

Judgment of 14<sup>th</sup> June 2006, [K 53/05](#)  
**COUNTERACTING TAX LAW EVASION (II)**

<b>Type of proceedings:</b> <a href="#">Abstract review</a> <b>Initiator:</b> Commissioner for Citizens' Rights	<b>Composition of Tribunal:</b> Plenary session	<b>Dissenting opinions:</b> 0
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Legal provisions under review	Basis of review
Possibility of a tax authority filing, before a common court, for determination of the existence or non-existence of a legal relation or right (as regards civil law as broadly construed) giving rise to taxation consequences, where doubt is raised as regards the evidence gathered by the said authority, concerning the said existence or non-existence  [Tax Ordinance Act 1997: Article 199a § 3 (inserted in 2005); Civil Procedure Code 1964: Article 189 <sup>1</sup> (inserted in 2005)]	Rule of law Freedom of economic activity  [Constitution: Articles 2 and 22]

For some time now, the Polish legislator has been seeking to counteract a form of tax avoidance whereby taxpayers configure their transactions under civil law – for the purposes of tax proceedings – in such a way that either no tax liability at all arises or else the said liability is reduced to a level lower than that which would have arisen, had the transaction under civil law been configured in the manner regarded by the tax authorities as relevant to the true intention of those persons concluding such a transaction, as well as to the economic content thereof.

In its judgment of 11<sup>th</sup> May 2004, [K 4/03](#) (summarised separately), issued upon the application filed by the Commissioner for Citizens' Rights and the President of the Supreme Administrative Court, the Constitutional Tribunal ruled that one of the provisions of the Tax Ordinance Act 1997 was unconstitutional. The said unconstitutional provision empowered tax authorities to engage in independent examination as to the reliability of a taxpayer's own determination of the nature of transactions in civil law concluded thereby. In accordance therewith, tax authorities were obliged to disregard the consequences for taxation of such transactions, where it could be demonstrated that the conclusion thereof could not have brought significant benefits other than those arising from the reduction of the tax liability, the increasing of a taxpayer's loss, the increasing of tax overpayment or tax reimbursement. Simultaneously, tax authorities could independently recognise, on the grounds of a particular case, consequences for taxation of a transaction different from that declared by the taxpayer, where the parties achieved the intended economic effect to which the said different transaction was appropriate.

By declaring the non-conformity of the aforementioned regulation with the Constitution, the Tribunal, in its reasoning of the judgment in case [K 4/03](#), pointed to the potential risk of arbitrary interpretation, as well as to the fact that the power to interpret such imprecise statutory provisions had been vested in administrative organs.

The new legal provision, challenged in the present case, differs most notably from its predecessor in the determination of the existence or non-existence of a particular right or legal relation in civil law be-

ing made via civil proceedings in common courts whose decisions are binding upon tax authorities. The legislator had resort to the civil proceedings' concept of the declaratory judgment, this being in the nature of a binding decision confirming the existence or non-existence of a given legal relation or right. While a court may issue a "classical" declaratory judgment at the request of anyone able to demonstrate a legal interest in the obtainment thereof (see Article 189 of the Civil Procedure Code 1964), the new Article 189<sup>1</sup> of the 1964 Code provides that the declaratory judgment for the purpose of taxation proceedings may be issued upon the initiative of a tax (or fiscal control) authority – providing that such a judgment is necessary to determine consequences for taxation.

The Commissioner for Citizens' Rights brought the aforementioned new provision of the Civil Procedure Code 1964 before the Constitutional Tribunal, alleging infringement of the principles of correct legislation and of citizens' trust in the State and its laws, as stemming from the rule of law clause (Article 2 of the Constitution), as well as the freedom of economic activity (Article 22 of the Constitution), as expressed in an individual's freedom to configure his/her relations under civil law within the limits of the law in force.

