DOI 10.24147/2542-1514.2020.4(3).46-68

LEGAL REGULATION OF LIABILITY FOR TAX OFFNCES AND TAX DISPUTE RESOLUTION IN GEORGIA, MOLDOVA AND RUSSIAN FEDERATION

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Article info
Received –
2020 June 18
Accepted –
2020 August 20
Available online –
2020 October 01

Keywords
Tax relations, legal regulation, legal liability, dispute resolution, tax dispute, Georgia, Moldova, Russia

The subject. For many years, Georgia, Moldova and Russia were part of the same state, which a priori indicates the existence of a similar legal system. Despite the positive experience of the European Economic Community, the trends that the USSR faced at the end of the XX century were reversed: the former republics gained independence and started to form their own legal systems. It seems appropriate to put forward the hypothesis that the newly formed States should have used a common legal heritage and/or tried and tested foreign examples of normative acts. However, this does not seem to be the case.
Purpose of the study. The article represents an attempt to verify the aforementioned hypothesis and deals with selected provisions of the national legislation of Georgia, Moldova and Russia that, from one hand, relate to taxation and, from the other, are of general character, i.e. can be applied not only to particular cases.
Methodology. The research was carried out with the application of the formally legal interpretation of legal acts as well as the comparative analysis of Georgian, Moldovian and Russian legal literature. Structural and systemic methods are also the basis of the research,
The main results. The content of tax laws determines the chosen model of the distribution of law provisions on liability for breach of tax legislation, i.e. the fact whether such laws contain provisions on liability. The compulsory administrative stage of dispute resolution has proven to be ineffective for taxpayers, tax representatives and third parties. As for the international resolution of tax disputes there is a wide diversity of applicable means (particularly, arbitration which is not characteristic for the national order) and of specific dispute resolution mechanisms.
Conclusions. Despite certain differences, the legal regulation of liability and dispute resolution in Georgia, Moldova and Russia is very similar. However, it is necessary to take into account the distinctive features arising from the limitation of the territorial legal effect of the norms of Georgia and Moldova.

ISSN 2542-1514 (Online)

1. Introduction

Beginning with the end of the XX century Georgia, Moldova and Russia have initiated the formation of their own tax systems. The concept of a tax system includes inter alia all the fundamental conditions of taxation which include tax liability and dispute resolution.

The scope and objective of the present study are to ascertain the similarities and differences the regulation of the mentioned provisions in Georgia, the Republic of Moldova and Russia and the extent of the engagement of the legal heritage of the Russian Empire and the USSR.

The comparison shall be carried out both vertically and horizontally. A vertical analysis supposes the use of some of the data on the history of the Tsarist Russia and the USSR. A horizontal comparison implies the engagement of the legislation and jurisprudence of Russia and Romania in their capacity of states with a socialistic past alongside with other states, particularly, on the territory of the former USSR.

On the supranational level there is no evidence of specific differences in regulation since Georgia, Moldova and Russia are contracting parties to the same multilateral international agreements and are actively using model conventions. The mentioned consideration nevertheless leaves open the possibility of addressing particular issues for illustrative purposes.

The present research mainly focuses on the provisions of the national legislation of the mentioned states.

As a general rule the first to be analyzed with a different level of detalization are the legal provisions of Georgia, Moldova and Russia.

The tax legislation of Abkhazia, South Ossetia and Transnistria the territories of which are not controlled by Georgia and Moldova, accordingly, shall be employed only occasionally.

2. Legal liability

The question of liability is of utmost importance for the legal regulation of tax relations. Such a complex topic of discussion allows nevertheless to emphasize certain illustrative system units, specifically:

- the model of regulation;
- the types of violations and the extent of liability.

Model of regulation. The breach of tax legislation is, for example, a first priority topic for different publications on the general state of affairs in Georgia. The liability for such breach is regarded in academic research as a constituent part of the concept of tax system [1, p. 25].

It is commonly known that there are different models of regulation of the legal liability for the breach of tax legislation.

The first model to be analyzed and the most widely spread one provides for the imposition of almost every kind of tax by means of a separate law which also includes provisions on liability.

