Judgment of 13th March 2006, P 8/05

EXCLUSION FROM AGRICULTURAL SOCIAL INSURANCE OF CERTAIN PERSONS ALSO ENGAGING IN NON-AGRICULTURAL ECONOMIC ACTIVITY

Type of proceedings:	Composition of the Tribunal:	Dissenting opinions:
Question of law referred by a court Initiator: Court of Appeal for Rzeszów	5-judge panel	0

Legal provisions under review	Basis of review
Principles and procedure underpinning the exclusion from farmers' social insurance – as of the end of the third quarter of 2004 – of certain persons also engaging in non-agricultural economic activity [Farmers' Social Insurance Act and Certain Other Acts Amendment Act 2004: Article 5]	Rule of law Principles of the social market economy Principle of equality and prohibition of discrimination [Constitution: Articles 2, 20 and 32]

The system of social insurance applying to farmers in Poland is distinct from the general social insurance, applicable to employees and persons engaging in non-agricultural economic activity on their own account. The institution administering farmers' social insurance is the Agricultural Social Insurance Fund (*Kasa Rolniczego Ubezpieczenia Społecznego – KRUS*), whilst the general social insurances are administered by the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych – ZUS*). The separateness of the agricultural system is connected, inter alia, with separate financing principles, beneficial to those insured, and thereby constituting one of the forms of State support for agriculture. Over 90% of the Agricultural Social Insurance Fund's expenditure on retirement and agricultural pensions is financed from the State budget, something that allows it to maintain the compulsory social insurance contributions paid by farmers at a relatively low level. For example, in the first quarter of 2006, the overall agricultural social insurance contribution for a single insured person amounted to 240.80 Polish Zloty (the equivalent of ca. 60 Euro) for the entire quarter, whilst the total of minimum general social insurance contributions for persons engaged in non-agricultural economic activity at the same time amounted to over 500 Polish Zloty (120 Euro) a month.

The legislator assumed that a farmer who is simultaneously employed beyond his/her farm as an employee, or else engages in non-agricultural economic activity, is subject to general social insurance and not agricultural social insurance. However, with a view to facilitating engagement in additional, own-account profit-making activity on the part of farmers not obtaining a fair income from their farm, in the 1990's the legislator allowed for situations in which a farmer hitherto insured under the Agricultural Social Insurance Fund could remain solely subject to agricultural insurance even while engaging in additional non-agricultural economic activity. This provided for the avoidance of the high costs of such additional activity constituted by compulsory contributions payable to the Social Insurance Institution. However, the discussed regulation encouraged some entrepreneurs to evade the obligation to pay contributions to the aforementioned Institution, regardless of the fact that the non-agricultural economic activity engaged in

constituted their main source of income, with the agricultural activity being of a marginal and sometimes only superficial nature.

The Amendment Act 2004 challenged in the present case and amending the Farmers' Social Insurance Act 1990 (which had previously been subject to frequent amendments), aimed to eliminate these and other kinds of abuses contradicting the legislator's intentions. The said Amendment Act 2004 entered into force on 1st May 2004. Article 5a thereof (not challenged in the present case) provided for more stringent preconditions under which agricultural insurance might be continued with, in the event of non-agricultural economic activity being engaged in. Specifically, the required duration of farmers' social insurance directly preceding the taking-up of non-agricultural activity was extended to three years, while further enjoyment of such social insurance became conditional upon the non-exceeding of a given threshold amount as regards the income tax from the non-agricultural activity in the preceding year.

In seeking to adjust the situations applying previously to the new principles, the legislator used Article 5 of the said Amendment Act 2004 (challenged in the present case), to set out preconditions under which farmers also engaged in non-agricultural economic activity remained subject to agricultural insurance. The legislator thereby sought to achieve a kind of "shift" of the dual-occupation farmers who did not fulfil these conditions, from the system of agricultural insurance to that of general social insurance. Pursuant to the discussed provision, a farmer was *ex lege* excluded from agricultural insurance, as of the end of the third quarter of 2004, wherever the income from non-agricultural economic activity was taxed in form other than the lump-sum income tax, or wherever the tax exceeded 2528 Polish Zloty (ca. 630 Euro) for the year 2003. The lump-sum income tax is a simplified form of taxing certain types of economic activity on the part of natural persons (cf. the Lump-Sum Income Tax Relating to Certain Revenues Earned by Natural Persons Act 1998).

"Household members", i.e. family members of a farmer working on the latter's farm, have been treated in the same manner as farmers themselves. Farmers and their household members "cooperating" in the pursuit of non-agricultural economic activity have been treated equivalently to the farmers and their household members actually engaging in such activity.

