Prawo Budżetowe Państwa i Samorządu **4(6)/2018**
ISSN 2300-9853 DOI: http://dx.doi.org/10.12775/PBPS.2018.022
Date of receipt: 15 October 2018 Date of acceptance: 26 November 2018

RAFAŁ DOWGIER
University of Białystok
r.dowgier@uwb.edu.pl
ORCID: 0000-0003-1583-086X

A few remarks on the establishment of local tax law in Poland[1]

Kilka uwag w przedmiocie tworzenia w Polsce lokalnego prawa podatkowego[2]

Abstract. In the Polish tax system there are taxes that feed both the central budget and the budgets at the lowest level of territorial self-government, i.e. municipalities. The tax authority of communes is limited by the provisions of the Act, which means that it is the legislator who in fact decides on the shape of the local tax law. In the recent period, its activities have led to a significant reduction in the municipalities' own income without compensation for the revenues lost by them. The study indicates the methods by which the legislator interferes in the tax revenues of communes. This phenomenon is all the more worrying as it is usually connected with the violation of generally accepted principles of good legislation.

[1] Publication financed by the Minister of Science and Higher Education as part of grant financed research aimed at maintaining the research potential awarded to the Faculty of Law at the University of Białystok.

[2] Publikacja finansowana ze środków Ministra Nauki i Szkolnictwa Wyższego w ramach dotacji na utrzymanie potencjału badawczego przyznanej Wydziałowi Prawa Uniwersytetu w Białymstoku.

Keywords: legislation; local tax law; taxes.

Streszczenie. W polskim systemie podatkowym występują podatki zasilające zarówno budżet centralny, jak i budżety najniższego szczebla samorządu terytorialnego, jakimi są gminy. Władztwo podatkowe gmin ograniczone jest przepisami ustawy, a zatem to ustawodawca w istocie decyduje o kształcie lokalnego prawa podatkowego. W ostatnim czasie jego działania doprowadzają do znacznej obniżki dochodów własnych gmin bez rekompensaty utraconych przez nie dochodów. W opracowaniu wskazano, jakimi metodami ustawodawca ingeruje w podatkowe dochody gmin. Zjawisko to jest o tyle niepokojące, że zwykle wiąże się z naruszeniem powszechnie akceptowanych zasad przyzwoitej legislacji.

Słowa kluczowe: stanowienie prawa; lokalne prawo podatkowe; podatki.

1. Introduction

One of the basic principles expressed in the Constitution of the Republic of Poland[3], which asserts the independence of local government units, is their financial autonomy. This principle was expressed in Article 16(2), and then *expressis verbis* in Article 165(2) and Article 167 of the Constitution of the Republic of Poland, and remains one of the foundations for the existence of territorial self-government. The role of this norm is emphasized by the Constitutional Tribunal, which points to its content: "territorial self-government units should be provided with revenues enabling them to carry out the public tasks assigned to these units, as well as freedom as to the shape of their expenditures (however bearing in mind statutory reservations) and appropriate formal and procedural guarantees in this respect"[4].

In Poland, only those municipalities have their own revenues of a fiscal nature, whose budgets are credited with taxes on real estate, agriculture, forestry, means of transport, income from natural persons paid in the

[3] Act of 2 April 1997 – Constitution of the Republic of Poland (Dz.U. [Polish Journal of Laws] No 78, item 483).

[4] Cf. decision of the Constitutional Tribunal of 24 March 1998 (K 40/97), "Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy" 1998 No 2, item 12.

form of a tax card, on inheritances and donations, as well as on civil law transactions[5]. The tax on real estate is of the greatest fiscal significance in this respect. The construction of this provision is regulated by the Act of 12 January 1991 on local taxes and charges[6]. The fiscal sovereignty of municipalities with regard to this tax is quite limited. Although Article 168 of the Constitution of the Republic of Poland stipulates that territorial self-government units have the right to determine the amount of local taxes and charges to the extent specified in the Act, in practice these powers are limited to determining the amount of real estate tax rates, as well as to introducing exemptions[7]. Thus, the municipal authorities have no influence on either the personal or the material scope of this tax – in this area the legislator has the sole competence. And the same legislator has been exercising this right for years, not always in the way that is required of a good legislator, i.e. such that observes the basic principles of tax legislation[8]. Local tax law is broadly understood as a set of regulations that are applied by the local unit and concern local taxes (it does not matter whether they are created at the local or central level)[9], it is an element of the system of this law, and therefore its making should meet certain standards.

