

TAX MISDEMEANOR SANCTIONS AND THE PROBLEM OF COMPETENCE IN METHODS OF JUDICIAL APPLICATION AGAINST THEM

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Abstract

The main sanction to be applied to tax misdemeanors is administrative fine as in other misdemeanors. The penalties in question are the sanctions imposed by the administration directly through an administrative act, without requiring a judicial decision, based on the authority given by the laws, to those who violate the tax legislation. However, the sanctions imposed on tax misdemeanors are not limited to administrative fines. withholding from professional activity in the VUK; to prevent transportation vehicles from traffic, to keep goods on hold and to protect them; There are various types and weights of administrative measures, such as taxpayers' declarations, which are the basis of tax assessment, finalized taxes and penalties, and the disclosure of overdue taxes and fines by the Ministry of Finance.

The provisions of the Misdemeanors Code on judicial protection against administrative sanction decisions are applicable unless there is a contrary provision in other laws. Considering the situation in terms of administrative sanctions for tax misdemeanors, it can be mentioned that there are special provisions regarding judicial protection. The conclusion that the VUK accepts the tax penalty in the form of administrative fines imposed as a result of tax loss misdemeanor and irregularity misdemeanors is also reached from the interpretation of other provisions. For example, the title of the third part of the Law is "Implementation, Payment and Abolition of Tax Penalty". Some other provisions containing expressions such as "calculation and amount of tax penalty" are also proof of this. In that case, if the tax penalty is viewed from the perspective of VUK, only administrative fines will be considered and the authority to apply against these penalties will be the tax courts. On the other hand, the problem of duty will be encountered in the ways of applying for administrative sanctions other than administrative fines. In the study, this subject will be examined and the sanctions other than the administrative fines stipulated in the law in return for tax misdemeanors, the ways of judicial protection against these sanctions, and the judicial branch and authority in charge will be tried to be revealed by considering the judicial decisions on this issue.

Keywords: tax misdemeanor, sanction, application mechanism, competence

JEL Code: K34, K39, H21, H29

1. Introduction

Behaviors that disrupt, threaten or disrupt the functioning of the social order are met with a reaction by the bodies authorized to impose sanctions. The reaction in question is inevitable in order to ensure the healthy continuation of the order. It is at the discretion of the legislator that which acts will be sanctioned at what rate. Depending on the changes in social life, technological developments, transformation in the understanding of justice and awareness of law over time, the legislator may decriminalize some acts as well as introduce new crimes. In addition, it can also change preferences in the characterization policy of existing crimes. Decriminalization can be achieved by completely removing the de facto, which is currently met with a penal sanction, from positive law; It may occur in the form of removing it from the penal laws and introducing it into another branch of law (such as administrative law) (Bayraktar, 1984: 198). Today, the legislature authorities abandon the tendency to criminalize minor acts by excluding them from the penal code (Kangal, 2022: 31). Misdemeanor refers to the typical and unlawful act for which administrative sanctions are envisaged in the law. Misdemeanors are also acts that constitute injustice, but in return, administrative sanctions are applied, not penalties or security measures. The existence of the definition of misdemeanor brings the concept of administrative sanction to the fore. For this reason, it is very important to determine what the administrative sanction is and its legal nature.

2. Administrative Sanction and Administrative Measure

The direct definition of Administrative Sanctions, which gives its name to the third part of the Misdemeanor Law, is not made, its scope is stipulated in Article 16 titled "Types of Sanctions". Accordingly, administrative sanctions to be applied in return for misdemeanors consist of administrative fines and administrative measures. The clearest conclusion to be reached from the first paragraph of the article is that an administrative fine is a misdemeanor sanction, but not an administrative measure. For this reason, it is necessary to explain what the administrative measure is in order to reach a conclusion about administrative sanctions. In the second paragraph of Article 16, the legislator stated that administrative measures by way of sampling are the transfer of property to the public and other measures included in the relevant laws.

