

The (Un)Constitutionality of the Financial Investigation as Provided by the Financial Administration Act – A Case Study¹

Benjamin Flander

Purpose:

The article provides an in-depth analysis of the regulation of financial investigations under the Financial Administration Act (“Zakon o finančni upravi (ZFU)”, 2014) and the manner of implementing the regulatory framework of this instrument in Slovenia. It presents the conditions for the initiation of a financial investigation, along with the competence and authorisations of investigators, the status of a person under investigation, and the procedure and conclusion of a financial investigation. In the article we take the position that either the existing regulatory framework or the manner in which the regulatory framework of financial investigation is implemented is unconstitutional.

Design/Methods/Approach:

We applied the normative method, the analysis and synthesis method, and a case study.

Findings:

We claim that Article 100 of the “ZFU” (2014), which governs financial investigations, is not compliant with the Constitution or the manner in which this provision is implemented by the Financial Administration of the Republic of Slovenia, which also has support in courts’ decisions. The Financial Administration, the Administrative Court and courts of general jurisdiction interpret and implement Article 100 of the “ZFU”, in the section relating to the moment in which a financial investigation is completed and tax inspection proceedings begin, in a way that is not compliant with the explanation by the Constitutional Court of the Republic of Slovenia in decision No. U-I-69/22-4.

Research Limitations/Implications:

The research does not include a comparative analysis, i.e., an analysis of the regulation and practice of conducting financial investigations pertaining to

¹ The article presents findings of the author’s research activities in the Central European Professors’ Network and the research group on the Interpretation of Fundamental Rights in Europe, coordinated by the Ferenc Mádai Institute of Comparative Law, Budapest, Hungary.

infringements of tax regulations in other countries.

Keywords: Financial Administration Act, financial investigation, financial administration, constitution

UDC: 336.1.07

(Ne)ustavnost finančne preiskave po Zakonu o finančni upravi – študija primera

Namen prispevka:

Prispevek podaja poglobljeno analizo ureditve finančnih preiskav po Zakonu o finančni upravi ("ZFU", 2014) in način izvajanja regulativnega okvira tega instrumenta v Sloveniji. Predstavlja pogoje za uvedbo finančne preiskave, pristojnosti in pooblastila preiskovalcev, status preiskovanca ter postopek in zaključek finančne preiskave. V prispevku zagovarjamo stališče, da je bodisi obstoječi regulativni okvir bodisi način izvajanja regulativnega okvira finančne preiskave protiustaven.

Metode:

Uporabili smo normativno metodo, metodo analize in sinteze ter študijo primera.

Ugotovitve:

Trdimo, da 100. člen "ZFU" (2014), ki ureja finančne preiskave, ni v skladu z Ustavo oziroma načinom izvajanja te določbe s strani Finančne uprave RS, ki ima oporo tudi v odločbah sodišč. Finančna uprava, Upravno sodišče in sodišča splošne pristojnosti razlagajo in izvajajo 100. člen "ZFU" v delu, ki se nanaša na trenutek, ko je končana finančna preiskava in začel postopek davčnega inšpekcijskega nadzora, na način, ki ni skladen z obrazložitvijo Ustavnega sodišča Republike Slovenije v odločbi št. U-I-69/22-4.

Omejitve/uporabnost raziskave:

Raziskava ne vključuje primerjalne analize, to je analize ureditve in prakse izvajanja finančnih preiskav v zvezi s kršitvami davčnih predpisov v drugih državah.

Ključne besede: Zakon o finančni upravi, finančna preiskava, finančna uprava, ustava

UDK: 336.1.07

1 INTRODUCTION

According to the Financial Administration Act ("ZFU", 2014), a financial investigation is an instrument in the legal system of the Republic of Slovenia intended to prevent, investigate and detect the most serious infringements of regulations pertaining to the areas of taxation and organising games of chance.

