

**ANNA DRYWA
SVETLANA MIRONOVA**

**Views on quality of tax regulations on real property
Polish and Russian experiences**

Wydawnictwo Uniwersytetu Gdańskiego



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Abbreviations

ATA	the Act of 15 November, 1984 on Agricultural Tax (consolidated text: Journal of Laws of 2017, item 1892 with amendments)
CBOSA	Central Database of Decisions of Administrative Courts [Centralna Baza Orzeczeń Sądów Administracyjnych], available at: http://orzeczenia.nsa.gov.pl/cbo/query
FPV	Free Port of Vladivostok
FTA	the Act of 30 October, 2002 on Forest Tax (consolidated text: Journal of Laws of 2017, item 1821 with amendments)
FTS	Federal Tax Service
LTFA	the Act of 12 January, 1991 on Local Taxes and Fees (consolidated text: Journal of Laws of 2017, item 1785 with amendments)
NSA	Supreme Administrative Court [Naczelny Sąd Administracyjny]
OTK	Constitutional Tribunal Jurisprudence [Orzecznictwo Trybunału Konstytucyjnego]
TK	Constitutional Tribunal [Trybunał Konstytucyjny]
VAT	value added tax
WSA	Voivodship Administrative Court [Wojewódzki Sąd Administracyjny]

Introduction

The issue of law quality is a matter of utmost importance, one determining the level of legal situation security enjoyed – or not – by legal rule addressees. A high quality of law is much desired both by Polish and Russian taxpayers, the legislator being expected to take due care for a high profile of legal regulations, which demands are formulated using both soft measures, like recommendations or expectations and binding legal standards (e.g., on constitutional level). High quality legislation builds trust in the State, is a proof of the existence of the rule of law and care taken for the citizens. It must not be neglected, though, that attainment of the goal, in the ever changing realities of modern world is hard, a telling example of the problem being tax law. There should be asked question, if Polish and Russian legislator do cares about quality of tax regulations on real property, how there is their approach to this important for taxpayers issue. Maybe they put only attention on incomes generate by real property taxes.

The idea of collection and pooling of public resources, since its very inception, involved, in the first turn, levies placed on property. Real property was one of the first taxable items; in fact, it constituted, in a sense, a “natural” item subject to taxation. Land property is a finite good, and buildings (as well as parts thereof) are hard to hide. Intuitively, the regulations concerning real property taxation are supposed to be ones of particularly high quality, that means i.e., those being comprehensible, clear and leaving no room for doubts. The experiences learned from various countries show that the reality may be quite different from such expectations.

The purpose of this study is define term quality of tax regulations, set conditions for that and than to analyse and evaluate the quality of legal regulations concerning the taxation of real property in the Poland and Russia.

Quality of law is a value cherished in the democratic states based on the rule of law. There are, however, many factors that affect it and make the problem a complex one. What comes as a surprise in that respect is that the notion is hardly understood uniformly, legal scholars putting stress on various aspects of the quality of law. Differentiation of tax systems, the environment of tax law operation, political structure of the country or its geopolitical situation, all those factors translate in the quality of tax law having different meaning even in the legal culture of the related Slavic states.

The monograph is composed of three parts, in each of them are introduce Polish and Russian experiences. This approach seems to be the value of the monograph, gives a comparative attitude and set a good basis to create conclusions on the topic. Presented in the first chapter are views on the issue of law quality, as formulated by legal scholars from the Poland and Russia. The evaluation of legal provisions should be based upon an analysis of objective criteria. In this context a few aspects can be put to examination. In the legal culture of the West, the main measure of the quality of law is meeting the standards of the democratic state based on the rule of law including, in particular, the principles of the citizens' trust in law and appropriate legislation.

Next, in chapter two, national regulations concerning real estate taxation are presented (a due degree of generality being preserved). The Polish system of taxation of real property is composed of the real property tax, the forest tax and the agricultural tax. The Russian system of property taxes on real estate consist of the property tax of organizations (corporate property tax), the property tax of individuals (personal property tax) and land tax.

