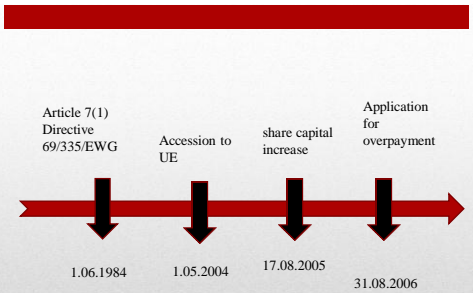




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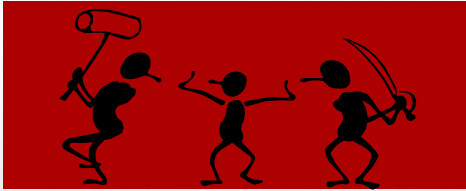
THE DAY AFTER

Judge Dagmara Dominik-Ogrńska, Poland



- In interpreting Article 7(1) of Directive 69/335 ... [as amended by Directive 85/303,] must a national court take account of the provisions of amending directives, in particular Directives 73/79 ... and 73/80 ..., even though those directives were no longer in force when the Republic of Poland acceded to the European Union?

One of the questions to the Court of Justice for a preliminary ruling



TWO OPPOSITE POINTS OF VIEW

the literal interpretation of Article 7(1) of the Directive
Member States shall exempt from capital duty transactions,
other than those referred to in Article 9, which were, as at **1
July 1984**, exempted or taxed at a rate of 0.50% or less.

First

- In Poland in 1 July 1984
- Article 1(1)(3)(d) of the Law of 19 December 1975 on stamp duty
- ‘Stamp duty shall be levied:
on the following acts confirming civil-law transactions:
transactions confirming the establishment of a company by
physical and legal persons which do not carry out their
activities within the framework of the planned economy.’

First

- In Poland in 1 July 1984
- Paragraph 54(1) of the Order of the Council of Ministers of 16 May 1983 on stamp duty states:

‘The stamp duty to be levied on the memorandum and articles of association, as applied to the amount on which duty is charged, shall be:

- (1) 10% on contributions of immovable property or permanent usufruct,
- (2) 5% on all other contributions.’

First

- interpretation of Article 7(1) of the Directive 69/335/EEC should be performed taking into account all amendments in the content of the Directive, and therefore also amendments resulting from Directives 73/79/EEC and 73/80/EEC.

Second

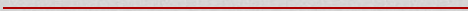


Judgment

on 16 February 2012



- the Republic of Poland, which acceded to the European Union on 1 May 2004, in the absence of derogating provisions in the Act of Accession of that State to the European Union or in any other European Union document, Article 7(1) of Directive 69/335, as amended by Directive 85/303, must be interpreted to mean that the mandatory exemption provided for in that provision applies only to those transactions coming within the scope of that directive, as amended, which, on 1 July 1984, were exempted, in that State, from capital duty or were subject to that duty at a reduced rate of 0.50% or less.



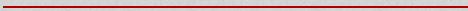


What next?





The decision of the national court



- Evaluation of conformity of implementation of the Directive into Polish law

Court's obligation



Problems?

- 1 July 1984 Poland is the communist country, without the companies, without market economy
 - The judge must adopt as a reference point to the correct implementation, the provision coming from another world
-

- European Court gives to national court the right of interpret the provisions of nonbinding
- The principle is that the taxation must be provided in law not in the order

- This results from the present constitution but not due to the old constitution

constitutionnal problem

If we can find the resolution of this situation?

- 1. Member States shall exempt from capital duty transactions, ~~other than those referred to in Article 9,~~ which were, as at 1 July 1984, exempted or taxed at a rate of 0.50% or less.
- 2. Member States may either exempt from capital duty all transactions other than those referred to in paragraph 1 or **charge duty on them at a single rate not exceeding 1 %.**

Article 7 of the Directive

