

Judgment of 16th April 2002, [SK 23/01](#)
**PAYMENT OF TAX LIABILITIES AS A CONDITION
FOR DISPOSAL OF INHERITED PROPERTY**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinion: 1
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Legal provisions under review	Basis of review
Payment of inheritance tax as a condition for effectiveness of disposal of inherited property right [Inheritance and Donation Tax Act 1983: Article 19(6)]	Protection of ownership and succession Principle of proportionality [Constitution: Articles 21, 31(3), 64]

The challenged Article 19(6) of the Inheritance and Donation Tax Act 1983 refers to persons wishing to dispose (alienate or encumber) ownership or another property rights acquired by succession, legacy or prescription. In accordance with the aforementioned provision, where such a person has not paid the tax due on the acquisition of the property in question, a notary may not issue a notarial deed or certify a signature. In consequence, the disposal of property in such cases would be invalid. However, the tax authorities may give permission to make disposition with regard to the property prior to payment of the aforementioned tax.

In the present case, the complainant had inherited real estate and wished to sell it, but the notary refused to issue the deed of sale – on the basis of the challenged provision. The applicant asserted that this provision interfered illegitimately in the right to ownership, as protected by Article 21 and Article 64 of the Constitution, and thereby violated the constitutional principle of proportionality (Article 31(3)).

The judgment was delivered by the majority of votes. *Judge Andrzej Mączyński* presented a dissenting opinion concerning both the ruling and the principal reasons for the ruling.

RULING

Article 19(6) of the Inheritance and Donation Tax Act 1983 conforms to Article 21, Article 31(3) and Article 64 of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. The payment of taxes is one of the citizen's duties towards the State (Article 84 of the Constitution). Everyone – by virtue of benefiting from various forms of public services provided by the State – should contribute to the financing of these services. The payment of tax liabilities contributes to safeguarding constitutionally guaranteed rights and freedoms, including the right to ownership.

2. Public dues are an essential element of the common good, which is guarded mainly by the appropriate State authorities. The responsibilities of such authorities for providing public services may lead to restrictions being placed on a taxpayer's ability to dispose of components of his property.
3. One of the inherent features of a tax, as a legal institution, is that it interferes with the right to ownership and other property rights. Due to their universal character (i.e. their applicability to all subjects) taxes are an almost elemental form of encumbering property rights with specific obligations. As such, they modify these property rights.
4. The normative content of the concept of ownership mentioned in Articles 21 and 64 of the Constitution comprises obligations resulting from the need for owners to pay public dues.
5. The principle of proportionality established in Article 31(3) of the Constitution requires the legislator, on the one hand, to ascertain whether it is really necessary in the specific situation to interfere with the individual's rights or freedoms. On the other hand, it permits only such legal measures as are effective, in the sense that they achieve the legislator's purposes. The relevant measures taken must be necessary, in the sense that they allow realisation of those purposes to such an extent and in such a manner that would not be achievable through other means. At the same time, such measures should cause as minimal a burden as possible for the individual whose rights or freedoms are to be restricted. Therefore any interference in the ambit of the rights of the individual must be reasonably and appropriately proportionate to the purposes, the protection of which justifies the intended restriction.
6. The purposes listed in Article 31(3) of the Constitution, which may justify the State's interference with the rights and freedoms guaranteed by the Constitution, can be summarized in the concept of "public interest". They belong to the sphere of tasks in the competence of public authorities and are also clearly set out in Article 1 of the Constitution. The achievement of these tasks requires appropriate financial means from the State budget, which are obtained first and foremost by means of public taxation.
7. The regulation of the restriction of ownership rights in Article 64(3) does not preclude the applicability of the general principle stated in Article 31(3). Article 64(3) merely affirms both the need for a statutory basis for the restriction of property rights (so-called legal reservation) and delineates the maximum permissible scope of the interference (i.e. the restriction should not violate the essence of the right). Therefore Article 64(3) is not *lex specialis* vis-à-vis Article 31(3), in the sense that the scope of permissible interference indicated by the latter also applies in full to the right to ownership.
8. Formal requirements determined by the legislator, aimed at providing certainty for legal transactions (e.g. the requirement of notarial deed for disposing of real estate), cannot be considered unconstitutional solely for the reason that they restrict the freedom of the owner to dispose of his right (*ius disponendi*).
9. Article 19(6) of the Inheritance and Donation Tax Act 1983, representing the basis of the constitutional complaint, does not prohibit alienating or encumbering things or property rights. The Article merely determines the formal prerequisites for carrying

out a legal transaction in accordance with the law. This is done by prescribing that the notary must be provided with evidence proving either that the tax obligation has been fulfilled or that such fulfilment has been adequately secured. In this respect, the payment of tax is not the only way in which the property may be disposed of since, as an alternative, the responsible tax authorities may grant permission in the absence of such payment. Removing the norm in question from the legal order would jeopardise the fulfilment of inheritance tax requirements at the time the inherited real estate is disposed of (e.g. if the subject has insufficient funds to pay the tax).