Chapter three of the study has practical character as well as is focused on discussion of specific issues, problems, aspects and experiences related to the quality of tax regulations concerning real property in the Poland and Russia.

The final element of the considerations is an attempt to draw broad conclusions and provide a *sui generis* summary as well as an evaluation of quality of tax regulations on real property. In this context finally obvious might occur fact, that both the content of the legal regulations and the practice of their application is a resultant of numerous factors – and the first of all is quality of legal regulations.

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1. Theoretical views on the quality of law

1.1. Polish approach

1.1.1. Introductory remarks

Quality, or – as a dictionary of Polish puts it – the “value of sth,”¹ is a category subject to judgment. The latter depends on, *inter alia*, our expectations towards the assessed object. An immediate proof of the quality of law is the citizens’ acceptance of legal standards. The evaluation should, however, be based upon an analysis of objective criteria. Apparently, a few aspects can be put to examination. In the legal culture of the West, the main measure of the quality of law is meeting the standards of the democratic state based on the rule of law including, in particular, the principles of the citizens’ trust in law and appropriate legislation. The procedural aspect of law-making is not without meaning, either, just as is the legislator’s capacity to solve current practical problems being definitely a sign of the times, such as integration and globalisation. The evaluation of law quality must be completed by an empirical analysis of the efficiency and effectiveness of legal regulations. And there is no doubt that legal standards are supposed to meet the high expectations voiced by the public.

¹ According to the definition in a Polish language dictionary, quality also means “essential characteristics of the object distinguishing it from others.” Cf. www.sjp.pwn.pl. The following study does not, however, attempt at defining the notion of law or pointing out to its specific traits. The considerations contained therein focus on matters of quality of the Polish law.

Unfortunately, the statements made about poor quality of Poland's law – the system in general or its individual branches – are no mere assumptions any more, but have become a dominating and mundane view not asking for evidence. The legislation has lost its quality of a factor exerting a stabilising influence on socio-economic life, which makes the implementation of law an ever harder process. And sticking to linguistic interpretation entails bitter disappointments to anybody who hopes to find an equitable resolution that way.²

The deterioration of the quality of law has been going on for years, the crisis striking not only the content of the legal standards, but also the structure of the law as a system.³ What is created by the legislator seems to be more a haphazard collection of sources of law than a legal system. When talking about the tax law, which deeply interferes with the socio-economic life and is thus vulnerable to any deficiencies – the existence of a tax “conglomerate” rather than a system based on well-thought and predetermined ideas is being talked of by the legal scholars.⁴

One of important yardsticks whereby the quality of law may be measured is the degree to which the standard of a democratic state based on the rule of law is met by the legislation. The very idea of such

² E. Łętowska, “Prawo w «płynnej nowoczesności»,” *Państwo i Prawo* 2014, no. 3, p. 20.

³ Cf. *ibidem*, p. 8 *et seq.*; S. Wronkowska, “Tworzenie prawa” [in:] S. Wronkowska, Z. Ziemiński, *Zarys teorii prawa*, Poznań 2001, p. 122 *et seq.*

⁴ Cf. J. Glumińska-Pawlic, “«Fanaberie» podatkowe” [in:] *O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin*, księga II, eds. M. Mikołajczyk *et al.*, Białystok–Katowice 2010, p. 912; R. Mastalski, “Polski system podatkowy oraz kierunki jego przekształceń” [in:] *Prawo finansowe i nauka prawa finansowego na przełomie wieków. Ogólnopolska Konferencja Katedr Prawa Finansowego, Kraków, 21–23 października 1999 r.*, ed. A. Kostecki, Kraków 2000, p. 41.

a state⁵ determines the approach to the state's functions and role. An essential factor is the content of the legal standards, their objective and functions. Important for the citizens is the way the legislator takes care of them and models their legal situation.⁶ A fundamental thing in that respect is whether duties imposed on them are counterbalanced by the instruments of citizens' rights protection. In addition, reflected in the law should be values accepted by the society. The principle of the democratic state based on the rule of law concerns not only the sphere of the law's operation, the way in which it is applied, by also the law itself, and it is on that aspect that further considerations about the quality of law will be focused.⁷ But first of all, law has to take a duly formalised shape and contain regulations of general and abstract nature, yet sufficiently defined, precise and stable. From the essence and axiology of the state governed by law a number of specific rules can be derived. The rich output of the Constitutional Tribunal (hereinafter TK) has

⁵ Art. 2 of the Constitution of the Republic of Poland of 2 April, 1997 (Journal of Laws No. 78, item 483).

