LIMITS OF EVIDENCE AND PROHIBITION OF SELF-INCRIMINATION IN TAX ADMINISTRATION THROUGH THE LENS OF JUDICIAL AUTHORITIES

LIMITY DOKAZOVANIA A ZÁKAZU SEBAOBVIŇOVANIA PRI SPRÁVE DANÍ OPTIKOU SÚDNYCH AUTORÍT

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ABSTRACT
Taking of evidence is an essential institute in any procedure for conferring rights or imposing obligations. Tax administration and tax proceedings are no exception, which, unlike other proceedings, are characterized by the so-called reversal of the burden of proof. This means that the primary task of the taxpayer is to prove almost all the facts relating to its tax liability. This is further reinforced by the right and at the same time the obligation of taxpayers to provide cooperation to tax administrators. The presented scientific article deals with the general definition of the term proof and points out in particular the statutory and jurisprudential limits of the burden of proof of the taxpayer. Particular emphasis is placed on the possibility for a taxpayer to refuse to provide cooperation, with reference to the exercise of the right not to incriminate himself.

ABSTRAKT
Dokazovanie predstavuje nevyhnutný inštitút, a to v rámci akéhokoľvek konania, ktorým sa priznávajú práva, alebo ukladajú povinnosti. Výnimkou nie je ani správa daní a daňové konanie, ktoré sa však na rozdiel od iných konaní vyznačuje tzv. obráteným dôkazným bremenom. To znamená, že je primárnou úlohou daňového subjektu preukazovať takmer všetky skutočnosti, ktoré sa týkajú jeho daňovej povinnosti. To sa umocňuje ešte viac právom a zároveň aj povinnosťou daňových subjektov poskytovať správcom dane súčinnosť. Predkladaný vedecký článok sa zaoberá práve všeobecným vymedzením pojmu dôkaz a poukazuje najmä na zákonné a judikatúrou vyprofilované mantinely dôkazného bremena daňového subjektu. Osobitne sa akcentuje možnosť daňového subjektu odoprieť poskytnúť súčinnosť, a to s odvolaním sa na uplatnenie práva neobviňovať sebe samého.

I. INTRODUCTION

Taking of evidence is an important procedural institute of the tax administrator, which clarifies essential facts in order to establish the facts decisive for the correct determination of the tax. Within legal theory, but especially in application practice, it is required to point out certain limits of evidence. For example, in terms of the time of submission of evidence, the Constitutional Court of the Slovak Republic, in its resolution no. II. ÚS 218/2024 of 24 April 2024, agreed with the opinion of the Supreme Administrative Court of the Slovak Republic, which stated that the applicant's passivity in the context of a tax audit cannot be validated by submitting this type of evidence only during the assessment procedure, as this would deny the purpose of the tax audit and the concentration principle when presenting evidence in the

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context of a tax audit. Ipso facto, by initiating the assessment procedure, the taking of evidence does not start anew, but continues, on the basis of evidence already obtained during the tax audit.

However, the issue of evidence is primarily important from the point of view of the legality of the procedure for obtaining evidence. The procedural procedure of evidence in tax administration is also dealt with in legal theory, to which there are also relevant references in this article. However, according to the author, only marginal attention is paid to the taxpayer's obligation to provide cooperation to the tax administrator and, on the other hand, to the consideration of the possibility of exercising the right to refuse to testify (cooperation) due to the prohibition of self-incrimination, [2] as the answers are provided by judicial practice.[3] This creates a research gap, which the author will try to answer in the following text. On the basis of the description of the legislation, therefore, the general postulates on the content of the concept of evidence are abstracted, which are followed by comparative legal studies with the intention of resulting in an almost identical definition of the term evidence in the legal order of the Slovak Republic. The method of legal analysis of court decisions is also essential, because it is the developmental tendencies of the decision-making activities of judicial authorities that create the application practice and make it possible to answer the questions posed. At this point, it should be borne in mind that case-law should also be drafted in the light of a legitimate expectation, the purpose of which is to protect private individuals from an unforeseeable interference of power in their legal situation, on the result of which they have relied.[4]

The scientific questions are: What is the content of the term proof? Is the taxpayer obliged to cooperate with the tax administrator and can he exercise his right not to incriminate himself? Are there limits on the tax administrator and his authority to enforce evidence by imposing civil fines? The questions asked are answered continuously, in the above chronology.

The indicated questions of evidence will also be perceived from the point of view of the fiscal, regulatory and repressive function of tax law,[5] as well as in connection with the

[2] In the alternative, reference can be made to previously published articles, such as: LICHNOVSKÝ, O. Dokazování daňových trestných činů v trestním řízení. In: *Trestněprávní revue*. 2018, roč. 17, č. 11 – 12, s. 253 – 256, in which the author explains the issue of the burden of proof in the field of taxes borne by the taxpayer and the burden of proof of law enforcement authorities. In doing so, he also points to a frequent case where failure to bear the burden of proof by the taxpayer may lead to a certain "repression" on the part of the tax administrator, but its decision is not a binding basis for law enforcement authorities and the court. SREBALOVÁ, M. Limity aplikácie zásad správneho trestania v praxi. In: *Přestupky a řízení o nich z pohledu teorie a praxe, sborník z mezinárodní vědecké konference konané dne 4. října 2013*. Praha : Policejní akademie České republiky v Praze, 2014, s. 235 – 244, in which the author points out the issues of administrative punishment. It is also worth mentioning a series of articles by the authors mentioned in footnote no. 56, GALANDOVÁ, M., KAČALJAK, M., ŠAMKO, P., who are leading a polemic about the admissibility of taxation of income from criminal activities, also with regard to the possible aspect of self-incrimination by declaring and taxing this income.

[3] With regard to finding solutions in court decisions, it is possible to point out in particular: judgment of the European Court of Human Rights in the case of Funke v. France, application no. 10588/83, of 25.2.1993; judgment of the European Court of Human Rights in the case of Chambaz v. Switzerland, application no. 11663/04, of 5.4.2012; judgment of the European Court of Human Rights in the case of De Legé v. the Netherlands, application no. 58342/15, of 4.10.2022; judgment of the European Court of Human Rights in the case of Allen v. the United Kingdom, application no. 76574/01, of 10.9.2002; judgment of the European Court of Human Rights in the case of Savic v. Austria, applications no. 10487/16 and 10502/16, of 15.9.2020, and others, periodically referred to in this article.

[4] MAĎAR, M. Predvídateľnosť súdnych rozhodnutí ako súčasť práva na spravodlivý proces. In: *Banskobystrické dni práva : zborník z 2. ročníka medzinárodnej vedeckej konferencie na tému „Kvalita normotvornej a aplikačnej stránky zákonnosti ako determinant právneho štátu", 23. – 24. november 2016. Sekcia verejného práva*. 1. vyd. [online]. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2017, s. 138. [cit. 28.12.2025]. Dostupné na: https://www.prf.umb.sk/veda-a-vyskum/konferencie-a-konferencne-on-line-vystupy/ii-banskobystricke-zamocke-dni-prava/; BRZEZIŃSKI, B., FRANCZAK, A. In Search of a Strategy for the Interpretation of Tax Law by Courts. In: *Krytyka Prawa. Niezależne Studia nad Prawem*, tom 16, nr 4/2024. [online]. Warszawa : Kozmiński University, 2024, s. 57. [cit. 28.12.2025]. DOI 10.7206/kp.2080-1084.720.

