


## General principles of law and taxation


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**Abstract:** Although the general principles of law at first sight do not bring about numerous associations with the sphere of taxation where the processes of compliance with legal rules or applying them must end with a precise numerical result, both the relevance and the significance of these principles in the sphere of tax law are more and more noticeable. The principle of proportionality has been invoked in probably every second VAT judgment of the Court of Justice for years. The principle of legal certainty has made its way to the case law of the said court as well as the Constitutional Tribunal in Poland. The importance of other principles is definitely on the rise.

## 1. Introduction

The notion of general principles of law brings about numerous associations with some basic rights and fundamental freedoms that cannot be eliminat-

ed or even limited without serious grounds by a statute, not to mention through by-laws or any type of executive action. They are linked with basic natural (hence also a link with natural law), social, and political rights. This creates, at the first sight, rather limited connections with the sphere of tax law. *Prima vista* one can think about the protection of the right to private property and *nullum tributum sine lege* principle which actually has roots in the beginnings of the previous millennium. The general wording, if not vagueness of general principles, makes one think that the potential of such principles in the field of taxation is highly limited as one can hardly make a precise calculation of the amount of tax to be remitted on the basis of such generally worded principles.

The authors of this article prove the contrary and highlight the general principles that have already gained significance in the field of tax law, or can be expected to become far more important in this field of law in the very near future.

## 2. The aim of the general principles of law

One may pose questions regarding the need to have general principles in the system of law. Precise rules are rather simple to follow (at least theoretically if one takes into account the intricacies of tax law), but the same cannot be said about general principles which, by their very nature, cannot be precise. On one hand, the general principles may be useful in filling certain loopholes that are unavoidable in legal systems. On the other hand, they can allow the adjusting of legal norms to certain situations where the application of precise rules might lead to unacceptable results (from the perspective of fairness or social justice, for example). They are perfectly suitable if one needs to choose from among a variety of interpretative possibilities.

The general principles have been correctly described in the legal scientific literature as tools allowing the protection of individuals. This is especially true in the field of taxation when one can hardly imagine imposing taxes on the basis of generally worded principles, but one definitely ought to be ready to envision limiting the scope of taxation on the basis of general principles – similarly to criminal law where a court cannot convict a person on the basis of a general principle alone, but can definitely use one to acquit a person.

For a variety of reasons, the general principles constitute tools that work in one direction only – to the benefit of the individual. First of all, applying the principles against an individual, for instance, to close the loophole allowing non-taxation would mean that the common requirement of statutory imposition of taxes (no taxation without representation) is circumvented. Secondly, the use of principles against one individual to balance his situation with the situation of another individual is also unimaginable. At the same time, it is possible to rely on the same principle to relieve an individual, under a general principle, from his duties in order to make his treatment equal with the treatment of another person. If, for example, income earned by a man is taxed using the rate of 10% and woman's income at the rate to 20%, the principle of equal treatment may be used to provide certain relief to a woman, but not to levy an additional tax burden on a man. This academic example reminds one of the problem of relationships between general principles. Decreasing the woman's tax burden would not collide with any other principles, but increasing the man's tax would do so. It could not be accepted under the principle of legal certainty (and: *nullum tributum sine lege*). One can hardly expect an average male individual to become familiar with all rules that do not explicitly apply to him and assess their fairness under a constitutional system.

### 3. Place of general principles in hierarchy of law

This article relates to two legal systems – the law of the European Union (EU) and Polish domestic law, where the former system embraces the latter and, therefore, the latter must be in conformity with the former. General principles function in both of these systems and, as may seem rather puzzling at first sight, they mutually influence each other despite the fact that one would rather expect this relationship to work one way, i.e. only the EU system would impact on the domestic legal systems of EU Member States. This is generally true as the general principles of the EU legal system must be observed by its Member States understood as legislative, executive, and judicial authorities. One must, however, bear in mind that the unwritten general principles of EU law originate from the constitutional principles of its Member States. This is where one can observe the mutual influence

mentioned above<sup>1</sup>. This peculiar relationship does not, however, eliminate the need to position the general principles of EU law and of the Polish domestic legal system in their respective legal orders.

