

**RADA FUNDACJI**

Halina Bortnowska-Dąbrowska    Marek Antoni Nowicki  
Jerzy Ciemniowski                Teresa Romer  
Janusz Grzełak                    Mirosław Wyrzykowski  
Michał Nawrocki

**ZARZĄD FUNDACJI**

Prezes:                                Danuta Przywara  
Wiceprezes:                        Maciej Nowicki  
Sekretarz:                          Piotr Kładoczny  
Skarbnik:                            Lenur Kerymov  
Członek Zarządu: Dominika Bychawska-Siniarska

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**Andrzej Ruciński against Poland**  
**(Application No. 22716/12)**

WRITTEN COMMENTS

BY

HELSINKI FOUNDATION FOR HUMAN RIGHTS

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**I. INTRODUCTION**

These written comments are submitted by the Helsinki Foundation for Human Rights (hereinafter referred to as the "HFHR"), with its seat in Warsaw, Poland at ul. Zgoda 11 pursuant to a leave granted to the HFHR.

1. This opinion discusses the tax system in Poland, with particular regard given to the institution of damages from the State Treasury for a defective tax decision. The HFHR seeks to describe the Polish reality where taxpayers, after lengthy battles with government agencies, do not receive damages even though the operation of the tax authorities has caused substantial loss to such taxpayers.

## II. PART ONE

2. The first part of the opinion discusses the current state of Polish tax legislation and presents the general framework of the Polish tax system so as to familiarise the reader with the environment in which taxpayers operate and to highlight the many difficulties taxpayers have to face in practice.

### II. 1. Volume and complexity of tax law

3. Polish tax law is characterised by excessive voluminousness, variability, complexity and casuistry. Thousands of pages of acts and regulations, an abundance of tax rates, tax bands, tax deductions, reliefs and legal loopholes, as well as divergent interpretations and judgments of courts are part of the daily life of the Polish taxpayer. One of the major problems is the dispersion of tax law over various legal acts. The substantive law is made up of more than 300 pieces of legislation, including a dozen or so parliamentary acts. It consists of a total of 5789 typewritten pages, of which 1518 pages are accounted for by parliamentary acts, and 4271 by regulations (as at the end of November 2016<sup>1</sup>). Grant Thornton's research suggests that, among all types of substantive law, the income tax law ranks first place for its volume, with as many as 2,700 pages. In second place is excise law (991 pages), and in third VAT (890 pages).<sup>2</sup>

The copiousness of legislation translates, *inter alia*, into time spent on performance of tax obligations in Poland, which far exceeds the European average<sup>3</sup>.

4. The Tax Code (Journal of Laws of 2017, Item 201) provides that tax liabilities may arise in one of two ways:
  - a) on the date of service of the decision of the tax authority determining the amount of the liability;
  - b) on the day of the occurrence of the event to which the origination of the tax liability is linked under the tax act.

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<sup>1</sup> *Podatki w Polsce* (Taxes in Poland), report by Grant Thornton 2017; [http://grantthornton.pl/wp-content/uploads/2017/01/Podatki\\_w\\_Polsce\\_GrantThornton\\_up.pdf](http://grantthornton.pl/wp-content/uploads/2017/01/Podatki_w_Polsce_GrantThornton_up.pdf).

<sup>2</sup> *Ibidem*.

<sup>3</sup> According to the report of PWC and the World Bank (<http://www.pwc.com/gx/en/paying-taxes/pdf/pwc-paying-taxes-2017.pdf>), the average time spent on performance of tax obligations in Poland is 271 hours a year for a taxpayer running a business, which is the third worst result in Europe.