[5] BABČÁK, V. a kol. *Daňové právo na Slovensku a v EÚ*. Bratislava : Epos, 2019, s. 62 – 63.

principle of legality of tax administration and the principle of uniformity of decision-making of the competent authority in tax administration.[6] On the basis of a legal analysis and mutual comparison of factual cases, general postulates will be induced regarding the limits of the burden of proof and the possibilities of enforcing evidence by the tax administrator. This formulates a scientific hypothesis: The burden of proof in tax administration lies with the taxpayer, allowing the tax administrator to enforce any evidence from the taxpayer.

II. EVIDENCE AND MEANS OF PROOF – IN ABSTRACTO

In the context of evidence, it is necessary to point out the absence of an exhaustively defined concept of evidence in the legal order of the Slovak Republic. Exempli causa, pursuant to Section 24 (4) of Act No. 563/2009 Coll. on Tax Administration (Tax Code) and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Tax Code"), anything that may contribute to the establishment and clarification of facts decisive for the correct determination of the tax and that is not obtained in violation of generally binding legal regulations may be used as evidence. These are mainly various submissions of taxpayers, witness statements, expert opinions, public documents, protocols on tax audits,[7] protocols on tax determination according to aids, minutes of local surveys and inspections, mandatory records and records kept by taxpayers and documents related to them. Similarly, pursuant to Section 34(1) and (2) of Act No 71/1967 Coll. on Administrative Procedure (the Code of Administrative Procedure), as amended (hereinafter referred to as the "Code of Administrative Procedure"), all means by which the actual state of the case can be established and clarified and which are in accordance with the law may be used for evidence, the evidence being in particular the examination of witnesses, expert opinions, documents and inspection. Similarly, the wording of Section 19 (3) of Act No. 301/2005 Coll. of the Code of Criminal Procedure, as amended (hereinafter referred to as the "Code of Criminal Procedure"), specifies that evidence may be used for anything that may contribute to the proper clarification of the case and that has been obtained from evidence under this Act or under a special law. Comparatively, also in accordance with Section 187 of Act No. 160/2015 Coll. of the Code of Civil Procedure, as amended (hereinafter referred to as the "Code of Civil Procedure"), anything that may contribute to the proper clarification of the case and that has been obtained lawfully from the means of evidence may serve as evidence.

A comparison of procedural laws leads to several basic results. The first is that, in principle, evidence may be anything that may contribute to the clarification of the case under examination, but it is essential that such evidence be obtained lawfully. The second essence is therefore the lawful process of providing, taking and using evidence. In the context of evidence, the doctrine based on the accumulation of three conditions applies, namely that evidence can only be a means by which the state of the case can be ascertained and clarified, is provided for by the relevant procedural regulation and is also carried out in accordance with this regulation. The requirements of certainty and predictability of procedural rules, as well as their reflection in the taking of evidence, must be subsumed under the safeguards required by Article 36(1) of the Charter of Fundamental Rights and Freedoms.[8]This fulfils the principle of

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[6] BABČÁK, V. a kol. *Daňové právo na Slovensku a v EÚ*. Bratislava : Epos, 2019, s. 448.

[7] The tax audit report with a summons serves as evidence in the assessment proceedings, while the date of its delivery is decisive for the initiation of the assessment proceedings. – KUBINCOVÁ, S., JAMRICHOVÁ, T. Daňová kontrola a daňové konanie v kontexte teórie a praxe. In: *STUDIA IURIDICA Cassoviensia*. [online]. Vol. 13.2025, no. 2, s. 103. ISSN 1339-3995. [cit. 26.12.2025]. Dostupné na: https://sic.pravo.upjs.sk/ecasopis/132025-2/6_Kubincova_Jamrichova_Danova_kontrola.pdf. DOI 10.33542/SIC2025-2-06.

[8] The Ruling of the Constitutional Court of the Czech Republic, Case no. III. ÚS 190/01 of 1.11.2001, N 167/24 SbNU 237; the Ruling of the Constitutional Court of the Czech Republic, Case no. III. ÚS 451/04 of 23.3.2006, N 68/40 SbNU 677.

legality, because only evidence presumed and taken by law can be considered legally approved.

The third postulate is the requirement to distinguish between evidence and means of proof, since they are not synonymous with each other, but two separate categories. Specifically, evidence is understood as a certain fact proving the monitored or ascertained circumstances of the legal case under consideration, which is obtained from the evidence provided for by the legislation.[9] With a certain degree of legal abstraction, it can therefore be considered that the means of proof is a broader concept, since it contains evidence. More precisely, evidence is the knowledge that has been obtained from the means of evidence in the course of evidence, when, for example, the means of evidence is the questioning of a person and the evidence is the content of his or her testimony.[10]

Evidence and similarly means of proof are usually divided into direct and indirect, or in relation to the factual hypothesis, there is also a division of evidence into: direct, indirect and supportive. Direct evidence is considered to be that for which the veracity of the evidentiary information is sufficient in itself to establish a factual hypothesis. Circumstantial evidence is one that is not sufficient in itself to prove the final factual hypothesis, but it supports the truth of the factual hypothesis. Supporting evidence can be described as a subset of circumstantial evidence, the evidentiary force of which, rather than a factual hypothesis, supports or weakens the belief in the relationship of inference between factual hypotheses.[11]

III. THE QUESTION OF THE LAWFULNESS OF THE TAKING AND TAKING OF EVIDENCE

One of the essential features of evidence is the aforementioned legality. A strict grammatical interpretation of the relevant provisions on the taking of evidence cannot even classify illegal evidence as evidence. In order for a certain piece of information clarifying the legal matter under consideration to become evidence, it is essential that it was obtained in a lawful manner, because otherwise it is only illegal information that cannot be used in the proceedings and is simply called illegal evidence, even if it is a certain linguistic inaccuracy.

The criteria of legality include the assessment of (1) whether the evidence was obtained and taken at the procedural stage at which the relevant procedural entity is entitled to obtain and take evidence under the law, and (2) whether the evidence was obtained and taken in a manner provided for or permitted by law.[12] It is therefore fundamental to obtain and take evidence in a lawful manner and by the competent authority. The presented theory can be supplemented by examining: 1) *whether the evidence was obtained from a source that is stipulated by law, or which is permitted by law, 2) whether the evidence was obtained and taken by a procedural subject authorized to do so by law, 3) whether the evidence was obtained and taken at the procedural stage at which the relevant procedural subject is authorized by law to seek and take evidence in the procedural sense, 4) whether the evidence obtained and taken relates to the subject of evidence in the given process, i.e. whether it relates to the act on which the proceedings are conducted, or issues that must be decided on*

[9] ÚRADNÍK, M. *Zásady deliktuálneho trestania vo vybraných oblastiach finančného práva s akcentom na otázku ne bis in idem*. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2023, s. 104.