Such model is commonly used by states and territories the legislation of which is not unified into tax codes. Transnistria can also be named among such territories. The limitation of the legal effect of legal norms on the territory of Moldova led to the formation of another tax system in the Transnistrian region. Unlike the legislation of Moldova, the tax provisions of the so called Pridnestrovian Moldovan Republic (hereafter – PMR) are not codified. Tax issues of general character are regulated by the Law (2000) № 321-ZID "On the general principles of the tax system in the PMR"[1]. The mentioned Law does not contain detailed provisions on liability and is merely referring to the norms of the 2002 Code on administrative offences[2] and the 2002 Criminal Code[3]. Particular types of taxes are regulated by laws of special character, for example, the 2011 Law № 156-Z-V "On corporate income tax"[4].

The differences in the model of regulation of

[1] Law of the PMR from July (19) 2000 № 321-ZID-III "On the general principles of the tax system in the PMR" // Collection of legislative acts of PMR. 2000. № 00–3.

[2] Code on administrative offences of the PMR from July (19) 2002 // Collection of legislative acts of PMR. 2002. № 02-29.

[3] Criminal code of the PMR from June (7) 2002 // Collection of legislative acts of PMR. 2002. № 02-23.

[4] Law of the PMR from September (29) 2011 № 156-Z-V "On corporate income taxation" // Collection of legislative acts of PMR. 2011. № 11–39.

ISSN 2542-1514 (Print)

tax relations between the Transnistrian region and the rest of the territory of Moldova leads to considerable difficulties for national producers of goods or service providers. One of such difficulties is the issue of the value added tax refund when dealing with Transnistrian producers of goods since there is no value added tax system in the region. De facto the aforementioned circumstances result in the loss of competitive advantages due to the rise of the final value of goods.

The second model supposes the separation of provisions on liability in specific laws.

This model is rare to be encountered. One of the few examples of such regulation supposes a mere reference to the regulation of liability stipulated by other normative acts. The legislation of Belorussia is quite illustrative in respect hereto. The administrative liability is defined in the Belorussian 2003 Code on administrative offences[5] whereas the provisions on criminal liability can be found in the 1999 Criminal Code of Belorussia[6].

The model under discussion can be considered the best one given three codes are in effect.

The third model supposes the dispersion of provisions on liability in three codes which form a triad of enforcement.

In Georgia the relevant norms are stipulated by the 2010 Tax Code[7], the 1984 Code on administrative offences[8] and the 1999 Criminal Code[9].

A similar model is used in Moldova and Russia.

The experience of Romania is relevant for analysing the third model of regulation.

Provisions on liability are stipulated in Title XI of the 2015 Code of tax procedure[10]. The norms of the Code are complemented by the rules of the 2001 (July) Ordinance of the Government № 2 «On the legal regime of administrative offences»[11]. This kind of approach of the legislator involves two conclusions.

Firstly, in Romania the norms on administrative liability can be introduced by delegated legislation. According to par. 3 art. 108 of the 1991 Constitution of Romania (as amended in 2003)[12] the term “ordinances” shall be understood to mean the acts of Government adopted on the grounds of a special law on delegation with the observance of the limitations stipulated in such law.

In the context of delegated legislation it should be noted that the legislation of Romania contains a stipulation related to the case when the tax legislation is modified by means of ordinances. Should it be the case, the new provisions are to be effective in a shorter period of time compared to the entry into legal force of legislative acts (par. 3 art. 4 of the 2015 Tax code of Romania[13]). In some cases the mentioned provision leads to the breach of the predictability of regulation. In this context Romania deals with the problem of frequent ammendments to tax provisions adopted by means of delegated legislation.

Secondly, the Law of Romania “On the legal regime of administrative offences” correlates to the provisions of the Code of tax procedure as lex generalis to lex specialis. This leads to the fact that the general principles of administrative liability are stipulated by the mentioned Law whereas specific sanctions are provided for in laws of special character (particularly, the Code of tax procedure of Romania).

In 2018 there was an attempt to elaborate the Administrative code of Romania which would

[5] Code on administrative offences of the Republic of Belarus from April (23) 2003 // The national register of legislative acts of the Republic of Belarus. № 2/946. 20.05.2003.