One of the basic principles of legislation, derived from the metaprinciple of the democratic rule of law (Article 2 of the Constitution of the Republic of Poland), is the principle of good legislation. It can be understood as a postulate of observance of the rules concerning legislation, both on the substantive and procedural level. As indicated by the Constitutional

---

5 Cf. Article 4(1) of the Act of 13 November 2003 on revenues of territorial self-government units (consolidated version, Dz.U. of 2018 item 1530 with subsequent amendments).

6 Consolidated version, Dz.U. of 2018 item 1445 with subsequent amendments, hereinafter: LTCA.

7 More broadly cf. R. Dowgier, *Zakres władztwa podatkowego gmin w prawie Rzeczpospolitej Polskiej w świetle standardów wynikających z Europejskiej Karty Samorządu Lokalnego* [in:] M. Ofiarska (ed.), *Europejska Karta Samorządu Lokalnego a prawo samorządu terytorialnego*, Szczecin 2015, pp. 77–78.

8 More broadly cf. R. Dowgier, *Zasady stanowienia prawa podatkowego – próba klasyfikacji* [in:] J. Głuchowski, A. Pomorska, J. Szołno-Koguc (eds), *Podatkowe i niepodatkowe źródła finansowania zadań publicznych*, Lublin 2007, p. 12 et seq.

9 M. Popławski, *Lokalne prawo podatkowe* (duplicated typescript), Białystok 2002, p. 9.

Tribunal in the judgment of 24 May 1994[10], particular care should be taken by the legislator in relation to tax issues as "With the established wide discretion of the legislative power in the area of shaping the tax system, [...] the Constitutional Tribunal has concluded that this discretion should be accompanied by an obligation of particularly careful observance of constitutional principles relating to the enactment and implementation of statutory provisions concerning taxes: from these principles the constitutional requirement of a fair and correct procedure should be derived".

Therefore, the principle of good legislation requires special diligence in relation to regulations concerning civil rights and freedoms, especially in the case of tax regulations. It is expressed, *inter alia*, in a proper assessment of the effects of the introduced regulation or the ban on introducing changes with regard to the tax liabilities during the tax year. As shown by the practice of recent years, the aforesaid principles are quite often violated when drafting acts classified as local tax law. The aim of this paper is to point to several characteristic cases in this respect. They prove that the standard of tax legislation is in fact different with respect to those legal regulations which relate to revenues feeding the central budget and those which constitute the basis for the assessment and collection of local taxes. This is, of course, an unwarranted and undesirable situation.

2. Taxation of buildings – a change in the area of taxation without a change in the tax law

The main source of income from the real estate tax, which feeds municipal budgets, is the tax on buildings and structures. These terms are defined in Article 1a(1) and (2) of LTCA. In both cases, when determining the subject matter of taxation, these provisions refer to non-tax regulations, i.e. to the provisions of the Act of 7 July 1994 – the Construction Law[11]. A building and a structure within the meaning of the aforemen-

[10] K 1/94, "Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy" 1994, item 10.

[11] Consolidated version, Dz.U. of 2018 item 1202 with subsequent amendments – hereinafter: CL.

tioned provision is a work within the meaning of the provisions of the Construction Law which meets the characteristics specified in the Tax Act. The main consequence of the reference to the provisions of the Construction Law is that they essentially co-define the coverage of real estate tax. This issue is of major importance primarily for the taxation of buildings, as highlighted by the Constitutional Tribunal in its judgment of 13 September 2011[12], which indicated that subject to taxation are "solely the structures listed *expressis verbis* in Article 3(3) of the Construction Law, or in other provisions of this Act or in an appendix thereto, together with installations and equipment which constitute a building as referred to in Article 3(1) of CL, i.e. on condition that they constitute a technical and usable whole. (...) it is not excluded that the status of particular facilities and devices will also be co-decided by other provisions of statutory rank, supplementing, modifying or clarifying the Construction Law".

