

Judgment of 20th November 2002, [K 41/02](#)
“TAX AMNESTY” AND “PROPRIETARY DECLARTIONS”

Type of proceedings: Preliminary review of an Act Initiator: President of the Republic of Poland	Composition of Tribunal: Plenary session	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Reduced tax rate on undisclosed income obtained between 1996 and 2001, on the condition that it is disclosed to the tax office <small>[One-off Taxation of Undisclosed Income and Amendment to Tax Ordinance Act and Fiscal Criminal Code Act 2002: Articles 1–17]</small>	Rule of law Principle of equality Principle of universality of bearing public burdens and duties <small>[Constitution: Articles 2, 32(1) and 84]</small>
Obligation of taxpayers to submit declarations concerning their property <small>[Ibidem: Article 18]</small>	Principle of proportionality Principle of equality Right to private life Informational autonomy of the individual Right to property <small>[Constitution: Articles 31(3), 32, 47, 51(2) and 64(1)]</small>

The Constitutional Tribunal usually carries out the review of the constitutionality of statutes after their coming into force (so-called subsequent review). The case is different with the so-called preliminary review, regulated by Article 122(3) and (4) of the Constitution. This latter type of review occurs when the President of the Republic of Poland refuses to sign a bill which has been adopted by parliament, on the basis of doubts regarding its constitutionality, and applies for the bill to be reviewed by the Constitutional Tribunal. A declaration by the Tribunal of the unconstitutionality of the whole of the bill, or of a part thereof which is inseparably connected with the whole bill, prevents it from entering into force.

This was the case with the aforementioned Act of 26th September 2002, whose adoption by Parliament and subsequent examination by the Constitutional Tribunal was followed with considerable interest by the general public.

The Act was comprised of two parts. The first part (Articles 1–17) envisaged a “one-off” solution based on the concept, utilised in a number of other countries, of a “tax amnesty”. The normal fiscal sanctions imposed on taxpayers for concealment of certain personal income would not be imposed on those who disclosed such income to the tax office and paid a one-off tax. In this case, the Act covered concealed income obtained between 1996 and 2001 and fixed the prescribed tax rate at 12% (i.e. less than the normal tax rate). The President of the Republic of Poland, considering that such a tax amnesty represented a particular “bonus” for dishonest taxpayers, expressed his doubts as to the conformity of this solution with the constitutional principles of: the rule of law (Article 2 of the Constitution); the universality of bearing public burdens (Article 84); and equality before the law (Article 32(1)).

In its second part (Article 18), the Act was to introduce – on permanent basis – an obligation for personal income taxpayers to submit so-called proprietary declarations to tax offices. The legislator’s intention was to enable the tax office to effectively review the integrity of income declarations, which form the basis for taxation. Such proprietary declarations were to include all of the most important elements of the taxpayer’s property. In principle, such a declaration need only be submitted once but, should the value of property rose by more than 100 thousand Polish Zloty within a given tax year, the taxpayer would be required to submit a supplementary declaration. The cost of the valuation of the property would be borne by the taxpayer. Farm owners (possessors) would be exempted from the obligation to submit such proprietary declarations. The President of the Republic of Poland considered that the institution of proprietary declarations, in the form adopted by Parliament, gave rise to doubts as to the conformity of this solution to the constitutional principles regarding human and civil rights and freedoms. Pursuant to Article 31(3) of the Constitution, no additional burdens may be imposed on citizens where the aim of the legislator (i.e. the efficient and effective disclosure of instances of concealed income) may be achieved by the use of legal means already in existence. Furthermore, the burden imposed on the individual must not be disproportionate to the expected benefits to be gained from the imposition of such a burden. Moreover, the obligation to submit proprietary declarations would infringe the right to privacy as regards a person’s private and family life (Article 47 of the Constitution) and the protection of property (Article 64(1)). Finally, the President considered that the exclusion of farm owners (possessors) from the obligation to submit proprietary declarations would constitute an infringement of the constitutional principle of equality (Article 32(1)).

RULING

1. The provisions of the challenged Act regarding the one-off taxation of undisclosed income (Articles 1–17) do not conform to Article 2, Article 32(1) and Article 84 of the Constitution.

2. The provision regarding the obligation to submit proprietary declarations (Article 18) does not conform to Article 32(1), Article 47, read in conjunction with Article 31(3), Article 51(2) and Article 64(1), of the Constitution.