[10] ŠAMKO, P. Nezákonné a nepoužiteľné dôkazy. In: *Právne listy*. [online]. Publikované: 6.12.2014. [cit. 25.12.2025]. Dostupné na: https://www.pravnelisty.sk/clanky/a321-nezakonne-a-nepouzitelne-dokazy.

[11] SÁBO, J. *Hodnotenie dôkazov v daňovom práve*. [online]. Košice : ŠafárikPress, 2020, s. 111 – 113. Dostupné na: https://unibook.upjs.sk/sk/. DOI 10.33542/HDD2020-881-1.

[12] Opinion of the Criminal Chamber of the Supreme Court of the Czech Republic, Case no. Tpjn 300/2019 of 18.9.2019; compare also: REPÍK, B. Procesní důsledky porušení předpisů o dokazování v trestním řízení. In: *Bulletin advokacie*. Červen – září 1982, s. 125 – 126; MUSIL, J., KRATOCHVÍL, V., ŠÁMAL, P. a kol. *Kurs trestního práva. Trestní právo procesní*. Praha : C. H. Beck, 2003, s. 408.

in connection with this act under the law, and 5) whether the evidence was obtained and taken in a manner stipulated or permitted by law.[13]

As far as the assessment of the ineffectiveness of the evidence obtained is concerned, evidence obtained illegally is either absolutely or relatively ineffective, depending on the nature and seriousness of the violation of the law. In the event of absolute ineffectiveness, the illegality cannot be validated and such evidence must be excluded from the assessment when establishing the facts of the case under consideration. Relatively ineffective evidence can be used, but only after the defect that has occurred has been rectified.[14] When taking evidence, it will be necessary to examine the procedural conditions for obtaining and taking evidence in order to ensure legality, which also applies to the area of tax administration.[15] Therefore, the question of legal assessment remains the procedure for obtaining evidence, whether within the framework of the tax administrator's own activity or in cooperation with the taxpayer, including the visibility of possible enforcement of evidence and the reversal of the burden of proof.

Pursuant to Section 24 of the Tax Code and the General Principles of Tax Administration, the tax administrator takes evidence, while ensuring that the facts necessary for the purposes of tax administration are established as completely as possible and is not bound only by the proposals of taxpayers.[16] At the same time, the tax administrator is obliged to take evidence in a way that guarantees its objectivity, and therefore must take into account evidence both against and in favour of the taxpayer. The tax administrator evaluates the evidence at its discretion, namely each piece of evidence individually and all evidence in its mutual connection, taking into account everything that[17] has come to light during the tax administration. In the event that the tax administrator has established factual circumstances capable of substantially influencing the decision in the case, but has not obtained such information in the evidentiary process through a legally compliant procedure, then the above cannot be taken into account.[18]

In this context, it is necessary to take special account of the linguistic aspect of the legislation, because according to Article 24(2) of the Tax Code, the tax administrator '*only*' takes evidence, which justifies the question of who takes the individual evidence. At first glance, the question posed is illogical, as it is clear from application practice that individual evidence is carried out by tax administrators. However, the literal wording of Article 24(2) of the Code of Tax Procedure does not grant them such power. An exception is paragraph 6 of the aforementioned provision, according to which, for the purposes of evidence, the tax administrator may also perform acts, such as oral hearings, examination of witnesses, examination of experts and familiarization with evidence, jointly. Similarly, the literal wording of the wording of Section 3(3) of the Tax Code does not imply the fact that the evidence is taken, but only the tax administrator's right to evaluate the evidence, at its own discretion, each piece of evidence individually and all evidence in their mutual connection,

[13] ŠAMKO, P. Nezákonné a nepoužiteľné dôkazy. In: *Právne listy*. [online]. Publikované: 6.12.2014. [cit. 25.12.2025]. Dostupné na: https://www.pravnelisty.sk/clanky/a321-nezakonne-a-nepouzitelne-dokazy.

[14] Resolution of the Regional Court in Banská Bystrica, Case no. 4 Tos 91/2021 of 30.9.2021.

[15] CAKOCI, K., POPOVIČ, A. Dôkazy získané v rámci miestneho zisťovania a limity ich využitia v daňovej kontrole. In: *I. Slovensko-české dni daňového práva. Daňové úniky a vyhýbanie sa daňovým povinnostiam*. Recenzovaný zborník vedeckých prác. Košice : Univerzita Pavla Jozefa Šafárika v Košiciach, 2017, s. 92.

[16] On obtaining information by the tax administrator, see also: BETHMANN, D., KVASNIČKA, M. International tax evasion, state purchases of confidential bank data and voluntary disclosures. In: *Journal of Comparative Economics*. [online]. 2025. ISSN 0147-5967. [cit. 20.12.2025]. Dostupné na: https://www.sciencedirect.com/science/article/abs/pii/S0147596725000873?via%3Dihub. DOI 10.1016/j.jce.2025.11.005.

[17] On tax administration, see: VARTAŠOVÁ, A., ČERVENÁ, K. Vývoj právnej úpravy správy daní na území SR v moderných dejinách. In: *100 rokov Česko-Slovenskej štátnosti, právnictva a bezpečnosti*. Bratislava : Akadémia Policajného zboru v Bratislave, 2019, s. 445 – 454.

[18] The Ruling of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 314/2015 of 16.12.2015.

taking into account everything that has come to light during the tax administration. Therefore, a proposal that would, for example, explicitly grant tax administrators the power to take evidence, following the example of Section 34(4) of the Code of Administrative Procedure, is justified.

On the other hand, however, it is indisputable that it is the tax administrators who take and evaluate the evidence in real life. The principle of free evaluation of evidence must be seen in a broader dimension, namely that the tax administrator should evaluate not only the evidence submitted by taxpayers, but in order to determine the correct determination of the tax, it should try to obtain and subsequently evaluate all evidence that could have an impact on the clarification of the facts decisive for the correct determination of the tax. However, the aforementioned principle does not impose an obligation on the tax administrator to ascertain the actual state of the case. The tax administrator only takes into account what has come to light during the tax administration, i.e. it only ascertains the facts of the case.[19] Therefore, the principle of objective truth does not apply to the administration of taxes.

The principle of free evaluation of evidence contains perhaps the most important fact, when no evidence is assigned more or less weight within the meaning of the Tax Code. On the contrary, all evidence has the same probative value and depends on the specific factual circumstances which of the evidence presented "turns out" to be more important for a given case. Therefore, there is no doubt that the principle of free evaluation of evidence is based on maximizing the objectification of subjectively perceived (evaluated) facts, namely by taking evidence and evaluating it separately as well as in mutual contexts. The specification of the evidence taken and the method of its evaluation should therefore be an appropriate part of the justification of the tax administrator's decision.