⁶ For a broader discussion of the quality of the tax law as a factor shaping taxpayer's legal position see: A. Drywa, "The Quality of the Tax Law as a Factor Shaping the Taxpayer's Legal Position" [in:] *The Financial Law Towards Challenges of the XXI Century (Conference Proceedings)*, eds. M. Radvan *et al.*, Publications of the Masaryk University, Theoretical series, edition Scienta, file no. 580, Brno 2017, p. 289 *et seq.*, https://www.law.muni.cz/sborniky/Radvan_Financial_challenges.pdf (accessed: 21.07.2020). As well as for a broader discussion of the taxpayer's legal situation in real estate tax see: A. Drywa, "The Taxpayer's Legal Situation in Real Estate Tax – the Polish Perspective" [in:] *The Challenges of Local Government Financing in the Light of European Union Regional Policy (Conference Proceedings)*, eds. P. Mrkývka *et al.*, Publications of the Masaryk University, Theoretical series, edition Scienta, file no. 636, Brno 2018, p. 359 *et seq.*, https://www.law.muni.cz/sborniky/others/Local_government_financing.pdf (accessed: 21.07.2020).

⁷ Cf. J. Nowacki, "Formalne państwo prawne (kwestia charakterystyki)" [in:] Uniwersytet Mikołaja Kopernika, *Teoria prawa. Filozofia prawa. Współczesne prawo i prawoznawstwo*, Toruń 1998, p. 219.

contributed to imbuing the rules with appropriate flesh.⁸ And it seems desirable to note that the system of measures instrumental in securing a due quality of law must be supplied with two more components: an efficient and independent court system and law-abiding public administration.

1.1.2. The rule of the citizen's trust in the State

The principle of the citizen's trust in the State and the law enacted by the latter (also referred to as the rule of the State's loyalty towards its citizens), derived from the principle of the democratic state based on the rule of law, is founded upon the assumption of law certainty, or securing to the citizens a stable (though not unchangeable) legal environment.⁹ The elements that are indispensable for the certainty of law are: its predictability, definiteness, clarity and stability.¹⁰ In that respect the rule is closely related to the principle of fair legislation.

In a democratic state law has to meet the requirement of certainty (security). The latter, as a feature of law, consists in the addressee of a legal standard being in a position to foresee what the legal consequences

⁸ Cf. e.g., the TK ruling of 6 December, 2016, SK 71/13, Constitutional Tribunal Jurisprudence [hereinafter OTK-A] of 2016, item 81; the TK ruling of 28 June, 2016, SK 31/14, OTK-A of 2016, item 51; the TK ruling of 8 June, 2016, SK 37/13, OTK-A of 2016, item 28; the TK ruling of 28 October, 2015, K 21/14, OTK-A of 2015, no. 9, item 152; the TK ruling of 14 October, 2015, KP 1/15, OTK-A of 2015, no. 9, item 147; the TK ruling of 24 March, 2015, K 19/14, OTK-A of 2015, no. 3, item 32; the TK ruling of 5 December, 2013, K 27/13, OTK-A of 2013, no. 9, item 134; the TK ruling of 3 December, 2013, P 40/12, OTK-A of 2013, no. 9, item 133.

⁹ The ruling of the TK of 14 December, 2017, K 36/15, OTK-A of 2017, item 89.