10. The challenged provision is not exceptional within the Polish legal order. Tax regulations contain many provisions prescribing sanctions for non-fulfilment, or belated fulfilment, of tax obligations (e.g. Article 19(3)(b) of the Value Added Tax Act 1993, under which a tax payer's right to offset prior VAT payments against his own VAT dues does not apply where he misses the deadline for the submission of monthly VAT declarations). Such provisions, being sanctions encroaching in effect on the taxpayer's assets, are quintessential to tax law.

MAIN ARGUMENTS OF THE DISSENTING OPINION

- Legal provisions restricting constitutionally guaranteed rights and freedoms are only permissible if they are legitimate in the light of the Constitution. Consequently, they do not benefit from an automatic presumption of constitutionality in constitutional conformity challenge procedures before the Constitutional Tribunal.
- The challenged provision restricts the right to freely dispose of ownership and other property rights and, therefore, it falls within the scope of protection of Article 64, in conjunction with Article 21, of the Constitution. This restriction occurs regardless of the fact that the ability to dispose of property is one of the crucial characteristics of right to ownership. The restriction affects a person who has acquired a property right as a result of succession and who, in turn, is often already capable of proving his or her right by means of a legal certificate of inheritance (i.e. confirmation of the acquisition of an inheritance), thus enabling that person to dispose of the acquired right. The fulfilment of tax liabilities is not a prerequisite for the heir to acquire the estate. Nor must it be understood as a precondition for exercising one's right to dispose of property (a constitutive characteristic of the rights belonging to the estate) particularly since disposal of the inherited property right, prior to payment of inheritance tax, is not an illegal transaction as such.
- The legal provision under discussion authorises the notary to carry out transactions stated therein, inasmuch as permission has been obtained from the tax authority, yet it does not contain any indications as to the prerequisites for granting such permission, which amounts to an acceptance of discretion or even arbitrariness on the part of the authority. Experience shows that such provisions encourage corruption.
- The provision in question violates the principle of proportionality. In particular, it does not meet the requirement of necessity, since inheritance tax can be enforced effectively even in the absence of this provision. In this respect no legal lacuna would arise if the challenged provision were to be quashed. Furthermore, under Article 190(3) of the Constitution, the Constitutional Tribunal would be able to delay the coming into force of any possible ruling of incompatibility with the Constitution. The provision also fails to take into account the requirement of effectiveness, since it does not apply to all cases in which tax liability has accrued as a result of an act of inheritance – e.g. it does not apply where the inherited property consists not of real estate but of valuable chattels, which may be disposed of without the need for a notarial deed. Furthermore, this provision is excessively burdensome for the person concerned, when considered in relation to the interest the legislator seeks to protect by virtue of its application. Rather than securing the accomplishment of collecting tax liability payments, as seems to have been assumed *a priori* by the Tribunal, it serves to make the task of collecting taxes easier for the authorities, which is no justification for restricting constitutionally guaranteed rights and freedoms.
- In considering the provision in question to be justified by reference to the notion of “public interest”, the Constitutional Tribunal interprets this notion too widely; the notion of “public interest” was excluded from the wording of Article 31 of the Constitution, and not without reason. Securing the payment of taxes is not a justification which is supported by Article 31(3).

- The fact that Article 84 of the Constitution provides for the possibility of adopting statutes imposing tax liabilities, and that Article 217 defines the necessary content of such statutes, does not imply that all tax law provisions may be justified as conforming to the Constitution by virtue of Article 84.

Provisions of the Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens

Art. 21. 1. The Republic of Poland shall protect ownership and the right of succession.

2. Expropriation may be allowed solely for public purposes and for just compensation.

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. 64. 1. Everyone shall have 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. 190. [...] 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.

Art. 217. The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.