However, in accordance with the principle of free evaluation of evidence, it must be emphasized that the evaluation of evidence by the tax administrator cannot be arbitrary.[20] The scope of the requirements for the evaluation of evidence by the tax administrator must be subject to the limits of legality and objectivity, which, however, emphasizes the complexity and high degree of erudition of these activities.[21] An adequately explained conclusion of a public authority on the greater credibility of some of the evidence, unless it is the culmination of an obvious error or extreme excess in the process of concluding factual conclusions, is a natural result of the process of free evaluation of evidence and does not in itself indicate the possibility of pronouncing a violation of constitutional guarantees of judicial protection within the meaning of Articles 46 to 50 of the Constitution of the Slovak Republic.[22]

IV. POWERS TO PROPOSE AND ENFORCE EVIDENCE

The provision of Section 24 of the Tax Code also formulates one of the fundamental rights of taxpayers, namely to propose evidence. This is also related to the need for the tax administrator to properly deal with the evidence proposed by the taxpayer, which also means justifying the procedure for not taking the proposed evidence.

In this consideration, it is justified by analogy to refer to the so-called Perna test, which is based on the assessment of three basic criteria: 1) whether the request for additional

[19] KUBINCOVÁ, S. *Daňový poriadok. Komentár*. 1. vydanie. Bratislava : C. H. Beck, 2015, s. 32; KUBINCOVÁ, S. Komparácia procesných zásad, vybraných inštitútov a postupov podľa Daňového poriadku a Správneho poriadku. In: *Finančné právo, daňové právo a správne právo v európskom priestore : recenzovaný zborník vedeckých štúdií*. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2019, s. 23.

[20] Judgment of the Supreme Court of the Slovak Republic, Case no. 10 Šzfk 44/2019 of 24.11.2020; judgment of the Supreme Court of the Slovak Republic, Case no. 1 Sžfk 22/2019 of 26.5.2020.

[21] RAKOVSKÝ, P. K pojmu daňové konanie a daňová kontrola v intenciách vybraných rozhodnutí súdov Slovenskej republiky. In: *Acta Facultatis Iuridicae Universitatis Comenianae*. [online]. Tomus XXXIX, 2/2020, s. 285. [cit. 27.12.2025]. Dostupné na: https://afi.flaw.uniba.sk/index.php/AFI/article/view/630/464.

[22] Resolution of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 200/2023 of 5.4.2023, ZNaU No. 5/2023.

evidence was sufficiently justified and whether it related to the substance of the accusation, 2) whether the significance of certain evidence was assessed and whether the courts were provided with sufficient reasons in this regard why the evidence was not taken during the court proceedings, and finally 3) whether this decision did not undermine the overall fairness of the proceedings.[23] The conclusions of the European Court of Human Rights (hereinafter referred to as the "ECtHR") emphasizing the need to deal with proposed and unproduced evidence in criminal proceedings are by analogy also applicable in the field of taxes, since not only decisions on an administrative offence under Section 154 of the Tax Code, but also decisions of the tax administrator on tax assessment, or its difference, materially[24] imply a certain declaration of guilt of the taxpayer.[25] When assessing the evidence proposed by the taxpayer, it is therefore crucial that the tax administrator also takes into account the degree of justification for both the evidence taken and the evidence not taken, thus explaining the facts for which he did not consider the proposal for evidence to be justified. This also pursues overall fairness, the essence of which is already contained in the basic principles of tax administration, when the tax administrator is obliged to take care of the preservation of the rights and legally protected interests of taxpayers and other persons.

The rights of the taxpayer in the taking of evidence are therefore extremely important, and in addition to proposing evidence, the taxpayer also has the right to be present at the hearing of the witness and to ask him questions, while the tax administrator is obliged, according to Section 25 (4) of the Tax Code, to notify the taxpayer in writing of the hearing of the witness in a timely manner. The importance of the taxpayer's participation in the hearing of a witness lies in the fact that the taxpayer has the opportunity to directly confront, object to asking suggestive and capricious questions, the tax administrator does not have to ask questions about all relevant facts in favor of the taxpayer, and thus the risk of unilaterally targeted questions is eliminated.[26] This implements the adversarial principle as part of overall justice.

1. Limits of the reversal of the burden of proof

Despite the fact that the Tax Code regulates the obligation of the tax administrator to ensure that the facts necessary for the purposes of tax administration are established as fully as possible, according to the Constitutional Court of the Slovak Republic, the tax administrator does not have to produce such *"evidentiary ferocity*" in favour of the taxpayer as would be initiated and exerted by the taxpayer itself, which is essentially affected by the tax case. According to the Constitutional Court, the tax administrator primarily defends the fiscal interests of the state and, moreover, may not have enough information to properly protect the interests of the taxpayer concerned.[27]

[23] Judgment of the Grand Chamber of the European Court of Human Rights in the case of Perna v. Italy, application no. 48898/99, of 6.5.2003, supplemented conceptually in accordance with the judgment of the Grand Chamber of the European Court of Human Rights in the case of Murtazaliyeva v. Russia, application no. 36658/05, of 18.12.2018.

[24] For a comparison of substantive and formal interpretation, see: BRZEZIŃSKI, B., FRANCZAK, A. In Search of a Strategy for the Interpretation of Tax Law by Courts. In: *Krytyka Prawa. Niezależne Studia nad Prawem*, tom 16, nr 4/2024. [online]. Warszawa : Kozmiński University, 2024, s. 62. [cit. 28.12.2025]. DOI 10.7206/kp.2080-1084.720.

[25] Decision of the Supreme Court of the Slovak Socialist Republic, Case no. 4 Tz 62/78 of 14.9.1978; judgment of the Supreme Court of the Czech Republic, Case no. 5 Tz 101/2001 of 18.7.2001, published in the Collection of Court Decisions and Opinions of the Supreme Court of the Czech Republic under No. 20/2002.

[26] Judgment of the Supreme Administrative Court of the Slovak Republic, Case no. 5Sfk/32/2021 of 27.10.2023. In this regard, see also the possibility of using witness testimony from a local investigation in the context of a tax audit. – CAKOCI, K., POPOVIČ, A. Dôkazy získané v rámci miestneho zisťovania a limity ich využitia v daňovej kontrole. In: *I. Slovensko-české dni daňového práva. Daňové úniky a vyhýbanie sa daňovým povinnostiam*. Recenzovaný zborník vedeckých prác. Košice : Univerzita Pavla Jozefa Šafárika v Košiciach, 2017, s. 94 a nasl.

[27] Resolution of the Constitutional Court of the Slovak Republic no. IV. ÚS 607/2021 of 30.11.2021, Collection of Judgments and Resolutions of the Constitutional Court of the Slovak Republic No. 109/2021.