¹⁰ H. Filipczyk, *Postulat pewności prawa w wykładni operatywnej prawa podatkowego*, Warszawa 2013, pp. 21–22.

of specific facts of life can be.¹¹ The tax law directly and imperiously affects the situation of the taxpayer, ailments related to this fact should not be further aggravated by the lack of legal certainty.¹² The legal security of an individual means the individual's capacity to plan the person's own activities, make decisions about one's course of actions based on the knowledge of the motives that guide the operation of state agencies and the possible legal consequences.¹³

Yet the certainty of law does not only mean its predictability, but also comprehensibility, clarity, precision, non-retroaction and respect to interests in progress, protection of the acquired rights. Securing a *due vacatio legis* is also necessary, making it possible to the addressees to adapt to the changing regulations and decide what the further course of their actions should be.¹⁴ The certainty of law provides citizens with a due level of safety, as it enables them to reasonably plan their own activities. The requirements derived from the rule of the citizen's trust in the state and the law enacted by it should be duly met by the legislator. In the democratic state governed by law the citizens have the right to good legislation.

The legal system should be stable. Changes of law do happen to be necessary, the fact resulting from the need to adjust the law to the changing realities. Amendments to legal regulations allow to correct

¹¹ T. Gizbert-Studnicki, "Postulat jasności i zrozumiałości tekstów prawnych a dostęp do prawa" [in:] *Prawo i język*, eds. A. Mróz, A. Niewiadomski, M. Pawelec, Warszawa 2009, p. 9 *et seq.* See also: H. Filipczyk, *Postulat pewności...*, p. 21; J. Nowacki, *Studia z teorii prawa*, Kraków 2003, p. 88; M. Wojciechowski, *Pewność prawa*, Gdańsk 2014, p. 27 *et seq.*; S. Wronkowska, "Postulat jasności prawa i niektóre metody jego realizacji," *Państwo i Prawo* 1976, no. 10, p. 19 *et seq.*

¹² J. Zimmermann, "Pewność" [in:] *Pewność sytuacji prawnej jednostki w prawie administracyjnym*, ed. A. Błaś, Warszawa 2012, p. 198.

¹³ The TK ruling of 2 April, 2007, SK 19/06, OTK-A of 2007, no. 4, item 37.

¹⁴ The TK ruling of 14 December, 2017, K 36/15, OTK-A of 2017, item 89.

their shape, result in new provisions being enacted whenever needed, while those, which – upon a thorough analysis – have been found inefficient, unnecessary or flawed, are repealed. However, no matter how much desired and correctly made changes of law are, they always, to a certain extent, destabilise the existing legal order and should therefore be a result of well-considered and informed decisions. A particularly negative impact is that exerted by changes which are fragmentary, made under transient impulses or short-lived needs or due to political, if not populist reasons. All they destabilise the legal system.

Typical of legal culture of the developed and developing countries alike is the legislator's belief that many (if not all) spheres of individual and social life should be subject to legal regulation. Actually, both insufficient level of regulation and the excessive number of legal acts (over-regulation) brings about negative results. The societies are faced with the problem of a dramatic increase in the number of legal regulations, their quality falling at the same time. The so-called inflation of law should be talked of, meaning a situation where there is too much law (over-regulation), the legal regulations being unreasonable and unnecessary as the legislator's objectives could be achieved using a smaller amount of provisions or making the legal regulations less detailed. And yet another effect of the inflation of law should not be forgotten – bewilderment of the addressees of law. In the huge sets of legal rules it is ever more difficult to identify those providing answer to specific legal questions.¹⁵ The excess of law impairs human ability to learn the law, thus resulting in uncertainty about the individual's legal situation. The inflation of law brings about incoherence of the legal system, selective application of law, and forces frequent amendments to the existing legislation. The authority of law declines.

¹⁵ S. Wronkowska, "Tworzenie prawa" [in:] S. Wronkowska, Z. Ziemiński, *Zarys teorii prawa*, Poznań 2001, p. 123.

