

RESEARCH ARTICLE:

Activities of local fiscal bodies and the process for hearing of taxpayers

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ABSTRACT

Beyond material needs and without being subordinated to human rights, public policies can be seen as a plan to achieve human rights. On the other hand, the multitude of normative acts, the bureaucracy reflected by the significant increase of the forms through which the information is collected, as well as the main objective of the tax authorities, respectively the collection of the revenues to the budget, makes it increasingly difficult to achieve the objectives of the field human rights. In order to respect the right to be heard and to a fair trial, but also the uniform application in Romania of the requirements of the fiscal legislation, we consider that some of the activities of the local fiscal bodies, such as: control of fiscal receivables, forced execution and settlement of appeals, must be organized by associating communes and/or cities at county level, so that they can cover their expenses.

KEYWORDS: *hearing, right to be heard, administration, fiscal bodies, fiscal receivables.*

1. Introduction

Concerns over human rights can be observed throughout the history of each state. For example, Solon, called <the first state man of Europe> chose the diallektes (arbiter) in 594/593 BC, which in a time of profound social-political crisis created the premises of classical Athenian democracy, achieved a compromise between conflicting social strata, limited gentile right to private property, abolished debts, canceled mortgages on land, and forbidden the sale of slaves of insolvent debtors¹. Another example is the Spartan king Agis IV (244-241 BC), who under the influence of the stoic philosopher Sphairos of Borysthene, has initiated a program of radical social reforms such as: giving citizens full rights, re-introducing education and traditional austere way of life². This phenomenon can also be seen in the work of some philosophers and jurists of the time, such as Plato, Aristotle, Confucius, Kant, Montesquieu, Paulus, Ulpian and others. Initiatives for the promotion of human rights and ideas on their protection are mainly found in documents of a constitutional nature; the most famous document of this kind was the Magna Charta Libertatum authenticated with the Great Seal on June 15, 1215, by King John Lackland. On July 4, 1776, the Statement of Independence of the United States of America, represented by the United States of America constituted in the General Congress, was approved, a document which states that all men are created equal and that among the inalienable rights with which they are endowed by their Creator, include: life, freedom and the right to happiness. The Declaration of Human and Citizen Rights adopted in August 1789 by the representatives of the French people

constituted in the French National Assembly, stated that: people are born and remain free and equal in rights. Such documents are also known in other states, whose citizens, in order to remove the abuses of the public authorities, have decided to unite with the same desire, that of freedom without abuse. For the protection of the human being, numerous attempts have been made, and the process of their crystallization is better noticed after the Second World War.

2. Theoretical aspects

Beyond material needs and without being subordinated to human rights, public policies can be seen as a plan to achieve human rights. On the other hand, the multitude of normative acts, the bureaucracy reflected by the significant increase of the forms through which the information is collected, as well as the main objective of the tax authorities, respectively the collection of the revenues to the budget, makes it increasingly difficult to achieve the objectives of the field human rights.

The problems of social life management, those of achieving a high performance of social activity cannot be treated empirically but directly related to social action, given the specificity in which individuals manifest themselves as active personalities within the social structure. This involves investigating and scheduling the social action of people in direct relation to that specific framework in which individuals manifest and integrate³. John Locke said that “people being free from nature, equal and indifferent, nobody can get them out of this state to be subjected to the political power of another without their own consent through which they can agree with other people to join in society to preserve them, to their mutual safety, to the

¹ Matei, H.C. 2007. *The Encyclopedia of antiquity*, 6th edition, Bucharest, Romania: Meronia, p. 299.

² *Ibidem*, p. 15.

³ Pătulea, V. 2010. *Treaties of legal and judicial management*, Bucharest, Romania: IRDO, p. 25.

peace of their lives, to quietly take advantage of what is their own and to be better protected from the insults of those who want to harm them”⁴. Therefore, justice and freedom have been and will remain the fundamental values needed to build a democratic society.

The atrocities committed in the two world wars have made some states associate with each other so that peace can survive, and human rights and freedom are respected. Thus, the Charter of the United Nations was ratified on October 24, 1945, through which the participating states reaffirmed: their belief in the fundamental human rights; the maintenance of justice and compliance with obligations arising from the treaties and other sources of international law; promoting social progress. Subsequently, on December 10, 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights⁵ – document viewed as a common standard in the field that all people must respect. Romania joined this approach on December 14, 1955 when, at its 555th plenary session, it was admitted to the UN⁶ by the General Assembly through Resolution A/RES/995 (X) at its 555th plenary session⁷. Among the key objectives to which the international organization attaches a particular significance are those directly related to human rights, democracy and good governance.⁸ Thus, at international level, among the objectives Romania has undertaken to fulfill, it has been: promoting and encouraging the respect for human rights and fundamental freedoms for all, regardless of race, sex,