It is easier to start with the reference to Polish law where general principles are worded in the Constitution of the Republic of Poland of 2 April 1997<sup>2</sup>. Under Article 8(1) of the Constitution, the Constitution shall be the supreme law of the Republic of Poland. Therefore, general principles contained in the Constitution, as all of its provisions, are hierarchically above other provisions of Polish law. It is worth noting that under Article 90(1) of the Constitution, the Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters. Poland has done so with regard to the European Union. This was an internal constitutional process aimed at giving EU law supremacy in Poland.

It should also be mentioned that principles that can be considered to be general principles are to be found in various chapters of the Constitution. They are not located in any specific part of it. The rule of law principle appears nearly at the beginning of the Constitution – its Article 2 says that the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice. The right to ownership is protected under Article 64 and the requirement to impose taxes and other duties by statutes is expressed as far as in Articles 84 and 217 of the Constitution. Numerous other provisions amounting to general principles are contained somewhere in between the above mentioned extremes<sup>3</sup>. Moreover, the general principles are not viewed as an independent normative category of the Polish Constitution<sup>4</sup>.

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<sup>1</sup> Such a mutual relationship is possible because the Member States of the EU have highly similar cultural backgrounds – see, for instance, Marek Zirk-Sadowski, *Prawo a uczenie w kulturze* (Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 1998), 108.

<sup>2</sup> Journal of Laws 1997, No. 78, item 483, as amended.

<sup>3</sup> Catalogues of Constitutional provisions viewed as expressing principles vary in literature – see Andrzej Pułło, *Zasady ustroju politycznego państwa. Zarys wykładu* (Gdańsk: GSW Wydawnictwo, 2018), 30 et seq.

<sup>4</sup> See, Piotr Tuleja, “Pojęcie zasady konstytucyjnej,” in *Zasady ustroju Rzeczypospolitej Polskiej w nowej konstytucji*, ed. Krzysztof Wójtowicz (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1997), 22.

The general principles of EU law are not homogenous in nature, either. Some of them are unwritten. Some authors describe them as unwritten (or: originally unwritten) primary law<sup>5</sup>. They are positioned as either equal to primary law of the EU or as placed somewhere between its primary and secondary law<sup>6</sup>.

#### 4. General principles of law of relevance in the sphere of taxation

As was mentioned earlier, the general principles of law do not bring about very many associations with the law of taxation. This is especially true with regard to the views presented by those who need to make their (or their clients') organizations comply with tax law in their daily routine, namely in-house tax managers or accountants. They need to reach exact numbers representing the amount of tax to be remitted to tax offices. The general principles do not seem to facilitate the process of achieving this purpose. On the contrary, as some of them are rather vague and are definitely not based on precise numbers, they can blur the picture of a precise set of rules that the tax law seems to be. Employees of the tax administration would be even less likely to apply the general principles of law particularly if such application might lead to limiting the scope of taxation or the amount of tax.

A different approach is likely to be presented by tax lawyers specializing in litigation whose skills and reasoning must be used far beyond filling in tax returns as they deal with controversies. In their day-to-day practice they are focused rather on convincing courts about the proper understanding of rules (which can be affected by the principles) or even about the need to reject some of the rules as contrary to the principles. This approach of litigators leads to the rather extensive use of general principles in case-law.

<sup>5</sup> See, for instance, Ziemowit Jacek Pietraś, *Prawo wspólnotowe i integracja europejska* (Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2006), 48 et seq. This author mentions the following principles in this category: respecting human rights, equality, subsidiarity, proportionality, solidarity, flexibility, legal security (comprising the principle of legal certainty, protection of legitimate expectations, and non-retroactivity). Some authors point to an "unnamed principle" as a constitutional category in Poland – see Jan Galster, "Zasada nienazwana jako kategoria konstytucji," in *Zasady ustroju Rzeczypospolitej*, 63.

<sup>6</sup> Cezary Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki* (Warszawa: C.H. Beck, 2000), 486.

Summarizing the above remarks, the practical relevance of the general principles of law depends on the field of practice. Moreover, it must be noted that there is a whole string of general principles of law, and that their relevance for the application in the sphere of taxation is obviously varied. One could identify the following principles as crucial for tax law: the principles of legal certainty, proportionality, equality, protection of legitimate expectations, prohibition of retroactivity, and respecting the ability-to-pay. One should mention the principle of protecting private property as well. There are certain principles underpinning modern political systems that are indirectly connected with taxation. It is also possible to indicate other principles with a rather minor impact on taxation or with an impact on certain rules of taxation. Today, the right to privacy is becoming more and more linked with tax law.