In reflecting on the course of evidence in tax proceedings, it is justified to point out its immanent characteristic, consisting in the so-called reversal of the burden of proof. This burdens the taxpayer, such as the taxpayer, taxpayer, etc. This distinguishes tax proceedings from criminal proceedings, which are based on the principle of the presumption of innocence, and therefore all evidence of the commission of a crime is obtained by the law enforcement authorities and the court. According to the general principles of criminal procedure, the prosecuting authorities clarify with equal care the circumstances against the accused as well as the circumstances in their favour, and take evidence in both directions in such a way as to enable the court to reach a fair decision. Thus, criminal proceedings and tax proceedings can even be perceived as opposites.[28]

More precisely, while the tax administrator only proves the facts about the acts performed against the taxpayer that are decisive for the correct determination of the tax,[29] the taxpayer must bear the burden of proof for all the facts that he is obliged to prove in accordance with the relevant legal regulations. The burden of proof to prove and explain "everything" is regulated by the legislator in the wording of Section 24 (1) of the Tax Code. The institute of the so-called shifted burden of proof also has its legal basis in the basic principles of tax administration, more precisely in the provision of Section 3 (8) of the Tax Code, which contains a certain legal oxymoron, when it formulates both the right and the obligation of taxpayers to closely cooperate with the tax administrator in tax administration. Thus, the taxpayer is not only entitled but primarily obliged to prove facts within the tax administration, all of which are decisive for the correct determination of its tax liability. From the point of view of application practice, however, the question of the extent to which the taxpayer is obliged to "cooperate", i.e. to what extent it bears the burden of proof, is justified.

The Constitutional Court of the Slovak Republic, in its ruling no. I. ÚS 259/2022 of 12 October 2022, ruled on the gradual shifting of the burden of proof in tax proceedings between the taxpayer and the tax administrator, which is first borne by the taxpayer and only then by the tax administrator, and at a certain stage of the proceedings it can always be borne by only one of them. According to the Constitutional Court, the disproportionate[30] burden of proof may manifest itself on two levels, namely 1) the burden on the taxpayer by presenting evidence beyond the extent strictly sufficient to prove the decisive facts, or 2) the requirement to prove such a range of facts that do not constitute the burden of proof on the taxpayer. Therefore, this results in an obligation for tax administrators, who, on the basis of the above, may only require evidence that relates to the case under review and is sufficient to prove the decisive facts, while securing them must be within the taxpayer's real possibility.

The Federal Finance Court of the Federal Republic of Germany presented a legal opinion that the taxpayer must, as part of its obligation to cooperate with the tax administrator, prove the credibility of the evidence submitted. Consequently, a trader who applies for deduction of input tax bears the burden of proving that the statutory (in particular substantive) requirements for the application of that deduction are satisfied. In any event, the burden of determination can only be borne by the person who relies on the absence of facts or

[28] ÚRADNÍK, M. *Zásady deliktuálneho trestania vo vybraných oblastiach finančného práva s akcentom na otázku ne bis in idem*. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2023, s. 110.

[29] See: Section 24(3) of the Tax Code.

[30] The question of adequacy must also be examined in the context of an ongoing tax audit. – For more details: VERNARSKÝ, M. Daňová kontrola a dokazovanie v daňovom konaní. In: *Zborník z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2015*. [online]. Bratislava : Univerzita Komenského v Bratislave, Právnická fakulta, 2015, s. 444. [cit. 28.12.2025]. Dostupné na: https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/4th_Session.pdf.

circumstances if the opponent, in this case the tax authority, has substantiated evidence in favour of the existence of certain facts.[31]

However, the taxpayer cannot be required to submit such evidence, the submission of which is objectively impossible from its point of view (the so-called probatio diabolica). The scope of the evidentiary obligation can logically apply only to the evidence that the taxpayer can actually have at its disposal. The burden of proof cannot therefore be taken broadly and extended to prove all, or any, facts, that is to say, including those which another entity is required to adduce.[32] For tax purposes, a taxpayer may be required to provide standard and customary evidence in business practice, for which it is reasonable to assume that the taxpayer will keep it, with the cumulation that it must be evidence that is sufficient to prove a certain fact, such as the supply of goods. When assessing the level of the burden of proof on the taxpayer, it must be assumed that the burden of proof borne by the taxpayer does not meet the obligation to prove the alleged facts with absolute certainty, but it is sufficient to prove a sufficient degree of probability. If the taxpayer has proved the existence of material performance and has submitted all the documents required by law relating to it, then it has exhausted its own burden of proof.[33] The tax administrator cannot attribute to the taxpayer the existence of a need for evidence relating to facts that did not constitute its burden of proof. Regardless of the nature of the evidence submitted by the taxpayer, it is up to the tax administrator to establish the facts accurately and completely, and it depends on him what evidence he will take for this purpose.[34]

For example, according to the judgment of the Supreme Administrative Court of the Slovak Republic, no. 1 Sfk 68/2022 of 30 September 2024, [35] if the person of the supplier relied on the validity of the customer's VAT identification number resulting from the customer's entry in the relevant public register, which is evidence of the customer's status as a taxable person or a person identified for tax purposes in accordance with the decision-making activity of the Court of Justice of the European Union, The supplier cannot reasonably be required to obtain, in addition to the documents required by the provision of Section 43 (5) of Act No. 222/2004 Coll. on Value Added Tax, as amended, at the time of the transactions other evidence proving the performance of an economic activity by the customer in the event that the customer's VAT registration is cancelled.

In another case, the taxpayer may not rely on the fulfilment of its evidentiary obligation in tax proceedings if the tax administrator has demonstrably challenged the credibility, truthfulness or completeness of the documents (evidence) submitted by the taxpayer and the taxpayer has subsequently failed to refute the tax administrator's challenge with other evidence.[36] More precisely, the burden of proof arises again on the taxpayer at the moment when the tax administrator lawfully and clearly expresses doubts about the taxpayer's claim. It should be emphasized that the tax administrator is obliged to substantiate its doubts with evidence that unequivocally refutes the taxpayer's claims, and the tax administrator's evidence must have at least the same explanatory power, seriousness and credibility as the evidence submitted by the taxpayer.[37]

[31] Judgment of the Federal Finance Court of the Federal Republic of Germany, Case no. V R 48/04 of 19.4.2007, paragraph 63.
[32] Resolution of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 420/2025 of 6.8.2025.
[33] The Ruling of the Constitutional Court of the Slovak Republic, Case no. IV. ÚS 569/2022 of 7.2.2023.
[34] The Ruling of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 259/2022 of 12.10.2022.
[35] Published in the Collection of Opinions and Decisions of the Supreme Administrative Court of the Slovak Republic 2/2025, volume IV, under No. 99/2025 ZNSS.
[36] Resolution of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 103/2024 of 21.2.2024.
[37] The Ruling of the Constitutional Court of the Slovak Republic, Case no. I. ÚS 259/2022 of 12.10.2022.

Despite the fact that breaking the burden of proof is associated with claims in the field of value added tax with a certain degree of generalization,[38] its application applies to all taxes. As part of the taking of evidence in the administration of road tax, the Supreme Administrative Court of the Czech Republic in its judgment no. 8 Afs 23/2018 of 16 January 2020 emphasized that the time that has elapsed since the time when the proven facts occurred must also be taken into account in the taking of evidence. Simply put, memory traces are subject to natural time selection, when they are gradually weakened by the passage of time, and therefore "*not remembering*" certain facts does not automatically mean purposeful action of the interrogated person.

