

Judgment of 4th May 2004, [K 8/03](#)
**EXCLUSION OF THE RIGHT TO JOINT TAXATION OF SPOUSES
FOLLOWING THE DEATH OF A SPOUSE**

Type of proceedings: Abstract Review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
--	--	----------------------------------

Legal provisions under review	Basis of review
Exclusion of the right to joint taxation of spouses following the death of a spouse [Personal Income Tax Act 1991: Article 6(2) (in the wording introduced in 2003)]	Rule of law State protection and care for marriage and family [Constitution: Articles 2, 18 and 71(1)]

Polish family law contains a rule of the so-called marital community of property. This rule usually applies as a statutory regime – it comes into existence by operation of law and is regulated by the Family and Guardianship Code. Pursuant to this regime, the incomes of both spouses (e.g. from earnings or economic activity) acquired during the marriage form part of their joint marital property. Spouses may extend, limit or exclude the statutory community of property by contractual agreement.

In relation to the community of property regime between spouses, legal provisions governing personal income tax (PIT) allow for a choice between the separate taxation of each individual spouse's income and joint taxation based on the so-called marital quotient method. The latter method consists in combining the incomes of both spouses (which is also the case when one of the spouses has no income, or an income below a level at which taxation applies), dividing this sum in half and determining the tax due as twice the amount due on the basis of this calculated half. Since the taxation rules envisage a non-taxable level of income and a progressive rate of taxation (i.e. the higher the income, the higher the tax in percentage terms), application of the marital quotient often allows for a reduction of the tax burden compared with that which would exist in the event that each spouse's income was taxed separately.

In the present proceedings, the Commissioner for Citizens' Rights challenged Article 6(2) of the Personal Income Tax Act 1991 which (in the wording in force when this judgment was delivered) makes the possibility of joint taxation conditional upon, inter alia, the fulfillment of two requirements: continuation of the marriage during the entire tax year and submission of an application concerning joint taxation as part of the joint tax return for a given year. These returns are filed by taxpayers following conclusion of the tax year, and by 30th April of the subsequent year at the very latest. The existence of these two requirements meant that any taxpayer whose spouse died during the tax year, or even following its conclusion but prior to the filing of the annual tax return, was unable to benefit from the joint taxation scheme.

The applicant alleged that the challenged provision creates a state of uncertainty concerning the rules governing the determination of tax liability for the preceding year and, accordingly, infringed the principle of citizen's trust in the State and its laws, as derived from the constitutional rule of law principle (Article 2 of the Constitution). The Commissioner for Citizens' Rights alleged, furthermore, that this provision infringed the constitutional guarantee that the State shall protect and care for the institutions of marriage and family life (Article 18 and 71(1)).

The Tribunal found the applicant's claims to be justified. It follows from the Tribunal's reasoning that its judgment does not, in itself, ensure the constitutionality of the tax provisions and that further legislative amendment is required.

RULING

Article 6(2) of the Personal Income Tax Act 1991 does not conform to Articles 2, 18 and 71(1) of the Constitution insofar as it deprives the following persons of the right to joint income taxation of spouses subject to the community of property regime:

a) taxpayers who married prior to commencement of the tax year and whose spouse died during that tax year;

b) taxpayers who continued to be married during the entire tax year and whose spouse died following conclusion of the tax year but prior to filing a joint tax return.

PRINCIPAL REASONS FOR THE RULING

1. The legislator is entitled to a broad discretion when deciding which issues require statutory regulation. However, where Parliament has reached such a decision, statutory regulation of the relevant area must respect constitutional principles.
2. Tax burdens may not infringe the essence of the values protected by the Constitution.
3. From the rule of law principle (Article 2 of the Constitution) follows the prohibition on adopting laws that would surprise citizens by virtue of their content or form. Citizens should have the sense of relative legal stability in order to be able to arrange their affairs confident in the fact that, whilst taking certain decisions and undertaking certain actions, they do not expose themselves to adverse and unforeseeable legal consequences.
4. The recognition of family as a constitutional value protected and cared for by the State (cf. Articles 18 and 71(1) of the Constitution) justifies the need to create legal provisions mitigating the risk of weakening economic bases for the existence of a family having suffered loss as the result of the death of one of the spouses, or even contributing to the strengthening of such bases.
5. The acceptance, under certain conditions, of the joint taxation of spouses based on the marital quotient method, as envisaged by Article 6(2) and (3) of the Personal Income Tax

1991, does not constitute an exception from the principle of the universality of taxation (Article 84 of the Constitution), nor a privilege or a type of tax reduction (cf. Article 3(6) of the Tax Ordinance Act 2003) but is one of the two equivalent methods of income taxation of persons under the community of property regime (alongside the method of separate taxation of each spouse's income – Article 6(1) of the Personal Income Tax Act 1991). Joint taxation is justified on the grounds of values expressed in Articles 18 and 71(1) of the Constitution and is also cohesive with the regulations of the Family and Guardianship Code, stressing the economic dimension of the community formed by the family, in particular with the obligation of each of the spouses to contribute to fulfillment of the family's needs according to his/her abilities and earning capacity (Article 27 of the Family and Guardianship Code). It also corresponds to the fairness principle in taxation (expressed in Article 84 of the Constitution), according to which the tax burden should correspond to the taxpayer's financial capacity.

6. With the commencement of the tax year, spouses assume they will have the right to joint taxation and, acting on this assumption, they form plans regarding their level of income and expenditure. Where there exists a considerable difference between the personal incomes of spouses, or where one spouse does not earn any income, application of the marital quotient method is economically beneficial for them and justified from the perspective of the good of the family. However, as a result of the limitations stemming from Article 6(2) of the Act, the forecasting and shaping of spouses' life relations is accompanied by the risk of unexpected adverse financial consequences. The challenged provision allows for a situation whereby, if the death of a spouse occurs during the tax year or following the conclusion of the tax year but prior to the filing of that year's annual tax return, the widowed spouse is deprived of the possibility to benefit from joint income taxation, contrary to their prior expectations. In enacting such a provision, the legislator adopted an excessively formalistic condition for the applicability of the joint taxation system: namely, requiring both spouses to submit an appropriate application as part of their joint tax return following conclusion of the tax year. Accordingly, the challenged provision creates a peculiar trap for taxpayers and, for this reason, the claim that it fails to conform to Article 2 of the Constitution is justified.
7. It is the legislator's function to amend the challenged provision so as to ensure its conformity with the Constitution. The broad discretion enjoyed by the legislator when shaping the tax regime enables a choice between several possible solutions to the present problem, including for example the right to combine the dead spouse's income with income acquired by the widowed taxpayer either during the whole tax year or merely from the commencement of the tax year until the death of the other spouse.
8. The addressee of the norms included in Articles 18 and 71(1) of the Constitution, formulated as principles of State policy, is primarily the legislator. These provisions do not constitute a basis for the pursuit of individual claims.

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. 18. Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

Art. 71. 1. The State, in its social and economic policy, shall take into account the good of the family. Families finding themselves in difficult material and social circumstances, particularly those with many children or a single parent, shall have the right to special assistance from public authorities.

Art. 84. Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.