This type of financial investigation involves implementing acts, measures and procedures when there are grounds for suspecting that an act was committed that constitutes an infringement of the aforementioned regulations. According to the “ZFU” (2014), a financial investigation may lead to tax inspection proceedings and sanctions for infringers. The article presents the conditions for and manner of initiating a financial investigation, along with the competence and authorisations of investigators, the status of the person under investigation, and the procedure and conclusion of a financial investigation. The attention is drawn to the fact that the regulatory framework of financial investigations is insufficient and that the persons under investigation have no right to make a statement or view the file during the financial investigation procedure, nor do they have judicial or any other legal protection, and after the investigation is completed, they have no right to view the final report and/or become familiar with the data gathered if no tax inspection proceedings are initiated. In the financial investigation under the “ZFU” (2014), persons under investigation are *de facto* objects of the proceedings until tax inspection proceedings possibly begin. In the article we take the position that the regulation of financial investigations according to the “ZFU” (2014), although amended in the spring of 2022, is not compliant with the Constitution of the Republic of Slovenia (“Ustava Republike Slovenije (URS)”, 1991), or, alternatively, that the way the regulatory framework is interpreted and implemented is unconstitutional and unlawful. The alleged unconstitutionality of the existing regulatory framework of financial investigations or of the established manner of implementing this instrument in practice, will be substantiated, *inter alia*, by means of a case study.

2 FINANCIAL INVESTIGATION PROCEEDINGS AND INVESTIGATORS' AUTHORISATIONS

Financial investigations are governed by Article 100 of the “ZFU” (2014). According to this provision, a financial investigation means the performance of acts, measures and procedures in accordance with the “ZFU” and the Tax Procedure Act (“Zakon o davčnem postopku (ZDavP-2-UPB4)”, 2011) if there are grounds for suspecting that acts have been committed by which taxation regulations or regulations pertaining to the area of organising games of chance have been infringed. The acts and measures of financial investigations are performed with a view to preventing, investigating and detecting the most serious infringements of taxation regulations.² Pursuant to Article 100 of the “ZFU” (2014), the most serious infringements of taxation regulations or other regulations falling within the field of competence of the Financial Administration are actions or acts of persons liable for tax and other persons or institutions, whereby the financial interests or the protection and safety interests of the Republic of Slovenia or the EU may be seriously jeopardised. The most serious infringements of taxation regulations mainly include minor offences that are defined as severe infringements given their importance in the tax regulation.

² A financial investigation may also be initiated due to acts and actions under the “ZFU” (2014) and “ZDavP-2-UPB4” (2011) in order to provide mutual assistance to the authorities within the EU, the EU Member States and third countries.

Under the “ZFU” (2014), financial investigations are initiated by the issuance of an investigation order in which the circumstances are stated from which arise the grounds for suspicion, the acts and measures to be taken, and the circumstances to be investigated in a financial investigation, as well as the entities subject to a financial investigation. The investigation order is issued by the head of the competent financial administration. If there are grounds for suspecting that compulsory duties have been charged in an insufficient amount or that other irregularities falling within the field of competence of the Financial Administration exist, inspections may be carried out after the financial investigation is completed, which begin by serving the decision on inspection proceedings. If the inspection proceedings were threatened, the inspection is initiated when inspectors perform any acts with a view to performing inspections and when the person liable for tax is informed about this. It is deemed that the purpose of tax inspection proceedings is threatened if an inspector, based on the data from official records or other data obtained about the person liable for tax, or depending on the purpose of the inspection, justifiably expects that the obtaining of evidence or fulfilment of tax liability will be made difficult or prevented, or if it is necessary that a tax inspection is carried out immediately and unexpectedly, or if further infringements need to be prevented. Upon the completion of a financial investigation, the officials shall draw up a final investigation report in which the findings of the financial investigation are described.

