

SVK-2016-1-001

a) Slovakia / b) [Constitutional Court](#) / c) Plenum / d) 04-11-2015 / e) PL. ÚS 14/2014 / f) / g) *Zbierka nálezov a uznesení Ústavného súdu Slovenskej republiky* (Official Digest), 58/2012 / h) CODICES ([Slovak](#)).

Keywords of the Systematic Thesaurus:

- [03.16](#) General Principles - **Proportionality**.
- [03.20](#) General Principles - **Reasonableness**.
- [03.21](#) General Principles - **Equality**.
- [03.22](#) General Principles - **Prohibition of arbitrariness**.
- [03.25](#) General Principles - **Market economy**.
- [04.10](#) Institutions - **Public finances**.
- [04.10.07](#) Institutions - Public finances - **Taxation**.
- [05.01.03](#) Fundamental Rights - General questions - **Positive obligation of the state**.

Keywords of the alphabetical index:

[Income tax](#), minimum / [Entrepreneur](#), person, natural or legal / [Enterprise](#), profit, loss, burden, liquidation / State obligation, competition.

Headnotes:

The constitutional principle of the protection of economic competition does not entail the State's obligation to preserve unsuccessful entrepreneurs from being closed down because loss-making entrepreneurs inevitably leave markets in regular economic competition. It follows that the duty to pay a minimum income tax imposed upon entrepreneurs that make a tax loss does not run counter to the principle of protection of economic competition, even if it leads to liquidation of such entrepreneurs.

Summary:

I. The case originated in a motion submitted by 35 members (hereinafter, «MPs») of the National Council (hereinafter, the «Parliament»), who challenged the constitutional conformity of several provisions of Law no. 595/2003 Coll. on Income Tax.

The provisions in question stipulated that legal-entity entrepreneurs were obliged to pay the minimum income tax (hereinafter, «MIT») for assessment periods in which their real income taxes were lower than the MIT or when they made a tax loss. The sum of the paid MIT exceeding the real income tax could be offset against income taxes in three consecutive assessment periods.

The Members of Parliament argued that these provisions detrimentally affected loss-making or low profit-making entrepreneurs, as the money paid to settle the MIT might otherwise be used for their businesses. In some instances, the duty to pay the MIT could lead to a liquidation of such entrepreneurs. Moreover, the MIT was prescribed only for legal entities, that are corporations which were treated differently from legal entities that are natural-

persons. The Members of Parliament also claimed that the MIT itself could not serve its aim to deter entrepreneurs from evading the income tax, and it was imposed upon all legal entities irrespective of whether they avoided the income tax. This legal framework breached the constitutional requirement of proportionality for the reason that it put an excessive burden on legal-entity entrepreneurs.

Based on these arguments the Members of Parliament contended that the MIT was not in line with the Constitution, which enshrines the principle of protection of economic competition, the right to engage in entrepreneurial activity, and according to which all restrictions on fundamental rights must be applied equally to all similar cases in a manner that safeguards the essence of these rights, while any restrictions must also be aimed at the intended purpose.

II. The Constitutional Court reasoned that Article 55 of the Constitution, according to which the state protects economic competition based on the principles of a socially and ecologically oriented market economy, could not be interpreted as obliging the State to preserve unsuccessful entrepreneurs from closing down. Loss-making entrepreneurs inevitably leave markets in regular economic competition, so the mere possibility of an entrepreneur being put into liquidation due to paying the MIT could not justify the conclusion that the MIT violated the respective constitutional principles. It should be borne in mind that constitutional principles, which have to be respected when passing or applying laws, are not constitutional rights, and that they do not guarantee the right to enter or participate in economic competition. The ideal or absolute economic competition does not exist, as it only takes place on the so-called relevant markets which are distinguished by location, time or traded goods. Various entrepreneurs enter into relevant markets regardless of their legal form, and it is possible that only corporations are present in some of the relevant markets. Thus, the Court opined, the restriction of the MIT to legal entities did not contravene the relevant constitutional principle either.

The Constitutional Court went on to say that the MIT was in line with the right to engage in entrepreneurial activity according to Article 35 of the Constitution. The reason is that the exercise of this right also involved the responsibility for its possibly unsuccessful outcome. The former right could be claimed only within the limits of the laws that execute it (Article 51 of the Constitution), which conform to the Constitution if they represent reasonable means to achieve a legitimate aim and if they are not manifestly disproportionate to this aim. The Court opined that the purpose of the MIT to prevent tax avoidance was legitimate, a reasonable means to achieve this objective, and used in other countries. The rate of the MIT (from 480 euros up to 2 880 euros, dependant on gross annual income) was several times lower than the average income tax in the Slovak Republic. The MIT could not have a chilling effect on entrepreneurs, as the reason for their activity was to gain profit, not to make a loss. The challenged provisions were therefore not disproportionate to their intended purpose.

In the Court's opinion, the distinction between natural persons and corporations with regard to the duty to pay the MIT was neither arbitrary nor discriminatory, due to the fact that natural-persons are economically more vulnerable than corporations.

The Court also addressed the Members of Parliament's objection that the procedural rules had been violated in the course of passing the Law by amending the draft proposed by the government directly in Parliament without the ministries having the opportunity to comment on these amendments. The Court reasoned that Parliament is the sole legislative body in the

Slovak Republic (Article 72 of the Constitution) and as such it has the competence to amend any proposed draft legislation.

For all these reasons, the Court dismissed the motion.

Supplementary information:

One of the judges filed a concurring opinion in which he stated that the reasoning of the decision was too strict concerning the constitutional conformity of levying various fees and deductions. However, this had no effect on the correctness of the decision in the case at hand.

Cross-references:

Constitutional Court:

- no. PL. ÚS 13/97, *Bulletin* 1998/2 [[SVK-1998-2-007](#)].