language or religion; the maintenance of justice and compliance with obligations arising from the treaties and other sources of international law; promoting social progress.⁹ Based on the United Nations Charter and the Universal Declaration of Human Rights, States have adopted the following standards in the field of human rights: internationally - the International Covenant on Civil and Political Rights (1966) in force on 23 March 1976 and the International Covenant on Economic, Social Rights and Cultural (1966) in force on January 3, 1976, ratified by Romania by the Decree of the State Council no. 212 of October 31, 1974¹⁰; at the level of the Council of Europe - Convention for the Protection of Human Rights and Fundamental Freedoms (1950) in force since 1953, ratified by Romania through Law no. 30/1994¹¹ and the European Social Charter (revised); at the level of the Organization for Security and Cooperation in Europe - Final Act of the Conference for Security and Cooperation in Europe, done at Helsinki on 1 August 1975¹², The Charter of Paris for a New Europe¹³ (1990) and the European Security Charter¹⁴ (1999); at the level of the European Union - the Charter of Fundamental Rights of the European Union (2000), as amended in 2007 in Strasbourg¹⁵, legally binding on 1 December 2009. The documents described above are the fundamental standards underpinning the creation of many instruments and mechanisms for the promotion and protection of human rights, addressing various issues that fall within the sphere of competence of human rights.

⁴Locke, J. 1999. *Essay on civil governance in the fundamentals of modern political thought*, Iasi, Romania: Polirom, p. 65.

⁵https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/rum.pdf (accessed on 1 April 2019)

⁶United Nations - an association of states that advocate for the maintenance of international peace and security.

⁷[http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/995\(X\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/995(X)) (accessed on 1 April 2019)

⁸Moroianu-Zlătescu, I. 2007. *Human rights: an evolving system*, Bucharest, Romania: IRDO, p. 201.

⁹Charter of the United Nations Published in Brochure no. 0 of 26 June 1945

¹⁰Published in OB no. 146 of 20 November 1974.

¹¹Published in Official Gazette, I no. 135 of 31 May 1994.

¹²Published in OB no. 92 of 13 August 1975.

¹³Published in Official Gazette, I no. 181 of 9 September 1991.

¹⁴Published in Broșura no. 0 of 1 January 2001.

¹⁵Published in OJEU, C 303 of 14 December 2007.

As regards the hearing, the Commission of the European Communities has stated that observance of the rights of the defence requires that any addressee of a decision which significantly affects its interests must have the right to be heard, which means to be able to make known its point of view. For the exercise of the right to be heard, it is necessary to allow a reasonable period to enable the addressee to submit its observations¹⁶. In addition, despite the differences between the administrative and legal systems of the Member States, Resolution (77) 31, adopted on 28 September 1977 by the Committee of Ministers of the Council of Europe, at the 275th Ministerial Conference, lays down the following rules: in the case of the right to be informed, the person concerned shall, at his request, be informed, before the adoption of an administrative act by appropriate means, of all the factors available and relevant to that decision; in relation to the right to be heard, the public authority shall ensure that the person concerned has the opportunity to submit facts, arguments and to request evidence in the case of any administrative act likely to affect his rights, freedoms or interests. At the same time, the administrative authority must inform the data subject, in a timely manner and in a manner appropriate to the case, of the rights specified above. The Charter of Fundamental Rights of the European Union also regulated the right of every person to be heard before any individual measure that might affect him. These rules are also found in the Romanian tax system. At least theoretically, as we noticed earlier, it arises from the initiation of a tax procedure to a natural or legal person, as the case may be. The rule assumes that both during and especially at the end of the procedure the taxpayer must be aware of the findings and

their consequences. The purpose of this rule is to clarify any misunderstanding during the procedure and to enable the natural or legal person to formulate a point of view. According to the regulation, the tax authority is obliged to allow the taxpayer the opportunity to express his point of view on the relevant facts and circumstances in making the decision before making the decision. In order to subsequently prove compliance with the right to be heard, it is necessary to record the taxpayer's arguments in a document¹⁷. "Otherwise, in the doctrine it is considered that the fiscal administrative act is susceptible to annulment. The argument is that, in the absence of such an obligation, it would be impossible to establish whether or not the tax authority provided the taxpayer with the right to be heard"¹⁸. On the other hand, if non-compliance with this obligation is not sanctioned in any way, then this rule will only remain a legal provision without any effect¹⁹.

In the context of the administrative reform, one of the measures that the Romanian Government seeks to fulfil according to the Governance Program 2018-2020²⁰ is the elaboration of the Local Public Finance Code - initiated in 2017 by GD no. 285/2017²¹ for the approval of the preliminary Theses of the draft Local Public Finance Code. The objectives set for local taxation through this normative act, and which we consider pertinent, are: "systematizing and concentrating the legal norms specific to this field, subordinated to

¹⁶CJUE 18.12.2008, *Sopropé-Organizações de Calçado Lda v. Fazenda Pública*, Case C-349/07, ECLI:EU:C:2008:746.