In accordance with Article 14 of the “ZFU” (2014), in performing the duties of the Financial Administration officials may establish the personal identity and status of persons liable for tax, collect and obtain notifications and information, require the submission of data and documents, use technical devices for photography and recording, confiscate documents, data support media of databases and other items, enter property, premises and facilities and examine them, examine equipment, goods and other items, take and examine samples of goods, stop vehicles, examine and investigate vehicles and movable assets, carry out security searches, examine persons, use means of compulsion, prohibit the pursuit of a business and seal business premises, books of account and other documentation, use technical equipment, service dogs, and service vehicles with priority, detain infringers, and carry out other acts in accordance with the purpose of performing the duties of the Financial Administration. An extensive part of the “ZFU” (2014) regulates the authorisations listed in greater detail.

3 ASSESSMENT OF THE REGULATORY FRAMEWORK OF FINANCIAL INVESTIGATIONS

As financial investigations are initiated to prevent, investigate and detect the most serious infringements of taxation regulations,³ it is unusual that the legal system regulates this important instrument to a very modest (in two articles of the “ZFU” if the provision pertaining to record-keeping is taken into account) and vague

³ In practice, in most cases financial investigations are initiated in relation to undeclared income, international tax carousels, business operations with tax oases, non-payment of social security contributions, excise and environmental duties, undeclared employment and investigations pertaining to international data exchange (Finančna uprava Republike Slovenije, 2021).

extent. It is not clear, for example, which of the above-mentioned authorisations as set forth under Article 14 of the “ZFU” (2014) are included in the “acts, measures and procedures”, which, as stipulated under Article 100, are carried out within financial investigations. The “ZFU” (2014) includes investigators amongst the officials of the Financial Administration of the Republic of Slovenia (hereinafter the Financial Administration), in addition to inspectors, customs officers, controllers and debt collectors, but does not further stipulate which of the authorisations listed are supposed to be implemented by the investigators (this is stipulated for each type of official listed except for the investigator). It is even less clear which “acts, measures and procedures” are supposed to be implemented in the course of an investigation from the range of authorisations, acts, measures and procedures under the “ZDavP-2-UPB4” (2011), as this law makes no mention of financial investigations.

As already mentioned, an investigation begins when an investigation order is issued by the head of the competent financial administration. In said order, the head of the competent financial administration states the circumstances from which arise the grounds for suspicion, the acts and measures to be taken, and the circumstances to be investigated and the circle of entities subject to a financial investigation. The “ZFU” (2014) does not stipulate that the financial investigation should be initiated and implemented in secrecy. Furthermore, it is not clear from the “ZFU” as to how long an investigation can take. In addition, it does not stipulate any restrictions of rights and (procedural) legal guarantees which duty holders have in a tax procedure and in the tax inspection proceedings. Last but not least, the “ZFU” (2014) does not stipulate that, unlike tax proceedings and tax inspection proceedings, a financial investigation is not a (special) administrative procedure by its legal nature. If the legislators wanted to strip financial investigations of the nature of a (special) administrative procedure (see below), we believe they should specify this and regulate such a procedure in a way that is compliant with the Constitution. We believe the same applies to any restrictions of constitutional and legal rights and procedural guarantees of persons under investigation (Flander, 2019).

In accordance with the fifth paragraph of Article 100 of the “ZFU” (2014), tax inspection proceedings may be conducted after the completion of the financial investigation. Both for the financial investigation and tax inspection, the “ZFU” (2014) determines the same standard of proof based on which the proceedings are then initiated, i.e. grounds for suspicion that other irregularities and infringements of regulations were committed that fall under the competence of the Financial Administration. Here, we believe a question needs to be posed as to why we need both if the financial investigation and tax inspection are initiated for the same or at least similar reasons and subject to the same standard of proof (Flander, 2019). This, along with other deficiencies we pointed out, indicate that the applicable regulatory framework of ordering and implementing financial investigations is ambiguous and inconsistent.

