

Judgment of 3rd April 2001, [K 32/99](#)
**CLASSIFICATIONS OF GOODS AND SERVICES
AND SOURCES OF TAX LAW**

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 2
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Legal provisions under review	Basis of review
Reference in the provisions regulating taxation of goods and services to statistical classifications of the Central Statistical Office [VAT and Excise Duty Act 1993: Article 2, Article 4 points 1 and 2, Article 54(1) and (2)]	Exhaustive list of sources of universally binding law Legal reservation (exclusivity of statutes) in relation to tax law [Constitution: Articles 87(1) and 217]
The Minister of Finance's duty to announce appendices to the Tax Act which take into account any new statistical classifications introduced by the Central Statistical Office [Ibidem: Article 54(3)]	
Appropriate application of statistical classifications in force prior to 1 st July 1997, until the end of 2002 [Ibidem: Article 54(4)]	Principle of legality Exhaustive list of sources of universally binding law Legal reservation (exclusivity of statutes) in relation to tax law [Constitution: Articles 7, 87(1) and 217]

Value Added Tax (VAT) was introduced into the Polish legal system under the name “goods and services tax” by the VAT and Excise Duty Act 1993. This Act set a basic taxation rate at a level of 22%, as well as a preferential rate and tax exemptions.

In accordance with Article 2 of the Act, the following were subject to VAT: the sale of goods and provision of services for consideration within the territory of Poland (Article 2(1)); the import/export of goods and services (Article 2(2)); and other transactions mentioned in Article 2(3), including, inter alia, the donation of goods or gratuitous provision of services. For the purposes of the Act, “goods” were defined by Article 4 point 1 as any of the following, falling within classifications issued on the basis of provisions concerning State statistics: moveable property; all forms of energy; and any building or part thereof. The relevant provisions delegated the function of compiling such classifications to the Central Statistical Office (*Główny Urząd Statystyczny*, hereinafter referred to as CSO). The Act defined “services” as those services contained in the CSO classifications (Article 4 point 2).

One of the Act’s transitional provisions – Article 54(1) – stated that any goods or services not included in the CSO classifications would be subject to the basic rate of VAT (i.e. 22%) until the end of 2002. Article 54(4) stated that, for the purpose of tax collection until the end of 2002, the classifications in force prior to 1st July 1997 were to be applied appropriately.

In his application to the Constitutional Tribunal, the Commissioner for Citizens' Rights alleged that, in consequence of adopting the aforementioned legal construction, calculation of the payable tax amount, or tax exemption, is determined by the symbol of goods or services, as defined in the CSO's classification. The Commissioner alleged that this was contrary to Articles 87(1) (the exhaustive list of sources of universally binding law) and 217 of the Constitution (legal reservation, i.e. exclusivity of statutes, in relation to tax law). The applicant also submitted that Article 54(4) of the Act failed to conform to Article 7 of the Constitution (the principle of legality).

Article 54(3) of the Act provided that, in the event that the CSO introduced new classifications, the Minister of Finance was obliged to announce – in conjunction with the President of the CSO – appendices to the reviewed Act which reflect such new classifications. In furtherance of this duty, the Minister of Finance issued an announcement containing the relevant tables.

The Commissioner for Citizens' Rights submitted that this provision failed to conform to Articles 87(1) and 217 of the Constitution (as above), since it authorised the Minister of Finance to create norms of universally binding law by way of an act that is internal in nature (i.e. an announcement).

A majority of the Constitutional Tribunal found that the Commissioner's allegations were unfounded, whilst two judges submitted dissenting opinions. *Judge Andrzej Mączyński* disagreed with the Tribunal's judgment in its entirety, whilst *judge Janusz Trzcíński* did not share the Tribunal's view as to the conformity of Article 54(3) and (4) of the 1993 Act with the Constitution.

In point 2 of the ruling, this judgment may be seen to have the character of an "interpretative judgment". In judgments of this kind, the Constitutional Tribunal finds that the challenged provision conforms to the Constitution, but only provided that it is interpreted in a certain manner.

RULING

1. Article 2, Article 4 points 1 and 2, and Article 54(1), (2) and (4) of the challenged Act conform to Articles 87(1) and 217 of the Constitution; Article 54(4) also conforms to Article 7 of the Constitution.

2. Article 54(3) of the challenged Act, understood in a way which imposes a duty upon the Minister of Finance to merely announce the contents of appendices to the aforementioned Act, conforms to Articles 87(1) and 217 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. For the purposes of VAT, statistical classification may fulfil a definitional function (i.e. play the role of a dictionary) and thereby not represent a source of tax law.
2. Although the appendices to the VAT and Excise Duty Act 1993 (referred to in Article 7(1) point 2 and Article 18(1a), (2) and (3) of this Act), specifying services exempt from taxation or imposing VAT rates lower than the basic rate, are based on the statistical classification of goods and services, the content of these appendices is nevertheless shaped on its merits by Parliament. *Ipso facto* it is the appendix which possesses

normative significance, as an integral part of the Act, and not the classification from which the appendix merely derives its terminology. The allegation of infringement of Articles 87(1) and 217 of the Constitution is therefore unfounded.

