

RENDERING TAX LAW JUDICIAL WITHIN THE SCOPE OF THE GROUNDS FOR CHALLENGE OF PETITIONS

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Abstract

In this study, the emerging perception differences to the detriment of the individual with regard to the grounds for challenge of petitions in public receivables disputes before the administrative courts have been assessed and several recommendations and criticisms have been put forth within this framework.

Keywords: Petition, administrative, jurisdiction, procedure, tax law.

JEL Code: K34, K38, K41.

1. Introduction

As per the article 36 of our Constitution, the restriction of a judicial right deriving from the right to legal remedies or the right to a fair trial is a violation of the Constitution. Furthermore, in our country which has adopted the administrative regime, interpreting the rules related to administrative justice to the detriment of the individual would also hinder the principle of the rule of law.

The grounds for challenge of petitions stated in the law should be assessed through taking the case law and the principles and rules of the administrative regime into account and trying to protect the theoretical and practical aspects in a balanced manner.

In this study, the emerging perception differences to the detriment of the individual with regard to the grounds for challenge of petitions in public receivables disputes before the administrative courts have been assessed and several recommendations and criticisms have been put forth within this framework.

2. Grounds for Challenge of Petitions in Tax Law

According to the article 3 of the Administrative Jurisdiction Procedures Law numbered 2577;

- a) The names and surnames or titles and addresses of the parties and, if applicable, their attorneys or representatives and the identity numbers of real persons,
- b) The subject and reasons of the case and the based evidence,
- c) The written notification date of the administrative action constituting the subject matter of the case,
- d) The amount of the dispute in cases related to tax, due, legal fee and similar financial responsibilities and their additions and penalties, and in full remedy actions,

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- e) The nature and year of the tax or tax penalty constituting the subject matter of a tax case, the date and number of the issued notice and the account number of the taxpayer, if applicable, shall be indicated in the petitions.

According to the first paragraph of the article 5 of the same Law, separate cases shall be filed against each administrative action. However, a case may be filed with one petition against a number of actions for actions among which a material or legal correlation or a causal link exists.

3. Perception Difference

The use of the statement of “Rendering administrative justice juridical” has been inspired from the paper of deceased Administrative Justice Prof. Lûtfi DURAN titled “Administrative Justice Has Become Juridical” written in 1982 (Lûtfi DURAN, “İdari Yargı Adlileşti...”, *İdare Hukuku ve İlimleri Dergisi* (SARICA’ya Armağan), Yıl 3, Sayı 1-3, 1982, s. 53-83.). With the description of “becoming judicial” Duran refers to the differentiation of the judicial system through interventions to the jurisdiction of the administrative justice with laws, which do not comply with the administrative regime; the reason this description has been used in this study is to attract attention to the practices of especially the tax courts that will result with “rendering the tax disputes judicial”. These practices will be examined from the tax disputes perspective within the jurisdiction of administrative courts. Today, we are facing the practices of the administrative justice itself in a trend to render tax disputes into judicial cases whereas in the past, the wrongness of transferring the issues that should be solved within administrative justice to judicial cases was being discussed.

4. Conclusion

In a case filed in the administrative court against a payment order including more than one tax claim (such as delinquency, administrative fine, adequate pay, etc.); the ruling of the court for the refusal of the petition on the grounds that a separate case shall be filed for each claim within the payment order means, above all, the restriction of the right to legal remedies. Plea against this ruling, which is “final”, is not possible. As per the article 36 of our Constitution, the restriction of a judicial right deriving from the right to legal remedies or the right to a fair trial is a violation of the Constitution. Furthermore, in our country which has adopted the administrative regime, interpreting the rules related to administrative justice to the detriment of the individual would also hinder the principle of the rule of law. For example; a citizen should sacrifice filing cases for each of the items within the payment order and 374,00 TRL per case as the 2019 legal fee and post costs because of this ruling of the court even though fixed fees are implemented in administrative justice; whereas s/he would pay one fourth of the proportional fee to be calculated by 68,31 per thousand (1.707,75 TRL) if the same case worth 100 thousand Turkish lira was filed before the judicial justice. In other words, if 10 cases should be filed, 3.740,00 TRL shall be paid. The same amount would be paid in judicial justice for a case worth around 200 hundred Turkish lira with the same fees and costs whereas the total claims within the payment order may not even be 10 thousand Turkish liras under these circumstances. It is self-evident that the law-makers did not assume such a meaningless result.