5. The first type of tax liabilities where tax authorities play an active part in their origination involves a rather narrow group of taxes, mainly those that are local taxes (e.g. real property tax charged from natural persons) or constitute proceeds of local governments (e.g. inheritance and donation tax). In general, however, the system of Polish tax law is based on the tax self-calculation mechanism. This means that it is the taxpayer's responsibility to determine, based on applicable tax laws, whether he is liable to tax, to himself calculate the tax amount due and to pay that amount to the bank account of the tax authority. The application of this mechanism obviously generates certain demands addressed to Legislator. Tax law should be clear and obvious enough for the taxpayer to properly interpret it on his own for purposes of calculation and payment of tax. The tax system should be coherent and stable, as well as functional and clearly structured. Such requirements stem primarily from the principle of a democratic state based on the rule of law expressed in Article 2 of the Constitution. In addition, judgments rendered by the Constitutional Tribunal made it possible to formulate certain legal standards which should be followed in the correct process of adopting and regulating taxes: recognition of the constitutional hierarchy of tax law sources, the principle that tax obligations may be determined solely on a statutory basis, and the principle of *lex retro non agit* (whereby tax law may not operate as a sort of a trap for a taxpayer). The principle of trust in the State and its tax law combines the aspects of transparency, clarity and legal certainty. Appropriate correctness, precision and clarity of laws are particularly important when it comes to the protection of the constitutional rights and freedoms of citizens. The clarity of tax law is related to the language of the law. The addressee of a legal norm must know what kind of behaviour has legal consequences and for what reasons. According to the Constitutional Tribunal, statutory tax legislation must always be sufficiently specific, as required by the principle of a democratic state based on the rule of law (which is depicted in following judgements: K. 24/00, U. 3/02, P. 21/02, K. 28/02, K. 38/04, SK 42/05, K. 19/07, P. 28/07, K. 44/07).<sup>4</sup>
6. Analysis of the current legal environment confirms the claim that the tax law currently in force does not meet the above conditions – on the contrary, the Polish tax law

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<sup>4</sup>A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe (Taxes and Tax Law)*, LexisNexis Polska Sp. z o.o., 2013, p. 93.

system is complicated, difficult to interpret and, last but not least, keeps changing all the time<sup>5</sup>. The frequent amendments of tax acts are a symptom of an advanced inflation of tax law. For example, during the seven years from the entry into force of the VAT Act (in 2004), 698 provisions have been changed in it, while Article 2 alone (containing dictionary definitions) has been modified as many as 14 times.<sup>6</sup> In 2013 alone, the VAT Act was amended six times<sup>7</sup>. In 2016, as many as 1784 pages of new legislation directly governing tax matters came into force.<sup>8</sup> The instability of the tax system, which is a consequence of numerous amendments, makes tax law and the whole tax system rather opaque. It is therefore unfriendly to the addressees, and taxpayers are often unable to familiarise themselves with currently prevailing law and may be at risk of default and penalties from the tax administration.

7. It is undeniable that clear tax regulations are of prime importance for the voluntary fulfilment of tax obligations. Recognising the weakness of the current system, lawmakers introduced official tax interpretations which were intended to help taxpayers understand the content of tax regulations applicable to them. Their essence was to guarantee taxpayers the right to ask the tax authorities for an interpretation of a specific tax provision applicable to their individual case. In the years 2008 to 2016, 301,946 individual interpretations were issued<sup>9</sup>, out of which 7% to 9% were challenged before administrative courts<sup>10</sup>. The fact that the treasury service issues more than 33,000 individual interpretations a year demonstrates the very high demand for clarification of ambiguity and inconsistencies in tax law. The institution of interpretation of tax law does not, however, affect the implementation of the principle of precision of tax law. It is a tool that minimises the effects of the legislative imperfection of these laws<sup>11</sup>.

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<sup>5</sup> Polish Ombudsman's letter to the Minister of Finance, dated 3 June 2013, ref. No. RPO-735419-V/13/ST, 03.06.2013.

<sup>6</sup> EY, *System stworzony od podstaw, czyli prawdziwa historia 25-lecia polskich podatków* (System built from scratch, or the true story of twenty-five years of Polish taxes), 2014.

<sup>7</sup> *Ibidem*.

<sup>8</sup> *Podatki w Polsce* (Taxes in Poland), report by Grant Thornton 2017; [http://granthornton.pl/wp-content/uploads/2017/01/Podatki\\_w\\_Polsce\\_GrantThornton\\_up.pdf](http://granthornton.pl/wp-content/uploads/2017/01/Podatki_w_Polsce_GrantThornton_up.pdf).

<sup>9</sup> *Informacja z działalności Biur Krajowej Informacji Podatkowej w 2016 r.* (Information about the operations of the Offices of the National Tax Information in 2016), Leszno 2016

<sup>10</sup> [http://orka.sejm.gov.pl/WydBAS.nsf/0/06404514E59D4DC8C12580DB003D21DF/\\$file/Analiza\\_BAS\\_2017\\_144.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/06404514E59D4DC8C12580DB003D21DF/$file/Analiza_BAS_2017_144.pdf).