3. The unconstitutional provisions of the Act (Art. 1–18) are inseparably connected with the whole Act.

PRINCIPAL REASONS FOR THE RULING

1. The achievement of a balanced budget is a constitutional value. The legislature has a free discretion to choose between various tax liability options to ensure the collection of necessary income for the State budget. Nevertheless, even where the State budget is in a poor condition, this cannot justify the violation of fundamental principles of a democratic State governed by the rule of law, justice and equality before the law.
2. The constitutional status of the individual vis-à-vis the State has two distinct aspects. On the one hand, Article 84 of the Constitution states the individual’s obligation to bear public burdens and duties and thereby expresses an individual’s “constitutional

debt”. On the other hand, the individual is dealt with as a “creditor” as regards particular freedoms and rights governed by the Constitution. Constitutional norms governing the status of the individual and his relations with the State in general, such as the principle of the rule of law, proportionality and equality of treatment, are applicable to both rights and freedoms and to the obligation to bear public burdens.

3. The principle of the rule of law, as contained in Article 2 of the Constitution, has far-reaching consequences on the manner in which legislation is adopted (i.e. principle of appropriate legislation; principle of the clarity of legal provisions) and legal security (i.e. principle of protecting citizens’ trust in the State and its laws; protection of acquired rights). These principles, resulting from the constitutional principle of the rule of law, interact with each other in specific factual circumstances. The ambiguity of a legal provision, in practice, creates uncertainty from the addressee’s perspective as regards his legal position and leaves it to the authorities applying the provision to elucidate its meaning; any differentiation between the manner in which individual cases are settled leads to the law being perceived as unjust and thereby reduces citizens’ trust in the State.
4. The legislator is required to be especially vigilant in observing the requirements stemming from the rule of law principle when adopting legal provisions limiting the rights and freedoms of citizens or imposing duties on citizens in respect of the State. The requirement of specificity of legal provisions is especially important in two areas – criminal law and tax law.
5. The legislator is allowed to ascribe words used in a normative act with a meaning which differs from their common meaning, or to ascribe a meaning which differs from how the same word was used in an earlier statute. Nevertheless, the legislator may do this only on the condition that such terms are unequivocally defined and are subsequently applied in accordance with their ascribed meaning.
6. Where the text of a statute attempts to explain the unknown by the unknown (*ignotum per ignotum*), this infringes the constitutional rule demanding the clarity and precision of legal provisions.
7. Where statutory provisions have exceeded a certain level of ambiguity, this reason alone may justify finding such provisions incompatible with those provisions of the Constitution requiring statutory specification of certain matters (so-called legal reservation) as well as with the principle of the rule of law, as expressed in Article 2.
8. The absence of precision and clarity of the provisions regulating the one-off taxation of undisclosed income (Articles 1–17 of the challenged Act) is especially significant in the assessment of these provisions, since they envisage that the taxpayer will himself calculate the amount of tax due. Any errors committed during this calculation are subject to criminal sanctions for the submission of an incorrect tax declaration, despite the fact that they may have occurred as a result of misunderstanding the contents of these provisions.
9. In relation to tax law, the constitutional principle of equality, contained in Article 32 of the Constitution, is defined further by Article 84 of the Constitution, which enshrines the principle of the universality of taxation.

10. The amnesty provisions (Articles 1–17 of the challenged Act) would introduce an unjustified distinction between the legal position of persons who paid their tax dues on time and persons benefiting from the tax amnesty. In fact, the benefits to the latter category of persons would grow correspondingly with the amount of undisclosed income. Persons benefiting from the amnesty would thereby be placed in a specially privileged position in comparison to those who, between 1996 and 2001, concealed their income and were found liable under Article 30(1) point 7 of the Personal Income Tax Act (and taxed at the level of 75% of such income) and, moreover, were punished on the basis of Article 54 of the Fiscal Criminal Code. The effect of the amnesty would not only be to relieve such persons of criminal responsibility but also to limit their tax liability to a level of 12%.
11. The infringement of the constitutional principle of equality by the challenged amnesty provisions is also evident from three other norms. Firstly, the possibility of benefiting from the Act's amnesty provisions is made dependent upon the type of organ conducting proceedings against the taxpayer (Article 2(3)), which constitutes an irrational and accidental criterion, given the stated purpose of the statute. Secondly, the Act unjustly rewards taxpayers who failed to register their economic activities (Article 7(2)). Finally, the Act excludes from among amnesty beneficiaries those who, at any time between 1990 and 2002, were public officials within the meaning of Article 115 § 13 of the Criminal Code (Article 12); such an exclusion would not raise objections, in the light of Article 32 of the Constitution, if it comprised persons discharging public functions who are the addressees of various types of anti-corruption provisions.
12. The obligation to submit proprietary declarations (duty to disclose property and its valuation, indicating the time of purchase etc.) envisaged in Article 18 of the challenged Act, is a public burden within the meaning of Article 84 of the Constitution
13. The exclusion of one occupational group – farmers – from the, in principle universal, obligation to submit proprietary declarations justifies the assertion that the Act infringes the principle of equality in relation to imposing public burdens. The fact that income from farming is exempt from income tax does not justify a distinction between the legal position of farmers and all non-farmers, irrespective of age and the fact of obtaining income, where the latter group would be obliged to submit proprietary declarations in relation to certain statutorily-defined components of property.
14. The individual's right to legal protection of his private life, guaranteed in Article 47 of the Constitution, also comprises informational autonomy (Article 51), meaning that the individual has the right to decide whether to disclose personal information to others and also has the right to review such information where it comes into another's possession. The importance of the right to privacy (Article 47 of the Constitution) in the constitutional protection of rights and freedoms is made clear, *inter alia*, by the fact that, pursuant to Article 233(1) of the Constitution, this right may not be limited even by statutes passed during times of martial law or states of emergency, whereas other rights may.
15. An analysis of the relationship between Article 31(3) and Article 51(2) of the Constitution leads to the conclusion that any limits placed on the right to informational autonomy must be compatible with the requirements specified in Article 31(3). Any such limit must be essential to attain the goals indicated in the discussed provision (the