The consequence of the thus formed and discussed[13] definition of the object of real estate tax is that it is possible to interfere in the material scope of this tax without changes in the act which regulates its structure. It is sufficient to properly modify the provisions of the Construction Law, i.e. generally the provisions outside the scope of the tax law, which in a way leads to putting to sleep the vigilance of the representatives of local government units in the legislative process for which the tax is a source of income. As a result, without direct interference in the tax act, the tax law undergoes a change. This occurs without an assessment of the financial impact of such a regulation, as it is claimed that it does not interfere with the income of communes, and without the participation of local government representatives in the legislative process. It should be stressed, however, that the amendments to the Construction

[12] P 33/09, Dz.U. of 2011, No 206, item 1228.

[13] Cf. L. Etel, R. Dowgier, *Podatki i opłaty lokalne – czas na zmiany*, Białystok 2013, p. 164.

Law and the so-called construction-related acts[14] are in fact changes to tax acts. It should therefore be assumed that this concept encompasses[15]:

- a normative act,
- originating from Parliament,
- issued for the purpose of levying (establishing) a tax or impost having the characteristics of a tax, and
- determining its legal structure (subject, object), tax base, amount (tax rates and other tax adjustment factors) or
- making a change in the legal structure of the tax.

A tax law should therefore also be regarded as a law which repeals or modifies the range of a tax liability or its elements, even if those regulations constitute only a fragment of a larger and fundamentally different whole as far as the substance is concerned[16]. Therefore, the construction law acts which affect the scope of the real estate tax should be recognized as tax acts in this dimension, and consequently they should be subject to the legislative standards applicable to the development of tax law. They should, but as practice shows, they are not, and the possibility of modifying the range of real estate taxation through changes in the construction law is used by the legislator, as exemplified by the cases of taxation of telecommunication networks and wind power plants.

In the first of the above cases, since 17 July 2010, linear structures defined in the new Article 3a CL[17] have been classified as structures within the meaning of the Construction Law. The said article defines a linear structure as a structure whose characteristic parameters are length, in particular a road with exits, railway line, water supply, canal, gas pipeline, heat pipeline, pipeline, power line and traction, aboveground and underground cable line, flood embankment and cable ducts, with the cables

[14] E.g. the Act of 20 May 2016 on investments in wind power plants (Dz.U. of 2016, item 961, with subsequent amendments), which defines the conditions and procedure for the location and construction of wind power plants and the conditions for the location of wind power plants in the vicinity of existing or planned housing development.

[15] C. Kosikowski, *Ustawa podatkowa*, Warszawa 2006, p. 13.

[16] Ibidem, p. 91.

[17] Act of 7 May 2010 on supporting the development of telecommunications services and networks (Dz.U. No 106, item 675).

installed in it not being a structure or its part or construction equipment. From the above definition of a structure, it follows that, in the light of the Construction Law, a cable placed in a cable duct is not a structure, with the direct consequence being that by linking the Construction Law with the Act on Local Taxes and Fees, cables placed in a sewage system whose value constitutes a significant part of the entire telecommunications network were excluded from the scope of the property tax.

How has this change been assessed in the context of its impact on municipalities' income? In the financial impact assessment of the draft regulation[18] attached to the government bill on supporting the development of telecommunications services and networks, it was indicated that it will result in an increase in the expenditures of the state budget and the public sector – especially in the first period of its validity, until the investment and organisational expenditures made are balanced with the benefits resulting from launching new investments in telecommunications infrastructure. It was also pointed out that the negative effects of the proposed changes on the state budget and territorial self-government units will be largely compensated in subsequent years by tax revenues, as investments in telecommunications translate into a significant increase in production and employment, and as a result increase public revenues through the demand and supply effect of the investments. However, the government's bill amending the Construction Law provided for changes in the definition of the land development network binding in the surveying and cartographic law, but by changing the definition of structures in the construction law, it did not exclude from the definition the cables placed in the sewage system. Such a provision was added in the course of parliamentary work and led to a situation in which the change of regulations resulted in a significant decrease in the communes' revenues from the taxation of telecommunications networks, probably amounting to hundreds of millions of PLN on a national scale. In the end, therefore, support was granted to telecommunications companies which, from the beginning

[18] Justification of the government's bill on supporting the development of telecommunications services and networks (Sejm of the sixth term of office, print No 2546), www.sejm.gov.pl.

of August 2010, could exclude from taxation the value of cables placed in the sewage system[19].