Doubts arose for the Court of Appeal for Rzeszów as it was considering two appeals against judgments of a court of first instance issued following a challenge against decisions of the Agricultural Social Insurance Fund taken on the basis of Article 5 of the Amendment Act 2004 – as to the conformity of this Article with the Constitution. In these circumstances, the aforementioned Court referred a question of law regarding the matter to the Constitutional Tribunal. In the Court's opinion, the regulation contained within the challenged provision discriminates against certain economic entities on the basis of the form of taxation thereof, as such failing to conform to Article 32 of the Constitution. The discrimination was considered to lie in the fact that, in stipulating preconditions for farmers to remain subject to agricultural social insurance, the legislator erroneously used the form of taxation, as opposed to income, as the relevant criterion. According to the Court of Appeal, the conferment of "finality" upon the deadline for the submission to the Agricultural Social Insurance Fund of the document regarding the form of taxation of the non-agricultural activity and the amount of income tax from this activity for the year 2003, also constitutes an infringement of the principle of equality. In the Court's opinion this signifies unequal treatment of entities

characterised by an identical relevant feature (fulfilment of the preconditions for remaining subject to agricultural insurance).

The Court referring the question of law also contended that the above amounted, *ipso facto*, to an infringement of the freedom of economic activity as one of the principles of the social market economy (Article 20 of the Constitution). According to the Court of Appeal, the entry into force of the Amendment Act 2004 in the course of the tax year prevented farmers engaging in economic activity from choosing their form of taxation; continuation of agricultural insurance required the abandonment of non-agricultural economic activity.

Furthermore, the Court of Appeal challenged the discussed provision from the point of view of the rule of law principle (Article 2 of the Constitution), including the principle of protecting citizens' trust in the State, obliging the legislator to respect pending interests. From such a perspective, the Court referring the question of law challenged, in particular, the lack of appropriate *vacatio legis*, and the determination of 30th September 2004 as the time-limit date by which fulfilment of the preconditions for the continued enjoyment of farmers' insurance by insured persons also engaging in non-agricultural economic activity was to have been demonstrated.

RULING

1. Article 5(1) and (3) of the Amendment Act 2004 (i.e. the requirement – whose non-fulfilment results in termination of agricultural social insurance as of the end of the third quarter of 2004 – for a person subject to agricultural social insurance on the date the Act enters into force and, concomitantly, engaging in non-agricultural economic activity, or cooperating in the pursuance of such activity, to document, vis-à-vis the Agricultural Social Insurance Fund, the form of taxation to which the said activity is subject and, in the event of pursuing it likewise in 2003 – to also document the due tax amount for that year) conforms to Articles 2 and 32 of the Constitution and is not inconsistent with Article 20 of the Constitution.

2. Article 5(2) of the aforementioned Act, insofar as it uses the form of taxation (i.e. taxation in a form other than the lump-sum income tax) as a basis for excluding from compulsory farmers' social insurance (as of the end of the third quarter of 2004) a farmer or household member thereof engaging in non-agricultural economic activity, does not conform to Articles 2 and 32 of the Constitution and is not inconsistent with Article 20 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In the light of its covering the greater part of the costs of a social insurance system that can be regarded as preferential for the insured, on account of the levels of contribution, the public authority has the right to determine and modify preconditions for participation in the said system. The postulate, according to which insurance should only extend to farmers whose principal source of income stems from work on their own farm, may not be challenged on constitutional grounds.

2. There are no constitutional premises that might in principle prevent the legislator from instituting time limits by which citizens applying for certain entitlements must have

done so. The aim of such actions on the part of the legislator could be – as in the case under review – to bring order to a certain sphere of entitlements. The circumstance that the provisions indicated in point 1 of the ruling came into force in the course of a tax year, thereby preventing interested parties from choosing their form of taxation, may not influence the assessment of this regulation from the point of view of constitutional principles of the rule of law (Article 2) and equality (Article 32). The deadline for the submission of the relevant declarations applied to all farmers engaging in non-agricultural economic activity, with no discrimination whatsoever in this respect.

3. However, in the light of the principle of equality, the form of taxation of the non-agricultural economic activity a farmer engages in – i.e. the lump-sum income tax – may not be recognised as the relevant criterion in determining the possibility to continue with agricultural insurance. The provision indicated in point 2 of the ruling therefore led to discrimination against farmers engaging in non-agricultural economic activity taxed on the basis of general principles. Meanwhile, it is not the type of taxing of non-agricultural economic activity (i.e. taxation on the basis of general principles or else lump-sum taxation) that attests to the marginal nature of the said activity, justifying the continuation of agricultural insurance, but rather the level of income actually gained from it.

4. While introduction of the reviewed provision could indeed have resulted in a farmer's decision to terminate engagement in non-agricultural economic activity, Article 5 of the Amendment Act 2004 may not be treated as if it were a prohibition on the pursuit of a certain activity, or an order to engage therein. Article 20 of the Constitution thus fails to constitute an adequate basis of review of the challenged provision.

5. A legal provision (in the present case: the reviewed Article 5 of the Amendment Act 2004) operates within a legal system as long as individual acts applying the law are, or may be, issued on the basis thereof. For the purposes of deciding whether to discontinue proceedings before the Constitutional Tribunal (Article 39(1) point 3 of the Constitutional Tribunal Act), a legal provision may only be said to have lost its binding force when it may no longer be applied to any given factual situation.

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. 20. A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

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.

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.