<sup>11</sup> *Ocena skutków wprowadzenia i stosowania instytucji indywidualnych interpretacji przepisów prawa podatkowego* (Evaluation of the effects of implementation and application of individual interpretations of tax law), Jacek Kulicki, Biuro Analiz Sejmowych (Sejm Office of Analysis), No. 3, 2017

8. The amount of the tax regulations, the frequency of their change or the number of interpretations issued affect the way taxpayers perceive the quality of tax law. Research and analyses indicate that the overwhelming majority of taxpayers have a very bad opinion not only about the quality of legislation directly related to tax assessment, but also about the quality of institutions of the whole tax system (including the organisation and work of tax authorities)<sup>12</sup>. The negative evaluation of Polish tax legislation is also confirmed by the results of a survey of taxpayers conducted by the Parliament Office of Analysis. They show that the main causes of tax problems for Polish taxpayers are primarily: a) unclear content of tax provisions - 56.16%, b) complexity of procedures - 23.83%, c) inadequacy of terms - 8.39%.<sup>13</sup>

## **II. 2. Verification of taxpayers' settlements (as of the end of February 2017)**

9. As a consequence of adopting a tax self-calculation system, the tax authorities have become involved in verification of taxpayers' activities. As of the end of February 2017, there were two separate divisions of tax authorities in the Polish tax system which checked the correctness of taxpayers' settlements<sup>14</sup>, namely tax offices and fiscal control offices, with mutually overlapping powers. Each of these divisions acted according to a separate procedure (although a substantial part of the procedure of the fiscal control offices drew on the procedure defined in the Tax Code, which is appropriate for tax offices). In addition, the then-existing procedures had various phases (audit of tax books, tax audit, tax proceedings, fiscal proceedings), some of which were optional for different bodies.
10. Although tax acts define time limits within which verification proceedings conducted by a tax authority should be completed (in principle, they should be completed within two months in each of the first and second instances), such time limits are of an indicative nature only, and exceeding them does not trigger

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<sup>12</sup><http://biznes.interia.pl/firma/news/krytyczna-ocena-prawa-podatkowego,2117727,1852>

<sup>13</sup> *Ocena skutków wprowadzenia i stosowania instytucji indywidualnych interpretacji przepisów prawa podatkowego* (Evaluation of the effects of implementation and application of individual interpretations of tax law), Jacek Kulicki, Biuro Analiz Sejmowych (Sejm Office of Analysis), No. 3, 2017

<sup>14</sup> There is also an independent function of local government tax authorities responsible for local taxes

significant legal consequences. In practice, such proceedings last months or even years before a second-degree authority issues a decision.

### **III. PART TWO**

11. The second part of the opinion illustrates the stages that the taxpayer must go through to receive damages from the State Treasury for a defective tax decision. This analysis focuses primarily on a problem-based approach to the issue.

#### **III. 1. Fiscal audit, tax audit and tax proceedings**

12. In general, fiscal (tax) audit begins the process of checking the correctness of a taxpayer's settlements with the tax office. The audit is carried out by the tax authority of the first instance which is competent for the taxpayer concerned and for the settlement of the specific tax. Its initiation does not necessarily indicate that tax authorities suspect the existence of tax irregularities.

In practice, a tax audit is the first procedure initiated by tax authorities to verify the correctness of tax settlements.

On the other hand, if tax officials find certain irregularities in the settlements of the auditee, then tax proceedings are initiated on the basis of the audit results. The purpose of the tax proceedings is to settle a particular tax case, usually by issuing a tax assessment decision (determining the amount of the tax liability, tax arrears or overpayment) or decision which finish the tax proceeding without assessment (for instance decision about redemption of the proceeding). .

13. Tax proceedings in the Polish legal system are a particular type of administrative proceedings which should follow the general principles set out in Articles 120 to 129 of the Tax Code, such as: the principle of legalism, the principle of conducting proceedings in a manner inspiring taxpayers' trust in the state authorities, the principle of active participation of parties and the principle of expeditiousness of

proceedings.