¹⁷Bărgaru, M. *Fundamental Principles of Tax and Tax Administration in the New Fiscal Procedure Code*, in Commercial Law Magazine no. 5/2004, pp. 153-154.

¹⁸Sasu, H., Țăpu, L., Pătroi, D. 2008. *Fiscal Procedure Code: comments and explanations*, Bucharest, Romania: C.H. Beck, p. 36.

¹⁹Dascalu, D., Alexandru C. 2005. *The theoretical and practical explanations of the Fiscal Procedure Code*, Bucharest, Romania: Rosetti, p. 92.

²⁰Published in Official Gazette, I no. 84 of 29 January 2018.

²¹Published in Official Gazette, I no. 342 of 10 May 2017.

common principles, specifying them; the correlation of the existing legislation, thus expressly abrogating the dispossessed legal provisions or registering contradictory aspects in the field of local public finances; the establishment of a unitary and harmonized structure that would facilitate the knowledge of the tax legislation by the taxpayers, on the one hand and implicitly by the local public administration authorities in Romania, invested with the organization of execution and execution in concrete of the law, on the other; the premises that the local public administration authorities can develop and approve strategies for the economic, social and environmental development of the administrative-territorial unit in the medium and long term in line with the multi-annual local budget projections; grouping the articles into 4 books to ensure a lighter and natural transition from 4 normative acts to a single normative act, and within them the titles and chapters²². Among the weaknesses found in the local tax system are included: “the lack of legislative coherence in the field, determined by the many existing normative acts; the lack of clarity of the normative acts in the field and the limitation of accessibility, determined by the successive modifications of the specific legislation; the lack of systematization of the rules governing the activity in the financial-fiscal field in such a way that the normative system is understood by all and therefore it is easily controllable; lack of unitary terminology²³. I also noted the findings of the Council of the European Union in the context of Romania’s National Reform Program for 2018, namely: the public consultation process and the use of regulatory impact assessments remain low at the design, implementation and monitoring stages of policies, which affect

the quality and predictability of regulation; frequent changes to the fiscal code; the low degree of involvement of stakeholders in the development and implementation of reforms, rarely calling for a genuine dialogue; the mechanism for addressing views expressed by stakeholders during public consultations does not ensure adequate monitoring, which has a negative impact on citizens’ perception and confidence; no tangible results have been obtained on public administration reforms, and the General Secretariat of the Government has a limited role in controlling the quality of policy development²⁴. In support of the aforementioned, it is also noted the findings of the European Commission in the European Semester 2018, according to which: there are still difficulties in simplifying and implementing transparency measures at all levels of government, one of the reasons being insufficient administrative capacity and poor political support to improve the quality and impact of the public consultation process; services at local level is unsatisfactory, according to a poll, with 70% of respondents assessing the quality of public services as unsatisfactory; poor administrative capacity of local governments, lack of services in poor or isolated areas, lack of qualified staff and fragmentation of services. At the same time, the European Commission considers that the adoption of the Local Public Finance Code might solve some issues, but the precise content or impact of these measures is not known²⁵.

²²Point IV of GD no. 285/2017 for the approval of the Preliminary Theses of the draft Local Public Finance Code.

²³Point II, *ibid*.

²⁴Point 18 from Recommendation of the Council of the European Union of 13 July 2018 on the National Reform Program of Romania for 2018 and which includes a Council opinion on the Convergence Program of Romania for 2018, OJEU, C 320/22 of 10 September 2018, p. 98.

²⁵<https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-romania-ro.pdf>

3. The administration of fiscal receivables and hearing to taxpayers

At the level of the Romanian tax institutions, in the context of a procedure for the administration of local taxes which has the purpose of issuing a decision, there is the rule that the taxpayer has the right to express his or her point of view on the relevant facts and circumstances in making the decision. Among the activities that local fiscal bodies – specialized structures within the local public administration authorities responsible for the administration of fiscal receivables – have to carry out before the administration of the fiscal receivables, according to the Code of fiscal procedure, there are: tax registration of taxpayers and other subjects of tax legal relationships; declaration, establishment, control and collection of fiscal receivables; resolution of appeals against tax administrative acts; assistance/guidance to taxpayers, on request or ex officio; applying sanctions under the law.

3.1 Tax registration activity of taxpayers and other subjects of tax legal relationships

Within this activity the legal norm establishes that the tax registration is the activity carried out by the fiscal bodies for: the attribution of the fiscal identification code, the organization of the taxpayers' register and the issuance of the tax registration certificate.

3.1.1 The attribution of the fiscal identification code

According to the Fiscal Procedure Code, any person who is subject to a tax legal relationship is taxed by receiving a fiscal identification code (FIC). This code can be represented by: the fiscal registration code assigned by the tax authority (FRC), the unique registration code assigned under the special law (URC), the personal numerical code assigned under the special law (PNC), the fiscal

identification number assigned by the tax authority (FIN).