The second very good example of changes in tax law through changes in the construction law is the case of wind power plants. Until the amendment of the Construction Law resulting from the Act of 28 July 2005 amending the Construction Law and certain other acts[20], this Act did not mention such facilities by name. It was only as a result of the aforementioned amendment that the concept of wind power plants appeared in Article 3(3) of the CL in 2006, which on the other hand resulted from the fact that the construction parts of technical equipment (boilers, industrial furnaces, wind power plants and other equipment) have been recognised as structures. It is important that until the change, there were doubts as to which elements of the said structure should be subject to taxation (the construction or also non-construction elements). The literature on the subject indicates that until 2009, against the provisions of the Construction Law as in force until the end of 2005, the dominant line of rulings was the one under which all elements of wind farms were subject to taxation[21]. The structure subject to taxation was considered to be a wind power plant consisting of construction parts and non-construction parts, which made up a technical and usable whole[22]. A clear change in the case-law line took place in 2009 and, as it is indicated[23], it was at least in part related to the change in the construction law, which ensued in 2005[24].

---

19 More broadly cf. R. Dowgier, *Wpływ zmiany definicji budowli w prawie budowlanym na zasady opodatkowania podatkiem od nieruchomości*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2010, No 9, pp. 8–12.

20 Dz.U. No 163, item 1364.

21 Cf. W. Morawski, *Elektrownie wiatrowe* [in:] W. Morawski (ed.), *Podatek od nieruchomości w orzecznictwie sądów administracyjnych. Komentarz. Linie interpretacyjne*, Warszawa 2013, p. 78 et seq.

22 Cf. judgments of the Voivodeship Administrative Court in Szczecin of 4 January 2006, I SA/Sz 882/04 and of 18 May 2005, I SA/Sz 108/04, as well as judgment of the Supreme Administrative Court of 18 January 2007, II FSK 51/06, Central Database of Decisions of Administrative Courts (CBOSA) at: www.orzeczenia.nsa.gov.pl/cbo/query.

23 W. Morawski, *Elektrownie...*, p. 82.

24 Judgments of the Voivodeship Administrative Court in Szczecin of 23 February 2011, I SA/Sz 887/10, of 7 November 2007, I SA/Sz 171/07, of 25 October 2006, I SA/Sz 854/05 and of the Supreme Administrative Court of 20 July 2009, II FSK 202/08.

The change in the Construction Law introduced by the Act of 2005 led to the unification of the position of administrative courts with regard to the taxation of wind power plants. Taxation of only the construction parts of wind power plants was also confirmed by the Ministry of Finance[25]. This legal status was maintained until the entry into force of another amendment to the Construction Law implemented by the Act of 20 May 2016 on investments in wind power plants[26]. This act amended both Article 3(3) of the CL and the Annex thereto, and defined a wind power plant in Article 2 of the Wind Power Plant Investments Act. Without going into detailed considerations in this respect, it is reasonable, although not unquestionable, to take the view that these changes led to the inclusion of non-construction elements of wind power plants also in taxation at the beginning of 2017[27]. This was confirmed by the legislator itself in Article 17 of the Act, indicating that "From the date of entry into force of the Act until 31 December 2016, property tax on wind farms shall be determined and collected in accordance with the provisions in force before the date of entry into force of the Act". Already by introducing this change, which was raised as an argument that it does not change the principles of taxation of wind power plants, the legislator did not indicate its significant, as it later turned out, financial consequences.

