

Streszczenie rozprawy w języku angielskim

A civil law partnership is one of the forms of conducting business in Poland. Its essence as well as fundamental structural elements were regulated in the field of civil law. Existence of the civil partnership in the economic turnover, is inseparably connected with the necessity of incurring public-legal tributes, because of the activities undertaken in its framework, with which particular tax laws bind the tax obligation. The subject of this dissertation is the issue of the subjectivity of a civil law partnership under Polish tax law, and thus the issue which raises controversies of a practical nature both in the doctrine of tax law and in jurisprudence. The thesis presents not only a formal and legal dimension, but also an anthropological and philosophical perspective on the identity of a civil law partnership from the perspective of selected philosophical concepts.

The dissertation consists of an introduction, six chapters and a conclusion.

The first chapter was begun with a historical analysis, showing the genesis of the development of civil law partnership regulations in Poland. The legal regulations of neighbouring countries were recalled, together with an indication of their role in establishing the institution of a civil law partnership, as well as the circumstances surrounding individual amendments. The historical background, which is the basis for the currently adopted formula, was presented. The key element of considerations carried out within the framework of the first chapter were the provisions of the Civil Code, which constitute the main source of regulation of the civil law partnership. Thereby, the essential features of this legal form resulting from the mentioned regulation were presented. The formal-legal analysis was completed by presenting the civil law partnership from an anthropological-philosophical perspective. It is difficult to find philosophical concepts which would directly refer to this form of business activity, although an indirect influence of particular trends has been noticed due to quite extensive discussions on the issues of trust and equality, which are the pillars on which the construction of a civil law partnership is based. Philosophical concepts have been referred to, showing the anthropological aspect due to the personal nature of a civil law partnership requiring trust between its partners as well as a sense of equality. Applying the legal-dogmatic method, the analysis of the jurisprudence concerning the subjectivity of a civil law partnership in such legal branches as civil law, administrative law, penal fiscal law was conducted. The essence of the review of the jurisprudence on the aforementioned subject was to determine whether a civil law partnership is considered a subject of rights and obligations in the light of the cited areas of law, or whether this role is attributed to its partners. Due to the fact that the

subjectivity analyzed in the context of a civil law partnership is attributed the main role within the framework of this dissertation, the considerations in this respect were complemented by the presentation of selected gnoseological concepts, the elements of which are appropriately discernible in current cognitive processes, thus showing the penetration of philosophy in anthropological terms into the sphere of positive law, within which a civil law partnership has been established.

The second chapter was devoted to the location of the civil law partnership in the economic turnover. In view of the above, reference was made to the genesis and essence of doing business, as well as reference was made to the provisions of the Act of 6 March 2018 Entrepreneurs' Law. A significant role in economic relations undertaken in connection with the conclusion of a civil law partnership agreement is played by the specificity of the property, which is characterized by joint ownership, as well as the rules of liability for obligations incurred in connection with the conduct of a civil partnership. Not without significance for the considerations carried out in the context of the rules of liability for incurred obligations is the dissolution of a civil law partnership and the related change in the legal character of the joint property of partners, which then covered by joint ownership is transformed into fractional co-ownership. The analysis of the system of tax liabilities in legal, philosophical as a result of anthropological considerations, as well as sociological terms was carried out. These considerations have proven that the system should be seen as an organized whole, a series of interrelated and interacting elements, which is guided by the implementation of a specific idea with a parallel consideration of the legal norm concentrating such features as order and security, power and peace, cooperation, solidarity and justice, which is sometimes associated with the necessity of applying coercion to a specific behavior towards an individual. Having in mind the assumptions which should guide the system of tax obligations, a verification was undertaken of whether the tax system of a civil law partnership is characterized by the following features, i.e.: relevance, sustainability, cost-effectiveness, efficiency, effectiveness, functionality, innovativeness and usefulness.

The third chapter is an introduction to the matter of tax law. The meaning of this term was explained, the tax rules were characterized, and the classification of taxes developed in the literature on the subject was presented. An important element of this part of the discussion is the economic analysis of the tax system in Poland. As part of the analysis, selected economic theories of taxation were discussed in a fragmentary way, showing their assumptions, directions of changes, and accompanying circumstances, as well as an economic analysis of the structure of the Polish tax system using statistical data showing the degree of

fiscal efficiency of individual taxes. At the end of the third chapter, the role of courts in establishing and applying tax law is discussed, as well as the influence of EU regulations on the national legal order, which often requires the implementation of Community solutions. This is noticeable in the case of taxes harmonized at the EU level, such as the value added tax or excise tax.