prerequisite of necessity). Secondly, the stated goal must be capable of effective realisation (the prerequisite of effectiveness). Thirdly, the extent of the limitation placed by the public authority on the sphere of informational autonomy (in this case: by requiring citizens to submit proprietary declarations) must be proportionate to the stated goal.

16. The system for disclosing and valuing property adopted in the challenged Act would constitute a “trap” for the citizen. The preparing of declarations, pursuant to requirements of the Act, would lead to the imminent risk that such a declaration was incorrect and, when assessed by the appropriate tax authorities, could expose the citizen to severe sanctions. Conversely, the current form of proprietary declarations would not be an adequate instrument to allow the tax authorities to ensure that the legislator’s intended goal was fulfilled, since the collection by tax authorities of numerous information regarding property is not equivalent to those authorities being in possession of necessary and sufficient information allowing them to reliably assess an individual’s tax liability. Since tax is paid on income, and the proprietary declarations would have the character of a detailed list of items of property gathered over many years, the need to determine time-functionality relations between the property and the income, and its source, would always require additional explanatory proceedings in each individual case, rather than merely when doubts arose. Meanwhile, the Polish tax system has different instruments for acquiring appropriate information and the taxation of persons whose financial situation indicates a failure to submit full information regarding their taxable personal income. For these reasons the legislative interference with the individual’s rights and freedoms, as guaranteed by Articles 47 and 51, fails to effectively meet the criteria arising from Article 31(3) (cf. point 15 above).
17. The challenged provisions represent an unconstitutional interference with an individual’s right to privacy and informational autonomy by introducing a general obligation to submit proprietary declarations (cf. point 16 above), by creating additional costs to be borne by the taxpayer in order to minimise the risk of not having a correct declaration (e.g. costs associated with the valuation of a piece of artwork) and by creating high risks, in the form of criminal sanctions, associated with the possibility that a declaration may be incorrect without any culpability on the part of the taxpayer. These factors collectively mean that the principle of proportionality, contained in Article 31(3) of the Constitution, would also be infringed by these measures, which impose a superfluous financial burden on the individual which should be qualified as a violation of the rights protected by virtue of Article 64 of the Constitution.
18. Public burdens, in the form of properly established taxes, cannot be considered an unconstitutional interference with the right to ownership and other property rights.
19. Although the President of the Republic of Poland did not challenge Article 19 of the reviewed Act, which contains amendments to the Fiscal Criminal Code, nor did he challenge Article 20 thereof, which governs the date on which the Act comes into force, both of these provisions are so inextricably linked with the legal institutions regulated in the Act (i.e. amnesty provisions and proprietary declarations) that they are legally meaningless given the unconstitutionality of Articles 1–18. For these reasons the whole Act may not enter into force.

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. 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. 47. Everyone shall have the right to legal protection of his private and family life, of his honor and good reputation and to make decisions about his personal life.

Art. 51. 1. No one may be obliged, except on the basis of statute, to disclose information concerning his person.
2. Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state governed by the rule of law.
3. Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.
5. Principles and procedures for collection of and access to information shall be specified by statute.

Art. 64. 1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

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

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. 233. 1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children).