However, this state of affairs did not last long, as in July 2018 both the Construction Law and the Wind Power Plant Investment Act were amended once again[28]. The changes led to a return to the regulations in

---

25 Cf. clarification by the Ministry of Finance, Department of Taxes and Local Fees of 17 March 2007 on the taxation of real estate tax on wind power plants (PL-833/35/07/IP/346), „Biuletyn Skarbowy" 2007, No 3, p. 21.

26 Dz.U. of 2016 item 961.

27 Cf. more broadly R. Dowgier, *Nowe zasady opodatkowania elektrowni wiatrowych*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2016, No 9, pp. 6–11. Ultimately, however, it seems that this issue has been resolved at least at the level of administrative courts through the judgment issued by 7 judges of the Supreme Administrative Court on 22 October 2018, II FSK 2983/17, CBOSA, which indicated the legitimacy of taxation from 1 January to 31 December 2017 of both structural and non-structural parts of wind power plants.

28 Act of 7 June 2018 amending the Act on Renewable Energy Sources and certain other acts (Dz.U. of 2018 item 1276).

force on 1 January 2017. As can be seen from the justification of the bill[29] "With regard to the changes introduced in Article 2, the entry into force of the amendment concerning Article 3(3) of the Construction Law Act, containing the definition of structures and concerning the annex to this Act, will result in the introduction of uniform and transparent rules of the property tax taxation". In the further part of the justification it was indicated that "the change provided for in Article 3(1) of the draft concerns giving a new wording to the definition of a wind power plant. This will enable a clear distinction to be made between the technical components and the structure consisting of the mast and the foundation of the wind power plant. An integral part of the described change in the area of property tax for wind power plants is the changes provided for in Article 2(1) and (6) of the draft, in the field of changes in the definition of structures and in the annex to the Construction Law".

Also this time the assessment of the financial impact of the change did not take into account the decrease in the income of communes. At the same time a rather exceptional situation occurred, as the amendment was given retroactive effect. Therefore, in June 2018, the rules of taxation of wind power plants were changed with effect from 1 January 2018.

3. The retroactive effect of the law

The standard when creating tax law is to respect the *lex retro non agit* principle. This principle means the exclusion of retroactivity of law, i.e. the inadmissibility of the retroactive force of a normative act. Therefore, on its basis, the legislator cannot lay down provisions of law which would link legal effects with legal events taking place in the past. The law should be predictable and reliable for those who are bound by it, who must be sure that in a given case they are acting in accordance with the law in force, which means that they cannot be held liable for such behav-

[29] Justification to the Government's bill amending the Act on Renewable Energy Sources and certain other acts (print No 2412 of 26 March 2018), http://orka.sejm.gov.pl/Druki8ka.nsf/0/508530CF3005026FC125826C003358A4/%24File/2412.pdf.

iour in the future, even if the law changes. This principle is the basis of the legal order, resulting from the principle of a democratic state under the rule of law expressed in Article 2 of the Constitution of the Republic of Poland and shaping other principles, such as the principle of the citizen's trust in the state and the law enacted by it[30].

The prohibition of the retroaction of law is not absolute, but as the Constitutional Tribunal pointed out, derogations from it are permitted in exceptional circumstances, "if it is justified by the need to implement another constitutional principle, and the implementation of this principle is not possible without the retroactivity of law. The admissibility of a derogation from this principle also depends on the importance of constitutional values, which the regulation under examination is to protect"[31]. The principle *lex retro non agit* "does not prevent the granting or extension of rights retroactively. It is not affected by a retroactive amendment of a law which does not deprive or restrict citizens' rights, or at least the prospects for those rights"[32].

Therefore, it follows from the above that the retroactive effect of the law is an exceptional situation and, even if it is permissible it is only applied in particularly justified cases. Such exceptional circumstances do not seem to have occurred, and yet the legislator decided to introduce in the course of 2018, with effect from 1 January of this year, the amendment already discussed in the previous part of the study, resulting in a significant reduction of the tax base of wind power plants. As a consequence, this change led to a significant deterioration of the financial situation of those municipalities which had been legally implementing property tax revenues from wind power plants from the beginning of the year. The amendment in question clearly had a negative impact on the income of territorial self-government units and, hence, on the tasks performed by

---

30 Cf. judgment of the Constitutional Tribunal of 17 December 1997, K 22/96, "Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy" 1997, No 5–6, item 71.