2. The degree of cooperation of the taxpayer in the visibility of the right to refuse to testify against him

However, the burden of proof has its limits, and not only in the context of its transfer between the taxpayer and the tax administrator. The primary question is also to what extent the taxpayer is obliged to prove the required facts to the tax administrator, as it is clear from the above-mentioned case law that the taxpayer cannot be required to provide facts that he cannot ascertain. On the other hand, however, there is the principle of close cooperation when, according to Section 3 (2) and in conjunction with Section 3 (8) of the Tax Code, the tax administrator proceeds in close cooperation with the taxpayer in tax administration, while it is the right and obligation of taxpayers to cooperate closely with the tax administrator. Therefore, regardless of the state of its will, the taxpayer is[39] entitled and at the same time obliged to provide cooperation to the tax administrator, and thus also to submit evidence, either to meet its legal obligations or required by the tax administrator.

According to the Court of Justice of the European Union, national authorities cannot apply only pre-established general criteria in order to determine whether an operation has as its object tax evasion or abuse, but must carry out an overall examination of the '*suspected*' transaction on a case-by-case basis. The adoption of a tax measure of a general nature which automatically excludes certain categories of taxpayers from benefiting from a tax advantage, without requiring the tax authorities to provide at least initial proof or proof of the existence of tax evasion and abuse, goes beyond what is necessary to prevent tax evasion and abuse.[40]Thus, the Court of Justice of the European Union not only shifted the burden of proving tax evasion or abuse of rights[41] to the tax administrator, but to a certain extent set limits on the taxpayer's burden of proof, because the facts leading to the unlawful conduct must be proved by the tax administrator, but without requiring them from the taxpayer himself. Ipso facto, the content of the tax burden and the provision of cooperation of the

[38] In particular, in connection with the burden of proof on the part of the tax administrator to prove tax fraud – see the Order of the Court of Justice of the European Union in the case of Crewprint Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, C-611/19, of 3.9.2020.

[39] On the actions of the taxpayer before and after the tax audit, see: KASPER, M., ALM, J. Audits, audit effectiveness, and post-audit tax compliance. In: *Journal of Economic Behavior & Organization*. [online]. Vol. 195, 2022, s. 87 – 102. [cit. 28.12.2025]. Dostupné na: https://www.sciencedirect.com/science/article/pii/S0167268122000099?via%3Dihub. DOI 10.1016/j.jebo.2022.01.003.

[40] Judgment of the Court of Justice of the European Union in Case C-6/16 Eqiom SAS and Enka SA v. Ministre des Finances et des Comptes publics, of 7.9.2017, paragraph 32; judgment of the Court of Justice of the European Union (CJEU) in Joined Cases C-504/16 and C-613/16 Deister Holding AG and Juhler Holding A/S v. Bundeszentralamt für Steuern, of 20.12.2017, paragraph 62.

[41] On tax evasion and the gradual efforts of countries to expand the prosecution and abuse of tax regimes, see: BLAUFUS, K., HUNDSDOERFER, J., JACOB, M., SÜNWOLDT, M. Does legality matter? The case of tax avoidance and evasion. In: *Journal of Economic Behavior & Organization*. [online]. Vol. 127, 2016, s. 182 – 206. [cit. 28.12.2025]. Dostupné na: https://www.sciencedirect.com/science/article/abs/pii/S0167268116300427. DOI 10.1016/j.jebo.2016.04.002. ŠTRKOLEC, M. Boj proti zneužívaniu daňového systému de lege ferenda. In: BABČÁK, V. a kol. *Daňové úniky a daňové podvody a právne možnosti ich predchádzania (inštitútmi daňového, obchodného a trestného práva)*. [online]. Košice : UPJŠ, 2018, s. 135 a nasl. [cit. 30.12.2025]. Dostupné na: https://www.upjs.sk/app/uploads/sites/11/2022/09/zbornik_62.pdf.

taxpayer does not consist in the obligation to prove his or her possible legally reparated conduct in the field of taxation, precisely with regard to the criminal law principle of the prohibition of self-incrimination.

The prohibition of compelling confession includes not only the right not to testify, but also the right not to contribute in any active way, either directly or indirectly, to one's accusation. This means not only the prohibition of forcing a suspect or accused person to testify, but also the prohibition of forcing such a person to cooperate or to actively act that is necessary for his conviction, for example, by forcing the submission of matters that connect him or may be connected with the criminal activity under investigation.[42] In the case of Heaney and McGuinness v. Ireland, the European Court of Human Rights ruled that even the public interest in detecting, prosecuting[43] and punishing the offender cannot justify the action of public authorities interfering with the very essence of the defendant's right of defence, including the right not to be forced to incriminate himself.[44]

Similarly, in Funke v. France, the European Court of Human Rights found an infringement of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention'), in so far as the customs authorities[45] attempted to compel the applicant to provide evidence of his criminal activity by imposing civil fines for failure to issue the bank statements requested, merely assuming the existence of those documents; since they could not or did not want to obtain them by other means.[46]

Although the right to refuse to testify and the right not to testify against oneself are not explicitly mentioned in Article 6 of the Convention, these are rights generally recognized by international norms, which are at the heart of the concept of fair trial. Their purpose is, among other things, to protect the accused from undue pressure from public authorities, which was confirmed by the European Court of Human Rights in the case of Murray v. the United Kingdom.[47] According to the ECtHR, in particular, the right not to testify against oneself presupposes the activity of the prosecution which seeks to prove the guilt of the accused without resorting to evidence obtained by coercive means or coercion contrary to the will of the accused. In that sense, the right at issue is closely linked to the presumption of innocence laid down in Article 6(2) of the Convention.[48]

In the indicated context, it is necessary to point out the jurisprudential starting points, because the right of a person not to testify against himself has its limits. According to the European Court of Human Rights, in order to assess protection against self-incrimination, it is necessary to primarily assess whether the person must have first been subjected to some form

[42] Resolution of the Regional Court in Banská Bystrica, Case no. 4 Tos 91/2021 of 30.9.2021. For comparison: the Ruling of the Constitutional Court of the Slovak Republic, Case no. PL. ÚS 17/2023 of 27.11.2024.

[43] On the features of a criminal offence, see: BURDA, E., BELEŠ, A., ĽORKO, A., MIHÁLIK, S. *Trestná zodpovednosť*. 1. vyd. [online]. Bratislava : Univerzita Komenského v Bratislave, Právnická fakulta, 2022, s. 69. [cit. 26.12.2025]. Dostupné na: https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Katedry/KTPKK/VU_Trestna_zodpovednost_KTPKK.pdf.

[44] Judgment of the European Court of Human Rights in the case of Heaney and McGuinness v. Ireland, application no. 34720/97, of 21.12.2000.