In the following sections of this article selected principles of high relevance in the sphere of tax law have been highlighted. Procedural guarantees have been left out of the scope of this article, but they could well be subject of many other scholarly writings<sup>7</sup>.

## 5. Principle of legal certainty

The analysis should begin with the principle of legal certainty which is of crucial importance, especially if one takes into account the fact that taxes are mostly calculated by taxpayers themselves (self-assessed). The principle of legal certainty is even viewed as a constitutional value<sup>8</sup>.

Taxpayers, especially if they are expected to calculate their tax themselves and remit it to the tax authorities, should be able to trust what is written in the journal of laws. Lack of trust may be engendered by an insufficient number of precise rules<sup>9</sup>.

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<sup>7</sup> This problems has been partly tackled by Andrzej Gorgol, “Structuring of Statutory Values of Polish Tax Procedures,” *Review of European and Comparative Law* 44, no. 1 (2021): 19 et seq.

<sup>8</sup> See, Marzena Kordela, “Pewność prawa jako wartość konstytucyjna,” in *Wykładnia Konstytucji. Aktualne problemy i tendencje*, ed. Marek Smolak (Warszawa: Wolters Kluwer, 2016), 149 et seq.

<sup>9</sup> See, Maria Borucka-Arctowa, “Zaufanie do prawa jako wartość społeczna i rola sprawiedliwości proceduralnej,” in Maria Borucka-Arctowa et al., *Teoria prawa, filozofia prawa, współczesne prawo i prawoznawstwo* (Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 1998), 18.

In Poland, the Constitution does not explicitly set specific quality requirements for national tax legislation (other legal acts do not provide such requirements, either). Polish courts and the Constitutional Tribunal (*Trybunał Konstytucyjny*) nevertheless formulate specific quality requirements in relation to tax law based on constitutional principles<sup>10</sup>.

It is worth noting that, according to the Constitutional Tribunal, tax legislation needs to be more precise than legislation in other areas of law. The Tribunal clearly expressed this opinion e.g. in its judgment of 13 September 2011 (ref. no. P 33/09)<sup>11</sup>. The dispute concerned the subject of real estate tax. Although the same definition was applicable for the purposes of both construction law and tax law, the Constitutional Tribunal emphasized that it should not be interpreted in an identical manner – the interpretation for the purposes of tax law should be narrower (*per analogiam* reasoning cannot be applied to broaden the scope of taxation, imprecise terms should not be used to delimit the scope of taxation)<sup>12</sup>.

The administrative courts and the Constitutional Tribunal have developed the principle of strict interpretation of provisions imposing taxes. The principle that doubts concerning the interpretation of tax law provisions should be resolved in favour of the taxpayer has also been developed on the basis of the rule of law principle. This means that the effects of imperfections in the tax law should be borne by the State, and not by the taxpayer<sup>13</sup>. Before *in dubio pro tributario* was introduced as a statutory principle, it had often been based on the constitutional rule of law principle.

The Constitutional Tribunal indicates that tax law provisions should be clear and precise. Lack of clarity and precision might be perceived as a violation of the rule of the principle expressed in Article 2 of the Constitution (for instance, the judgment of 29 October 2003, ref no. K 53/02)<sup>14</sup>. However, the cases in which the Constitutional Tribunal held that tax law provisions were so indeterminate that they must be perceived as unconsti-

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<sup>10</sup> Krzysztof Lasiński-Sulecki, Wojciech Morawski, and Jowita Pustul, “Depicting National Tax Legislation: Poland,” in *Tax Legislation. Standards, Trends and Challenges*, eds. Włodzimierz Nykiel and Małgorzata Sęć (Warszawa: LEX a Wolters Kluwer business, 2015), 345.

<sup>11</sup> Journal of Laws 2011, No. 206, item 1228.

<sup>12</sup> Lasiński-Sulecki, Morawski, and Pustul, “Depicting National Tax Legislation,” 345.