In the spring of 2022, the National Assembly of the Republic of Slovenia adopted the Act Amending the Financial Administration Act (“Zakon o spremembah in dopolnitvah Zakona o finančni upravi (ZFU-A)”, 2022). The

amendment formally narrows the area of implementing financial investigations (the ambiguous formulation that financial investigations are also conducted to prevent, investigate and detect “other regulations falling within the field of competence of the Financial Administration”, not just serious infringements of taxation regulations, was removed from the first paragraph of Article 100). The amendments determined who issues the order on initiating a financial investigation (the original text of the “ZFU” was silent on that). Another welcome change is that the amended version of the “ZFU” (2014) stipulates that tax inspection may be carried out “after the completion of the financial investigation”, not “as part of financial investigations”, as the original version of the Act stated.

Regardless of the above, our analysis of amendments to the “ZFU” showed that Financial Administration directed changes at itself and not to the legal status of the person undergoing the investigation, and we allege in this article that it is not regulated in line with the Constitution or, to put it more precisely, is not regulated at all. Both the original text of the “ZFU” (2014) and the “ZFU-A” (2022) provide the person under investigation with no right to make a statement or view the file. If, after the completed financial investigation, tax inspection proceedings are not even initiated, the person liable for tax has no right to view the final report or at even become familiar with the findings of the investigation. Last but not least, even after introducing the “ZFU-A” (2022), the duration of the financial investigation is still not time-limited.

4 CASE STUDY

4.1 The Circumstances of the Case and Procedures

In the case we had the opportunity to become familiar with in greater detail, the financial investigation against a taxable person took around two and a half years. The tax inspection proceedings, however, were never initiated. In 2016, Financial Administration officials knocked on T.’s door and informed him that he was suspected of infringing regulations that fell under the competence of the Financial Administration and that he was under a financial investigation. On several occasions, the investigators collected notifications and statements directly from T. by visiting him at home or at his business premises, or via telephone. While they required him to submit documents several times, he provided all of the required explanations and submitted all of the required data and documents. As stated by T. himself, he was misled and subjected to threats in his direct (personal) communication with the investigators (he even recorded part of this communication).⁴ They then stopped all contact with him. The legal and general uncertainty he found himself in led him to seek legal help, and he submitted a request to the Financial Administration asking to view the related file and calling on them to conclude the procedure. The Financial Administration issued a decision rejecting this request (meaning that it made no substantive decision

⁴ For example, when he expressed his intention of seeking legal assistance in an interview with the investigators who collected notifications from him they said this was not necessary, as it would complicate and prolong the procedure.

on it). The decision was issued nearly two years after T. learned about the first official act in the proceedings. T. brought an action against the decision at the Administrative Court of the Republic of Slovenia. In this action, he asked to view the file and that the proceedings be concluded. The Administrative Court rejected the appeal and took the position that T. had judicial protection provided under the provisions of the Obligations Code ("*Obligacijski zakonik (OZ-UPB1)*", 2007). In accordance with this, he brought an action to the ordinary court of law on the grounds of infringement of his personal rights. In the meantime, he received no document or information about whether the investigation conducted against him was still ongoing or had been concluded, or whether tax inspection proceedings were initiated against him. The ordinary court of first instance partly rejected and partly dismissed his action. It was evident from the reasoning of the judgment that on March 6, 2019 the Financial Administration issued a final investigation report, and that the tax inspection proceedings were not initiated because the financial investigation did not confirm suspicions of infringements of regulations. T. filed an appeal against the judgment brought by the court of first instance, which the higher court rejected as unfounded. T. then filed a request for a revision with the Supreme Court. He requested that he be allowed to view the final report or at least be given the chance to become familiar with the findings of the financial investigation, receive an apology and financial compensation. The Supreme Court of the Republic of Slovenia rejected the revision request as inadmissible. T. eventually filed a constitutional complaint at the Constitutional Court, together with a petition for the review of constitutionality of Article 100 of the "ZFU" (2014), which has yet to be decided on.