### **III.2. Proceedings before administrative courts - obtaining of an adjudication on illegality**

14. A taxpayer who disagrees with a decision concluding the aforementioned tax proceedings issued in second instance can submit a complaint via the tax authority that issued the decision to the court of first instance, i.e. to the Voivodeship Administrative Court (hereinafter referred to as the "VAC").

Administrative courts oversee the activities of public administration bodies. Their tasks include, but are not limited to, analysis of a given tax decision in terms of its compliance with applicable regulations (both substantial and formal). As a matter of principle, a case before an administrative court should end as soon as possible. Often it is resolved at the first hearing. However, the waiting time for a hearing before the VAC, according to our experience, ranges from 6 to 12 months (depending on the voivodeship).

15. The VAC as a rule does not run an evidence proceeding but solve the case on files collected during the tax proceeding. No witnesses are heard and no opinions of court expert witnesses are requested before the administrative court (such evidence, if needed to settle a tax case, should be taken during the tax proceedings (e.g. tax office, fiscal control office); if not taken, the decision is likely to be reversed by the court).

16. The VAC does not carry out its own tax proceeding, which means that if it diagnoses the mistakes during the tax proceeding, it can only reverse a tax decision and refer the case back for reconsideration by the tax authority (unless the mistakes refer to pure misinterpretation of the substantive law and the case can be solved solely on it). The VAC's ruling, which concludes the proceedings in a case and can take the form of a judgment or a decision rejecting the complaint, can be challenged by way of a cassation complaint filed with the Supreme Administrative Court (second instance) (hereinafter referred to as the "SAC").

17. A cassation complaint is filed via the VAC and must meet specific formal requirements, including, but not limited to, the need to properly formulate charges. In tax matters, an appeal should be filed by an advocate, legal counsellor or tax advisor. Again, the HFHR's experience shows that the average waiting time for a hearing before the SAC exceeds two years.

17. The SAC can resolve a cassation complaint in one of the following ways. It dismisses the cassation complaint if the appeal has no justified grounds or if the challenged ruling is nevertheless in conformity with the law despite incorrect justification.

If the cassation complaint is granted, the SAC reverses the contested verdict in its entirety or in part and refers the case back for reconsideration to the voivodeship administrative court that issued the ruling. On the other hand, the SAC decides on the merits of the case if it is only substantive law that has been violated and not the procedural law that might have a material impact on the outcome of the case.

### **III. 3. Statistics**

18. Tax assessment proceedings are held in two instances; in the event of a dispute, the proceedings end with a decision issued by the second instance authority, which may be challenged before the administrative court (also in two instances). The number of appeals and disputes between taxpayers and tax authorities is further evidence of the quality of tax law:<sup>15</sup>.

19. And so, in **2010**, 12,753 complaints about the acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,712 were settled, of which 25% were granted (plus 51 complaints against decisions of Directors of Tax Offices, of which 9 were settled, of which 44% were granted in favour of the taxpayer).

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<sup>15</sup> Cf. activity reports of the SAC and the VAC available from <http://www.nsa.gov.pl/sprawozdania-roczne.php>.



20. In **2011**, 11,787 complaints about acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,886 were settled, of which 29% were granted (plus 178 complaints against decisions of Directors of Tax Offices, of which 53 were settled, of which 22% were granted in favour of the taxpayer).
21. In **2012**, 10,898 complaints about acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,443 were settled, of which 26% were granted (plus 92 complaints against decisions of Directors of Tax Offices, of which 49 were settled, of which 16% were granted in favour of the taxpayer).
22. In **2013**, 11,318 complaints about acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,800 were settled, of which 30% were granted (plus 102 complaints against decisions of Directors of Tax Offices, of which 58 were settled, of which 16% were granted in favour of the taxpayer).
23. In **2014**, 11,952 complaints about acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,337 were settled, of which 27% were granted (plus 156 complaints against decisions of Directors of Tax Offices, of which 66 were settled, of which 21% were granted in favour of the taxpayer).
24. In **2016**, 10,775 complaints about acts and activities of Directors of Tax Chambers were filed with Voivodeship Administrative Courts, of which 7,178 were settled, of which 18% were granted (plus 85 complaints against decisions of Directors of Tax Offices, of which 59 were settled, of which 12% were granted in favour of the taxpayer).