<sup>13</sup> Lasiński-Sulecki, Morawski, and Pustul, “Depicting National Tax Legislation,” 345.

<sup>14</sup> Polish Monitor 2003, No. 51, item 797.

tutional have been rare. The Tribunal believes that declaring a provision unconstitutional is an extreme solution. This is only acceptable when the provision cannot be interpreted in any manner that would be in line with the Constitution. Therefore, vagueness of legal provisions is not sufficient reason to hold that a provision is unconstitutional, unless it is so vague that it cannot be understood<sup>15</sup>.

At some point the Polish general anti-avoidance rule (GAAR) was considered to be contrary to the rule of law principle by the Constitutional Tribunal (the Tribunal has not dealt with current, more elaborate GAAR rules yet)<sup>16</sup>. The text of the Tribunal's judgment sets very high standards for any GAAR. The Tribunal held that: "One of the elements of the principle of trust in the State and its laws, as derived from the principle of the rule of law (Article 2 of the Constitution), is the prohibition of sanctioning – in the sense of attributing negative consequences to, or refusing to recognize the positive consequences of – the lawful behaviour of the addressees of legal norms. Thus, where the addressee of a legal norm concludes a lawful transaction and thereby achieves a goal which is not prohibited by law, the objective (including the tax objective) accomplished in this manner should not be regarded as tantamount to prohibited objectives"<sup>17</sup>. According to the Tribunal the requirement for the legislator to comply with the principles of correct legislation stems from the rule of law principle. This requirement is functionally tied with the principles of legal certainty, legal security, and protection of trust in the State and its laws. The constitutional requirements of correct legislation are particularly infringed, as the Tribunal continued, when the wording of a legal provision is so vague and imprecise that it creates uncertainty amongst its addressees as regards their rights and duties, by creating an exceedingly broad framework within which the authorities charged with applying the provision are required, *de facto*, to assume the roles of law-makers in respect to these vaguely and imprecisely regulated issues. The Tribunal indicated a number of general clauses that were used in Art. 24b of the General Tax Law: "one could not

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<sup>15</sup> Lasiński-Sulecki, Morawski, and Pustul, "Depicting National Tax Legislation," 346.

<sup>16</sup> Ref no. K 4/03, Journal of Laws 2004, No. 122, item 1288.

<sup>17</sup> Bogumił Brzeziński and Krzysztof Lasiński-Sulecki, "Poland," in *A Comparative Look at Regulation of Corporate Tax Avoidance*, ed. Karen Brown (Springer, 2012), 273.



have expected”, “other significant benefits”, “benefits stemming from the reduction of tax liability”<sup>18</sup>.

The Polish Constitutional Tribunal also considered a situation where one cannot check all the facts relevant for the purposes of taxation to be in breach of the principle of legal certainty (judgement of 12 February 2015, SK 14/12)<sup>19</sup>.

Similarly, the principle of legal certainty has been recognized by the Court of Justice. In its judgment of 6 November 2008 in the case *Kollektivavtalsstiftelsen TRR Trygghetsrådet v Skatteverket*, C-291/07,<sup>20</sup> the Court opted for the interpretation in line with the principle of certainty where the core issue was to understand an interpreted provision in such a way that all the circumstances relevant from the perspective of taxation could be identified by a taxpayer. The Court held:

“30. Such an interpretation is consistent with the objective pursued by Article 9 of the Sixth Directive, which (...) is to lay down a conflict of laws rule to avoid the risk of double taxation or non-taxation.

31. In the same way (...) that interpretation facilitates the implementation of that conflict of laws rule, in that it serves the interests of simplicity of administration – of the rules on the place of supply of services – as regards the rules governing the collection of taxes and the prevention of tax avoidance. The supplier of services needs merely to establish that the customer is a taxable person in order to ascertain whether the place of supply of services is in the Member State in which he, the supplier, is established or in the Member State in which the customer’s activities are based.

32. Furthermore, that interpretation is in line with the objectives and operating rules of the Community VAT system since it ensures, in a situation such as that at issue in the main proceedings, that the ultimate consumer of the supply of services bears the final cost of the VAT payable.

