

Judgment of 21<sup>st</sup> September 2004, [K 34/03](#)  
**CASH-REGISTERS IN TAXI CABS**

<b>Type of proceedings:</b> <a href="#">Abstract review</a> <b>Initiator:</b> Group of Deputies	<b>Composition of Tribunal:</b> 5-judge panel	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Obligation for taxpayers selling goods or providing services to consumers or to individual farmers, to record turnover with the use of cash-registers [VAT and Excise Duty Act 1993: Article 29(1)]	Rule of law Principle of legality Freedom of the person Exhaustive list of the sources of universally binding law
Certain issues concerning cash-registers, in particular, the temporary exemption of taxi-drivers from the obligation to register turnover with the use of such registers (only) until the end of the year 2003 [The Minister of Finance's Regulation 2002 concerning cash-registers]	Conditions for authorising the issuing of a regulation Legal reservation (exclusivity of statutes) in relation to tax law [Constitution: Articles 2, 7, 31(1), 87(1), 92(1), 217]

Value Added Tax (VAT) has existed in Poland since 5<sup>th</sup> July 1993, upon the entry into force of the VAT and Excise Duty Act 1993. On 29<sup>th</sup> April 2004 a new VAT Act, adopted on 11<sup>th</sup> March 2004, entered into force.

Since turnover earned by entrepreneurs in connection with the sale of goods or provision of services is subject to VAT, it is in the interests of the State to ensure the reliable recording of all such turnover. In relation to transactions between entrepreneurs, VAT invoices have particular significance from the perspective of monitoring turnover and, accordingly, it is compulsory to issue VAT invoices in such cases (cf. summary of the case [K 24/03](#)). As regards the sale of goods or provision of services to consumers, a commonly encountered method for recording turnover, utilised in many countries, is the compulsory use of cash-registers, i.e. devices recording all revenues and calculating due tax amounts.

In the present case, initiated under the prior VAT Act of 1993, Article 29(1) of the mentioned Act was challenged, together with a Regulation issued on the basis thereof.

The challenged provision obliged taxpayers who sell goods or provide services to natural persons not acting in pursuit of an economic activity (consumers) or to persons pursuing solely farming activities (individual farmers) to record turnover and payable tax amounts with the use of cash-registers. In Article 29(2b) and (2c) the legislator allowed such taxpayers to deduct the cost of purchasing the cash-register from their payable tax or (where such persons were pursuing tax-exempt activities) a reimbursement of these costs – within specified limits. On the basis of Article 29(3), the Minister of Finance issued executive acts regulating in detail the deduction or reimbursement of the purchase costs of cash-registers and temporarily exempting certain taxpayers and activities from the obligation to record turnover with the use of cash-registers. The Minister of Finance's Regulation 2002, issued on the aforementioned basis, challenged in its

entirety by the applicant, provided such exemption for the period until 31<sup>st</sup> December 2003 in respect of, inter alia, the “carriage of persons and cargo by means of passenger and baggage taxi cabs”. Following the expiry of these exemption periods (in the case of taxi-drivers this period expired on 1<sup>st</sup> January 2004), the statutory obligation to possess and use cash-registers for such taxpayers or activities came into effect.

Although this application by a group of deputies was formally submitted in the interests of various categories of small entrepreneurs, its background, representing the subject of particular concern for general public opinion, concerned wide-scale and spectacular forms of protest by taxi-drivers during the year 2003, in response to the Regulation’s envisaged abolition of the temporary exemption from the obligation to possess cash-registers, effective from the outset of 2004.

Having cited the aforementioned constitutional provisions as the basis of review, the applicants challenged in particular (in a rather opaque legal argument) the additional requirement, contained in § 6 of the Regulation, that persons exempted by statute from paying taxation (e.g. by virtue of such persons not having exceeded a volume of sales equivalent to €10 000 in the preceding tax year) must nevertheless record their turnover with the use of cash-registers. The applicants submitted that the recording of turnover and sales with the use of cash-registers was justified only where it concerned both turnover and calculation of VAT dues. Where no tax liability existed, given the ability of certain entities generating turnover to take advantage of individual exemptions or exemptions applicable to specified activities, no justification existed for the requirement to record such information.

In the proceedings before the Constitutional Tribunal the Minister of Finance explained that, in accordance with the legislator’s intentions, one of the reasons for imposing on small entrepreneurs the obligation to keep records with the use of cash-registers, even given the existence of applicable tax exemptions, was to ensure the ability to calculate such taxpayers’ turnover in order to facilitate the application of tax exemptions based on the criterion of turnover levels. Furthermore, the obligation to keep records did not merely fulfil fiscal functions but also served to ensure consumer protection. The obligation for taxpayers to record turnover with the use of cash-registers is in operation in Turkey, Greece and Bulgaria, while in many other European countries taxi-metres, meeting special legal requirements, are broadly used for the purposes of recording information. The Minister of Finance also referred to the Sixth Council Directive 77/388/EEC of 17<sup>th</sup> May 1977 (cf. below, point 3), according to which all taxpayers should be obliged by national legislation to keep records to a degree enabling calculation of tax dues and inspection thereof by tax authorities.