[6] Criminal code of the Republic of Belarus from July (9) 1999 // The national register of legislative acts of the Republic of Belarus. № 2/1999. 24.07.2000.

[7] Tax code of Georgia from September (17) 2010 // Legislative herald of Georgia. № 54. 12.10.2010.

[8] Code on administrative offences of Georgia from December (15) 1984 // Gazzette of the Supreme Soviet of the Georgian SSR. № 12. 20.12.1984.

[9] Criminal code of Georgia from July (22) 1999 // Legislative herald of Georgia. № 41 (48), art. 209.

[10] Tax procedure code of Romania from July (23) 2015 // M.Of. № 547. 23.07.2015.

[11] Government Ordinance of Romania from July (2) 2001 № 2 «On the legal regime of administrative offences» // M.Of. № 410. 25.07.2001.

[12] Constitution of Romania from November (21) 1991 (as ammended in October (29) 2003) // M.Of. № 767. 31.10.2003.

[13] Tax code of Romania from September (10) 2015 // M.Of. № 688. 10.09.2015.

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codify all the effective norms on administrative procedures. However the Constitutional court of Romania held that in the process of the adoption of the mentioned Code the constitutional procedure had been breached (2018 decision № 681[14]).

The provisions on criminal liability are incorporated into the 2005 Law of Romania № 241 «On preventing and combating tax evasion»[15] and in the 2009 Criminal code[16]. Such duplication of provisions in different legislative acts does not contribute to the consistent interpretation of the applicable norms.

The existence of such triad can be explained by the fact that the main focus of the authors was the adoption of a codified act on tax rules. Moreover, the simultaneous amendment of the provisions of the Tax code and of the Code on administrative offences becomes rather burdensome. In Russia proposals to transfer the provisions on administrative liability into the relevant code have been initiated. The mentioned initiatives did not get any support from the representatives of tax authorities.

The incorporation of rules on administrative liability in the Tax Code is a popular subject of debate and can serve as grounds for the inaccurate conclusion of the existence of tax liability [2, p. 185–189].

The pseudo-problem under discussion of the former USSR republics is the result of the incorporation of rules on legal liability into the Tax code and of the imprecision of relevant terminology. Consequently, some authors believe, for example, that the tax legislation of Belorussia provides for only one type of tax liability [3, p. 80].

Upon closer analysis, every attempt to prove the existence of tax liability is very much like the battle of the well-known novel character with the windmills.

It is hardly necessary to articulate all the arguments against the concept of tax liability.

However, with respect to Russia, the transfer of the provisions of the 1998 Tax code[17] into the 2001 Code on administrative offences[18] would contribute to solving several issues.

Firstly, such transfer would automatically exclude the use of the term “tax liability” (thus solving the pseudo-problem). This kind of approach will be consistent with the judicial and doctrinal interpretation of the liability for the breach of tax legislation.

Secondly, the Code on administrative offences of Russia already contains provisions on liability for the breach of tax legislation (art. 15.3–15.9 and others). The transfer of the relevant provisions from the Tax code would allow to organize an integrated system of rules.

Thirdly, the mentioned transfer does not entail negative consequences for the budget. This conclusion is validated by the experience with the 2003 Customs code of Russia and relevant statistics.

Fourthly, the inclusion of the provisions on liability for the breach of tax legislation into the Code on administrative offences of Russia would allow for the direct application, namely, of par. 2 art. 3.1. According to the mentioned provision, an administrative punishment cannot lead to the abasement of the human dignity of an individual who committed an administrative offence or to the infliction of harm to the business reputation of an entity. Therefore the provision of par. 2 art. 2 of the Tax code of Russia (that the tax legislation regulates relations where one party has power over the other) will somehow be “smoothened” and lead to a proper interpretation from the part of tax authorities.

Types of breaches and sanctions. As a result of the adopted model of regulation, the types of breaches and the corresponding sanctions are provided for in different codes.

The norms on the types of breaches of tax legislation and the relevant sanctions are incorporated in Chapter XL of the Tax code of

[14] Decision of the Constitutional Court of Romania from November (6) 2018 № 681 [Electronic source]. Access through the legal research system «Legalis» (accessed: 17.06.2020).

[15] Law of Romania from July (15) 2005 № 241 «On preventing and combating tax evasion» // M.Of. № 672. 27.07.2005.