4.2 Financial Investigation as a "Pre-procedural" Phase

In the decision rejecting T.'s application, the Financial Administration took the position that the financial investigation is *"a pre-procedural (investigative) phase, in which the tax inspection proceedings have not yet begun"*. In the Financial Administration's opinion, *"the rights, obligations and legal benefits of the person liable for tax were not yet decided on in this phase"*, and therefore the investigation does not have the nature of administrative or tax proceedings, and the documents issued by the authority in this phase of conduct are not yet administrative legal acts. As a result, the person under investigation does not have the right to view these documents and, following this logic of explanation, no other constitutional and administrative procedural rights and guarantees – until tax inspection proceedings possibly begin. In short, it is the position of the Financial Administration that, in the financial investigation phase, the person under investigation is not yet a party to an administrative procedure, and thus the file kept by the authority in this phase of the procedure is not a file of an administrative legal nature. The person under financial investigation is the object (not the subject) of the proceedings (Flander, 2019).

The Administrative Court agreed with the Financial Administration. It dismissed the action which T. brought to it because the Financial Administration had rejected his request to view the file, thus denying him the right to be informed

in the procedure. In its decision, the Administrative Court repeated the opinion of the Financial Administration that *“temporally speaking, the financial investigation falls in the pre-procedural phase, i.e., in the time preceding any formal beginning of tax inspection”*. In the court’s opinion, the authority does not yet issue a decision based on the investigation findings, deciding on the rights, obligations and legal benefits of the person under investigation; instead, it decides whether or not to carry out a tax inspection. It follows from the court’s judgment that the duty holder has no right prior to tax inspection proceedings to view the file and be informed in the procedure pursuant to the “ZFU” (2014) and the General Administrative Procedures Act (“Zakon o splošnem upravnem postopku (ZUP-UPB2)”, 2006), neither as a party nor as a third party. According to the Administrative Court, the Financial Administration’s acts issued in a financial investigation proceedings are not administrative acts which may be contested in an administrative dispute in the sense of Article 2 of the Administrative Disputes Act (“Zakon o upravnem sporu (ZUS-1)”, 2006), therefore the Court dismissed the action (Upravno sodišče Republike Slovenije, 2020).

On the grounds of infringing his personal rights, T. also filed an action at the court of general jurisdiction under Articles 178 and 179 of the Obligations Code (“OZ-UPB1”, 2007). He alleged the unlawfulness of the way the financial investigation was conducted, requested the chance to view the final investigation report or become familiar with the findings arrived at in the financial investigation, a publication of an apology and payment of compensation. The court of first instance reasoned its rejection and dismissal of the action with similar arguments as the Administrative Court. It took the position that, according to the “ZFU” (2014), a financial investigation constitutes a pre-procedural phase, which, in terms of time, takes place before the formal beginning of tax inspection proceedings. In this pre-phase of tax inspection proceedings, decisions are not yet made about the rights, obligations and legal benefits of a person liable for tax. In the opinion of the court, the appellant was not sufficiently concrete regarding the unlawful conduct of the Financial Administration during the investigation procedure. The court ruled that a level of “qualified unlawfulness or wrongness” is required to determine the unlawfulness of conduct by the state authorities. The fact that the financial investigation took a long time and concluded without any consequences for the appellant does not, in itself, adequately correspond to this standard in the court’s estimation (Okrožno sodišče v Ljubljani, 2020). The stance of the court of first instance was confirmed by the appeals court, and the Supreme Court of the Republic of Slovenia did not follow T.’s proposal to permit a revision.

4.3 Counter-Arguments

In the applications addressed to the courts, T. assessed that the interpretation of Article 100 of the “ZFU» (2014) by the Financial Administration, by means of which, in the absence of an appropriate legal basis, it stripped the financial investigation proceedings of the legal nature of a (special) administrative procedure and during its course deprived persons under investigation of their legal personality, is arbitrary, unlawful and non-compliant with the Constitution.