Administrative measures can generally be expressed as the part of administrative sanctions other than administrative fines. Terminologically, precaution is *teb*, meaning preparation, before an action or action rather than after it has taken place.

According to ULUSOY, administrative measures mainly refer to administrative sanctions envisaged to prevent disruption of public services and other administrative activities and

to ensure their proper functioning, as well as to prevent disruption of public order (Ulusoy, 2013: 9). For this reason, in administrative measures, the elements of putting an end to the violation, not continuing the violation, stopping, preventing, ensuring the repetition of the violation, that is, prevention, are at the forefront, not the elements of reproof, expiation, inflicting pain, that is, deterrence. Administrative measures; There are various types such as temporary blocking, withdrawal of administrative permission, temporary confiscation of goods.

2.1. Types of Tax Misdemeanors

The purpose of tax crimes and misdemeanors and the sanctions foreseen for them is to ensure that the tax laws are applied in a timely and appropriate manner (Şenyüz, 2022: 59) . Because the timely and complete payment of tax debts means the realization of public interest through the collection of tax revenues, which constitute the main source of public services. The tax relationship that begins between the State and the taxpayer with the realization of the taxable event is a debt relationship that takes place within the public law. However, in this relationship, apart from the material duty that means paying the tax, there are also many procedural and formal duties that can be directly or indirectly related to this duty. The duty dimension of the tax relationship is so advanced that the concept of taxpayer is used in tax law, which includes the taxpayer, taxpayers and people who are somehow involved in the tax relationship. The administration, which is the active side of the tax relationship, is trying to collect its receivables on the one hand, and on the other hand, it determines the behaviors contrary to the duties and puts them under sanctions. The purpose of these sanctions can be broadly stated as the protection of the tax administrative order.

The concept of misdemeanor is not used in the Tax Procedure Law No. 213. What constitutes tax misdemeanors is reached as a result of the interpretation of the provisions in the doctrine. With a systematic interpretation, it is possible to look for faults in the Fourth Book of the Law entitled "Penal Provisions". Likewise, misdemeanors of Tax Loss and Irregularity are arranged in this book. However, it would be more accurate to determine the misdemeanors regulated in the Law in accordance with the definition of misdemeanor made in the Misdemeanor Law. Accordingly, it will be necessary to examine whether there are injustices for which administrative sanctions are foreseen in order to protect the tax-administrative order in the provisions of the TPL. From such a point of view, it will be seen that there are other misdemeanors besides tax loss and irregularity misdemeanors, which are covered by administrative fines in the TPL.

As an example of these;

* In the event that the "Transportation note, delivery note and invoice are not present in the vehicle, these documents are given to the officers authorized to attend in subparagraph e of Article 127 of the Law titled "Purpose and Authority" in the First Part of the Seventh Part titled "Attention and Inspection". to detain the transport vehicles from traffic until the presentation of the goods, to keep the goods waiting until the identification of the owner of the transported goods, and to keep them under preservation, will be liquidated.) authority

* In the Second Book of the Law titled Taxpayer's Homework, Part One titled "Notifications", Part One titled Starting to Work, included in the fifth paragraph of Article 153/A, it is stated that among the members of the profession who operate within the scope of the Law No. A penalty of temporary suspension from professional activity for a period of three years is applied to those who are determined by the examination report and whose situation has been finalized. In the implementation of this penalty, the procedures in the Law No. 3568 shall be applied." application; In the 12th paragraph of the same article, "Except those listed in the first paragraph and the use of false or misleading documents due to their content, those who commit the acts listed in Article 359 are announced in accordance with the procedures and principles determined by the Ministry of Finance. Announcements made in this context are not considered a violation of tax privacy. If the act is committed within the body of a legal entity or an unincorporated entity, these are also announced. judgment can be given.

* The 3rd paragraph of the 5th article of the Law titled Tax Privacy: "The taxpayers' declarations, which are the basis for the tax assessment, the finalized taxes and penalties, and the amounts of taxes and penalties that are not paid even though they are overdue, can be disclosed by the Ministry of Finance. The Ministry of Finance may delegate this authority to the local authority (Rençber, 2017: 64).

