

23.06.2004, E.2004/14, K.2004/84

Date : 23.06.2004
Number : E.2004/14, K.2004/84
Official Gazette : 22.10.2005, 25974
Subject : Proportionality, Delegated rule-making powers, Principles, Taxation, principle of legality /Government, powers.

Headnotes:

When levying taxes on assets, the legislator is entitled to set criteria to reflect the real value of the assets. Calculation of tax on motorised vehicles according to the volume and capacity of the engine, the type of vehicle and number of seats and the vehicle's age is not at variance with the Constitution. It is possible for the legislator to delegate competence to the Council of Ministers over some issues, notably the flexibility to reduce tax on motorised vehicles by a percentage under certain conditions.

Summary:

Law 5035 amended some of the provisions of Law 197 on Motorised Vehicles. Before Law 5035 came into force, vehicle taxation was based on the age and weight of the motorised vehicles. Under the new law, the tax is levied with reference to age and size.

Several deputies applied to the Constitutional Court to assess the compliance with the Constitution of Articles 23, 24 and 50.d of Law 5035, which amended certain articles of the Law on Motorised Vehicles.

A. Amended Articles 5.1 and 6 of the Law 197

Everybody has to pay tax in accordance with their financial resources in order to meet public expenditure. This is set out in Article 73 of the Constitution. These are the principles of generality of taxes and paying taxes according to one's financial resources. The principle of generality requires anybody with financial resources to pay taxes. These taxes are universally levied by reference to expenditure, income or assets.

Taxation according to financial resources means that tax is levied according to taxpayers' economic and personal circumstances. The rationale behind this principle is that those with more resources pay proportionately more than those with fewer resources.

Tax on motorised vehicles is a tax imposed on assets, specifically motorised land, air or sea vehicles. In order to levy a tax on assets, it is necessary to determine their real value. The legal criteria used to determine the value must reflect the level of financial resources and the tax must be levied in a just and balanced way. There may be cases where it is very difficult or even impossible to determine the real value of assets and sometimes problems can arise in collecting the tax. The legislator must have the flexibility to determine criteria so that the value can be calculated as accurately as possible. Laws must be enacted within this field in accordance with constitutional principles.

Articles 5 and 6 of Law 197, as amended by Articles 23 and 24 of Law 5035, establish that the tax must be levied according to the type and age of the vehicle, the number of seats it has, and the engine capacity and power, and also that there is to be no differentiation as between taxpayers with the same vehicles. It was held that these amended articles were not unconstitutional.

The deputies' case was accordingly rejected.

B. Amended Article 5.2 of the Law 197

Under Article 5.2 of the Law, as amended, the Council of Ministers can reduce the tax on motorised vehicles by 4 % if the tax amounts set out in the article exceed the insurance value of vehicles by 6 %.

Article 73.3-4 of the Constitution provides that taxes, fees, duties and other such financial impositions are to be imposed, amended or revoked by law. It also enables the Council of Ministers to make exemptions from tax and to reduce the level of taxes, fees, duties and other such financial impositions within the minimum and maximum limits prescribed by law.

The basic elements of taxation such as evaluation, levying and collection, must be set out clearly within the legislation, to avoid arbitrary administration with an adverse impact on the social and economic lives of individuals. The executive power may in certain circumstances be given competence in fiscal matters, provided that the constitutional principles are observed and that the legal framework within which the executive power is to operate has been defined in the law.

The provision under dispute provides for certain conditions where the Council of Ministers may determine the tax which should be levied, within limits set out in the law. The principles of legality of administration and legal certainty were accordingly not breached and the provision was not unconstitutional. The deputies' case was rejected.