In fact, the central fiscal body is competent to assign the fiscal registration code (FRC) and fiscal identification number (FIN), the rest of the codes are already allocated by other competent bodies, according to special laws. At the same time, it is noteworthy that this activity is not opposed to local fiscal bodies, although in the local tax system each taxpayer is assigned a code named as a unique nominal role or fiscal role without being regulated in the Fiscal Procedure Code sense. The methodological norm of the old Fiscal Code established that: "the unique nominal role is the single taxpayer's identity card, which contains the identification elements, as well as its budgetary receivables at the level of the commune, city, municipality or sector of Bucharest, individualized by a role number, starting with no. 1 to the number that ensures the registration of all taxpayers. In particular, it is recommended that single administrative-territorial units with a large number of taxpayers to open up unique nominal role registers for individuals and unique nominal role registers for legal persons". Currently, the definition has been abrogated but the unique nominal role is attributed by local tax authorities and is still requested through the forms used in the collection of local tax claims²⁶. On this occasion, we consider that the identification of taxpayers in the relationship with the local fiscal bodies must be carried out under the same conditions as in the central fiscal bodies, and the unique nominal role should be the

²⁶See Annex no. 6 at OMRDPA nr. 144/2016, on the approval of standard forms for the collection of local taxes and duties and other local budget revenues by local fiscal bodies, and for amending and completing the Order of the Deputy Prime Minister, Minister of Regional Development and Public Administration, no. 2.068/2015 on the approval of standard forms for local tax assessment by local fiscal bodies, M.Of., I no. 124 of 17 February 2016.

link between the tax authority and the place where the taxable asset is located²⁷.

3.1.2 The organization of the taxpayers' register

At the central level, the fiscal body organizes taxpayers' records within the taxpayers' register. This register contains the following requirements: taxpayer identification data; data on the tax vector; other information needed to manage fiscal receivables.

In the local tax system this activity is not regulated, but there is a form called unique nominal role Registry – Model 2016 ITL 021, which contains, similarly to the records of the central tax authorities, the following requirements: identification elements of taxpayer; the unique nominal role; personal identification code; unique registration code; data on the tax vector; correspondence with other records; other elements.

3.1.3 Issuing the tax registration certificate

In order to certify tax registration as a taxpayer, taxes and contributions, at the request of the taxpayer, the central fiscal body issues the tax registration certificate. This activity is also not regulated for the local tax authority, probably because it derives from the activities described above.

3.2 The activity of declaring, establishing, controlling and collecting fiscal receivables

The activity of declaring and determining the fiscal receivables is the dominant activity, in my opinion, because it is burdened by the declaratory obligation of the taxpayers and the issuance of tax administrative acts by the tax authorities, as the case may be. The more this activity is done through the voluntary participation of the taxpayers, the more the taxable material increases, and with it the increase of the revenue collection to the state budget or the local budgets, as the case may be, by

voluntary payment. The objective presented earlier can be achieved by harmonizing normative acts and creating an infrastructure that will allow the taxpayer to achieve the maximum share of participation in its achievement. At the same time, the local tax authorities must not forget that they are obliged to respect human rights in the activities carried out, which A. Năstase (1992) defines as being “those prerogatives conferred by national law and recognized by the international law of every individual, in its relations with the community and the State, which express fundamental social values and are aimed at satisfying essential human needs and legitimate aspirations in the economic-social, political, cultural and instinctive of a particular society”²⁸.

3.2.1 Declaration of fiscal receivables

In general, the activity of declaring the fiscal receivables, according to the name, is done at the level of the central fiscal bodies. In the case of taxpayers who provide income to local budgets by paying local taxes, the declaration is called the “tax declaration on ” and contains elements about the taxable/taxable object (the tax on the residential building: the destination building area, building area, building facilities, building age, measurements, etc.). After declaring these elements, the local fiscal bodies apply the values regulated by the Tax Code and Local Council Decisions. It is only after this process is exhausted that the tax payable by that taxpayer will be due to the local budget of the administrative-territorial unit/subdivision within the area of which the the taxable object is located. Therefore, between the data provided for the establishment of the taxable base and the issuance of the fiscal administrative act, the taxpayer should be assisted and guided by the local tax authority so that the fiscal

²⁷Malherbe, P. 2017. *Elements of international tax law* (scientific control and translation review: Buliga, M., Codruț, M., Bufan R.), Hamangiu, Bucharest, 2017, p. 7.

²⁸Năstase, A. 1992. *Human Rights - Religion at the End of the Century*, Bucharest, Romania: IRDO, p. 36.

administrative act reflects the actual fiscal situation.