3. Application Against Tax Misdemeanor Sanctions

The judicial review of the administration is the result of the idea that the individual should be protected because of his weakness against the administration. One of the sine qua non of the principle of the rule of law, the administration's adherence to the law is possible by auditing it. In particular, administrative sanctions are the dispositions of the public authority that have negative effects and consequences on individuals, and the legal control of whether these are given in accordance with the law is very important in terms of providing legal security to individuals. Likewise, the Constitution states that "Judicial remedy is open against all kinds of actions and transactions of the administration." There are provisions that regulate the supervision of the administration in the constitutional dimension, especially the first paragraph of Article 125, which has the provision of.

Tax courts in accordance with Article 6 of the Law No. 2576, titled Duties of Tax Courts:

- a) Cases related to taxes, duties and fees and similar financial obligations and their hikes and penalties and tariffs pertaining to the general budget, special provincial administrations, municipalities and villages,
- b) Cases regarding the implementation of the Law No. 6183 on the Procedure of Collection of Public Receivables on the issues in subparagraph (a),
- c) Solves the works given by other laws.

Tax courts are the courts of first instance for the disputes listed in this article. In addition, these courts are organized and serve as special courts in the administrative judiciary branch.

A conclusion can be reached with the determination of the legal nature of the sanctions of these misdemeanors, in the case of judicial application and duty, against the misdemeanors in the TPL for which administrative sanctions other than administrative fines are envisaged. Accordingly, in case of detection of books, documents and evidence that are outside of the legal books and documents and that constitute an indication of tax loss, in clause 127/c of the TPL, "to receive them", in clause e, "Transportation note, delivery note and in case the invoice is not in the vehicle, to detain the transport vehicles from traffic until the presentation of these documents, to keep the goods waiting and to keep them under protection until the identification of the owner of the transported goods, if the owner of the transported goods is not known," in Article 153/A, A temporary suspension of professional activity for a period of three years shall be imposed on those who are found to have participated in these acts of those whose liability has been terminated due to certain circumstances, and those whose status has been finalized." Sanctions are administrative measures. These administrative measures, whose legal qualifications are administrative acts, have a unilateral and executive character, which is established by the administration equipped with public power privileges by following administrative procedures, aimed at producing legal results. For this reason, those whose interests have been violated against these measures, which are considered to be unlawful, should file a case with the administrative courts within sixty days in accordance with Article 7 of the Procedure of Administrative Justice Act. As a result, the courts in charge of this judicial application are the administrative courts that have the task of resolving the annulment cases. In the event that the concerned parties file a case with the tax court, the tax court should decide upon the first examination that the case file be sent to the competent court by rejecting the case in terms of duty in accordance with Article 15/1-a of the Procedure of Administrative Justice Act.

4. Conclusion

The provisions of the Misdemeanors Code on judicial protection against administrative sanction decisions are applicable unless there is a contrary provision in other laws. Considering the situation in terms of administrative sanctions for tax misdemeanors, it can be mentioned that there are special provisions regarding judicial protection. The resolution of disputes falling under the jurisdiction of tax courts is subject to the procedures set forth in the Administrative Procedure Law No. 2577. tax courts; It resolves the cases related to the general budget, special provincial administrations, municipalities and villages, taxes, duties and fees and similar financial obligations and their hikes and penalties and tariffs, the cases regarding the implementation of the Law No. 6183 on the Collection of Public Claims and the works given by other laws. In this case, determining the scope of the tax penalty will also pave the way for the determination of the remedy that can be taken against the said penalties.

As a result, the concept of tax penalty in TPL should be taken into a clearer framework after the adoption of the Misdemeanor Law. If the legislator desires the tax courts to control the administrative measures other than administrative fines, the addition of the phrase "and administrative sanctions" to Article 6 of the Law No.

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