

Judgment of 15th November 2005, P 3/05
**DETERMINING INCOME CONSTITUTING THE BASIS
 FOR THE RIGHT TO FAMILY ALLOWANCE**

Type of proceedings: Question of law referred by a court Initiator: District Court (Labour and Social Insurance Court) for Toruń	Composition of Tribunal: 5 judge-panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Manner of determining income constituting the basis for the right to family allowance for persons paying their income tax in lump-sum form [Family Benefits Act 2003: Article 5(10)]	Principles of social justice Principle of equality Right of families in difficult circumstances to special assistance [Constitution: Articles 2, 32 and 71]

Family allowance is a social benefit aiming to partially cover the expenses for maintaining a child in low-income families. In principle, the right to such allowance exists whenever a family's average monthly income (calculated per person), or the income of a person undergoing education, did not exceed 504 Polish Zloty in the preceding tax year (Article 5(1) of the Family Benefits Act 2003).

Within the meaning of the 2003 Act, in principle, income means actual net income, i.e. total revenue during the tax year minus the costs incurred in earning such revenue, payable income tax and social and health insurance contributions (Article 3 point 1 letter a of the 2003 Act).

The provision challenged in the present case introduced an exception to the principle governing determination of a family's actual income, constituting the basis for granting family allowance. In respect of persons paying income tax in lump-sum form, unrelated to detailed calculation of revenue and incurred costs (cf. the Lump-Sum Income Tax Relating to Certain Revenues Earned by Natural Persons Act 1998), the challenged Article 5(10) of the 2003 Act created the presumption that, for the purposes of determining the right to family allowance, the net annual income shall be calculated as amounting to six times the due lump-sum income tax and health insurance contributions. In practice, this signified that, even where a person applying for child allowance earned an actual annual income below the calculation value indicated in the 2003 Act, the organ determining the right to this allowance (the Social Insurance Institution) was obliged to assume the existence of the income level specified in the 2003 Act. Consequently, whilst lump-sum taxation is generally convenient for the taxpayer, it could have adverse consequences from the perspective of the right to family allowance.

The District Court (Labour and Social Insurance Court) for Toruń encountered such a situation when considering a complaint against a decision of the Social Insurance Institution refusing the right to family allowance in respect of a person whose actual annual income amounted to 11,800 Polish Zloty, whilst their income

calculated following application of the discussed provision was six times the amount of 5,076 Polish Zloty. Accordingly, the challenged provision was decisive in the refusal to grant the allowance. This motivated the Court to refer a question of law to the Constitutional Tribunal, regarding the provision's conformity with the Constitution.

The District Court alleged that, in distinguishing between the treatment of groups of persons raising children, on the basis of their method of income tax payment, the provision infringed the right to assistance from public authorities (Article 71(1) of the Constitution), as well as the principles of equality (Article 32 of the Constitution) and social justice (Article 2 of the Constitution).

RULING

The challenged provision does not conform to Articles 2, 32 and 71(1) of the Constitution and is not inconsistent with Article 71(2) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. Articles 18 and 71 of the Constitution, interpreted in conjunction with Article 30 thereof, envisage an obligation to secure a minimum existence for each family member. When determining such a minimum standard, it should be noted that the discussed legal regulation has its source in Chapter I of the Constitution, devoted to the basic principles of the constitutional system, and that the content of the second sentence of Article 71(1) of the Constitution precisely states that assistance to families in difficult circumstances is intended to be "special" in nature, thereby exceeding ordinary assistance for persons raising children or assistance provided to other persons. The Constitution leaves the legislator a certain margin of discretion regarding determination of the minimum level of consumption of goods and services in the given socio-economic conditions.
2. The right to family allowance should be conditional solely upon the actual material situation of the family. However, the reviewed provision permits this right to be vested in persons earning identical actual income, provided that such income stems from activity which is not taxed in lump-sum form. The normative criterion for determining income, assumed within the challenged provision, limits the right to family allowance in a manner which is neither justified by the function and aim of the constitutional guarantee of protecting the family, nor by the function and aim of family allowances. The reviewed limitation, introduced in order to facilitate the work of relevant organs, which is not a constitutional value, amounts to an infringement of Article 71(1) of the Constitution.
3. The constitutional principles of equality (Article 32) and social justice (Article 2) require equal treatment of entities characterised by identical significant features. However, the challenged provision introduces an unjustified criterion of differentiation, unrelated to the principle governing the granting of allowances and the reasons for introducing such allowances. This leads to an unjust and discriminatory limitation on the opportunities of children finding themselves in difficult material circumstances, solely because their parent

earns income taxed in a lump-sum form.

4. The fact that lump-sum taxation of income is voluntary has no significance on assessing the constitutionality of the reviewed provision. Consent to lump-sum taxation is not tantamount to consenting to be denied the allowance and merely constitutes consent to a particular manner of fulfilling tax obligations. Furthermore, realisation of the right to family allowance is the duty of the State.
5. In light of the principle of subsidiarity, as expressed in Article 72(2) and the Preamble of the Constitution, it would be unjustified to relieve family members of the alimentary (maintenance) obligations incumbent upon them by creating a “competitive” system of family allowances.
6. The obligation to protect and assist the family may not be exclusively realised by the social security system but also through harmonised systemic solutions. The legislator must take particular account of the prohibition on interfering within the domain of family autonomy, including the material sphere (minimum existence), as stemming from Articles 18 and 71, read in conjunction with Articles 47 and 30, of the Constitution. It would, for example, be impermissible to deprive a family of the means necessary to secure the minimum existence of its members by adopting defective taxation constructions and concomitantly offering an allowance to the same family.

Provisions of the Constitution

[Preamble] Having regard for the existence and future of our Homeland [...] We, the Polish Nation - all citizens of the Republic [...] Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on [...] the principle of subsidiarity in the strengthening the powers of citizens and their communities. [...]

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. 18. Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

Art. 30. The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

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 honour and good reputation and to make decisions about his personal life.

Art. 71. 1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

2. A mother, before and after birth, shall have the right to special assistance from public authorities, to the extent specified by statute.

Art. 72. [...] 2. A child deprived of parental care shall have the right to care and assistance provided by public authorities.