

Summary of the Doctoral Dissertation entitled
„Review of Tax Law Norms by Means of a Constitutional Complaint”


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The objective of this dissertation is to undertake an academic reflection on the methods by which the Constitutional Tribunal reconstructs – in its jurisprudence, with direct application in the context of reviewing tax law norms through constitutional complaints – the object of review, i.e., a tax law norm, and the standard of such review, i.e., constitutional tax-related freedoms or rights, as well as the mutual relationship between the two, in the context of the alleged mode of infringement as specified in the complaint and expressed in the reasoning supporting the claim of unconstitutionality.

A constitutional complaint may, indeed, serve as an effective legal instrument aimed at the derogation of numerous tax law norms raising concerns regarding their constitutional validity. The existing jurisprudence of the Constitutional Tribunal in tax matters, although significant over the initial decades of its operation, remains scarce when compared to the volume and impact of tax law regulations that provoke such concerns. This situation is unlikely to change unless the Tribunal is presented with properly drafted and adequately reasoned constitutional complaints in this area.

Accordingly, it is fully justified to conduct a study of the Tribunal's case law concerning the admissibility of challenging, by means of a constitutional complaint (available to anyone whose constitutional freedoms or rights have been infringed), the constitutionality of binding tax law norms – provided that certain requirements are met, including the methodological conditions outlined in this dissertation.

The foregoing forms the foundation for the formulation of the following research hypothesis: a constitutional complaint, which may be lodged by any individual whose constitutional freedoms or rights have been violated, is fully capable of constituting – within the Polish constitutional and legislative practice – an effective legal instrument for the derogation of unconstitutional tax law norms. These norms may, indeed, serve as the object of constitutional review, while a range of constitutional freedoms and rights, as enshrined in the provisions of the binding Polish Constitution, may effectively serve as review standards in proceedings initiated by means of a constitutional complaint. Thus, the initiation of proceedings aimed at declaring a norm unconstitutional lies within the reach of any subject of Polish tax law.




However, an attempt to conduct a comprehensive analysis of the concept of a subjective (individual) right protected by the constitutional complaint – even if limited to tax matters – would, by its very nature, be doomed to failure due to the extraordinarily vast scope of the relevant normative space. Principles such as equality, proportionality, or tax justice would each require dedicated, extensive analyses. Therefore, it is appropriate to carry out such an analysis insofar as it emerges from the Tribunal's jurisprudence itself. It is through the interpretative methods applied – with varying degrees of success – in its judgments that one can concretely present the concept of a constitutional subjective right (the review standard) infringed by the application of a tax law norm (the object of review) in the final ruling on the complainant's constitutional freedoms, rights, or obligations (the mode of infringement).

This consideration necessitates an examination of the issue in three functionally interrelated areas:

The first area concerns the legal construction of a constitutional complaint from the perspective of a tax matter. It focuses on identifying the mode in which constitutional freedoms or rights are infringed by the application of a general and abstract tax law norm in an individual and concrete act of its final application. It also addresses the impact of the scope of the complaint as formulated by the complainant on the operative part of the Tribunal's ruling, as well as the relationship between this impact and the complainant's right to seek the reopening of proceedings in the event the complaint is upheld. The discussion begins with an outline of general procedural principles and concepts and presents the Tribunal's jurisprudence across various types of taxes, indicating the permissible configurations of review standards in relation to norms shaping the content of particular types of public levies (Chapter One – **The Structure of a Constitutional Complaint from the Perspective of a Tax Matter**).

The second area focuses on the object of such review – the tax law norm that co-determines the content of the decision issued in a tax matter. Tax law constitutes an autonomous and distinct part of the legal system. This circumstance forms the basis for the doctrinal and administrative judicial development of the concept of a “tax law norm” as a legal norm belonging to tax law. It is this norm that constitutes the object of review in constitutional complaint proceedings. Accordingly, the admissibility of its challenge through such proceedings is addressed in Chapter Two of this dissertation (**The Tax Law Norm as the Object of Review in Constitutional Complaint Proceedings**).