In this study, the emerging perception differences to the detriment of the individual with regard to the grounds for challenge of petitions in public receivables disputes before the administrative courts have been assessed and several recommendations and criticisms have been put forth within this framework.

References

- Ağar, S. (2005). Adil Yargılanma Hakkı Perspektifinden 4811 Sayılı Vergi Barışı Yasası, Türkiye Barolar Birliği Dergisi, 59, ss. 327-358.
- Ağar, S. (2006). Vergi Davalarının Hukuki Niteliği, Türkiye Barolar Birliği Dergisi, 62, ss. 262-297.
- Ağar, S. (2009). Vergi Davalarında Yasal Vekalet Ücretinin Maktu Olması, Türkiye Barolar Birliği Dergisi, 84, ss. 308-318.
- Ağar, S. (2009). Vergi Tahsilatından Kaynaklanan Uyuşmazlıklar ve Çözüm Yolları, Ankara: Yaklaşım Yayıncılık.
- Ağar, S. (2007). Vergi Yargısında Davaya Konu İcrai İşlem-I, Türkiye Barolar Birliği Dergisi, 67, ss. 285-316.
- Ağar, S. (2007). Vergi Yargısında Davaya Konu İcrai İşlem-I, Türkiye Barolar Birliği Dergisi, 68, ss. 360-392.
- Akyılmaz, B., Sezginer, M. & Kaya, C. (2018). *Türk İdari Yargılama Hukuku*, Ankara: Savaş Yayıncılık.
- Arslan, M. (2016). *Vergi Hukuku*, 9. Baskı, Bursa: Dora Yayıncılık.
- Arslan, R. & Yılmaz, E. & Taşpınar Ayvaz, S. (2016). *Medeni Usul Hukuku*, Ankara: Yetkin Yayınları.
- Balta, T. B. (1970/72). *İdare Hukuku I Genel Konular*, Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları.
- Başaran Yavaşlar, F. (2006). “İdari Nitelikli Vergi Suç ve Cezaları”, *Vergi Dünyası Dergisi*, No: 299, ss. 116-152.
- Başaran Yavaşlar, F. (2013). Vergi Ödevi İlişkinin Tarafları Üzerinden Alman Vergilendirme Usulü, Hukuk Devleti Bakış Açısıyla, Ankara: Seçkin Yayıncılık.
- Bayraktar, E. (1976). *Takdir Yetkisi ve Yargı Yoluyla Denetimi*, İdare Hukuku ve İdari Yargı İle İlgili İncelemeler I, Ankara: Danıştay Tasnif ve Yayın Bürosu Yayınları No: 21.
- Bilgin, H. (2014). Avrupa İnsan Mahkemesi Kararlarının Türk İdari Yargısına Yansımaları, Ankara: Adalet Yayınevi.
- Bilgin, H. (2018). İdari Davalar ve Çözüm Yolları, Ankara: Seçkin Yayıncılık.
- Bilici, N. (2017). *Vergi Hukuku*, C. 1, 40. Baskı, Ankara: Savaş Yayınevi.
- Boyar, O. (2013). Hakkın ve Yetkinin Kötüye Kullanılması Yasağı, İnsan Hakları Avrupa Sözleşmesi ve Anayasa, Anayasa Mahkemesine Bireysel Başvuru Kapsamında Bir İnceleme, 3. Baskı, İstanbul: Beta Yayınları, ss. 81-96.
- Buyse, A. (2010). “Introductory Note to European Court of Human Rights (Grand Chamber): Gäfgen v. German”, *International Legal Materials*, Washington, Vol: 49 (6), pp. 1597-1639.
- Candan, T. (2018). Açıklamalı Amme Alacaklarının Tahsil Usulü Hakkında Kanun, 4. Baskı, Ankara: Yetkin Yayınları.