In the light of the present judgment, the provisions challenged by the Commissioner for Citizens' Rights are of a procedural, rather than a substantial, nature. The Commissioner has not challenged Articles 199a § 1 and § 2 of the Tax Ordinance Act 1997, even though these are linked to the challenged § 3 thereof. § 1 requires that tax authorities take account of the common intention of parties to a transaction, and the purpose thereof, as opposed to just the literal wording of the declarations of will the said parties have made. Under § 2, where parties conclude a transaction other than the one they are pretending to conclude, the consequences as regards taxation are to be determined on the basis of the former (other or "concealed") transaction.

## RULING

**The challenged provisions conform to Article 2 and Article 22 of the Constitution.**

### PRINCIPAL REASONS FOR THE RULING

1. The Constitution does not engage in direct regulation of the number of organs conducting proceedings with a view to individual cases being ruled upon; and nor does it forbid the division between different organs of activity embarked upon as such cases are considered. Furthermore, the Constitution does not preclude the diversification of the principles underpinning proceedings in the cases of the different organs. However, arising from the principle of a democratic State governed by the rule of law is a general requirement that all proceedings conducted by organs of public authority with the aim of deciding upon an individual case should satisfy the standards of procedural justice.
2. Within the meaning of Article 1 thereof, the Civil Procedure Code 1964 regulates court proceedings in: cases arising from relations in civil, family and custodial, and la-

bour law; social insurance cases, and other cases to which the provisions of the said Code have application by virtue of special statutes (i.e. civil cases). In this regard, the action seeking a declaratory judgment instituted on the basis of the provisions challenged in the present case may be concerned solely with legal relations and rights falling within the scope of the Civil Procedure Code 1964. Accordingly, relations in public law (including those having regard to taxation) that fall outside the scope of jurisdiction of the common courts may not constitute a basis for an action of the aforementioned kind.

3. A final court decision issued in civil proceedings shall be binding, not only upon the parties and the court which pronounced that decision, but also upon other courts, State institutions, public administration organs and – in cases envisaged by statute – other persons (Article 365 § 1 of the Civil Procedure Code 1964). This rule also applies to judgments issued in proceedings initiated on the basis of the challenged provisions: a common court final judgment in such cases is binding upon tax authorities and upon administrative courts examining complaints against administrative decisions made in the course of tax proceedings.
4. The challenged Article 199a § 3 of the Tax Ordinance Act 1997 divides powers as regards the establishment of specific circumstances significant from the point of view of tax law between common courts and public administration organs conducting tax proceedings. The determination of the existence of a legal relation or right in civil, family and custodial, labour or social-insurance law lies within the purview of the common courts. In turn, the making of any other determinations, and the establishment of the consequences thereof by way of administrative decisions, is a competence of the relevant public-administration organs. A common court's decision regarding the existence or non-existence of a particular legal relation or right is not of an autonomous nature, but rather constitutes a basis upon which tax cases may be resolved by the competent authorities. Such a division of competences provides a significant safeguard where taxpayers are concerned. The professional knowledge and competence residing in common-court judges favours correct adjudication in complex matters from the aforementioned branches of law, while civil proceedings ensure just procedure for private entities, as based around the principle of adversarial proceedings and the right to be heard.
5. The challenged provisions relate solely to the procedure by which organs of the public administration may examine taxation cases. These provisions do not regulate matters of substance. They do not refer in any way to either the content of civil law relations or the taxpayers' subjective rights. Furthermore, they in no way limit the autonomy of the parties to transactions in civil law, and nor do they provoke any substantial consequences related to the contents thereof. The provisions in question do not constitute grounds for issuing decisions that would specify duties under public law. For the aforementioned reasons, the challenged legal regulations do not infringe the freedom of economic activity (Article 22 of the Constitution).
6. The Constitution provides that court or administrative proceedings be shaped in such a way that parties are assured of a decision without undue delay. For this reason, it may, in practice, be necessary for the reviewed statutory provisions to be supplemented by appropriate solutions that prevent excessively protracted proceedings.

**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. 22.** Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.