## RULING

**Article 29(1) of the VAT and Excise Duty Act 1993 and the Minister of Finance’s Regulation of 2002 concerning cash-registers conform to Articles 2, 7, 31(1), 87(1), 92(1) and 217 of the Constitution.**

## PRINCIPAL REASONS FOR THE RULING

1. The suggested interpretation of Article 29(1) of the VAT and Excise Duty Act 1993, according to which the absence of an obligation to pay VAT, arising as a result of reliance on a VAT exemption, signifies that turnover need not be recorded, is based on the erroneous assumption that persons taking advantage of tax exemptions are not taxpayers. On the contrary, in order to be able to qualify as a beneficiary of an exemption, one must be a payer of a particular tax (cf. Article 7 § 1 of the Tax Ordinance Act and Article 2 of the reviewed Act).
2. The obligation for VAT taxpayers to keep records of turnover fulfils several functions that are realised even given the existence of individual exemptions. In particular, it is indispensable for allowing the beneficiaries of tax exemptions to calculate their turnover, since the absence of reliable turnover records would render it impossible to verify one of the prerequisites for taking advantage of individual exemptions made conditional upon the level of turnover (cf. Article 14 of the reviewed Act). The recording of turnover is also in the interests of consumers since, even where the provider of goods or services is permitted to take advantage of a individual exemption, consumers retain an interest in the recording of data allowing them to identify the other contracting party, lodge a claim, protect their interests and so on.
3. The introduction of clear recording in relation to activities subject to VAT is a consequence of the duty to implement into the Polish legal system the Sixth Council Directive 77/388/EEC of 17<sup>th</sup> May 1977 on the harmonization of laws of the EC Member States relating to turnover taxes – common system of value added tax: uniform basis of assessment. This Directive creates the obligation to keep records “in sufficient detail to permit application of the value added tax and inspection by the tax authority” (Article 22(2)). Whilst the issue of accuracy and the manner of keeping records is left to domestic law, it is beyond doubt that, at the very least, the recording of turnover falls within the aforementioned obligation.
4. As a result of the principle of interpretation requiring domestic law to be construed in such a manner as to enable the efficient functioning of the economy within the framework of European integration, an expectation arises that any interpretation of domestic law will ensure conformity with European law. Such an obligation stems from Article 10 (ex-Article 5) of the EC Treaty. The aim of this obligation is to ensure the compatibility of domestic law with Community law. This means that interpretations of domestic legal provisions (in this case, Article 29(1) of the VAT Act 1993) leading to conflict with obligations stemming from Community law may not be approved.
5. The Polish legislator’s decision concerning the universal use of cash-registers to record turnover (Article 29 of the reviewed Act) was taken in 1993 and realisation of this decision proceeded gradually, extending to broader and broader groups of taxpayers (the gradual removal and restriction of exclusions and exemptions). The mere existence of such exemptions and exclusions may not, by itself, substantiate submissions concerning an alleged infringement of the principle of equality (Article 32(1) of the Constitution), in the light of the applicant’s failure to challenge the criteria governing applicability of those exemptions and exclusions to particular entities or to particular activities. Furthermore, the fact that the requirement to use cash-registers has been introduced progressively, as hitherto exemptions are gradually abolished, does not in it-

self indicate an infringement of the constitutional limits of the State's regulatory freedom, nor is it evidence of a violation of the constitutional principle of equality.

6. The applicants' submissions in relation to the appropriateness, or otherwise, of using alternative methods to record turnover do not impact upon the constitutional issues raised by the applicants. Merely because a particular solution adopted by law is inappropriate, non-pragmatic or counter-productive does not automatically imply that such a solution does not conform to the Constitution. Allegations as to the non-conformity of a particular legal solution with Article 2, read in conjunction with Article 31(3), of the Constitution, may only be substantiated by demonstrating that the introduction of such a solution, deprived of its functional attributes, prevents, for example, the exercise of a constitutional right or introduces an excessive and disproportionate burden in comparison to alternative solutions.
7. The application in the present case does not allege an infringement of the constitutional principle of proportionality (Article 31(3)). As an aside, however, it may be remarked that the actual cost of purchasing a cash-register, ca. 1000–1500 Polish Zloty, does not represent an excessive, disproportionate burden in comparison with the possible adaptation of existing taxi-meters for the purposes of recording turnover, which would also require additional expenditure.
8. The possibility for the Constitutional Tribunal to review normative acts having lost their binding force, pursuant to Article 39(3) of the Constitutional Tribunal Act, is not limited to proceedings initiated by constitutional complaint but also exists in respect of other [procedures for the review of legal norms](#).

#### Provisions of the Polish Constitution, the Constitutional Tribunal Act and the Treaty establishing the European Community

##### 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. 31.** 1. Freedom of the person shall receive legal protection.

2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.  
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. 32.** 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

**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.** 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.

**Art. 217.** The imposition of taxes, as well as other public levies, 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.

##### CT Act

**Art. 39.** 1. The Tribunal shall, at a sitting in camera, discontinue the proceedings:

- 1) if the pronouncement of a judicial decision is superfluous or inadmissible;
- 2) in consequence of the withdrawal of the application, question of law or complaint concerning constitutional infringements;

- 3) if the normative act has ceased to have effect to the extent challenged prior to the delivery of a judicial decision by the Tribunal.
2. If the circumstances referred to in paragraph 1 above shall come to light at the hearing, the Tribunal shall make a decision to discontinue the proceedings.
3. The regulation stated in item 1 point 3 is not applied if issuing a judgement on a normative act which lost its validity before issuing the judgement is necessary for protecting constitutional freedom and rights.

**EC Treaty**

**Art. 10.** Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.