 31(3) of the Constitution.**

#### PRINCIPAL REASONS FOR THE RULING

1. The obligation for the legislator to comply with the principles of appropriate legislation follows from the rule of law principle, as expressed in Article 2 of the Constitution. It is functionally tied with the principles of legal certainty, legal security and the protection of trust in the State and its laws. These principles require legal provisions to be formulated in a clear, precise and grammatically correct manner. The requirement of clarity means that enacted provisions must be precise and comprehensible to their addressees, without raising doubts as to the scope of duties imposed or rights granted thereby. Where legal provisions exceed a certain degree of ambiguity, this in itself may constitute an independent justification for finding that they do not conform to Article 2 of the Constitution.
2. Adherence to the principles of appropriate legislation has special significance in the sphere of rights and freedoms, especially with regard to tax provisions. The legislator may not leave the authorities responsible for applying such provisions unwarranted discretion in determining their subjective and objective scope, as a result of the ambiguous formulation of their content, and thereby subject taxpayers to uncertainty.
3. The exclusivity of statutes (so-called legal reservation) as a source of tax law stems from Article 217 of the Constitution. Statutes should determine the entity liable to pay the tax (subject), the aspects of social and economic life which are subject to the tax (object) and the level at which such tax should be levied.
4. The challenged Article 1 point 3 of the amendment of 23<sup>rd</sup> of November 2002, in the part concerning the “hitherto wording of Article 11” of the Sea Ports and Harbours Act 1996, regulates the level of real property tax charged on property located within sea ports and harbours. Since the need to regulate this element of taxation by way of statute stems directly from Article 217 of the Constitution, the absence of sufficient clarity of the reviewed provision constitutes a concurrent breach of both Article 2 and

Article 217 of the Constitution. Since, however, there is no inherent connection between the norm expressed in the original wording of Article 11 and the norm expressed in the new section 2 of this Article, the remainder of Article 1 point 3 of the reviewed amendment does not infringe the constitutional provisions cited as the basis of review.

5. Requirements concerning adequate clarity and legislative propriety are of special importance in the preliminary review procedure. Any defects within legal provisions that are perceived during preliminary review by the Constitutional Tribunal may, and indeed should, be immediately rectified in the further course of the legislative procedure, in accordance with the procedure prescribed by Article 122(4) of the Constitution.
6. The Constitutional Tribunal recommends that the President return the amendment to Parliament in accordance with Article 122(4) of the Constitution, to allow for the removal of the unconstitutional aspects of Article 1 point 3, in the part indicated above in point 1 of the ruling, and for the remainder of this provision to be re-drafted in an appropriate manner.
7. The Constitutional Tribunal does not share the applicant's view that the regulation contained in Article 1 point 5 of the amending Act infringes the principles of appropriate legislation by rendering it impossible to determine the amount of real property tax due. As of 1<sup>st</sup> January 2003, the amount of this tax is determined in accordance with the provisions of the Local Taxes and Fees Act. In this part of the amendment the legislator closed a lacuna hitherto existing in respect of defining the range of entities charged with management of sea ports and harbours that are subject to real property taxation (i.e. the subjective scope). Point 6 of the amendment, governing the date of its entry into force, may not be questioned in respect of its legislative propriety. It is of a secondary nature to the provisions discussed above.
8. Article 31(3) of the Constitution, dealing with limitation upon the exercise of constitutional rights and freedoms, in no way represents an adequate basis of review of the provisions challenged by the applicant.

#### Provisions of the Constitution

**Art. 2.** The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice

**Art. 31.** [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

**Art. 122.** [...] 3. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.

4. The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution. If, however, the non-conformity to the Constitution relates to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after seeking the opinion of the Marshal of the Sejm, shall sign the bill with the omission of those provisions considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity.

**Art. 217.** The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.