T. asserted that, by arbitrarily interpreting Article 100 of the “ZFU” and the way it implemented said Article, the body that conducted the financial investigation violated the general constitutional principles the rule of law and the legality as well as the constitutional and legal (procedural) rights and guarantees of persons liable for tax (e.g., the right to participation and information). It also violated the principles of the operation of the Financial Administration (the principles of providing clarifications to persons liable for tax and of foreseeable and public operations), which are determined by Articles 4, 5 and 6 of the “ZFU” (2014).

In his applications, T. expressed the opinion that due to its vagueness and inconsistency, despite the amendments brought by the “ZFU-A” (2022), the regulatory framework of financial investigations, i.e., Article 100 of the “ZFU” (2014), is non-compliant with the Constitution. In his opinion, the Financial Administration should change the interpretation and manner of implementing Article 100 of the “ZFU”, or the legislators should amend this provision. If the legislators intended to regulate financial investigations as a *sui generis* procedure, this should have been written in the Act and appropriate safeguards should have been foreseen so that a person under financial investigation could be protected against any unlawful interference with his or her privacy and other fundamental rights during and after the investigation. T. pointed out that, in 2016, the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije, 2016) stated its opinion several times on the legal nature of proceedings in which the relevant body does not decide on the rights, obligations and legal benefits of a person, but does ascertain whether a person respects or violates the regulations (the Supreme Court of the Republic of Slovenia stated this opinion in relation to the proceedings before the Commission for the prevention of Corruption). If an act regulating such a procedure lacks provisions that would limit or even eliminate certain procedural guarantees, the Supreme Court of the Republic of Slovenia judges that the procedural guarantees provided by the General Administrative Procedure Act (“ZUP-UPB2”, 2006) should be respected.⁵

It should be added to this that the »ZFU« (2014) imposes no time limit on the duration of financial investigations, and that in practice some of them take disproportionately long. Any unjustified and unlawful financial investigation or even just individual unlawful acts and/or measures of an official body can ruin a good name of a person under investigation and cause him/her/it enormous and irreparable economic and business damage and, if this is a natural person, even personal damage. These are the consequences that can also result from a disproportionately long investigation, which would ultimately – as in the T.’s case – not even lead to tax inspection proceedings. In such a case, a person under financial investigation would find themselves in circumstances marked by great legal uncertainty and lack of security, which could only be sanctioned legally if the investigated person had a legal personality and at least the minimal administrative law and constitutional guarantees and rights during the investigation, by means of which he/she/it could effectively contest and prevent irregularities or instances of misuse within the investigation, or if they had – similarly as in the regulation of financial investigations under the Confiscation of Assets of Illicit Origin Act

⁵ See judgement No. I Up 73/2016, dated September 14, 2016.

(“Zakon o odvzemu premoženja nezakonitega izvora (ZOPNI)”, 2011) – the right to be made familiar with the data gathered and the financial investigation’s findings.

5 CONCLUDING REMARKS (ON CONSTITUTIONAL COURT DECISION NO. U-I-69/22-4)

On April 28, 2022, the Constitutional Court of the Republic of Slovenia issued Decision No. U-I-69/22-4 (Ustavno sodišče Republike Slovenije, 2022), the first ever decision made by the Constitutional Court regarding the instrument of financial investigation under the “ZFU” (2014). In a matter unrelated to T’s case, the Constitutional Court dismissed the petition for the review of the constitutionality of Article 100 of the “ZFU”. In its reasoning, it took the position that upon the formal requests by the Financial Administration that the person under investigation should provide data and documents as part of his duty to cooperate, it should be deemed pursuant to Article 100 that tax inspection was initiated against such person. According to the wording of Article 100 of the “ZFU”, tax inspection is initiated when inspectors perform any acts with a view to performing inspections and when the person liable for tax is informed about this. When the tax authority includes the person under financial investigation in the investigation proceedings, the Constitutional Court believes the secrecy of investigation as the key characteristic of a financial investigation is no longer present. As stated by the Constitutional Court in the explanation of its decision, after the initiation of a tax inspection, in line with his or her right to a legal remedy the person liable for tax has the option of filing an appeal to the Ministry of Finance against the decisions issued by the Financial Administration. The person liable for tax is also provided with judicial protection before the Administrative Court and the Supreme Court of the Republic of Slovenia (Ustavno sodišče Republike Slovenije, 2022).