31 Judgment of the Constitutional Tribunal of 7 February 2001, K 27/00, "Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy" 2001, No 2, item 29.

32 Decision of the Constitutional Tribunal of 14 March 1995, K 13/94, "Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy" 1995, No 1, item 6.

them[33]. Consequently, pursuant to Article 50(1) of the Act of 28 August 2009 on Public Finance[34], a draft act which may result in a reduction of revenues of public finance sector entities in relation to the amounts resulting from the provisions in force, should include in its justification the determination of the size of these effects. It should, but did not include it. Therefore, it was easy for the legislator to deprive the communes of a multi-million PLN worth of their own income, without proper justification, or calculation of the financial consequences.

4. Nothing about us without us?

The experience of recent years allows us to state that a common phenomenon is the introduction of tax exemptions and other legal constructs to the acts regulating taxes constituting the municipal income of communes, the effect of which is a reduction in taxation. Sometimes this is done under the guise of the need to clarify the regulations, as was the case with the amendment of the exemption from property tax on railway infrastructure (Article 7(1)(1) of LTCA), while on other occasions it was introduced by new regulations. In the latter case, a good example is the package of amendments to agricultural, forestry and property taxes, in force since 2019. As a result, land under different types of technical networks (telecommunication networks, oil pipelines, electricity networks, gas pipelines, oil pipelines) is subject to lower taxation[35].

---

33 See the documents submitted at the stage of work on the project to the Senate for the following communes: Świecie nad Osą, Kuczbork-Osada, Wróblew, Słupsk, Gołańcz and the Association of Rural Municipalities of the Republic of Poland – https://www.senat.gov.pl/prace/senat/proces-legislacyjny-w-senacie/ustawy-uchwalone-przez-sejm/ustawy-uchwalone-przez-sejm/ustawa,551.html. As indicated by the Governor of Słupsk Commune in his letter of 11 June 2018, a change in the rules of taxation of wind power plants during the budget year in the case of this commune will result in a loss of income of more than 7%, which, with a budget of PLN 22 million, is a significant amount and may disrupt its implementation.

34 Consolidated version, Dz.U. of 2017 item 2077 with subsequent amendments.

35 More broadly cf. R. Dowgier, *Nowe zasady opodatkowania gruntów pod infrastrukturą techniczną*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2018, No 10, pp. 6–12.

It is a rule of thumb for such changes to the legal order that there should be consultation about them in the legislative process with the Joint Central Government and Local Government Committee. This is because it should not be that legal regulations concerning self-government, including its finances, are passed without the participation of its representatives (nothing about us without us). However, as evidenced by the case law, the law is one thing and practice is another. Documents accompanying the legislative process, which resulted in changes in taxation, are available on the website of the Government Legislation Centre[36], and their reading leads to the general conclusion that the author of the changes was the Ministry of Energy, which carried out the entire process despite the negative opinions of the Ministry of Finance and the Government Legislation Centre.

Several participants in the legislative process (Minister of Finance, Chairman of the Standing Committee of the Council of Ministers, Government Legislation Centre) pointed out the lack of preparation of that part of the Regulatory Impact Assessment (RIA) for the draft, which relates to the impact on the public finance sector. From the very beginning, the RIA did not indicate any values in this respect, although 2478 communes were identified as entities affected by the proposal. Secondly, the letters referred to the fact that, pursuant to Article 8(1) of the Act of 6 May 2005 on the Joint Central Government and Local Government Committee and the representatives of the Republic of Poland in the Committee of the Regions of the European Union[37], since the draft will have a direct impact on the income of local government units, leading to their reduction, it should have been submitted to the Joint Central Government and Local Government Committee for their opinion.