25. Judgments of the VAC in tax matters can be the subject of cassation complaints (filed by both parties).

<b>Year</b>	<b>Number of cassation complaints filed with the SAC in tax cases</b>
2010	4899
2011	6192
2012	6166
2013	7714
2014	7789
2015	7785
2016	6995

#### **III. 4. State Treasury's liability for damage caused by public authority**

26. The general grounds for the State Treasury's liability for unlawful acts or omissions in the exercise of public authority are provided for in Article 417 of the Civil Code<sup>16</sup>.

27. The State Treasury is liable for damages under Article 417 of the CC when three statutory conditions are jointly met: (i) the unlawfulness of the act or omission of the perpetrator, (ii) the damage and (ii) the normal cause-and-effect link

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<sup>16</sup> Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 1964, No. 16, Item 93 as amended), hereinafter referred to as the “CC”

between the perpetrator's illegal conduct and the damage<sup>17</sup>. This article finds application or limited application only if lawmakers have not specifically defined the consequences of certain activities of public authorities in a separate regulation.<sup>18</sup>

28. Article 417<sup>1</sup> of the CC, which regulates only selected aspects of tortious acts of public authorities being *lex specialis* with respect to Article 417 of the CC, is of particular importance in this context.<sup>19</sup> According to Article 417<sup>1</sup> § 2 of the CC, which is relevant in seeking repair of damage caused by final and binding judgments or final tax decisions, if the damage has been caused by issuance of a final and binding court judgment or a final decision, its redress may be sought only after it has been acknowledged in appropriate proceedings that the judgment or decision contradicts the law unless otherwise provided by separate provisions.

29. Article 417 § 1 of the CC does not differentiate torts based on the scale or degree of non-compliance with the law, and in particular it does not provide that the qualification of the activities of a public authority as unlawful should be limited to gross violation of law only. The condition of illegality must be understood in a manner consistent with civil law, i.e. as a conflict between the act/omission and the legal order defined *sensu largo*, which excludes the possibility of any differentiation as to the scale or degree of unlawful conduct<sup>20</sup>. However, there are rulings where the court argued that the only basis of liability of the State Treasury under Article 417 of the CC can be unlawfulness consisting in a *manifest* and blatant error of law which is unquestionable and of an *elementary* and *qualified* nature<sup>21</sup>.

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<sup>17</sup> Judgment of the Appellate Court in Szczecin, rendered on 20 December 2012, I ACa 679/12, LEX No. 1289571.

<sup>18</sup> A. Olejniczak, *Kodeks cywilny. Komentarz. Tom III. Zobowiązania - część ogólna, wyd. II*, (Civil Code. Commentary. Volume III. Obligations – general part. 2nd edition) ed. A. Kidyba, Warszawa 2014, p. 428.

<sup>19</sup> G. Karaszewski, *Kodeks cywilny. Komentarz*, (Civil Code. Commentary) ed. J. Ciszewski, Warszawa 2014, p. 701.

<sup>20</sup> Judgment of the Supreme Court of 19 April 2012, IV CSK 406/11, LEX No. 1169347.

<sup>21</sup> Judgment of the Regional Court in Gdańsk, rendered on 14 November 2012, III Ca 140/12, LEX No. 1714938.

### III. 4. Proceedings before common courts to obtain damages

29. The taxpayer, acting as a plaintiff before a common court of law, must therefore prove that he has suffered damage as a result of the administrative authority having issued a defective non-binding tax decision. Each time, in order to establish the existence of a normal cause-and-effect link between a defective decision and the claimed damage, it is necessary to assess whether the injury would also have occurred if a lawful decision had been made<sup>22</sup>. This requires the preparation of extensive evidentiary material. In practice, this is very complicated because the taxpayer must provide data which clearly shows that, for example, reduced turnover is a consequence of a faulty tax decision rather than a bad economic situation. The burden of proof rests on the taxpayer. He is confronted with the State Treasury Solicitors Office representing the State Treasury. Unlike in tax proceedings, where the authority (at least theoretically, while the case law puts strong emphasis on the special obligations of the taxpayer in the evidence-taking procedure) is obliged to comprehensively clarify the matter in civil law proceedings, the authority may limit itself to challenging the pieces of evidence produced by the taxpayer<sup>23</sup>.