[16] Criminal law of Romania from July (24) 2009 // M.Of. № 510. 24.07.2009.

[17] Tax code of the Russian Federation from July (31) 1998. Part 1 // Collection of laws of the Russian Federation. № 31. 03.08.1998.

[18] Code on administrative offences of the Russian Federation from December (30) 2001 // Russian Gazzette. № 256. 31.12.2001.

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Georgia.

Pursuant to par. 2 art. 270 of the Tax code of Georgia, the sanctions for the breach of tax legislation are the warning, the penalty interest, the (pecuniary) fine and the non-refundable forfeiture of assets or/and of transport facilities.

The list of the mentioned sanctions has undergone changes. According to par. 4 art. 1 of the 2011 (March) Law № 4470 «On amending and modifying the Tax code of Georgia»[19], a new type of sanction has been introduced in par. 2 art. 270 of the Georgian Tax code – the tax legislation teaching. Basing on available data this type of sanction has never been used. Pursuant to par. 35 art. 1 of the 2011 (November) Law № 5202 «On amending and modifying the Tax code of Georgia»[20] the mentioned type of sanction has been excluded from par. 2 art. 270 of the Georgian Tax code.

Georgian authors underline that the effective legislation provides for unconventional types of sanctions alongside with financial sanctions for the breach of the Georgian Tax code. The mentioned sanctions, except the warning, are applied to individuals that are responsible for the enforcement of the rules on customary control and do not apply in classical tax relations [4, pp. 50, 54–55].

The provisions of 1998 Tax code of the Russian Federation on tax sanctions are incorporated in art. 114. According to par. 2, sanctions are imposed in pecuniary penalties (fines) in assessed pursuant to Chapters 16 and 18.

As for now the fine is the only type of sanction for the breach of tax legislation pursuant to the provisions of the 2015 Code of tax procedure of Romania. Relevant provisions (par. 2 art. 336 and art. 337) are detailed and stipulate the liability for the following breaches: failure to fulfill the obligation to submit tax reporting documentation alongside with supporting documentation, untimely fulfillment of the obligation to declare the taxable income or the obligations connected to the electonic storage of data and transfer pricing, failure to execute the obligation of the taxpayer connected to source taxation, failure to perform the obligation to submit relevant data to tax authorities by the counterparties of the taxpayer and by financial organizations and others.

The historical development of provisions on the liability of taxpayers on the territory of Romania shows examples of stipulating the collective liability of a group of taxpayers, instead of applying an individual approach [5, p. 16].

Unlike the provisions of the Romanian Code of tax procedure, the 1997 Tax code of Moldova[21] does not provide for detailed norms on the amount of fines or types of breaches. According to par. 3 art. 231, all breaches are divided into two groups: considerable and minor. Minor breaches amount to 100 Moldovan lei in tax payable for individuals and 1000 Moldovan lei for entities and self-employed persons.

The 1997 Tax Code of Moldova provides for the application of a warning for breach of tax legislation (par. 2 art. 235). In Transnistria such application is sanctioned by art. 2.16.1. of the Code on administrative offences and not by the tax legislation. This example illustrates the considerable differences between the legal regulation of taxation in the Transnistrian region and on the rest of the territory of Moldova.

The 2007 Tax code of Uzbekistan[22] stipulates for the penalty interest as sanction.

The tax legislation of other states of the former USSR, including Russia, does not include the warning and the penalty interest as tax sanctions.

As it follows, for example, from par. 1 art. 72 of the Russian Tax code, the penalty interest serves as one of the means for ensuring the performance of tax obligations. This approach fully coincides with the doctrinal perspective of Soviet times which stated that the stipulated damages should not be assimilated to criminal or administrative sanctions [6, p. 116].

[19] Law of Georgia from March (22) 2011 № 4470 // https://www.matsne.gov.ge (accessed: 17.06.2020).

[20] Law of Georgia from November (8) 2011 № 5202 // https://www.matsne.gov.ge (accessed: 17.06.2020).

[21] Tax code of the Republic of Moldova from April (24) 1997 // M.Of. № ed.spec. 25.03.2005.