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<sup>18</sup> www.trybunal.gov.pl. An analogous problem in a comparative context was analysed in: Rebecca Prebble and John Prebble, “Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law – A Comparative,” *Saint Louis University Law Journal* 55 (2010): 21 et seq.

<sup>19</sup> Journal of Laws 2015, item 235.

<sup>20</sup> ECLI:EU:C:2008:609.

33. As the Advocate General observed (...), such an interpretation is also consistent with the principle of legal certainty; furthermore, it enables the burden on traders operating across the internal market to be reduced and facilitates the free movement of services”.

It is interesting to note the development of the concept of “tax certainty” where the search for the taxpayer’s secure position takes place also through instruments like dispute resolution mechanisms<sup>21</sup>.

## 6. Principle of proportionality

The principle of proportionality has been referred to extensively by the Court of Justice in VAT cases and, to a far lesser extent, in excise duty cases as well as in cases connected with treaty freedoms. For the purposes of applying the principle of proportionality, the freedom or right guaranteed by EU law is viewed as a point of reference. The freedom or right can be limited (usually by introducing certain domestic formal requirements) if the aim of this restriction or limitation is legitimate under EU law. Usually counteracting tax evasion is perceived as a legitimate aim. Any restrictions or limitations must not go beyond what is necessary to attain the legitimate aim of restriction or limitation – this is the core element of assessment for the needs of the principle of proportionality.

There have been numerous VAT cases based on the principle of proportionality<sup>22</sup>, but it would be interesting to refer to an excise duty case. In its judgment of 2 June 2016 the Court of Justice in the case *ROZ-ŚWIT Zakład Produkcyjno-Handlowo-Uługowy Henryk Ciurko, Adam Pawłowski spółka jawna v Dyrektor Izby Celnej we Wrocławiu*, C-418/14,<sup>23</sup> held: “the principle of proportionality must be interpreted as precluding national legislation under which, in the event of failure to submit a list of statements from purchasers within a prescribed time limit, the excise duty applicable for motor fuels is applied to heating fuels even though it has been found

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<sup>21</sup> See, Achim Pross, Sandra Knaepen, and Mark Johnson, “Embracing Tax Certainty through Improved Dispute Resolution,” *International Tax Review* 28, Issue 10 (2017): 16 et seq.

<sup>22</sup> See a book on the principle of proportionality: Artur Mudrecki, *Zasada proporcjonalności w prawie podatkowym* (Warszawa: Wolters Kluwer, 2020).

<sup>23</sup> ECLI:EU:C:2016:400.

that the intended use of that product for heating purposes is not in doubt” (para. 41).

The principle of proportionality in the sphere of tax law has been used by the Court of Justice more extensively by far than by the Constitutional Tribunal<sup>24</sup>. The Constitutional Tribunal perceives the legal basis for the principle of proportionality in Article 31(3)<sup>25</sup> and Article 2 (the rule of law). The scope of the latter is far broader. Owing to this, Article 2 is more useful in the sphere of taxation.

## 7. Principle of equality

Many variations of tax treatment cannot be considered to be in violation of the principle of equality<sup>26</sup>. For instance, excise duties are used to differentiate the competitive position of goods in order to reduce demand for some of them (e.g. alcoholic beverages with high content of alcohol by volume, cigarettes). Beer, wine, or heated tobacco products are taxed less heavily as an element of social policy. However, differences in taxation of goods cannot be used to discriminate against products of other Member States of the European Union.

Interestingly the principle of neutrality of VAT is considered by the Court of Justice to be an expression of the equality principle. As we can read in the opinion of Advocate General Pikamäe delivered on 14 May 2020 in the case *United Biscuits (Pensions Trustees) Limited, United Biscuits Pension Investments Limited v Commissioners for Her Majesty’s Revenue and Customs*, C-235/19<sup>27</sup>: “According to settled case-law, the principle of fiscal neutrality means that supplies of goods or services which are similar, and which are therefore in competition with each other, may not be

<sup>24</sup> See, Polish Constitutional Tribunal, Judgement of 6 December 2016, ref. No. SK 7/15, Journal of Laws 2016, item 2209.

<sup>25</sup> “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health, or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

<sup>26</sup> Cynthia A. Vroom, “Equal Protection versus the Principle of Equality: American and French Views on Equality in the Law,” *Capital University Law Review* 21 (1992): 218.