3.2.2 Establishment of fiscal receivables

According to the legal norm, the establishment of fiscal receivables is the activity of determining the taxable matter and of calculating the fiscal receivables. Fiscal receivables are also established by the imposition declaration in which fiscal liabilities are calculated by the taxpayer and the imposition decision in which fiscal liabilities are calculated by the fiscal body. This rule is specific to the central fiscal body, because at the local level, the legal norm does not specifically state how this activity is carried out. According to the specific forms of activity of the local fiscal bodies, we find that on the basis of the fiscal declaration submitted by the taxpayers according to the provisions of the Fiscal Code, the fiscal bodies issue the imposition decision by which they establish the tax base and related fiscal obligations. Even if the tax base and related fiscal obligations are established by the local fiscal bodies on the basis of the fiscal declaration, we consider that it is necessary to assist and guide it before issuing the fiscal administrative act. For example, in the activity of the central fiscal body the legal norm establishes the possibility for the taxpayer to opt for the fiscal declaration certification by a fiscal consultant, according to the legal regulations. Although the legal rule regulates that the tax administrative act must contain “mentions on taxpayer's hearing” in the case of the forms used²⁹ by local fiscal bodies this rule does not exist. “Knowing the jurisprudence of the European Court of Human Rights is a necessity. Consequently, the European Convention on Human Rights has become directly applicable in national law, and knowledge

²⁹See Annexes 8 and 9 to OMRDPA no. 2068/2015 on the approval of standard forms for local tax assessment by local fiscal bodies, published in Official Gazette, I no. 975 of 29 December 2015.

of the case law of the European Court of Human Rights becomes an obligation primarily for magistrates and lawyers, for teachers and students of legal faculties, researchers, for all those who invest with powers in the administration of justice, but not only for them”³⁰. In these circumstances, the local fiscal bodies must be aware that every person has the right to defence, respectively “< the right of any person to ask his judge to apply the treaties, regulations, directives or decisions of the Community. It is the judge's duty to make use of these texts, indifferent of the law of the country in which they come from> (R. Lecourt, *l'Europe des juges*, Bruylant, 1976, p. 248)”³¹. Also, the issue of the balance between the requirements of the general interest of the community and the requirements of the protection of the fundamental rights of the individual becomes relevant only after it has been established that the interference in question fulfilled the requirement of legality and was not arbitrary³². As a general rule, it is known that the right legitimizes, organizes behaviour, and at the same time establishes the boundaries of social relations, thus being a constitutive form of them. All this is ensured through permanent mechanisms, institutions and other specific bodies. They are also in line with Community law, with the indication that they have to be raised at the Community level, because Community law is supranational and always takes precedence over national law³³.

3.2.3 Control of fiscal receivables

³⁰Pătulea, V. 2007. *Fair trial – the case-law of the European Court of Human Rights* (foreword I. Moroianu-Zlătescu), Bucharest, Romania: IRDO, 2007, p. 5.

³¹Van Raepenbusch, S. 2014. *Institutional law of the European Union*, Bucharest, Romania: Rosetti International, p. 385.

³²ECHR 14.10.2010, *Shchokin v. Ukraine*, no. 23759/03 and no. 37943/06, ECLI:CE:ECHR:2010:1014JUD002375903.

³³ Moroianu-Zlătescu, I. 2008. *European Institutions and Human Rights*, Bucharest, Romania: IRDO, p. 79.

Control of fiscal receivables is achieved through fiscal inspection, unannounced control, anti-fraud control, personal fiscal check by the central fiscal body, documentary verification. Thus, from the listed activities only fiscal inspection, unannounced control and documentary verification are imposed on local fiscal bodies.

In the course of the fiscal inspection activity, both during the fiscal inspection and at the end of the fiscal inspection, it is necessary to inform and hear the taxpayer. Thus, at least theoretically, the taxpayer should be informed about the issues identified during the fiscal inspection and finalized about the tax consequences. In fact, as long as the taxpayer's information is not used by a document required by the legal norm, we can assert that the granting of this right remains at a level of appreciation against the point of view of the fiscal consequences that the taxpayer will submit in writing at the conclusion of the fiscal inspection. As in previous activities, this activity is not adapted to the specific of local government. An example of this is the way in which taxpayers are classified by the Fiscal Procedure Code, namely: large and medium-sized taxpayers, and in the case of fiscal inspection notice, large taxpayers and other taxpayers. In order to administer the fiscal receivables by the local fiscal body, the legal norm stipulates that the criteria by which the large and medium sized taxpayers can be established, as well as the lists with them, can be established by decision of the deliberative authority. From the researches we carried out we found that only a few administrative-territorial units in the country implemented this provision, but not the way to carry out the risk analysis, which is known to be the basis of the fiscal inspection. We believe that this will not be possible as long as the local government records are organized differently from one administrative-territorial unit to another, as there is currently no common database for

all local public services, which by applying the criteria specific to allow identification of the risks of non-compliance of the taxpayer with the provisions of the fiscal legislation.