None of the shortcomings identified had been remedied in the course of legislative work. Interestingly, to a firm letter from the Minister of Finance dated 21 May 2018 (PS2.8401.2.2018)[38], where he explicitly indicated that "the application of an incomplete procedure for the proposal without the opinion of the Joint Central Government and Local Government Com-

36 Project No UD386, https://legislacja.rcl.gov.pl/projekt/12313107/katalog/12518511#12518511.
37 Dz.U. No 90, item 759.
38 https://legislacja.rcl.gov.pl/docs//2/12313107/12518511/12518513/dokument347298.PDF.

mittee is inadmissible", the Minister of Energy replied in a letter dated 13 June 2018 (DE.VIII.0210.2.2018)[39] stating that "it was necessary owing to the need to announce the regulation in question later this year".

Thus, contrary to the rules of correct legislation, provisions have been introduced into the legal order, the consequence of which will be a significant reduction in the communes' own income, without consultation with the representatives of local government, without an assessment of the financial impact of this regulation, and without compensation for lost income[40].

5. Conclusions

The examples presented in the study do not exhaust the rich catalogue of cases in which regulations influencing the legitimate income of communes have been introduced in recent years in violation of the standards applicable to legislation. However, they give a good picture of a situation in which the legislator disregards the rules of legislation, which regulate someone else's income. The legislator takes excellent care of its revenues by preparing subsequent packages of changes to seal the tax system, including above all in the area of value added tax.

One can only hope that local tax regulations will be sealed and improved with the same zeal and determination. Of course, I am being a bit sarcastic at this point as I do not believe in the likelihood of such actions.

The general conclusion against the background of the deliberations presented in this paper may be that the main shortcoming of our legal system is, in principle, the lack of instruments related to the control of the legislative process. As far as statutes are concerned, the only mechanism for verifying the correctness of legislation seems to be the Constitutional Tribunal, which, however, operates only on the basis of a review of compliance with the constitutional standard. Meanwhile, it is worth noting that in terms of local law, including local tax law enacted by commune author-

[39] https://legislacja.rcl.gov.pl/docs//2/12313107/12518511/12518512/dokument347293.PDF.

[40] R. Dowgier, *Nowe zasady opodatkowania gruntów pod infrastrukturą techniczną...*, p. 7.

ities, the control of their activities does exist, and it is twofold. Tax resolutions are subject to verification both by Regional Chambers of Accounts and by administrative courts. Maybe that is why in practice such situations as those described in the text, i.e. the applicability of legal acts adopted in flagrant violation of the rules of correct legislation at the level of local tax law in principle do not occur.

Bibliography:

Dowgier R., *Zasady stanowienia prawa podatkowego – próba klasyfikacji* [in:] J. Głuchowski, A. Pomorska, J. Szołno-Koguc (eds), *Podatkowe i niepodatkowe źródła finansowania zadań publicznych*, Wydawnictwo KUL, Lublin 2007.

Dowgier R., *Wpływ zmiany definicji budowli w prawie budowlanym na zasady opodatkowania podatkiem od nieruchomości,* „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2010, No 9, pp. 8–12.

Dowgier R., *Zakres władztwa podatkowego gmin w prawie Rzeczpospolitej Polskiej w świetle standardów wynikających z Europejskiej Karty Samorządu Lokalnego* [in:] M. Ofiarska (ed.), *Europejska Karta Samorządu Lokalnego a prawo samorządu terytorialnego,* Wydział Prawa i Administracji Uniwersytetu Szczecińskiego, Szczecin 2015.

Dowgier R., *Nowe zasady opodatkowania elektrowni wiatrowych*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2016, No 9, pp. 6–11.

Dowgier R., *Nowe zasady opodatkowania gruntów pod infrastrukturą techniczną*, „Przegląd Podatków Lokalnych i Finansów Samorządowych" 2018, No 10, pp. 6–12.

Etel L., Dowgier R., *Podatki i opłaty lokalne – czas na zmiany*, Temida2, Białystok 2013. Kosikowski C., *Ustawa podatkowa,* Lexis Nexis Polska, Warszawa 2006.

Morawski W., *Elektrownie wiatrowe* [in:] W. Morawski (ed.), *Podatek od nieruchomości w orzecznictwie sądów administracyjnych. Komentarz. Linie interpretacyjne,* Wolters Kluwer Polska S.A., Warszawa 2013.

Popławski M., *Lokalne prawo podatkowe* (duplicated typescript), Białystok 2002.