<sup>27</sup> ECLI:EU:C:2020:380.

treated differently for VAT purposes. It should be borne in mind, from that aspect, that the principle of fiscal neutrality is a particular expression of the principle of equality at the level of secondary EU law and in the specific area of taxation” (para. 77).

There have not been numerous constitutional tax cases regarding the principle of equality.

## 8. Protection of legitimate expectations

There are two principles connected with introducing changes to tax laws. One of them is the principle of the protection of legitimate expectations and the other the principle of the prohibition of retroactivity.

David Blundell writes: “It is a well-established facet of the case law of the European Court of Justice that legitimate expectation cannot be used to override the limits of relevant legislation. For example, no legitimate expectation can arise if it would be inconsistent with the EC Treaty”<sup>28</sup>.

This thesis is generally true under both EU law and the domestic constitutional order in Poland. Yet, taxpayers must be given a chance to adjust to changing rules.

## 9. Prohibition of retroactivity

Retroactivity of tax law is condemned in scholarly writings, sometimes even without further elaborations<sup>29</sup>. Definitely tax rules cannot be applied retroactively if they work to the detriment of their addressees. Simultaneously, relieving taxpayers from certain duties with retroactive effect may not be forbidden. The main problem that one may notice nowadays is that there is a thin red line between retroactive and retrospective application of tax rules. Current GAAR in Poland can serve as a good example. It applies to advantages obtained after its entry into force. The problem is that these advantages are sometimes connected with tax arrangements introduced before the entry into force of the GAAR. This seems to be an example of retrospective application of the GAAR. But the tax authorities sometimes attempt to apply the GAAR to a situation where all the tax-relevant facts had taken place before the entry into force of the GAAR and a tax return for a given year was

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<sup>28</sup> David Blundell, “Ultra Vires Legitimate Expectations,” *Judicial Review* 10 (2005): 155.

<sup>29</sup> See, Michael J. Graetz, “Retroactivity revisited,” *Harvard Law Review* 98 (1985): 1821.

filed only later. This seems to be an example of retroactive application of tax law, which cannot be accepted.

## 10. Ability-to-pay

As is sometimes suggested in the literature, the ability to pay is sometimes treated as synonymous with justice in taxation<sup>30</sup> but it is not fully precise. One can definitely claim that confiscatory taxation is not acceptable (see judgment of the Constitutional Tribunal of 18 November 2014, ref. no. K 23/12<sup>31</sup> and other judgments referred to therein)<sup>32</sup>. The prohibition of confiscatory taxation applies predominantly in the sphere of income taxation<sup>33</sup>. It is worth mentioning that the Spanish Constitution explicitly prohibits confiscatory taxation in its Article 31. Limits of taxation are also analysed with the right to privacy principle<sup>34</sup>. Apart from that, delineating the legal limits of an acceptable economic burden of taxation is rather difficult, if not impossible.

## 11. Risk of jeopardizing the system of principles

It should be emphasized only that the principle of interpretation does not allow any court to go beyond the possible meaning of interpreted provisions. One might wonder whether this is the case in the case law of the Court of Justice<sup>35</sup>.

The general principles of EU law are among the sources of the EU. They are defined in the literature as “an unwritten Community law the particular significance of which is that it has as its primary aim the protection of

<sup>30</sup> See, Alfred G. Buehler, “Ability to Pay,” *Tax Law Review* 1, Issue 3 (1946): 243.

<sup>31</sup> Journal of Laws 2014, item 1663.

<sup>32</sup> See also Janusz Orłowski, “Konstytucyjna zasada powszechności opodatkowania. Wybrane zagadnienia,” *Studia Prawnoustrojowe*, no. 22 (2013): 88; Piotr Pietrasz, *Opodatkowanie dochodów nieujawnionych* (Warszawa: Oficyna a Wolters Kluwer business, 2007), 44.

<sup>33</sup> See, Bogumił Brzeziński, “Zasady ogólne prawa podatkowego,” *Toruński Rocznik Podatkowy* (2015): 16.

<sup>34</sup> See, for instance, Andrzej Gomułowicz, “Ochrona wolności i praw ekonomicznych a granice opodatkowania – zasady i kontrowersje,” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, no. 3 (2005): 32.