On the one hand, the position presented by the Constitutional Court partly compromises the arguments of the person under investigation in the case analysed in this paper. On the other, it additionally strengthens T.’s fundamental allegation that the Financial Administration conducted the proceedings in an unlawful and unconstitutional manner in his case. The Constitutional Court designated financial investigations as a procedure where the investigation should be conducted in secrecy (which Article 100 of the “ZFU” does not stipulate explicitly). It also seems that the Court has agreed that a financial investigation is a “pre-procedural phase” in which the person under investigation does not have the same status as during a tax inspection (the Constitutional Court has not stated its opinion on whether the person under investigation is also without any legal personality or constitutional procedural rights in this proceedings), although the “ZFU” (2014) does not say anything about this. However, the explanation of the decision by the Constitutional Court reasonably suggests that in the case presented in this article the Financial Administration’s order about the dismissal of the application of the person under investigation was incorrect and unlawful, and that this also applies to the decision by the Administrative Court, by means of which this

Court dismissed his action. This arises from the explanation of the Constitutional Court's decision that the application and the lawsuit should have been considered based on their content. After having asked the person under investigation to submit data and documents, the Financial Administration maintained throughout that the person under investigation was not party to procedures, that he had no right to be informed or to view the file, that the file was not an administrative file, etc., which is diametrically opposed to what the explanation of decision No. U-I-69/22-4 actually suggests. In the case presented in this article, based on the referral by the Financial Administration and the Administrative Court, the person under investigation also filed legal remedies with ordinary courts of law and these, too, were dismissed or rejected on the same grounds. From the moment the tax inspection was initiated (when the person under investigation received the formal request from the Financial Administration to submit data and documents) in line with the explanation of the Constitutional Court from the above-mentioned decision, at least two constitutional rights of the person under investigation were infringed: the right to equal protection of rights in any proceeding before a court and before other state authorities and bearers of public authority that decide on his rights, duties or legal interests, and the right to legal remedies. He was also deprived of the rights and procedural guarantees parties have under the provisions of the "ZDavP-2-UPB4" (2011) and "ZUP-UPB2" (2006).

Hence, it follows from the decision of the Constitutional Court that with the current interpretation and implementation of Article 100 of the "ZFU" (2014), the constitutional rights of persons under financial investigation (i.e. the parties in the tax inspection procedure as a special administrative procedure) are violated.⁶ Since in these procedures the Financial Administration also violates the principles of its own operation according to the "ZFU" (2014), it should change the way it interprets and implements the law in the coming years. If this does not happen, the legislator should adopt a new amendment to the "ZFU" (2014) and regulate the procedure of financial investigation and tax inspection in accordance with the decision of the Constitutional Court.

REFERENCES

- Finančna uprava Republike Slovenije [Financial Administration of the Republic of Slovenia]. (2018). *Letno poročilo Finančne uprave Republike Slovenije 2017* [Annual Report of the Financial Administration of the Republic of Slovenia 2017]. <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/e5bd7ff9b6/Letno-porocilo-Financne-uprave-RS-za-let-2017.pdf>
- Finančna uprava Republike Slovenije [Financial Administration of the Republic of Slovenia]. (2019). *Letno poročilo Finančne uprave Republike Slovenije 2018* [Annual Report of the Financial Administration of the Republic of Slovenia 2018]. <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/bd64218a9b/Letno-porocilo-Financne-uprave-RS-za-let-2018.pdf>
- Finančna uprava Republike Slovenije [Financial Administration of the Republic of Slovenia]. (2020). *Letno poročilo Finančne uprave Republike Slovenije 2019* [Annual

⁶ In the past five years, the Financial Administration initiated and completed around 100 financial investigations each year (Finančna uprava Republike Slovenije, 2018, 2019, 2020, 2021, 2022).