30. Although from a formal point of view the opponents in a court action are equal, in practice the State Treasury Solicitors Office is in a privileged position. It is a specialised body, extremely well-prepared and with in-depth experience in handling actions for damages from the State Treasury. And the plaintiff is a taxpayer who often does not have sufficient funds to spend on a highly qualified attorney who is well-versed in the very specific world of actions for damages from the State Treasury. The institution of damages from the State Treasury for faulty tax decisions is too complicated for a taxpayer to take advantage of without specialist assistance<sup>24</sup>. In practice, this leads to a situation where damages from the State Treasury are claimed

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<sup>22</sup> Judgment of the Supreme Court of 6 February 2004, II CK 433/02, Lex No. 163987.

<sup>23</sup> H. Litwińczuk, *Odpowiedzialność odszkodowawcza za wadliwą decyzję podatkową* (Liability for Damages for a Defective Tax Decision), "Studia Iuridica 2007", No. 47, p. 184.

<sup>24</sup> A. Drywa, *O efektywności procedury dochodzenia przez podatnika odszkodowania za niezgodne z prawem decyzje podatkowe*, [w:] *Prawo finansowe wobec wyzwań XXI wieku* (On the Effectiveness of the Taxpayer's Procedure for Seeking Damages for Unlawful Tax Decisions, [in:] *Finance Law Facing Challenges of the 21<sup>st</sup> Century*), ed. J. Gliniecka, Warszawa 2015, p. 251.

by large companies that can afford the high procedural costs, while smaller entities do not choose to file for damages or have very little chance of winning<sup>25</sup>.

31. In addition, there is a great danger that the taxpayer will not receive the required damages even if he is supported by a professional attorney and provides a wealth of evidence to demonstrate the damage suffered and the value of such damage<sup>26</sup>. This results from the fact that actions for damages are extremely complicated and thus difficult to handle, mainly due to the lack of uniform interpretation and their specificity<sup>27</sup>.

### III. 6. Statistics

32. Below we present statistics showing the number of cases concerning the liability of the State Treasury for faulty tax decisions that have been recorded by the State Treasury Solicitors Office.

Number of cases recorded in the years 2010-2016	2010	2011	2012	2013	2014	2015	2016
112	25	20	17	14	13	10	13

*Source: data provided by the State Treasury Solicitors Office in response to requests for access to public information*

<sup>25</sup> K. Koźmiński, *Odpowiedzialność odszkodowawcza władzy publicznej w poglądach sędziów* (Public Authority's Liability for Damages in Judges' Opinions), "Infos BAS 2015", No. 21, p. 3.

<sup>26</sup> *Ibidem*, p. 4.

<sup>27</sup> Based on empirical research involving surveying and free discourse techniques in in-depth interviews of judges, source: *Ibidem*, p. 2.

Outcome of the case	Total in the years 2010-2016	2010	2011	2012	2013	2014	2015	2016
Other	14	4	2	3	1	2	1	1
Partly lost by the State Treasury/more than 50% of the claim awarded	1	0	0	0	0	1	0	0
Lost by the State Treasury	2	1	0	1	0	0	0	0
Partly won by the State Treasury (>=50% of the claim)	5	1	0	1	0	0	2	1
Won by the State Treasury	94	10	15	20	15	12	13	9

*Source: data provided by the State Treasury Solicitors Office in response to requests for access to public information*

33. In the context of our discussion, it is worth comparing the statistics presented above with the statistics showing the number of complaints against acts and activities of administrative authorities (see point 3 of the opinion). There is a significant disproportion between the number of complaints that are filed with administrative courts and the number of judgments that reverse tax decisions in favour of the complainant, i.e. the taxpayer, on the one hand, and the number of actions for damages against the State Treasury, on the other. It can be concluded that in most cases the taxpayer stops at the stage where he succeeds in eliminating a defective tax decision from the legal system. The statistics also indicate that, out of the very small group of cases brought in connection with damage caused by a tax decision, most of the actions for damages from the State Treasury are lost by the taxpayer. When analysing the procedure for seeking damages from the State Treasury and the statistics showing the

number of cases recorded by the State Treasury Solicitors Office, one can infer that the institution of filing a claim for damages from the State Treasury for a faulty tax decision is practically of marginal importance.

