Judgment of 20th July 2006, K 40/05

SENATE AMENDMENTS TO AN AMENDMENT ACT. ADJUDICATION ON THE UNCONSTITUTIONALITY OF A TAX RELIEF IN THE COURSE OF A TAX YEAR

Type of proceedings: Abstract review Initiator: Prosecutor General	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0

Legal provisions under review	Basis of review
The introduction – by way of Senate amendments to a bill (already adopted by the Sejm) amending other statutes – of a tax relief for taxpayers incurring costs on the activity of sport clubs [Professional Sports Act 2005: Article 60 point 2 and Article 61 point 2]	Principle of legality of public authority functioning Specification of the class of subjects authorised to introduce legislation Competences of the Senate in relation to a bill already passed by the Sejm [Constitution: Articles 7, 118(1) and 121(2)]

The legislative power in Poland shall be vested in the Sejm (i.e. the first chamber of Parliament) and the Senate (i.e. the second chamber of Parliament) – see Article 10(2) of the Constitution. However, the powers of the two parliamentary chambers are not identical. The Sejm considers and adopts bills submitted by entities empowered to introduce legislation (cf. Articles 118–120 of the Constitution). A bill passed by the Sejm is subsequently considered by the Senate which may adopt the bill without proposing amendments thereto, reject the whole bill or propose amendments thereto. A resolution of the Senate rejecting a bill or proposing amendments thereto is not final, since the Sejm may reject such a resolution by an absolute majority of votes. If the Sejm does not reject amendments proposed by the Senate, amendments shall be deemed adopted. The Sejm may either adopt or reject specific Senate amendments; it is impermissible for it to modify the contents of such amendments (cf. Article 121 of the Constitution).

For almost 13 years, the Constitutional Tribunal has, through its jurisprudence, examined the matter of how wide the permissible "innovations" introduced into a bill by way of Senate amendments may extend. That problem concerns, in particular, the question whether or not the Senate amendments to a bill which amends another statute may fall beyond the subject-matter of such a bill, as determined by the Sejm, and introduce modifications to the amended statute that are not in line with the Sejm's intentions. Special attention should be paid to judgments issued by the Constitutional Tribunal sitting in plenary session, i.e. judgment of 23rd November 1993 (K 5/93); judgment of 22nd September 1997 (K 25/97); judgment of 23rd February 1999 (K 25/98); judgment of 19th June 2002 (K 11/02); judgment of 24th June 2002 (K 14/02; the last three with dissenting opinions).

The present judgment continues the jurisprudential line established by the aforementioned judgments of the Constitutional Tribunal.

In the present case, the incentive to consider the issue of Senate amendments has been provided by

the Prosecutor General who challenged two provisions of the Professional Sports Act 2005 (hereinafter "the 2005 Act"), alleging that the Senate exceeded the permissible scope of amendments to an amendment act. Apart from key issues, the 2005 Act includes Chapter 8 which contains provisions amending several other statutes in connection with the regulation of professional sports. These amending provisions include Article 60 point 2 and Article 61 point 2, introducing modifications to the Personal Income Tax Act and Corporate Income Tax Act that were not anticipated by the Professional Sports Act 2005 in the version adopted by the Sejm and, subsequently, referred to the Senate. Both Articles were proposed within the framework of Senate amendments adopted by the Sejm. These provisions introduced a specific tax relief for payers of Personal Income Tax (PIT) and Corporate Income Tax (CIT) incurring expenditure on the activity of sports clubs. Namely, such taxpayers may deduct from their taxation base (i.e. annual income) outlays on the activity of sport clubs that meet the criteria set out in the discussed provisions, albeit not exceeding 10% of overall income.

Notwithstanding reservations raised by the Sejm Physical Culture and Sport Committee, which pointed to the likely unconstitutionality of the aforementioned Senate amendments and petitioned for the rejection thereof, the Sejm adopted the aforementioned amendments. The bill, in a form embracing these amendments, was signed by the President of the Republic and published in the Journal of Laws. The tax relief in question took effect on 1st January 2006.

In the application lodged with the Constitutional Tribunal, the Prosecutor General challenged the constitutionality of the procedure applied in introducing the aforementioned modifications to the taxation acts. Furthermore, the applicant challenged the substantive content of these provisions, alleging infringement of the principle of the specificity of legal provisions, as stemming from the rule of law clause (Article 2 of the Constitution). However, the Tribunal only considered the allegations concerning the legislative procedure (see final part of ruling and point 10 below).

RULING

I

Article 60 point 2 and Article 61 point 2 of the Professional Sports Act 2005 do not conform to Article 7, Article 118(1) and Article 121(2) of the Constitution.

II

The Tribunal ruled that the loss of binding force of the provisions cited above shall be delayed until 31st December 2006.

Furthermore, on the basis of Article 39(1) point 1 of the Constitutional Tribunal Act 1997, the Tribunal discontinued proceedings within the remaining scope, given the superfluity of adjudication.

PRINCIPAL REASONS FOR THE RULING

1. In a democratic state governed by the rule of law, the principles of legislative procedure established in the Constitution do not fall within the scope of autonomy of the Sejm and Senate. Rather, they constitute a significant guarantee that laws will be made

with due diligence, in the face of the existence and observance of institutional requirements regarding the comprehensive consideration of submitted legislative proposals before they become binding law. The so-called legislative "shortcut" is, therefore, impermissible.