[22] Tax code of the Republic of Uzbekistan from December (25) 2007 // Collection of laws of the Republic of Uzbekistan. № 52 (II).

ISSN 2542-1514 (Online)

The 1984 RSFSR Code on administrative offences[23] did not initially incorporate provisions on the breach of tax law. Pursuant to the 1986 Decree of the Supreme Soviet of the USSR[24], art. 156.1 was introduced to the Code. The new rules provided for liability for the evasion of submitting tax declarations.

The Georgian Code on administrative offences has been adopted in 1984.

Nowadays the mentioned Code provides for liability for the failure to comply with the requirements of the tax authorities (Art. 164.4) and with the rules on opening bank accounts (Art. 165), tax evasion in the sphere of subsoil use (Art. 165.2), breach of tax reporting requirements (Art. 165.10) etc.

In Moldova the provisions on liability for breach of tax legislation are incorporated into Title XV of the 2008 Code on administrative offences[25]. Particularly, such norms provide for the liability for tax evasion (art. 301) and for failure to comply with the procedure of submitting tax reporting documentation (art. 301^1). The most detailed rules concern the breaches of customs legislation (art. 287, 287^1, 287^2, 287^3).

The rules on liability of the Code on administrative offences of Transnistria are incorporated into Chapter 15 "Administrative offences in finance, tax and other duties and capital markets". The mentioned provisions include the following types of breaches: carrying out of activities without registration with the tax authorities, untimely submission of information on opening or closing of bank and other accounts and failure to comply with the time and procedure requirements for the submission of tax reporting documentation. In addition, the Code contains rules on the liability of military officers and other individuals who comply with disciplinary regulations in the customs and tax spheres (art. 2.9.).

In Romania all sanctions for administrative offences are divided into two groups: primary and auxiliary. The application of such primary sanctions as the warning and the carrying-out of social works is envisaged by par. 2 art. 5 of the Law "On the legal regime of administrative offences".

The rules on liability for breach of tax legislation are incorporated in Chapter 15 of the 2001 Code on administrative offences of the Russian Federation "Administrative offences in matters of finance, tax and charges, insurance business and securities market".

Failure to comply with the tax reporting requirements (payment of insurance contributions) is regulated by art. 15.5 of the mentioned Code.

Article 244 of the 2002 Criminal code of Moldova[26] stipulates for the liability for tax evasion carried out by individuals and entities. Similar provisions are incorporated into art. 3–9 of the mentioned Law of Romania "On preventing and combating tax evasion".

The Criminal code of Transnistria provides for tax crimes in the form of evasion of paying taxes or insurance contributions to state non-budgetary funds and concealment of taxable pecuniary funds or assets (art. 195, 196, 196-1).

The 1958 Law of the USSR "On criminal liability for crimes against the state"[27] (art. 19) defined the liability for tax evasion or failure to comply with duties during wartime.

The mentioned rule has been copied into the Criminal Codes of the USSR republics. Subsequently it was also incorporated in art. 82 of the 1962 Criminal code of the RSFSR[28]. Apparently, a similar provision was also stipulated in the 1960 Criminal

[23] Code of RSFSR on administrative offences from June (26) 1984 // Bulletin of the Supreme Soviet of the RSFSR. 1984. № 27, art. 909 (inoperative)

[24] Decree of the Presidium of the Supreme Soviet of the USSR from May (28) 1986 № 3356 «On amending some legislative acts of the RSFSR» // Bulletin of the Supreme Soviet of the RSFSR. 1986. № 23, art. 638 (inoperative)

[25] Code on administrative offences of the Republic of Moldova from October (24) 2008 // M.Of. № 3–6. 16.01.2009.

[26] Criminal code of the Republic of Moldova from April (18) 2002 // M.Of. № 72–74. 14.04.2009.

[27] Law of the USSR from December (25) 1958 "On criminal liability for crimes against the state" (as amended in December (15) 1983) // Collection of laws of the USSR. 1990. Vol. 10. P. 547 (inoperative)

[28] Criminal code of the RSFSR (as amended in July (25) 1962 // Bulletin of the Supreme Soviet of the RSFSR. 1962. № 29, art. 449 (inoperative)

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code of the Georgian SSR[29].