Analysing the activity of tax inspection regulated by Title VI Chapter I of Law no. 207/2015 regarding the Fiscal Procedure Code, we have established that the following fiscal administrative acts are regulated in the procedure: the imposition decision, for differences in plus or minus the principal fiscal liabilities related to differences in tax bases; the decision not to modify the tax bases, if there are no differences between the tax bases and the main fiscal liabilities; the decision to change the tax bases if there are differences in the tax bases but without establishing differences in the main fiscal obligations; the decision to suspend the fiscal inspection; the decision to recheck the fiscal inspection; the provisional imposition decision. According to the Fiscal Procedure Code, the forms and instructions for their use, for the administration of fiscal receivables by the local fiscal body, as well as any norms or instructions, are approved by order of the Minister of Regional Development and Public Administration, with the approval of the Ministry of Public Finance. Regarding the fiscal administrative acts drawn up by the fiscal inspection bodies within the local fiscal bodies, we find that the Order of the Minister of Regional Development and Public Administration (OMRDPA) no. 144/2016. This order approves the following forms: the imposition decision on claims due to the local budget following the fiscal inspection Model 2016 ITL 035 and the decision not to modify the tax bases Model 2016 ITL 036. If we look closely at the legal framework, we will notice that the public authority was obliged to approve not only forms but also instructions for their use as well as the rules or instructions necessary for the unitary application of the Fiscal Procedure

Code. Out of the six tax administrative acts that the Fiscal Procedure Code regulates in the fiscal inspection activity, Order no. 144/2016 establishes only two such forms, inappropriate to the legislative requirement and without the necessary norms or instructions to the local fiscal bodies for the uniform application of the legal provisions.

Unannounced control and documentary verification are activities that contain stages similar to those of the fiscal inspection. In the case of documentary verification it is specifically stipulated that the tax decision issued without the taxpayer's hearing is null, a regulation that we consider generally valid for all tax decisions issued by the fiscal body in the activities carried out for the administration of the fiscal receivables.

3.2.4 Collection of fiscal receivables

According to the legal rule, the collection of fiscal receivables is the total of the activities aiming at extinguishing the fiscal receivables and is made under a title of fiscal receivable or a executory title, as the case may be. The collection of tax receivables is done in the following ways: payment, compensation, restitution, forced execution, bailout, conversion into shares of fiscal obligations, insolvency, cancellation of fiscal receivables. We consider that each of the activities listed earlier must contain the agreement or opinion of the taxpayer, or his representative, on the final solution. Among these activities, we present the forced execution activity.

Although the legislator has determined that the fiscal administrative act should contain, among other elements and *mentions on taxpayer's hearing*, he also ordered that the rule is not mandatory when: the delay in making the decision causes a danger to the actual fiscal situation regarding the fulfilment of the obligations of the taxpayer or for taking other measures provided by the law; the amount of fiscal receivables is to be changed by less than

10% of the value of the fiscal receivable previously established; *enforcement measures are to be taken*; the decisions regarding the tax related tax obligations will be issued.

Starting up January 2019, the mediation procedure has been introduced in the enforcement activity. Through this procedure the legal norm gives the taxpayer the possibility to express a point of view regarding to the extent of the fiscal obligation registered in the summons, respectively finding optimal solutions for collecting fiscal obligations. We consider that the mediation procedure cancels the condition of restriction of the right to be heard, respectively: "the fiscal body is not obliged to provide the debtor with the possibility of expressing its opinion on when enforcement actions are to be taken", and should therefore be cancelled. At the same time, in the case of other conditions of constraint, if they persist, we appreciate that the hearing must have place after the decision has been taken³⁴.

3.3 Settlement of appeals against fiscal administrative acts

The activity mainly regulates the possibility for any person to challenge fiscal administrative acts provided that they have been harmed by a fiscal administrative act. Tax administrations issued by local tax authorities against whom appeals have been lodged shall be resolved by these tax authorities. By this regulation, the Fiscal Procedure Code provides the taxpayer with the right to appeal, but not the way to perform the activity of solving the complaints against fiscal administrative acts issued by the local fiscal bodies. In this context, we ask ourselves how this activity is carried out within a community with no more than

³⁴Schneider, J. P., Hofmann, H. C., Ziller, J., Dragos, D.C. 2016. *The ReNEUAL Code of Administrative Procedure of the European Union*, Bucharest, Romania: Universul Juridic, p. 72.

1500 inhabitants where, according to the procedure for determining the maximum number of posts that can be classified at the level of administrative-territorial units/subdivisions, the maximum number of positions allocated is 16. Therefore, even if the public services are in the process of decentralization, respecting the right to a fair trial governed by the European Convention on Human Rights and the right to an effective remedy and to a fair trial governed by the Charter of Fundamental Rights of the European Union, we consider that some of the tax asset management activities, such as: control of fiscal receivables, forced execution and settlement of appeals must be organized at county.