<sup>35</sup> See, Krzysztof Lasiński-Sulecki, “Italmoda: Does the EU VAT Directive the Source of Individual’s Obligations,” *International VAT Monitor*, no. 5 (2015): 300 et seq.

the rights of the individual”<sup>36</sup>. Depriving taxable persons of certain rights expressly and precisely granted to them under EU directives (or under national provisions) can hardly be reconciled with the way in which general principles, especially, unwritten ones, work<sup>37</sup>.

The principles of the interpretation of EU law extend to national legal orders through the interpretation of directives in a way conforming with EU law (reconciliatory interpretation). If, for a certain reason, domestic law is worded in a way that does not allow the incorporation of the effects of interpretation of EU law in line with the anti-abuse and anti-fraud approaches developed by the Court of Justice, divergences between the norms of EU law and domestic law may arise. Such divergences cannot be eliminated in the course of interpretation of national law. Its provisions must be changed with the/any effects of this change restricted for the future only<sup>38, 39</sup>.

Similarly, the EU’s general principles may and should affect the interpretation of domestic law. They cannot be applied if the wording of domestic provisions does not allow such an interpretation. Even if one can imagine the application of certain (written) general principles in horizontal cases, it would be far more difficult to accept such (especially unwritten) principles in vertical cases against individuals<sup>40, 41</sup>.

## 12. Conclusions

This article can be concluded with the remark by Joseph Stiglitz that “Every tax system is an expression of a country’s basic values – and its politics. It translates into hard cash what might otherwise be simple high-flown rhetoric”<sup>42</sup>. This is particularly true in the field of tax law. The general prin-

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<sup>36</sup> A. G. Toth, *Legal Protection of Individuals in the European Community*, 1978, Vol. I, 86 as quoted by Anthony Arnall, *The General Principles of EEC Law and Individual* (London and Leicester: Leicester University Press, 1990), 1.

<sup>37</sup> Lasiński-Sulecki, “Italmoda,” 303.

<sup>38</sup> See also Marcel G. H. Schaper, “The Need to Prevent Abusive Practices and Fraud as a Composite Justification,” *EC Tax Review* 23, no. 4 (2014): 220.

<sup>39</sup> Lasiński-Sulecki, “Italmoda,” 303.

<sup>40</sup> See Takis Tridimas, *The General Principles of EC Law* (Oxford: Oxford University Press, 1999), 31–32.

<sup>41</sup> Lasiński-Sulecki, “Italmoda,” 303.

<sup>42</sup> Joseph Stiglitz, *The Roaring Nineties* (New York: W.W. Norton & Company, 2003), 177 [cited from:] Hans Gribnau, “Equality, Legal Certainty and Tax Legislation in the Netherlands:

ciples of EU and Polish legal orders significantly affect the interpretation of tax rules. Moreover, certain rules may be inapplicable due to their inconsistency with general principles. It should also be mentioned that the topic of general principles of law applicable in the sphere of taxation is distinct from another highly interesting topic of general principles of tax law<sup>43</sup>.

## References

- Arnall, Anthony. *The General Principles of EEC Law and Individual*. London and Leicester: Leicester University Press, 1990.
- Blundell, David. “Ultra Vires Legitimate Expectations.” *Judicial Review* 10 (2005): 147–155.
- Borucka-Arctowa, Maria. “Zaufanie do prawa jako wartość społeczna i rola sprawiedliwości proceduralnej.” In Maria Borucka-Arctowa et al., *Teoria prawa, filozofia prawa, współczesne prawo i prawoznawstwo*, 15–28. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 1998.
- Brzeziński, Bogumił, and Krzysztof Lasiński-Sulecki. “Poland.” In *A Comparative Look at Regulation of Corporate Tax Avoidance*, edited by Karen Brown, 267–276. Springer, 2012.
- Brzeziński, Bogumił. “Zasady ogólne prawa podatkowego (próba inwentaryzacji).” *Kwartalnik Prawno-Finansowy*, no. 1 (2018): 23–46.
- Brzeziński, Bogumił. “Zasady ogólne prawa podatkowego.” *Toruński Rocznik Podatkowy* 2015: 4–18.
- Buehler, Alfred G. “Ability to Pay.” *Tax Law Review* 1, Issue 3 (1946): 243–258.
- Galster, Jan. “Zasada nienazwana jako kategoria konstytucyj.” In *Zasady ustroju Rzeczypospolitej Polskiej w nowej konstytucji*, edited by Krzysztof Wójtowicz, 63–66. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1997.
- Gomułowicz, Andrzej. “Ochrona wolności i praw ekonomicznych a granice opodatkowania – zasady i kontrowersje.” *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, no. 3 (2005): 19–33.
- Gorgol, Andrzej. “Structuring of Statutory Values of Polish Tax Procedures.” *Review of European and Comparative Law* 44, no. 1 (2021): 19–36.