Further on a new article on taxation has been added to the criminal codes of the republics. For instance, the mentioned 1968 Decree of the Supreme Soviet of the USSR amended the Criminal code with rules on the evasion of submitting tax returns (Art. 162.1).

The limited attention to tax matters in criminal law is due to the political and economic concept of the socialistic vector of development of the state. It was assumed that there are no criminological prerequisites for the existence of tax criminality in a developed socialistic order [7, p. 15].

Nowadays the liability on the evasion to pay taxes or perform state duties during wartime is stipulated by art. 359 of the Georgian Criminal code.

The Criminal code of Georgia contains several tax provisions such as, for example, the liability for the illegal registration of transactions (art. 191), the violation of accounting rules (art. 204.1), the manufacturing, sale and use of fake credit and debit cards (art. 210) and the tax evasion (art. 218).

The 1996 Criminal code of Russia[30] does not contain provisions on the evasion to pay taxes or to perform state duties during wartime.

The Tax code provides for separate provisions on tax evasion liability for individuals and for legal entities (art. 198 and 199, correspondingly). The other rules on taxation concern the consequences of evasion to pay custom duties (art. 194), failure to comply with the obligations of a tax agent (art. 199.1) and the concealment of pecuniary funds or assets of a legal entity or a self-employed entrepreneur at the value of which the collection of taxes, other charges and insurance payments should be executed (art. 199.2).

The analysis of the content of the mentioned normative acts shows that in some cases new rules have been added to the existing forms. The incorporation of old rules can be explained by the fact that it is rather difficult to draft from scratch such an important legal document as the criminal law.

All the mentioned initiatives seem to echo The Internationale – «we will build a new world», although in practice it merely resumes to replacing the verb “build” with “copy”. Regardless of political statements adressed to protesters or voters, the legal heritage cannot be left behind instanteneously. However such denial can be faked.

This conclusion is valid not only in respect to the former USSR states and territories. In Romania, for instance, researchers reveal that some provisions of Socialistic times documents have been incorporated into the effective customs legislation [8, p. 283].

The aforementioned provisions are addressed to taxpayers and tax agents. Meanwhile tax authorities and their officials also bear liability for the breach of tax legislation.

The problem of the breach of tax legislation by the authorities themselves is as old as the tax evasion and has been acknowledged in certain historical documents. A proper example can be found in the description of a complaint of the inhabitants of the Lilo village dating back to the XVIII century. The villagers were revolting against the levy of two tributes to the state simultaneously [9, p. 188].

Interestingly, the breach of tax legislation by public officials can also arise in matters of procedural character which has been described inter alia by Romanian authors [10, pp. 318–320]. It was emphasized that in the XVII-XVIII centuries the procedure of the forced execution of an individual’s tax obligation was carried out by public officials without any legislative restrictions [11, pp. 46–47]. Subsequently, the necessity of limiting the authority of public officials led to the adoption of the main source of Romanian administrative law – the Organic regulations of the XIX century [12, p. 112].

The issue of the liability of public officials was also of interest for research carried out in the Republic of Moldova. As a result of a massive fleeing of taxpayers at the beginning of the XVIII century, for example, Constantin Mavrocordat was the first head

[29] Criminal code of the Georgian SSR from December (30) 1960 // Bulletin of the Supreme Soviet of the Georgian USSR. 1961. № 1, art. 10 (inoperative)

[30] Criminal code of the Russian Federation from June (13) 1996 // Collection of laws of the Russian Federation. 1996. № 25, фкe. 2954.

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of state who introduced rules on the liability of public officials in tax matters [13, p. 76].

Usually the publications of the fathers of legal science in Russia contain merely a remark on the issue of complying with the requirements of tax legislation, although there are some exceptions [14, c. 339]. One of them is the widely approved by academic circles sketch on the science of financial law [15, pp. 59, 195–207].

During Soviet times the description of financial law always included an indication of the liability of public officials [16, p. 9; 17, p. 581]. The tax legislation however did not incorporate provisions in this respect.

Specifically, art. 2 of the 1990 Law of the USSR "On rights, duties and liability of tax authorities"[31] merely stated that taxes and other charges wrongfully levied by tax authorities were to be returned and the damage caused by illegal acts of public officials was to be compensated according to the legislation of the USSR and the Union republics from funds of the relevant budgets.