3. Article 54(3) of the VAT and Excise Duty Act 1993 which, in the event that new classifications of goods and services are introduced, obliges the appropriate Minister to announce appendices to the Act reflecting the terminology stemming from the new classifications, does not authorise the Minister to enact norms of tax law but merely requires him to undertake technical actions consisting in categorising each individual good and service in accordance with their current statistical listing.
4. Until 31st December 2002 (i.e. until such time as the continuing application of the previous classifications ceases, in accordance with Article 54(4) of the Act), there is no need to announce appendices to the Act with references to new statistical classifications. Accordingly, Article 54(3) may not be applied during this period.
5. On the one hand, Article 217 of the Constitution institutes an absolute legal reservation (i.e. exclusivity of statutory regulation) in relation to “the imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation”. On the other hand, this provision requires that “the principles for granting tax relief and remissions, along with categories of taxpayers exempt from taxation” may only be regulated by statute. This implies the possibility for a broader scope of legal regulation in relation to tax relief and exemptions, including executive instruments, since the absolute legal reservation refers merely to the definition of “principles” and “categories” – there are no constitutional obstacles for more detailed matters to be regulated by way of executive instruments.
6. In a democratic State governed by the rule of law, it is not permissible for taxpayers to be adversely affected as a result of their unfamiliarity with an unpublished interpretation of legal provisions that does not constitute a source of binding law. In particular, taxpayers may not bear the adverse consequences of amendments introduced to the interpretation of provisions by State statistical organs.

MAIN ARGUMENTS OF THE DISSENTING OPINIONS

- judge Andrzej Mączyński:

- The requirement in Article 217 of the Constitution that the object and rate of a tax be specified by statute goes further than the requirement of specifying the principles for granting tax relief and remissions expressed in the final part of this Article, thereby allowing these latter principles to be expanded in executive acts (i.e. regulations).
- The specification of the object of a tax does not necessarily fail to conform to the Constitution by making reference to another legal instrument, provided such reference is to a provision of statutory rank. In the present case, however, the legislator did not refer to an act of universally binding law but to an act of an organ of State administration. This infringes not only the principles of the legislative technique (cf. § 9(2) and § 101(1) of the Prime Minister’s Regulation 2002 concerning the “Principles of the Legislative Technique”) but also Article 217 of the Constitution. Regardless of the nature of the aforementioned classifications, their inclusion in a statute results in them attaining legal significance, since it is inevitable that they will be taken into account when specifying the object of the tax.
- The requirement that legal provisions be sufficiently specific, which is usually derived from Article 2 of the Constitution, also forms an element of Article 217, which repeats the general principle expressed in Article 84 of the Constitution. Given the conjuncture of legal regulation envisaged in both of the aforementioned

provisions, Article 217 of the Constitution does not merely constitute a provision concerned with the regulation of public finance, but also represents a norm providing guarantees in the field of constitutional rights and obligations.

- The challenged provisions not only contradict Articles 217 and 87 of the Constitution but are also irreconcilable with the concept, expressed throughout the entirety of Chapter III of the Constitution, of differentiating between acts of universally binding law and acts which merely bind entities subordinate to the enacting authority.

- judge Janusz Trzcíński:

- The legislator decreed that the classifications contained in the provisions concerning State statistics shall be used for the purpose of specifying the goods to which a particular rate of taxation applies. Consequently, these provisions determine which goods are subject to which level of taxation.
- The provisions specifying the classifications of goods and services possess the rank of an Order of the CSO President. Accordingly, in the light of Article 87 of the Constitution, they do not represent a source of universally binding law. Nevertheless, the shaping of citizens' duties is only permissible by norms of universally binding law and, in reference to the imposition of tax obligations, this may only be done by statute (Article 217 of the Constitution).
- References in the VAT and Excise Duty Act 1993 to the provisions issued by the CSO President do not mean that the latter have acquired the status of statutory and universally binding legal provisions. Nevertheless, such references mean that the legal norm from which the tax obligation stems is constructed from inhomogeneous normative material (i.e. from a statute and an order), thus in a manner infringing the basic rules of interpreting legal norms.

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. 7. The organs of public authority shall function on the basis of, and within the limits of, the law.

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

Art. 87. 1. The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations.

Art. 92. 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.

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 relief and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.