[45] On the development of customs duties, see: CAKOCI, K., HRABČÁK, L. EU customs union yesterday, today and (possibly) tomorrow in e-commerce interaction. In: *STUDIA IURIDICA Cassoviensia*. [online]. Vol. 13.2025, no. 2, s. 4 – 18. [cit. 26.12.2025]. Dostupné na: https://sic.pravo.upjs.sk/ecasopis/132025-2/1_Cakoci_Hrabcak_Colna_unia_EU.pdf. DOI 10.33542/SIC2025-2-01.

[46] Judgment of the European Court of Human Rights in the case of Funke v. France, application no. 10588/83, of 25.2.1993, paragraph 44.

[47] Judgment of the European Court of Human Rights in the case of John Murray v. the United Kingdom, application no. 18731/91, of 8.2.1996, paragraphs 44 – 47.

[48] Judgment of the European Court of Human Rights in the case of Saunders v. the United Kingdom, application no. 19187/91, of 17.12.1996, paragraph 68.

of pressure or coercion by public authorities.[49] Second, that pressure must be applied either in order to obtain information that could incriminate the person concerned in ongoing or anticipated criminal proceedings, or the case must concern the use of incriminating information forcibly obtained outside the context of the criminal proceedings only in the subsequent criminal prosecution.[50]

The two cases indicated are considered to be prerequisites for the application of the principle of non-self-incrimination.[51] If these prerequisites are met, it is necessary to proceed to further examination, since the right not to testify against oneself primarily concerns respect for the will of the accused to remain silent. However, the volitional component of the proceedings is disturbed precisely by the methods of pressure aimed at obtaining certain information from the accused. Here, however, it is necessary to distinguish whether certain evidence exists regardless of the will of the accused. According to the case-law of the European Court of Human Rights[52] , the principle of non-self-incrimination does not apply to the use of materials obtained from an accused by coercive methods, provided that these materials exist independently of his will.

The right not to incriminate oneself is therefore not absolute,[53] and the degree of pressure exerted will be incompatible with Article 6 of the Convention if it destroys the very essence of that privilege,[54] and it is therefore necessary to assess, in particular, the nature and degree of pressure, the existence of any relevant safeguards in the proceedings and, in particular, the extent to which the evidence thus obtained is used.[55]

In the context of the prohibition of self-incrimination, the idea of taxation of criminal income can only be briefly outlined. In principle, two lines of opinion can be presented on the admissibility of taxation of income from illegal activities, on the contrary that the state should not be satisfied only with income as a tax paid, but in the sense of imposing penalties, it should draw off all the income (property) thus obtained.[56] Without further ado, the author only allows himself to note that the declaration of income from criminal activity for the

[49] Judgment of the European Court of Human Rights in the case of Serves v. France, application no. 20225/92, of 20.10.1997, paragraph 47; judgment of the European Court of Human Rights in the case of Bykov v. Russia, application no. 4378/02, of 10.3.2009, paragraph 102.

[50] Judgment of the European Court of Human Rights in the case of Weh v. Austria, application no. 38544/97, of 8.4.2004, paragraphs 42 – 43; judgment of the European Court of Human Rights in the case of Wanner v. Germany, application no. 26892/12, of 23.10.2018, paragraph 24.

[51] Judgment of the European Court of Human Rights in the case of Eklund v. Finland, application no. 56936/13, of 8.12.2015, paragraph 51.

[52] The right not to incriminate oneself does not apply to the use in criminal proceedings of materials that can be obtained from the accused by coercive means, if these exist independently of the suspect's will and can be secured on the basis of an arrest warrant, breath, blood and urine samples, or DNA testing. – Judgment of the European Court of Human Rights in the case of Saunders v. the United Kingdom, application no. 19187/91, of 17.12.1996, paragraph 69; judgment of the European Court of Human Rights in the case of Kalnėnienė v. Belgium, application no. 40233/07, of 31.1.2017, paragraph 52; decision of the European Court of Human Rights in the case of Sršen v. Croatia, application no. 30305/13, of 22.1.2019, paragraph 44; decision of the European Court of Human Rights in the case of El Khalloufi v. the Netherlands, application no. 37164/17, of 26.11.2019, paragraphs 38 – 40. However, if such evidence has been obtained through a procedure that violates Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of the prohibition of self-incrimination remains applicable according to the judgment of the European Court of Human Rights in the case of Jalloh v. Germany, application no. 54810/00, of 11.7.2006.

[53] For example, judgment of the European Court of Human Rights in the case of Heaney and McGuinness v. Ireland, application no. 34720/97, of 21.12.2000, paragraph 47.

[54] Judgment of the European Court of Human Rights in the case of John Murray v. the United Kingdom, application no. 18731/91, of 8.2.1996.

[55] Judgment of the European Court of Human Rights in the case of Allan v. the United Kingdom, application no. 48539/99, of 5.11.2002, paragraph 44; judgment of the European Court of Human Rights in the case of Jalloh v. Germany, application no. 54810/00, of 11.7.2006.

[56] GALANDOVÁ, M., KAČALJAK, M. Zdaňovanie príjmov z trestnej činnosti. In: *Trestněprávní revue*. 2016, roč. 15, č. 10, s. 234; ŠAMKO, P. Ešte raz k posúdeniu otázky, či príjem z trestnej činnosti podlieha dani z príjmu. In: *Trestněprávní revue*. 2017, roč. 16, č. 2, s. 46; GALANDOVÁ, M., KAČALJAK, M. Do tretice k zdaňovaniu príjmov z trestnej činnosti. In: *Trestněprávní revue*. 2017, roč. 16, č. 9, s. 214 – 218.

purpose of its taxation may lead to the violation of the prohibition of self-incrimination, on the other hand, the question remains when the law enforcement authorities learned about the crime and what to do with the property, which may have decreased in the meantime or even completely disappeared and at the end of the day the state will not receive any income.

In developing its own decision-making activity of the[57] principle of the prohibition of self-incrimination in financial matters falling under the criminal category of Article 6(1) of the Convention, the European Court of Human Rights distinguishes between factual situations whether *such materials existed before the application of "coercive means"* to obtain certain means of evidence, and whether the public authorities themselves were aware of their existence.