- Report of the Financial Administration of the Republic of Slovenia 2019]. <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-let-2019.pdf>
- Finančna uprava Republike Slovenije [Financial Administration of the Republic of Slovenia]. (2021). *Letno poročilo Finančne uprave Republike Slovenije 2020* [Annual Report of the Financial Administration of the Republic of Slovenia 2020]. <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-let-2020.pdf>
- Finančna uprava Republike Slovenije [Financial Administration of the Republic of Slovenia]. (2022). *Letno poročilo Finančne uprave Republike Slovenije 2021* [Annual Report of the Financial Administration of the Republic of Slovenia 2021]. <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-let-2021.pdf>
- Flander, B. (2019). Finančna preiskava po ZFU in ZOPNI [Financial investigation according to the provisions of the Financial Administration Act and Confiscation of Assets of Illicit Origin Act]. *Pravna praksa*, 38(19), II–VIII.
- Obligacijski zakonik [Obligations Code] (OZ-UPB1). (2007, 2016, 2018). *Uradni list RS*, (97/07, 64/16, 20/18).
- Okrožno sodišče v Ljubljani [District Court Ljubljana]. (2020). VII Pg 269/2020, July 10, 2020.
- Upravno sodišče Republike Slovenije [Administrative Court of the Republic of Slovenia]. (2020). I U 944/2019-9. September 10, 2020.
- Ustava Republike Slovenije [Constitution of the Republic of Slovenia] (URS). (1991, 1997, 2000, 2003, 2004, 2006, 2013, 2016, 2021). *Uradni list RS*, (33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13, 75/16, 92/21).
- Ustavno sodišče Republike Slovenije [Constitutional Court of the Republic of Slovenia]. (2022). U-I-69/22-4, April 28, 2022.
- Vrhovno sodišče Republike Slovenije [Supreme Court of the Republic of Slovenia]. (2016). Sodba I Up 73/2016 [Judgement I Up 73/2016]. [http://www.sodnapraksa.si/?q=id:2015081111399218&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2015081111399218](http://www.sodnapraksa.si/?q=id:2015081111399218&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&page=0&id=2015081111399218)
- Zakon o davčnem postopku [Tax Procedure Act] (ZDavP-2-UPB4). (2011, 2012, 2013, 2014, 2016, 2016, 2017, 2018, 2019, 2020, 2022). *Uradni list RS*, (13/11, 32/12, 94/12, 101/13, 111/13, 22/14, 25/14, 40/14, 90/14, 91/15, 63/16, 69/17, 13/18, 36/19, 66/19, 145/20, 203/20, 39/22, 52/22, 87/22, 163/22).
- Zakon o finančni upravi [Financial Administration Act] (ZFU). (2014, 2022). *Uradni list RS*, (25/14, 39/22).
- Zakon o odvzemu premoženja nezakonitega izvora [Confiscation of Assets of Illicit Origin Act] (ZOPNI). (2011, 2014, 2018) *Uradni list RS*, (91/11, 25/14, 53/18).
- Zakon o splošnem upravnem postopku [General Administrative Procedures Act] (ZUP, UPB2). (2006, 2007, 2008, 2013, 2020, 2022). *Uradni list RS*, (24/06, 126/07, 65/08, 8/10, 82/13, 175/20, 3/22).
- Zakon o spremembah in dopolnitvah Zakona o finančni upravi [Act Amending the Financial Administration Act] (ZFU-A). (2022). *Uradni list RS*, (39/22).

Zakon o upravnem sporu [Administrative Disputes Act] (ZUS-1). (2006, 2009, 2010, 2011, 2012, 2017). *Uradni list RS*, (105/06, 107/09, 62/10, 98/11, 109/12, 10/17).

About the author:

Benjamin Flander, PhD, Associate Professor of Law at the Faculty of Criminal Justice and Security, University of Maribor, Slovenia. E-mail: benjamin.flander@um.si