3.4 Assistance or guidance of taxpayers

The administration must serve the citizen and his fundamental needs and ensure the satisfaction of the general interest of the human community. Taxpayers should therefore be guided through direct assistance at the headquarters, by written correspondence, e-mail, telephone, and other similar ones³⁵. Taxpayers' assistance and guidance activity is a service with a public character – free, which originates from the provisions of art. 31 and art. 47 of the Romanian Constitution from 1991, revised by Law no. 429/2003³⁶, according to which citizens have unrestricted and free access to information. Moreover, the central and local public administration authorities are obliged to ensure that citizens are properly informed about public affairs and issues of personal interest. This implies that public administration provides a transparent public service in the interest of citizens. Analysing the tax regulations regarding the assistance and guidance of taxpayers, we find that at the level of the central fiscal

bodies there is the Order of the Minister of Public Finance (OMPF) no. 137/2004³⁷ for the approval of the Code of Ethics of the civil servant in the tax administration, which carries out its activity in the area of taxpayers' assistance and the Order of the President of the National Agency for Fiscal Administration (OPNAFA) no. 1338/2008³⁸ to approve the Procedure for taxpayers' guidance and assistance by fiscal bodies. We cannot say the same about local fiscal bodies, for which, apart from the constitutional provisions on rights, fundamental freedoms and duties of citizens, there are no clear legal rules that ensure not only the correct information of citizens on public affairs and on issues of personal interest, but also the training of civil servants with regard to the service they are required to perform. The solution that individuals appeal to, without being limited to, is the tax advice provided by some private law entities for money in most cases, with the risk that their opinions will not be taken into account by tax authorities, or documents drawn up not to be capitalized.

According to the Code of ethics of the civil servant in the fiscal administration, which carries out its activity in the field of taxpayers' assistance, the transparency results from the constitutional provisions and presupposes a condition of the dialogue, respectively a tool for controlling the citizen over the activity of the executive. Given the permanent nature of taxpayers' assistance and guidance, public authorities need to pay greater attention to this, by forecasting the resources needed to meet the needs and expectations of citizens, so that the tax authorities first carry out the prevention activity in the tax area and then pass to fiscal control and forced execution. “The complexity of social demands raises a number of issues before the public

³⁵Bălan, E. 2005. *Administrative procedure*, Bucharest, Romania: Ed. Universitara, p. 63.

³⁶Published in Official Gazette, I nr. 758 of 29 October 2003.

³⁷Published in Official Gazette, I nr. 66 of 27 January 2004.

³⁸Published in Official Gazette, I nr. 706 of 17 October 2008.

administration that need to be addressed. The society is aware of a continuous process of multiplication and diversification of the administration's tasks, which imposes continuous improvement in the structure and activity of the administration, using modern methods and techniques³⁹.

In the research of the activity of assistance and guidance of local taxpayers, we found that there are no norms or instructions to guide the local public administration authorities in the correct and unitary application of the legal provisions and the fulfilment of the specific attributions of this activity.

From a comparative point of view, state budget revenues and activities for fiscal receivables management are a constant concern to be regulated and adapted to European Union legislation, while at local level this interest is almost non-existent. For example, in the year 2018 about 100 orders of the President of the National Agency for Fiscal Administration and the Minister of Public Finance are in force at central government level, while at the level of the local public administration there are about 8 orders of the Minister of Regional Development and Public Administration. The large number of orders is not an over-regulation in fiscal matters but the necessary framework for the guidance and formation of central fiscal bodies, so that through their actions they achieve good administration. We consider that the deficiency found is due to the fact that the executive power did not take sufficient measures to ensure that the principle of "uniform application of the legislation" is also exercised in concrete terms by the local public administration authorities, especially since the activities of

fiscal receivables management are mandatory and them⁴⁰.

3.5 Applying sanctions

As some authors have said, if the failure to comply with an obligation is not sanctioned in any way, then the rule laid down by the legislator has no effect. Thus, for failing to comply with the obligations of the taxpayers, they are contraventional sanctioned by the fiscal bodies. Among the main contravention sanctions established by the law on contravention are: the warning, the contraventional fine, providing community service. Because one of the basic principles of the Romanian Economic Code is to be prevention⁴¹, starting with December 31, 2017, the Prevention Law no. 270/2017⁴² implemented by GD no. 33/2018⁴³ on the establishment of contraventions falling under the Prevention Law no. 270/2017, as well as the model of the remediation plan. The purpose of this normative act is to prevent the committing of contraventions, and for this the public authorities/institutions with powers of control, detection and sanctioning of contraventions, must take concrete measures for informing, training and guiding persons. In this respect, the law on prevention has established that, within 3 months of entry into force, the public authorities/institutions with powers of control, detection and sanctioning of contraventions, have the obligation to develop and disseminate documentary materials and guides and to allocate on the page internet sections dedicated to public information on: the current legislation on

³⁹Bălan, E. 2008. *Administrative institutions*, Bucharest, Romania: C.H. Beck, p. 21.

⁴⁰Truşcă, F.I. *Free counseling of individuals in the field of taxation*, in Law Review vol. III, Bucharest, Romania: Universul Juridic Publishing House, Special issue 2017, pp. 291-292.