In the case of J.B. v. Switzerland, the European Court of Human Rights declared a violation of the right not to incriminate under Article 6(1) of the Convention because, after detecting the applicant's investments, the tax authorities tried to force him to produce all documents relating to the companies in which he had invested money by imposing fines. More specifically, according to the judgment of the Federal Court of 7 July 1995, it was particularly important for the authorities to know whether the complainant had received any income that was not taxed, and therefore the tax authorities asked the complainant to provide the relevant information between 1987 and 1990 and, when he refused, successively imposed four fines on him. The European Court of Human Rights was also not convinced by the government's argument that at the time of imposing the fines, the tax authorities had information about the knowledge of the documents in question, as this was not clear in the circumstances of the case.[58]

In the Chambaz case, two fines were imposed on the complainant for refusing a request from the Swiss tax authorities to produce all documents relating to his business relations with the company and with the banks. According to the ECtHR, by imposing a fine on the applicant, the authorities exerted pressure on him to produce documents which would provide information on his income and assets, which were capable of exposing him to charges of tax evasion and thus liable to jeopardise his position in the investigation. The ECtHR therefore concluded that there had been a violation of Article 6(1) of the Convention in the specific circumstances of the case.[59]

Furthermore, it can be inferred from the case-law of the European Court of Human Rights that the use of documentary evidence obtained on pain of penalties in the context of financial law matters does not fall within the scope of the protection of the privilege of non-self-incrimination if the authorities are able to demonstrate that the purpose of the pressure is to obtain specific pre-existing documents.[60]

V. CONCLUSION

For the assessment of the refusal to provide cooperation to the tax administrator, in the context of its possible enforcement by imposing civil fines, with the taxpayer's argumentation about the use of its right not to blame itself, it is therefore decisive what facts the tax

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[57] MAĎAR, M. Predvídateľnosť súdnych rozhodnutí ako súčasť práva na spravodlivý proces. In: *Banskobystrické dni práva : zborník z 2. ročníka medzinárodnej vedeckej konferencie na tému „Kvalita normotvornej a aplikačnej stránky zákonnosti ako determinant právneho štátu“, 23. – 24. november 2016. Sekcia verejného práva*. 1. vyd. [online]. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2017, s. 134 – 145. [cit. 28.12.2025]. Dostupné na: https://www.prf.umb.sk/veda-a-vyskum/konferencie-a-konferencne-on-line-vystupy/ii-banskobystricke-zamocke-dni-prava/.

[58] Judgment of the European Court of Human Rights in the case of J.B. v. Switzerland, application no. 31827/96, of 3.5.2001, paragraphs 65 – 71.

[59] Judgment of the European Court of Human Rights in the case of Chambaz v. Switzerland, application no. 11663/04, of 5.4.2012.

[60] Judgment of the European Court of Human Rights in the case of De Legé v. the Netherlands, application no. 58342/15, of 4.10.2022.

administrator requires. Assuming that it requires the submission of general or unspecified evidence, then the application of the right to prohibit self-incrimination and, therefore, to refuse to cooperate is legitimate. On the other hand, if the tax administrator requests specific means of evidence, the taxpayer is obliged to provide them, while the prohibition of self-incrimination cannot be invoked, or only to a limited extent, depending on the specifics of the case. The scientific hypothesis must be falsified.

At the same time, the right to prohibit self-incrimination cannot be exercised without restriction even in the event of a refusal to submit certain '*essential documents*' relating to tax administration. In the case of Allen v. the United Kingdom, the European Court of Human Rights concluded that the tax administrator's requirement that the complainant file a tax return on his assets is not contrary to Article 6 of the Convention, even though a penalty was imposed for failure to file it.[61]

The right not to testify or the prohibition of self-incrimination cannot be interpreted in such a maximum that they mean absolute immunity for the taxpayer not to submit a tax return or other documents important for the correct determination of the tax to the tax administrator. Thus, the European Court of Human Rights distinguished Allen v. the United Kingdom from J.B. v. Switzerland on the ground that the applicant in the Allen case was not prosecuted for failing to provide information that could incriminate him in ongoing or anticipated criminal proceedings, but for the act of falsely declaring his assets, which is a criminal offence in itself. The ECtHR held that that privilege did not constitute a prohibition on the use of coercive powers to require taxpayers to provide information on their financial affairs in order to ensure an accurate tax assessment, noting that the obligation to disclose income and capital for the purposes of calculating and assessing tax is a common feature of the tax systems of the Member States and that it would therefore be difficult to imagine their effective functioning without it.

The question also remains as to the possible procedure of the tax administrator, who should refuse to instruct the taxpayer about the right to testify, even though such an obligation does not arise from the Tax Code. The controversy about the duty to provide information can be deduced taking into account a broader concept based on the different perception of the suspect by the European Court of Human Rights, which grants him the same range of rights as if he were an accused person who has the right to refuse to testify. The second reason is the procedure for applying the basic principles of criminal proceedings and imposing penalties, in particular with regard to the procedure for imposing a sanction for an administrative offence under Section 154 et seq. of the Tax Code,[62] in reflection on administrative punishment[63] and the procedure of the administrative court under Section 195 (c) and (d) of Act No. 162/2015 Coll. of the Code of Administrative Procedure, as amended. Within the application of

[61] Judgment of the European Court of Human Rights in the case of Allen v. the United Kingdom, application no. 76574/01, of 10.9.2002. For comparison: judgment of the European Court of Human Rights in the case of Savic v. Austria, applications no. 10487/16 and 10502/16, of 15.9.2020.

[62] In the context of prosecution for so-called tax offences, it is also necessary to take into account the liberation clause which, according to Section 154(2) of the Tax Code, allows a natural person who is not an entrepreneur to be relieved of liability for a breach of obligation, but only such a person. – KUBINCOVÁ, T. Vybrané otázky ukladania sankcií pri správe daní. In: *Banskobystrické zámocké dni práva : zborník z 3. ročníka medzinárodnej vedeckej konferencie na tému „Identifikácia únosnej miery autonómie právnych odvetví a súčasnej potreby ich synergie“, 23. – 24. november 2017, Vígľaš. Sekcia verejného práva*. 1. vyd. [online]. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2018, s. 134 – 135. [cit. 29.12.2025]. Dostupné na: https://www.prf.umb.sk/veda-a-vyskum/konferencie-a-konferencne-on-line-vystupy/iii-banskobystricke-zamocke-dni-prava/.

[63] See: PEKÁR, B. Efektivita sankcií pri správnom trestaní. In: *Banskobystrické zámocké dni práva : zborník z 3. ročníka medzinárodnej vedeckej konferencie na tému „Identifikácia únosnej miery autonómie právnych odvetví a súčasnej potreby ich synergie“, 23. – 24. november 2017, Vígľaš. Sekcia verejného práva*. 1. vyd. [online]. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2018, s. 148 a nasl. [cit. 29.12.2025]. Dostupné na: https://www.prf.umb.sk/veda-a-vyskum/konferencie-a-konferencne-on-line-vystupy/iii-banskobystricke-zamocke-dni-prava/.

criminal law principles to the area of administrative punishment, and thus also to the so-called tax offences, it is necessary to add that the application of the analogy cannot be to the detriment of the rights of the person concerned and will not apply even in cases of special legislation.[64] It is also necessary to point out the characteristics of the sanctions imposed, because the sanctioning legal norms in the field of public law apply primary punitive sanctions,[65] i.e. coercive sanctions, the imposition and fulfilment of which does not affect the primary obligation to perform a certain act for the non-execution of which the sanction was imposed. Therefore, the correlate of the above facts leads to the justification of the conclusion that the obligation to provide information has arisen, namely at the moment when the taxpayer becomes suspected of unlawful conduct.

KEY WORDS
tax, tax proceedings, evidence, proof, burden of proof, cooperation, prohibition of self-incrimination

KĽÚČOVÉ SLOVÁ
daň, daňové konanie, dôkaz, dokazovanie, dôkazné bremeno, súčinnosť, zákaz sebaobviňovania

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