

Is negotiating taxes fair? Alternative methods of tax disputes resolution in light of constitutional standards

The idea of resolving tax disputes – disputes between tax authorities and taxpayers – by way of agreement, is not new. This is how they are resolved in a number of other countries, in particular those of the Anglosphere (the United Kingdom, Canada, the USA, Australia). Also in Poland this idea becomes reality.

Alternative methods of tax disputes resolution in the project encompass: the conclusion of a tax agreement (making a settlement), and mediation, both in the tax proceedings (conducted by a tax authority) and in the proceedings before an administrative court. Amongst these procedures only the third one is regulated in the law in force; the first two procedures were proposed in the draft new Tax Ordinance prepared by the Commission for Codification of the General Tax Law.

A lot of advantages and values can be attained by the amicable, based on a settlement (agreement, consensus), resolution of a tax dispute. Such way of resolving disputes is by all means effective and efficient in terms of resources engaged, satisfying fair interests of both conflicted parties. Still, although methods and procedures of alternative dispute resolution (ADR) are commonly applied in a number of domains, their application in tax matters gives rise to numerous doubts and objections. The bulk of them focus on the issue of compliance of consensual methods in such use with the Constitution of the Republic of Poland. How to reconcile negotiating the outcome of a tax dispute with the principle of democratic state of law, with the principle that tax is imposed by a statute, and the principle of taxpayers' equality before the law? Where is the zone of possible agreement within which such negotiations can take place, if the principle of generality of taxation is binding, under which everyone has to pay the very tax dictated by tax law provisions?

The purpose of the project is to check whether these objections are valid. The analysis will be conducted in three stages. First, standards of constitutional evaluation will be identified, in which perspective the compliance of ADR methods applied in tax disputes with the Constitution should be determined. All these standards, as it is conjectured, are related to justice (substantive and procedural), and they encompass legality, equality before the law, procedural justice (fairness) and tax justice. Second, from the viewpoint of previously established standards the appraisal of ADR methods in tax matters will be performed. Within this appraisal not only will the most important hypothesis be verified: about the compliance of these methods and procedures with the Constitution, but also the conditions of such compliance will be established, concerning both the result of negotiations between tax authorities and taxpayers and the procedure of getting to this result, both the shape of legal regulation governing these procedures and its practical application. Third, the manner in which similar procedures are applied in the United Kingdom will be analysed – with the thought of transferring the UK experiences on Polish ground. Presumably (the validity of this hypothesis will be examined in the project) the ADR in tax matters are applied there in a way compliant with the requirements of justice (reconstructed on the basis of the Polish Constitution and the jurisprudence of the Polish Constitutional Tribunal), and this desirable effect is achieved thanks to the a number of legal institutions and safeguarding mechanisms. These institutions and mechanisms will be established and analysed with the aim of determining whether ones similar to them can be applied in Poland.

The project will allow to determine whether the alleged fundamental obstacle in the functioning of the alternative methods of tax dispute resolution in fact exists – namely, the fundamental obstacle in their very binding force which is their unconstitutionality (provisions cannot be binding where they are incompliant with the Constitution). If there is not such obstacle, the project's results will pave the way to applying ADR in tax matters. Importantly, by examining the question of constitutionality, the project will show if the application of alternative methods of tax disputes resolution can be fair, and if so, what the conditions of such fairness are. At the same time, the sense that it can be fair, and understanding conditions for such fairness, are important to convince taxpayers (both those directly engaged in a dispute being resolved and all others) and officials (holding the position of a tax authority) about their justifiability, and therefore, convince them to use these methods.

More generally, the project's results will serve the purpose of offering better understanding of the standards of justice (fairness) in the light of the Constitution – i.e., comprehension of the requirements dictated by the fundamental law (in their construal provided in the jurisprudence of the Constitutional Tribunal) for tax provisions building tax procedures to be just (fair). In particular, the role played by the standard of procedural justice will be determined and appreciated – this standard referring to the entirety of features that a given procedure should display in its application in practice for a party to it (a taxpayer) to be treated well in it.