The authors of the tax codes of the former USSR republics have expressly and implicitly followed this model.

The liability of public officials is mentioned in several articles of the Tax code of Georgia. Pursuant to par. 3 art. 39, the loss of tax secrecy documents or the disclosure of such information entails liability according to the legislation of Georgia. A similar provision has been included in par. 3 art. 41in case of breach of taxpayer's rights and legal interests.

Art. 165.1 of the Georgian Code on administrative offences provides for the liability of tax authorities for the wrongful levy of taxes.

The Code of Moldova on administrative offences provides for the liability of the head of the authority assigned rights in the sphere of tax administration for untimely value added tax refund (art. 311), disclosure of a tax secret (art. 107), as well as for violation of legal interests, rights or obligations of the tax payer and of other participants of tax relations (art. 297). In comparison to the legislation of Georgia, the mentioned provisions are more detailed as to the grounds for the tax liability of tax authorities for administrative offences.

Meanwhile art. 35 of the Russian Tax code contains two relevant provisions. Pursuant to par. 1, tax and customs authorities are liable for damages incurred by the payers of taxes, other duties or insurance contributions and withholding agents as a result of illegal actions (decisions) or failure to act of the aforementioned authorities and of their officials and other employees in the course of their duties. According to par. 3, the officials of the mentioned authorities and other employees are to be held liable for illegal actions or the failure to act stipulated in par. 1 according to the legislation of the Russian Federation.

The Russian Code on administrative offences does not stipulate for a similar provision as art. 165.1 of the Code on administrative offences of Georgia.

Publications refer to the situation at the beginning of the XXI century when middle and top level officials of the Georgian tax authorities would put pressure on the taxpayers so that the latter paid more taxes than were due following the performance target plan of the relevant authority [18, p. 362]. There are probably many more examples of the kind.

The problem of the breach of tax legislation by tax authorities and their officials is a known issue in Russia too. Nevertheless, art. 35 of the Russian Tax code is merely reproducing art. 2 of the USSR Law "On rights, duties and liability of state tax inspectorates" in a more detailed manner.

One could argue that the issues of the liability of public officials are regulated by administrative and criminal law sufficiently, however, express references are essential (as in the case of art. 165.1 of the Georgian Code on administrative offences).

The experience of Moldova and Romania shows that the issue of the liability of public officials for administrative offences are of constitutional importance (par. 1 art. 52 of the 1991 Constitution of Romania (revised in 2003) and par. 1 art. 53 of the

[31] Law of the USSR from May (21) 1990 № 1492-1 "On rights, duties and liability of tax authorities" // Bulletin of the Soviet of People's Deputies and the Supreme Soviet of the USSR. 1990. № 22, art. 394 (inoperative)

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1994 Constitution of the Republic of Moldova[32]).

The mentioned constitutional provisions stipulate the right of everyone to the compensation of damages caused by an act or a failure to act of a government authority. The question of the breaches of legislation by public authorities has been discussed in the Romanian doctrine of tax law [10, pp. 318–320; 12, pp. 612–619]. The rules in effect provide for four types of liability of public officials: civil, criminal, administrative and disciplinary. Particularly, the civil liability of an official incurred as a result of a culpable act which caused damages to the assets of a public authority or of a counter claim filed by the authority as a result of the recovery of damages by third parties pursuant to a final court judgement is considered the most effective means of regulating the behaviour of the official.

The provisions on the liability of public officials are incorporated, particularly, in the Criminal code of Romania. The disclosure of a tax secret is envisaged by art. 304 of the Criminal code of Romania in relation to the disclosure of non-public data or information which is covered by tax secrecy. In addition to the above, the damaged party has the right to recover damages either from the authority or from the official himself [19, p. 94].

Measures of administrative liability are provided for in special administrative laws.

Pursuant to art. 7 of the 2015 Tax code of Romania the tax authority has the obligation to inform the taxpayer on his rights and obligations and provides clarifications on the application of tax legislation. The disciplinary liability for the violation of the provisions of the Tax code are regulated by administrative acts, for example, the Ethical code of the public official of the tax administration (approved by the Order of the Ministry of public finance № 137/2004[33]). It is stipulated that the answers to the requests of taxpayers should be formulated in an accessible form and be exhaustive in order to minimize the necessity to additional professional assistance (Chapter III of the Ethical code). The mentioned Code is mandatory for public officials of the tax administration. Failure to comply with its provisions entails the application of disciplinary liability measures (Chapter V).