2. The institution of the amendment within legislative procedure (see Article 119(2) and Article 121(2) of the Constitution) is distinct from that of the legislative initiative (see Article 118 of the Constitution). The latter is, in principle, of an unlimited character, which is to say that the determination of the subject-matter and dimensions of a draft falls within the discretion of its sponsor, of which the Senate may be one (cf. Article 118(1) of the Constitution).

3. In examining the admissibility of amendments introduced by Sejm Deputies to a bill being considered by the Sejm (see Article 119(2) of the Constitution) or amendments introduced by the Senate to a bill already adopted by the Sejm (Article 121(2) of the Constitution), the Tribunal recognises a distinction between the "depth" and "width" of an amendment. The former notion pertains to the extent of modifications introduced to the substantive content of a bill, while the latter makes it possible to determine the subject-related limits to the scope of matters regulated. The more advanced the legislative process, the more limited the freedom to introduce amendments as regards "width".

4. Senate amendments to a bill already adopted by the Sejm may only concern content that is the subject-matter thereof. Within a bill's subject matter, such Senate amendments may envisage alternative solutions, opposite to the content adopted by the Sejm. Nonetheless, they must remain appropriately linked with the bill adopted by the Sejm, and must aim at the modification of its content.

5. In considering the content of an amendment act adopted by the Sejm, the Senate may only put forward alternative solutions within the scope of that amendment act, as opposed to within the scope of the amended act, extending beyond the framework of modifications introduced thereto by the Sejm. The adoption by the Senate, under the procedure laid down in Article 121(2) of the Constitution, of amendments concerning matters not expressed directly in the content of an amendment act as adopted by the Sejm, amounts to the evasion of Articles 118(1), 119 and 121 of the Constitution.

6. The Sejm's non-rejection of amendments adopted by the Senate and exceeding the permissible scope does not imply co-validation of the Senate's negligence.

7. In the light of Article 7 of the Constitution, presumptions concerning the competences of constitutional organs are impermissible. Accordingly, the exceeding by the Senate of the limits for amendments introduced under Article 121(2) of the Constitution amounts to the infringement of the principle expressed in Article 7 of the Constitution.

8. Within the government's draft of the examined Professional Sports Act 2005, the sponsor proposed the incorporation among the provisions of the Corporate Income Tax Act of an amendment envisaging exemption of the tax on part of the income earned by legal persons that are sport clubs, where this is spent on activities connected with participation in training by, and competition between, children and teenagers. The reasoning for the draft pointed out that the proposed amendments would not result in any reduction in budgetary receipts. In the course of legislative work in the Sejm, the

scope of the aforementioned exemption was broadened, so as to include payers of Personal Income Tax. However, the Senate amendments to the Professional Sports Act 2005 introduced to both tax statutes (i.e. the PIT Act and the CIT Act) a different tax relief, in that there was the possibility of deduction from the tax base of all taxpayers of expenses borne on the activity of some sport clubs. Hence, the Senate included, within the scope of its amendments, issues which were not in any way the subject-matter of the bill adopted by the Sejm. Furthermore, the financial consequences of these amendments fell outside the "financial framework" of the government's draft (cf. Article 118(3) of the Constitution).

9. The finding that the provisions indicated in point I.1 of the ruling (above) were introduced to the legal order by way of infringement of the constitutionally-determined legislative procedure is sufficient to declare them unconstitutional. In such situations, the Tribunal may abandon any review of the provisions in question on their merits (cf. the final part of the ruling).

10. It stems from Article 2 of the Constitution that, in general, the modification of tax levies in the course of a tax year is impermissible, with any alterations to the legal regulation of Personal Income Tax needing to be promulgated at least one month before the end of the previous tax year. These principles relate to the activities of the legislator, but are also significant in shaping the practice of the Constitutional Tribunal which, in ruling on the unconstitutionality of norms, performs the function of "negative legislator". For that reason, it is necessary for the Tribunal to make use of the possibility envisaged in Article 190(3) of the Constitution, i.e. to delay the loss of binding force of provisions concerning income tax that were adopted by way of a defective procedure (cf. part II of the ruling).

Provisions of the Constitution and the Constitutional Tribunal Act

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. 10. […] 2. Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

Art. 118. 1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
3. Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

Art. 119. 1. The Sejm shall consider bills in the course of three readings.
2. The right to introduce amendments to a bill in the course of its consideration by the Sejm shall belong to its sponsor, Deputies and the Council of Ministers.
3. The Marshal of the Sejm may refuse to put to a vote any amendment which has not previously been submitted to a committee.
4. The sponsor may withdraw a bill in the course of legislative proceedings in the Sejm until the conclusion of its second reading.

Art. 120. The Sejm shall pass bills by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless the Constitution provides for another majority. The same procedure shall be applied by the Sejm in adoption of resolutions, unless a statute or a resolution of the Sejm provide otherwise.

Art. 121. 1. A bill passed by the Sejm shall be submitted to the Senate by the Marshal of the Sejm.
2. The Senate, within 30 days of submission of a bill, may adopt it without amendment, adopt amendments or resolve upon its complete rejection. If, within 30 days following the submission of the bill, the Senate fails to adopt an appropriate resolution, the bill shall be considered adopted according to the wording submitted by the Sejm.

3. A resolution of the Senate rejecting a bill, or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of Deputies.

Art. 190. […] 3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

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.