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Fundamental Legal Principles as Checks on Legislative Power: A Case Study,” *Utrecht Law Review* 9, Issue 2 (2013): 52.

<sup>43</sup> On this topic, see, for instance, Bogumił Brzeziński, “Zasady ogólne prawa podatkowego (próba inwentaryzacji),” *Kwartalnik Prawno-Finansowy*, no. 1 (2018): 23 et seq.

- Graetz, Michael J. "Retroactivity revisited." *Harvard Law Review* 98 (1985): 1820–1841.
- Gribnau, Hans. "Equality, Legal Certainty and Tax Legislation in the Netherlands: Fundamental Legal Principles as Checks on Legislative Power: A Case Study." *Utrecht Law Review* 9, Issue 2 (2013): 52–74.
- Kordela, Marzena. "Pewność prawa jako wartość konstytucyjna." In *Wykładnia Konstytucji. Aktualne problemy i tendencje*, edited by Marek Smolak, 149–160. Warszawa: Wolters Kluwer, 2016.
- Lasiński-Sulecki, Krzysztof, Wojciech Morawski, and Jowita Pustul. "Depicting National Tax Legislation: Poland." In *Tax Legislation. Standards, Trends and Challenges*, edited by Włodzimierz Nykiel, and Małgorzata Sęk, 333–354. Warszawa: LEX a Wolters Kluwer business, 2015.
- Lasiński-Sulecki, Krzysztof. "Italmoda: Does the EU VAT Directive the Source of Individual's Obligations." *International VAT Monitor*, no. 5 (2015): 300–304.
- Mik, Cezary. *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*. Warszawa: C.H. Beck, 2000.
- Mudrecki, Artur. *Zasada proporcjonalności w prawie podatkowym*. Warszawa: Wolters Kluwer, 2020.
- Orłowski, Janusz. "Konstytucyjna zasada powszechności opodatkowania. Wybrane zagadnienia." *Studia Prawnoustrojowe*, no. 2 (2013): 81–100.
- Pietraś, Ziemowit Jacek. *Prawo wspólnotowe i integracja europejska*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2006.
- Pietrasz, Piotr. *Opodatkowanie dochodów nieujawnionych*. Warszawa: Oficyna a Wolters Kluwer business, 2007.
- Prebble, Rebecca, and John Prebble. "Does the Use of General Anti-Avoidance Rules to Combat Tax Avoidance Breach Principles of the Rule of Law – A Comparative." *Saint Louis University Law Journal* 55 (2010): 21–46.
- Pross, Achim, Sandra Knaepen, and Mark Johnson. "Embracing Tax Certainty through Improved Dispute Resolution." *International Tax Review* 28, Issue 10 (2017): 16–22.
- Pułło, Andrzej. *Zasady ustroju politycznego państwa. Zarys wykładu*. Gdańsk: GSW Wydawnictwo, 2018.
- Tridimas, Takis. *The General Principles of EC Law*. Oxford: Oxford University Press, 1999.
- Tuleja, Piotr. "Pojęcie zasady konstytucyjnej." In *Zasady ustroju Rzeczypospolitej Polskiej w nowej konstytucji*, edited by Krzysztof Wójtowicz, 7–22. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 1997.



Vroom, Cynthia A. "Equal Protection versus the Principle of Equality: American and French Views on Equality in the Law." *Capital University Law Review* 21 (1992): 199–224.

Zirk-Sadowski, Marek. *Prawo a uczestniczenie w kulturze*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 1998.