34. This situation should be viewed very negatively. The basic idea behind the compensation related to the exercise of public authority is that the actions of a public authority, which are by their nature taken in the general interest, should not lead to a situation where the entire risk of damage is transferred to an individual<sup>28</sup>. Unfortunately, the analysis of the institution of the State Treasury's liability for damages involving defective tax decisions indicates that the risk of damage in most cases burdens the taxpayer. This situation is unacceptable in a democratic state based on the rule of law and grossly violates the principle of the citizen's trust in the state – the principle which is the key element of constitutional axiology, and the principal rule of procedure for all public administration authorities<sup>29</sup>.

#### IV. SUMMARY

35. The above-mentioned mechanisms and procedures clearly point to the weaknesses of the Polish tax system. Outstanding specialists in tax law theory as well as tax practitioners have made a number of proposals aimed at reforming the current tax system<sup>30</sup>. Issues related to the reform of the tax system with a view to its simplification, the removal of barriers or the facilitation of settlements are also regularly brought up in public and political discourse. In our opinion, the authorisation of the actual enforcement of the tax authorities' liability for errors and compensations for taxpayers' losses would give the necessary momentum to intensifying work on the reform of the system, which would help avoid situations such as that of Mr Andrzej Ruciński. This can be done through eliminating, or signalling the lack of acceptance of, legal barriers that prevent or significantly impede the ability to enforce claims

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<sup>28</sup> M. Safjan, K. Matuszyk, *Odpowiedzialność odszkodowawcza władzy publicznej* (Public Authority's Liability for Damages), Warszawa 2009, p. 134.

<sup>29</sup> A. Błaś, *Zasada zaufania obywatela do państwa*, [w:] *Księga jubileuszowa Profesora Marka Mazurkiewicza* (Principle of the Citizen's Trust in the State, [in:] Professor Marek Mazurkiewicz Anniversary Book), ed. R. Mastalski, Wrocław 2001, pp. 203-204.

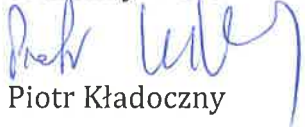
<sup>30</sup> Cf.: *Biała księga problemów podatkowych - Podsumowanie akcji „Uprośćmy podatki”, prowadzonej przez redakcję „Rzeczpospolitej” w okresie luty-czerwiec 2013 r.*, (White Book of Tax Problems – Summary of the “Let's Simplify Taxes” Campaign Run by the Editors of the *Rzeczpospolita* Daily), A. Gomułowicz, *Podatki a etyka* (*Taxes vis-à-vis Ethics*), p. 137.

against the State Treasury, whether on the case law level or otherwise. The unclarity of tax regulations cannot operate as an alibi for the party who is a legislator and a creditor at the same time in respect of faulty decisions. In addition, as of 1 January 2016, the principle of *in dubio pro tributario* was introduced into the Tax Code. Representatives of the legal community underline that it was merely a confirmation of the existing principles arising from the Constitution and the general principles of the tax system. From the perspective of our case, it means that where the interpretation of law does not lead to unambiguous results, doubts should be eliminated at the stage of issuing a tax assessment decision. In other words, the existence of ambiguity, discrepancies, etc. in the interpretation of tax law should operate as the grounds for issuing a decision in the taxpayer's favour and not as a statutory defence in a subsequent action for damages when the defective tax decision has inflicted damage on the taxpayer.

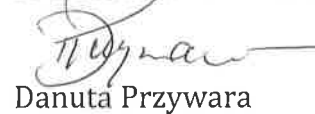
36. When the tax authority (as a representative of the State Treasury) decides to issue a tax assessment decision in the above-mentioned contentious situation despite the doubts that have arisen in this case, it should expect or at least be aware of the consequences of full responsibility for the mistakes made. In this respect, the requirement to fulfil additional criteria to have the guilt of the State Treasury recognised and the damages paid to the taxpayer has in fact a blocking function. Undoubtedly, it is another unjustified burden for the taxpayer, on top of the mentally, physically and financially exhausting disputes which last for years.

On behalf of Helsinki Foundation for Human Rights,

Secretary of the Board

  
Piotr Kładoczny

President of the Board

  
Danuta Przywara