1.1.3. Proper legislative technique

The rule of “fair legislation” is also derived, by the Constitutional Tribunal, from the principle of a democratic state ruled by law,¹⁶ and is intrinsically related to the rules of certainty of law or protection of trust in the state and law. It is one of the major elements the principle of democratic state ruled by law is composed of.¹⁷

The meaning of the rule, as ascribed to it by the Constitutional Tribunal, is very broad. When filling it with specific content the Tribunal provides for, *inter alia*, the requirement of definiteness of legal regulations, which regulations – according to the body in question – must be worded correctly, precisely and clearly.¹⁸ Unclear and vague wording of a legal rule is thus, in other words, an infringement of constitutional requirements.¹⁹ The linguistic aspect of law is a most important factor determining its quality. The basic condition of the definiteness of a precept is its proper structure – expressed in a clear way, it also must be logically flawless.²⁰ By and large, the law has always been treated as a stabilising factor, securing certainty and predictability of the legal situation.²¹

The requirement of clarity is an imperative stating that the provisions enacted by the legislator should be clear and understandable to the addressees. The latter can expect the legislator to create rules that do not raise doubts regarding the duties imposed on them nor the rights they

¹⁶ See Art. 2 of the Constitution and the TK ruling of 11 January, 2000, K 7/99, OTK of 2000, no. 1, item 2; the TK ruling of 8 April, 2014, SK 22/14, OTK-A of 2014, no. 4, item 37.

¹⁷ The TK ruling of 14 July, 2010, Kp 9/09, OTK-A of 2010, no. 6, item 59.

¹⁸ The TK ruling of 11 January, 2000, K 7/99, OTK of 2000, no. 1, item 2.

¹⁹ Cf. e.g., the TK ruling of 21 March, 2001, K 24/00, OTK of 2001, no. 3, item 51; the TK ruling of 30 October, 2001, K 33/00, OTK of 2001, no. 7, item 217.

²⁰ Cf. e.g., the TK ruling of 21 March, 2001, K 24/00, OTK of 2001, no. 3, item 51.

²¹ E. Łętowska, “Prawo w «płynnej nowoczesności»...” p. 19.

are granted.²² In turn, the precision of regulations requires that the imposed obligations and granted rights be definite, so that their meaning is obvious. The regulations must give an individual the opportunity to determine what the content of the legal norms, binding on him or her, is. Unclear and imprecise legal provisions usually leave excessive discretion to the law enforcement authorities in establishing or determining the obligations of an individual, i.e., the scope of the material and personal limitation of constitutional freedoms and rights of the individual.²³ A room for potential abuse of law emerges as a result, and the lack of the above mentioned qualities of legal regulations leads to undermining the citizens' trust in the state and the law enacted by it.

Using colloquial language or phrases loaned from other branches of law not always adds to the clarity of legal regulations; just the opposite, it may sometimes complicate their meaning, the limits of the imperatives contained in them being rather blurred.²⁴ The reasons for the law being unclear may also include, for instance, tricky wording of the regulations and their excessive abundance.²⁵ The legislator should take every care for clear, diligent and linguistically correct formulation of the texts of law. Clarity of law means that its language is precise, concise and communicative, corresponding with the adopted assumptions. Transparency of legal acts, in turn, involves implementation of

²² Cf. e.g., the TK ruling of 21 March, 2001, K 24/00, OTK of 2001, no. 3, item 51; the TK ruling of 13 February, 2001, K 19/99, OTK of 2001, no. 2, item 30.

²³ For a broader discussion of the principle of definiteness of tax law provisions see e.g., R. Dowgier, "Zasada demokratycznego państwa prawnego jako fundament stanowienia prawa podatkowego" [in:] *Konstytucyjne uwarunkowania tworzenia i stosowania prawa finansowego i podatkowego*, eds. P.J. Lewkowicz, J. Stankiewicz, Białystok 2010, p. 98 *et seq.*

²⁴ W. Szubert, "Uwagi o kulturze prawnej" [in:] *Naród. Kultura. Osobowość. Księga poświęcona Profesorowi Józefowi Chałasińskiemu*, Wrocław 1983, p. 587.

²⁵ *Ibidem.*



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