Meanwhile, Chapter Three (**The Standard of Constitutional Review of Tax Law Provisions under the Constitutional Complaint Procedure**) addresses the issue of constitutional subjective rights infringed by the issuance of a final judgment concerning the freedoms, rights, or obligations of the complainant in a tax case, as interpreted through the jurisprudence of the Constitutional Tribunal. The discussion in this section is a logical consequence of the conclusions drawn from the analyses presented in the two preceding chapters, by which point the structural perspective of the constitutional complaint in tax matters has been established, and the subject of review under this procedure has been characterized.

Each chapter begins with introductory remarks that are methodologically significant. Their purpose is to delineate the essence of the issues undertaken and to provide a systematic framework for the chapter. Each chapter concludes with synthetic conclusions, which are essentially summarizing and ordering in nature, but above all serve to confirm the assumptions outlined in the respective introductory remarks.

The research conducted in this study employs the following methodologies. First and foremost, the method of structural-critical analysis is applied to discuss the three fundamental structural elements of the constitutional complaint challenging the constitutionality of tax law provisions: the subject of review, the standard of review, and the relationship between the two from the perspective of the mode of violation. This is based on the legal views expressed in the case law of the Constitutional Tribunal and in legal scholarship, and these views are assessed through the prism of the *principium rationis sufficientis*. The application of this method necessitated the use of a second, complementary method, namely the method of synthesis, which allows for the organization of the knowledge thus acquired in a coherent, justified, and orderly manner. As already noted, each of the three structural elements is addressed in a separate chapter, each composed of analyses of the individual categories constituting these elements.

These methods were applied with the aid of the argumentative method, used to assess the legal positions adopted by the Constitutional Tribunal with respect to the values underpinning specific constitutional subjective rights of the addressees of tax law norms. This is considered in light of the constitutional complaint's structure and serves the practical purpose of properly formulating the scope and justification of the complaint. These methods were applied using the formal-dogmatic method, which is typical in legal sciences, with particular emphasis on the practical application of constitutional tax law in the case law of the Constitutional Tribunal, since such case law constitutes the principal domain for advancing arguments or evidence in support of claims of unconstitutionality of the contested provisions in successive constitutional complaints submitted



to the Tribunal. The formal aspect of this method consists of an analysis of the content of positive legal norms, in particular the provisions of the binding Constitution and their relationship to evolving, yet reviewable, normative acts of tax law and the Tribunal's reasoning in this regard. The dogmatic aspect, on the other hand, encompasses the belief (*dogma*, from the Greek) in the rationales, assumptions, or constructs underpinning the constitutional system of tax law—namely, tax law in its constitutional dimension—insofar as it becomes useful for correctly formulating the scope of a constitutional complaint in cases concerning the constitutionality of tax law provisions.

The application of the formal-dogmatic method throughout this work also required recourse to the hermeneutic method, to the extent necessary for acquiring knowledge on the development of operative interpretive rules in the jurisprudence of the Constitutional Tribunal. This knowledge is of vital importance both for authors of constitutional complaints—regarding how to formulate the scope and justification of a complaint—and for the Tribunal itself, which, over years of jurisprudential activity, has developed numerous standards for the protection of constitutional rights and freedoms of subjects under tax law. Moreover, to the extent that the analysis of jurisprudence may be considered part of the sociological method of legal research, this method has been extensively applied in the present work, particularly in Chapter Three, through an analysis of the Constitutional Tribunal's case law that is useful in proceedings concerning the constitutionality of tax law provisions under the constitutional complaint procedure.

The assessments, analyses, and comparisons of the various categories of the examined phenomena were operationalised using the method of axiological legal analysis, as it is precisely the values, ideals, and objectives of the law—that is, its axiological dimension in a broad sense—that play a pivotal role when attempting a scholarly evaluation of constitutional compliance tests. The same applies in the context of tax law. This method was reflected in the present work through attempts to identify a conflict of values inherently embedded in the structure of tax law norms. This conflict takes the form of a confrontation between the constitutional right to property—particularly the right to the complainant's monetary assets (Article 64 of the Constitution)—and the duty of every person to bear public burdens and contributions, including taxes established by statute (Article 84 of the Constitution), viewed through the lens of the obligation to observe the laws of the Republic of Poland, as set forth in Article 83 of the Constitution. This obligation is rooted in the idea, enshrined in Article 1 of the Constitution, that the Republic of Poland constitutes the common good of all its citizens, whose inherent, inalienable, and inviolable dignity is, as declared in Article 30 of the Constitution, to be respected and protected by public authorities.

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