- Candan, T. (2017). Açıklamalı İdari Yargılama Usulü Kanunu, 7. Baskı, Ankara: Yetkin Yayınevi.
- Ceylan, M. (2017). İdari Yargıya Hakim Olan İlkeler, İstanbul: On İki Levha Yayıncılık. Çağlayan, R. (2018). İdari Yargılama Hukuku, Ankara: Seçkin Yayınevi.
- Çevik, S. (2014). *Vergi Hukuku ve Türk Vergi Sistemi*, Konya: Palet Yayınları
- Doğru, O. & Nalbant, A. (2012). *İnsan Hakları Avrupa Sözleşmesi, Açıklama ve Önemli Kararlar*, 1. Cilt, Ankara: Legal Yayıncılık.
- Duran, L. (1982). İdari Yargı Adlileşti, İdare Hukuku ve İlimleri Dergisi, Y. 3, S. 1-3, ss. 38- 69.
- Eraslan, Y. & Bilgin, H. (2017). İdari Yargıda Görev Uyuşmazlığı, S. 8, ss. 151-187.
- Gerçek, A., Çetin Gerger, G., Taşkın, T., Bakar, F. & Güzel, S. (2015). *Mükellef Hakları: Türkiye Perspektifi ve Gelişimi*, Ankara, Seçkin Yayıncılık.
- Harris, D., O'Boyle, M., Bates, E. P. & Buckley, C. M. (2014) *Law of the European Convention on Human Rights*, 3rd Edition, London: Oxford University Press.
- İnceoğlu, S. (2013). *İnsan Hakları Avrupa Mahkemesi Kararlarında Adil Yargılanma Hakkı, Kamu ve Özel Hukuk Alanlarında Ortak Yargısal Hak ve İlkeler*, İstanbul: Beta Yayıncılık.
- Kalabalık, H. (2019). İdari Yargılama Usulü Hukuku, Ankara: Seçkin Yayıncılık.
- Kaneti, S. (1989). *Vergi Hukuku*, 2. Baskı, İstanbul: Filiz Kitabevi.
- Kaplan, G. (2017). İdari Yargılama Hukuku, 2. Baskı, Bursa: Ekin Yayınevi.
- Kaya, M. (2018). İdari Yargılama Usul Hukuku Ders Notları, Ankara: Temsil Yayınevi.
- Kılıçoğlu, E. (2012). Hukuk Muhakemeleri Kanunu'nun Gider Avansına İlişkin Düzenlemeleri Hakkında Değerlendirmeler, Kazancı Hukuk Araştırmaları Dergisi, S. 99-100, ss. 43-126.
- Kırbaş, S. (2015). *Vergi Hukuku, Temel Kavramlar, İlkeler ve Kurumlar*, 20. Baskı, Ankara: Siyasal Kitabevi.
- Oktar, S. A. (2016). *Vergi Hukuku*, 10. Baskı, İstanbul: Türkmen Kitabevi.
- Onar, S. S. (1966). *İdare Hukukunun Umumi Esasları*, C. I, 3. Baskı, İstanbul: İsmail Akgün Matbaacılık-Hak Kitabevi.
- Öncel, M., Kumrulu, A. & Çağan, N. (2016). *Vergi Hukuku*, 25. Baskı, Ankara: Turhan Kitabevi.
- Önüt, L. B. (2018). İdari Yargılama Hukukunda Adil Yargılanma İlkesi Çerçevesinde Grup Dava Uygulaması , Ankara: Seçkin Yayınevi.
- Özbalcı, Y. (2006). *Vergi Davaları*, Ankara: Oluş Yayıncılık. Pehlivan, O. (2016). *Vergi Hukuku*, Trabzon.
- Pekcanitez, H. & Atalay, O. & Özkes, M. (2013). *Medeni Usul Hukuku*, 14. Bası, Ankara: Yetkin Yayınları.
- Saban, N. (2016). *Vergi Hukuku*, İstanbul: Beta Yayınevi.

Şimşek, M. (2016). *Anayasal İlkeler Karşısında Vergi Kabahat ve Yaptırımları*, Ankara: Adalet Yayınevi.

Türmen, R. (2003). “Avrupa İnsan Hakları Sözleşmesi’nde Adil Yargılanma Hakkı”, *İnsan Hakları Avrupa Sözleşmesi ve Adli Yargı Sempozyumu*, 26-27 Eylül 2003, Ankara, Türkiye Barolar Birliği Yayınları, TBB-İHAUM Yayını: 4, ss. 39-45.

Üstün, G. (2018). 2577 Sayılı İdari Yargılama Usulü Kanununda Bağlantılı Davalar ve Aynı Dilekçeyle Dava Açılabilecek Haller, İstanbul: On İki Levha Yayıncılık.

Yaltı, B. S. (2000). “İnsan Hakları Açısından Vergi Yükümlüsünün Adil Yargılanma Hakkı- III”, *Vergi Sorunları Dergisi*, No: 145, ss. 108-129.

Yaltı, B. (2006). *Vergi Yükümlüsünün Hakları*, İstanbul: Beta Yayıncılık.

Yıldırım, R. & Çınarlı, S. (2018). *Türk İdari Yargılama Hukuku Dersleri*, Ankara: Astana Yayınları.