⁴¹<http://www.cdep.ro/proiecte/2017/400/20/3/em547.pdf> (accessed on 12 April 2019).

⁴²Published in Official Gazette, I no. 1037 of 28 December 2017.

⁴³Published in Official Gazette, I no. 107 of 5 February 2018.

the ascertainment and sanctioning of contraventions; the rights and obligations of these public authorities/institutions in conducting activities of ascertainment a contraventions and application of contravention sanctions; as well as the rights and obligations of persons who are subject to these activities; separate indication of contraventional deeds for which the public authority/institution has powers to ascertainment and application of contravention sanctions, as well as sanctions and/or other applicable measures. After the research carried out, in the direction mentioned above, we have found that some public institutions with attributions in the field of local taxes⁴⁴, competent for ascertainment and application of contravention sanctions, have not complied with the obligations imposed by the Prevention Law no. 270/2017 and therefore the rule set by the legislator is without any effect. For this reason, we appreciate that the Prevention Law should set up sanctions and a control mechanism to ensure compliance with its provisions and, at the same time, protect persons who are subject to activities of ascertainment and application of contravention sanctions.

4. Conclusions and proposals

The tax registration activity of taxpayers and other subjects of tax legal relationships, as regulated by the Fiscal Procedure Code, is not opposed to local fiscal bodies. Therefore, it is necessary for the legal norm to determine the way of assigning the unique nominal role or the fiscal role, the organization of the taxpayers register as well as the issuance of the fiscal registration certificate, so as to ensure personal data protection.

⁴⁴<http://www.ditl3.ro/legislatie/legislatia-folosita-in-cadrul-directiei-impozite-si-taxe-locale-sector-3.aspx>;
<https://www.dgitl4.ro/home/legislatie/>;
<http://ditl5.ro/organizare/legislatie-fiscala/>;
<http://taxelocale6.ro/>

Regarding the activity of declaring and establishing the local fiscal receivables, we find that among the collected elements, through the fiscal declaration, to establish the tax base and to issue the tax administrative act, there is no process of hearing the taxpayer so that he receives assistance and guidance from the local fiscal bodies and the receivable title reflects the fiscal situation. Although the rule of law regulates that the fiscal administrative act must contain “mentions on taxpayer's hearing”, in the case of forms used by local fiscal bodies this rule does not exist, so the taxpayer's right to be heard is violated.

Of the six fiscal administrative acts that the Fiscal Procedure Code regulates for the fiscal inspection activity, the normative act implements only two such forms, inappropriate to the legislative requirement and without the norms or instructions required by the local fiscal bodies for the application in a unitary legal provisions. Also, there are no instructions for using the forms used, as well as rules or instructions necessary for the unitary application of the Fiscal Procedure Code. In the case of documentary verification it is specifically stipulated that the imposition decision issued without the taxpayer's hearing is null, a regulation that we consider generally valid for all imposition decisions issued by the fiscal body in the activities carried out for the administration of the fiscal receivables.

There are administrative-territorial units in Romania which, for financial reasons or lack of human resources, cannot ensure the accomplishment of all the activities provided by the Fiscal Procedure Code for the administration of the fiscal receivable. Therefore, in order to respect the right to a fair trial governed by the European Convention on Human Rights and respect for the right to an effective remedy and to a fair trial governed by the Charter of Fundamental Rights of the European Union, we consider that some of

the activities of administering tax receivables (for example: control of fiscal receivables, forced execution and settlement of appeals) must be organized by associating communes and/or cities at county level so that they can cover their expenses⁴⁵.

At the level of the local public administration, in the research of the assistance and guidance of the local taxpayers, no norms or instructions have been identified that would guide the local fiscal bodies in the correct and unitary application of the legal provisions and the fulfilment of the specific attributions of this activities. Therefore, taxpayers' assistance and guidance services should be organized so as to ensure the promotion and protection of their rights.

Regarding the application of sanctions, some public institutions with attributions in the field of local taxes, competent for the ascertainment and application of contravention sanctions, do not respect the obligations imposed by the law on prevention and therefore the rule established by the legislator is ineffective. This is why we believe that this law should set up sanctions and a control mechanism to ensure compliance with its provisions, and at the same time to protect individuals who are subject to activities of ascertainment and application of contravention sanctions.

Finally, we consider that the principles and rules established by the Fiscal Procedure Code are not adapted to the administration of local taxes, and at the organizing the execution of the law does not take into account the management dimension of local authority issues that is different from an administrative-territory to another. On the other hand, the main objective of the fiscal bodies, respectively

the collection of fiscal receivables, can be achieved by harmonizing the normative acts and creating the means to allow the taxpayer to participate voluntarily in its realization.

⁴⁵Cernea, E., Molcuț, E. 2013. *The history of romanian state and law: the terminology of the old romanian law*, Bucharest, Romania: Universul Juridic, p. 319.

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