



**WYDZIAŁ PRAWA
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„Tax procedure participants’ guarantees in the state of law”

“Gwarancje procesowe uczestników procedur podatkowych w państwie prawa”

SUMMARY

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The subject of the analysis of the dissertation is assessment of the procedural guarantees of participants in tax procedures within the state of law.

The operation of tax authorities within tax procedures, in particular during tax inspections or verification activities, raises many controversies, as such activities result in interference with the rights of entities subject to inspection. The controlled party has a number of procedural rights and guarantees, resulting from both the Tax Ordinance Act and the Constitution of the Republic of Poland.

The practice of applying tax provisions of the Polish Constitution leaves much to be desired. Both the administrative courts and the Constitutional Tribunal make different interpretations of such concepts as a public levy or a fee, thus modifying the scope of application of Art. 84 and Art. 217 of the Constitution. Also, the doctrine sometimes tends to be inconsistent as to what features a given benefit should have in order to be included in the constitutionally separated category of public levies. As the practice of applying the law shows - tax authorities conducting control proceedings have an indifferent attitude towards the Constitutional regulations. Also, the inspected persons themselves and their representatives (plenipotentiaries) rarely refer to the provisions of the Constitution of RP.

For the above reasons, it seems justified to conduct a study on tax constitutional concepts that respects the specific rules of interpretation of the Constitution.

Dissertation consists of five chapters. The first chapter characterizes the position of the Constitution of the RP in the system of law sources, defines the concept of a constitutional standard and the activity of the Constitutional Tribunal in relation to tax law. In this chapter, the author also indicated the relationship between Polish tax law and the provisions of EU law.

The second chapter elaborates on the constitutional framework of tax procedures. This chapter indicates that the first level of authorities' prerogatives (and potential possible violations thereof) are legal sources, in particular the Constitution of RP. The Constitution is source of general principles, such as the principle of a democratic state ruled by law, the right to levy taxes, the principle of the rule of law, the principle

of equality, the right of protection of private life, the inviolability of housing, the right of ownership or the guarantee of freedom of economic activity. These rules, due to their importance, have been discussed by the author in detail.

The third chapter analyzes the various types of tax procedures. Verification activities, tax control, customs and tax control and tax proceedings were discussed therein. It was indicated what rights and obligations taxpayer has in particular tax procedures, as well as what is the role of the plenipotentiaries in this respect.

The fourth chapter analyzes violations of the rights of a party to the proceedings. This chapter describes the prerequisites for conducting a tax audit on the basis of applicable law, the institution of the tax audit notification, the collection and evaluation of evidence, and the completion of the audit.

The fifth chapter concerns modern methods of information processing in terms of protection of taxpayers' rights. In this chapter, the author discussed modern tools used by tax authorities utilized for the purposes of taxpayers' e-control.

At the end of the dissertation, the undertaken considerations were summarized and conclusions were presented, as well as forecasts regarding the application of the Constitution by the tax authorities in the future.

The research problem of the dissertation concerns the provisions on procedural guarantees of a taxpayer in the light of the principles of the Constitution, the achievements of the doctrine, the jurisprudence of the Constitutional Tribunal and the jurisprudence of the Court of Justice of the EU. The method of empirical research adopted by the author consists in the analysis of the legal text relating to verification activities, tax audit, customs and tax audit, tax proceedings, i.e. the Tax Ordinance Act, and to a limited extent the Act on the National Revenue Administration together with the Entrepreneurs' Law Act and with jurisprudence by examining the constitutional standard of the party to tax procedures based on constitutional principles and the jurisprudence of the Constitutional Tribunal and the jurisprudence of the Court of Justice of the EU.

The main conclusions resulting from the analyzes were also included in the conclusion of the work. Nowadays, in view of the complexity and level of complication of tax law, numerous obligations imposed on taxpayers and more frequent abuse of law by tax

authorities, EU mechanisms aiming at protecting taxpayers' rights in relations with tax authorities are of particular importance.

The implementation of procedural guarantees of preventive nature should be seen in the tax authorities' compliance with the obligations arising from the general rules of tax proceedings and the provisions specifying them (hence procedural guarantees are derived from the general rules of procedure). As regards the collection of evidence in tax cases, they are related to the implementation of: the principle of material truth (Art. 122 Ordynacja podatkowa), the principle of completeness (Art. 187 op.), the principle of active participation of the party in the proceedings (Art. 123 op.), through concretization related to with the right to initiate evidence proceedings (Article 188 op) and to express opinions on the collected evidence prior issuing a decision (Article 200 op) and the principle of two instances.

After analyzing the applicable regulations in the field of tax procedures, in particular customs and tax control, it was stated that the entire procedure conducted by the head of the customs and tax office (consisting of: first customs and tax control and then proceedings, and appeal procedure against a decision issued by the head of the customs and tax office), as D. Strzelec rightly states, is structured in a manner that gives the tax administration more extensive powers, while allowing, at the same time (being guided by incorrect assumptions when applying it) to marginalize the entity whose legal and tax situation will be decided, based on the head of the customs and tax office's decision.

Also assessing the functioning of the STIR, JPK or MDR in terms of constitutional and EU provisions from procedural guarantees of the party point of view, the author notices that the legislator has gone beyond the framework outlined by constitutional standards. Visible problems related to the discussed regulations include: STIR's interference with the constitutional right to privacy, secrecy of the algorithms provided for in the Act and compliance of the introduced regulations with the EU standard for registering taxpayers for VAT purposes.

The above conclusions lead to reflection on solutions that would increase the level of protection of parties to tax procedures' rightst. In Poland, there are no solutions such as a taxpayer's rights declaration (charter) or an institution of the Taxpayer's Rights Ombudsman, which would realistically allow taxpayers to protect themselves against the overzealousness of the tax authorities.

