

Procedural decision of 22nd February 2006, [K 48/04](#)
**INTERPRETATION OF THE JUDGMENT CONCERNING
A HIGHER RATE OF PERSONAL INCOME TAX**

Type of proceedings: Abstract review In this case: Application to explain doubts as to the content of a Tribunal's judgment Initiator: Prosecutor General	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Pursuant to Article 74(1) of the Constitutional Tribunal Act, the Tribunal panel that pronounced a decision (judgment or procedural decision) shall resolve doubts concerning the content thereof. The Tribunal issues a procedural decision on this matter upon application of a participant in the proceedings.

In its judgment of 15th February 2005 (reference number as above), summarised separately, the Constitutional Tribunal ruled that Article 9 of the Personal Income Tax Act Amendment Act 2004 (prescribing the entry into force of that Act on 1st January 2005), insofar as challenged, i.e. concerning the introduction of a fourth level on the taxation scale, failed to conform to Article 2 of the Constitution, due to insufficient *vacatio legis*. This judgment precluded the entry into force, on 1st January 2005, of the fourth level on the progressive taxation scale, applicable to income exceeding 600,000 Polish Zloty. The legislator intended that the tax payable on such income should equal 227,992.48 Polish Zloty (the maximum tax payable under the third level of taxation) plus 50% of any income in excess of 600,000 Polish Zloty. The formulation of the judgment, criticised, as a matter of fact, within the dissenting opinion submitted by judge *Marek Mazurkiewicz*, referred to the provision specifying the date of entry into force of the Amendment Act 2004. Substantial regulations concerning the fourth tax level remained within the text of the amended Personal Income Tax Act 1991, albeit they were not in force.

In the reasoning for the judgment, the Constitutional Tribunal ascertained that the fourth tax level, as well as the provisions tightly connected with the existence thereof, may “re-enter” into force at a future date, provided that legislative requirements for their entry into force are fulfilled.

To date the legislator has not repealed the “non-operative” provisions establishing the fourth level on the taxation scale from the Personal Income Tax Act 1991, while also failing to implement them anew. At the beginning of the new tax year – 2006 – some payers of the personal income tax were confused as to whether in such a situation the taxation scale remained unchanged as of 1st January of that year, or, contrary, the fourth tax level “re-entered” into force.

The Prosecutor General, i.e. the applicant in the case decided by the judgment of 15th February 2005, applied to the Constitutional Tribunal for an interpretation of the aforementioned judgment.

The ruling of the summarised procedural decision is presented below in a simplified version, omitting technical details.

RULING

On the basis of Article 74(1) of the Constitutional Tribunal Act, the Tribunal decided to:

- a) resolve doubts as to the content of the judgment of 15th February 2005,**
- b) explain that the provisions of the Amendment Act 2004, insofar as specified within the aforementioned judgment, were introduced within the Personal Income Tax Act 1991 in a manner non-conforming to Article 2 of the Constitution and, therefore, fail to exert legal effects despite remaining within the text of the Act.**

PRINCIPAL REASONS FOR THE RULING

1. The interpretation of a Constitutional Tribunal's decision, carried out pursuant to Article 74 of the Constitutional Tribunal Act, is, by assumption, intended to eliminate ambiguities within the understanding of such a decision. The need for an interpretation may stem from the insufficiently precise formulation of the judicial decision, its erroneous understanding by a participant in the proceedings, contradicting positions of participants as to its content, or doubts regarding the execution of certain direct legal effects of the decision. Such doubts should be significant (serious) and objective in nature.
2. The legal effects of a Constitutional Tribunal's judicial decision may be subject to interpretation, as discussed above, provided that they are *ex lege* connected therewith, i.e. they exist regardless of the activities undertaken by other State organs.
3. A judicial decision issued by the Constitutional Tribunal, finding a legal provision unconstitutional, has, by virtue of Article 190 of the Constitution, direct and unconditional legal effects, inseparably linked therewith. In the case of judicial decisions issued on the basis of Article 188 points 1–3 of the Constitution (with the exception of the case mentioned in the final part of the first sentence of Article 190(3) of the Constitution), the legal effects of such judgments are not always specified directly and *expressis verbis* within the text of the ruling. However, generally speaking, the significance of such judgments consists in the loss of binding force of the unconstitutional provision. Precise determination of the specific meaning of the loss of binding force may, as an element immanently connected with the judgment, be subject to the Tribunal's interpretation.
4. For reasons indicated in points 2 and 3 above, the circumstance that the applicant's doubts raised in the present case primarily concern the reasoning for the judgment of 15th February 2005 in its part regarding legal effects caused thereby, does not constitute an obstacle to carrying out the interpretation of this judgment.
5. The rule of law principle (Article 2 of the Constitution) generally objects to introducing modifications regarding tax burdens during the tax year and, furthermore, requires that amendments to legal regulations referring to personal income tax be promulgated at least one month before the conclusion of the previous tax year. Consequently, in the discussed situation, it is impossible to apply the general rule, as expressed in Article 4 of the Act on Promulgation of Normative Acts and Certain Other Legal Acts 2000, according to which a normative act enters into force following the lapse of 14 days from the date of its promulgation.

6. The impossibility of the entry into force of the amended Personal Income Tax Act 1991 provisions, indicated by the applicant, at the moment specified by the Amendment Act 2004 itself, is obvious in the present case, since it stems from the Constitutional Tribunal's judgment. The entry into force of these provisions following the lapse of a 14-day *vacatio legis* is also impossible, due to, *inter alia*, a different manner for specifying the moment of entry into force of tax provisions. Since the Constitutional Tribunal is not authorised to enact legal provisions but only to review their conformity with the Constitution and, as a result, to declare the loss of binding force of a legal provision in its entirety or part (the Tribunal's role as a "negative legislator"), the operation of the provisions indicated within the application (specifying the fourth level on the taxation scale) will only be possible when the legislator stipulates a new date of entry into force of these provisions, in accordance with the principles of correct legislation. Another admissible alternative is the elimination of these provisions from the text of the Act by the legislator.

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. 188. The Constitutional Tribunal shall adjudicate regarding the following matters:

- 1) the conformity of statutes and international agreements to the Constitution;
 - 2) the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
 - 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
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Art. 190. 1. Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.

2. Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be required to be immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.

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.

4. A judgment of the Constitutional Tribunal on the non-conformity with the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

5. Judgments of the Constitutional Tribunal shall be made by a majority of votes.

CT Act

Art. 74. 1. On application by a participant in the proceedings, the bench of the Tribunal, which passed the judicial decision at a sitting in camera, shall, by an order, settle all doubts as to its contents.

2. If the application for explanation of doubts cannot be considered by the bench specified in paragraph 1, the application shall be considered by the bench sitting with the same number.