The fourth chapter was devoted to the issue of tax-legal subjectivity in terms of positive law. An attempt was made to present the meaning of this term in a model way. In this part of the dissertation attention was paid to the nature of the civil-legal subjectivity and the specificity of the tax-legal subjectivity, thus showing their common elements, as well as the differences between them. The considerations undertaken within the framework of the fourth chapter was focused primarily on the tax-legal relationship and its parties. Due to the subject of this dissertation the main attention was paid to the passive party. In connection with the above, the legal institution of the taxpayer, payer or a third party responsible for the taxpayer's liabilities was referred to, with simultaneous indication of the specificity of the responsibility of these categories of entities for a tax. The main argument was reduced to the tax-legal subjectivity of the taxpayer, which is a necessary element, preceding proper considerations of a practical dimension as to whether the status of a taxpayer on the grounds of particular state taxes and local government taxes should be granted to a civil law partnership or its partners (which is discussed in more detail in the following chapters). This was determined by the fact, that the tax-legal subjectivity may be granted to various entities, among which a civil law partnership is specified in certain cases. Not without significance for these considerations, was the aforementioned institution of a third party responsible for tax arrears of a taxpayer, which in the case of a civil law partnership are its partners, or collection of tax by a tax remitter, as a result of which the rules of taxpayer's liability change. The subject matter discussed in this chapter was supplemented by the presentation of subjectivity in the context of subjective rights in the light of specific anthropological sciences and particular philosophical concepts. In this respect, selected concepts of subjective rights, developed within the school of natural law have been recalled, as well as their manner of evolution and the shape assumed by the philosophy of positive law have been presented.

The fifth chapter is a part showing the way of shaping the approach to the tax-legal subjectivity of a civil law partnership and its partners on the grounds of particular state taxes. The considerations in this respect were limited to those state taxes in which the acts do not explicitly indicate a civil law partnership or its partners as taxpayers, as it is the case in the Act of 2 March 2012 on tax on the extraction of certain minerals or the Act of 24 August 2006

on tonnage tax. In connection with the above, the following were analysed: value added tax, excise duty, personal income tax, corporate income tax, including the requirement to tax income from unrealized profits (commonly referred to as exit tax) and gambling tax. A key role for the considerations carried out in this scope was played by the analysis of the decisions made by tax authorities within the scope of issued tax interpretations or decisions, or case law, including in particular case law of administrative courts, with particular attention paid to the case law of the Supreme Administrative Court, which was attributed a leading role in the subject of resolving serious legal doubts generated by a given matter both in the doctrine of tax law and in the jurisprudence. The quoted rulings have highlighted interpretation difficulties arising from the provisions of particular tax laws in the context of the presented concept of a civil law partnership on the grounds of civil law and perception of the principles of liability for tax in the light of the provisions regulating these levies. The heterogeneity of the approach to the tax-legal subjectivity of a civil law partnership, the lack of clear regulations in this respect gave rise to the presentation of the philosophical context relating to the aspect of legal security, having strong connections with the justice or purposefulness element of the idea of law.

The last chapter presents considerations on the tax-legal subjectivity of a civil law partnership in the context of local government taxes, which were considered in the doctrine of tax law as the tax on means of transport, real estate tax, agricultural tax, forest tax, tax on civil law transactions, tax on inheritance and donations. Apart from the interpretation of the provisions of tax acts, the decisions of tax authorities and the jurisprudence, especially of administrative courts, were quoted, showing the rules of liability of a civil law partnership or its partners under particular taxes. Within the framework of the analysis carried out, attention was paid to the construction adopted by the legislator on the grounds of the discussed taxes, which shapes the subjective side of subject to taxation and links a specific type of entity with the possession of a legal title, regulated in private law. As a result, a number of interpretation difficulties were noticed due to doubts concerning the possibility of a civil partnership to possess the right indicated by the legislator. The considerations carried out in the fifth chapter were complemented by the presentation of philosophical anthropology concerning the aspect of legal subjectivity. The concepts of selected philosophers have been recalled, of which Hans Kelsen's theory proved to be the most up-to-date. Kelsen ascribed legal subjectivity to man, but he also allowed for the possibility of ascribing this attribute by a legal regulation to another entity, i.e. one that is a creation of man. Transferring this concept to the discussed issue, it should be stated that a civil partnership is an expression of human creation.

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