According to some studies, the process of direct interaction of tax authorities and taxpayers depends on the expectations of the latter (in the form of a reasonable and respectful attitude from the authorities) [20, c. 93–107]. From this perspective it should be noted that tax authorities bear responsibility for the formation of tax culture at large. The involvement of the taxpayer in discussing effective tax rules and ways of their possible improvement together with the use of educational programs, as well as television and electronic means of communication, contributes to the enhancement of the quality of such interaction. Research shows that taxpayers who have been provided with quality services from authorities are inclined to fully and timely execute their obligations to a far greater degree [21, c. 16].

3. Dispute resolution

The national dispute resolution regime deals with the appeal of the decisions of tax authorities (facts, actions and failures to act). Meanwhile the subject matter of the appeal could also refer to the provisions of international treaties which prevents it to be solved entirely according to the domestic rules of one of the contracting parties.

The mentioned treaties include double tax treaties but do not resume to them. Tax disputes can also arise from trade treaties or treaties on human rights.

Consequently, dispute resolution issues can be regulated by national and by international rules, i.e. two legal systems can be distinguished: the national and the international one.

National dispute resolution. Disputes arising from tax relations can particularly be connected to the question of legal liability and be complex matters in terms of resolution. However two main aspects of the issue can be emphasized, specifically:

- compulsory extrajudicial dispute resolution;
- subject matter jurisdiction.

Compulsory extrajudicial dispute resolution.

[32] Constitution of the Republic of Moldova from July (29) 1994 // M.Of. № 1. 12.08.1994.

[33] Decree of the Ministry of public finances of Romania from January (19) 2004 "On adopting the Ethical code of a public official of the tax administration engaged in assisting the taxpayer" // M.Of. № 66. 27.01.2004.

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It is commonly known that tax disputes can be resoluted in administrative and judicial procedures.

The extrajudicial procedure of dispute resolution has been established long time ago. Some indications on the adjudication of complaints can be found in the legislation of the Russian Empire, notably, art. 380 of the Charter on direct taxes (1903 version)[34]. The issue of the obligatoriness of the extrajudicial stage of dispute resolution is subject to further investigation.

The tax legislation of the USSR did not usually provide for the possibility of addressing a complaint directly to court however some examples attest the right of choice in this respect. For instance, art. 33 of the 1990 Law "On income tax of the citizens of the USSR, foreign citizens and stateless persons"[35] stipulated that decisions on complaints were to be appealed within one month to the hierarchically higher tax authority or to people's court.

Nowadays the right of the taxpayer to address either the hierarchically higher tax authority or the court is stipulated by par. 1 art. 86 of the Tax code of Belorussia[36], par. 3 art. 81 of the 2012 Tax code of Tajikistan[37] and par. 1 art. 86 of the 2005 Tax code of Turkmenistan[38].

Dispute resolution is regulated by Chapter XIV of the Georgian Tax code.

Pursuant to par. 1 art. 296 tax disputes are to be resolved in the system of public authorities of the Ministry of Finance or in court. Paragraph 2 of the mentioned article expressly stipulates that the appellant can address the issue to court at any stage of its resolution in the Ministry of Finance. According to art. 301, the appeal shall not be considered by the relevant public authority if the appellant has filed a complaint to court on the same matter.

The complex analysis of the mentioned provisions supports the conclusion that extrajudicial dispute resolution is not of binding character in Georgia.

On one hand, research shows that the resolution of tax disputes within the Ministry of Finance is faster and has several other advantages, particularly, no commissions to be paid and the fact that a negative result which can actually be used for better understanding of the other party's arguments and preparation for defending one's position in court [22, pp. 668–669].

On the other, it is recognized that extrajudicial mechanisms of tax disputes resolution are an appropriate safeguard for the observance of the rights of taxayers. Thus it is important to transfer the dispute outside the executive branch, specifically, to the judicial authorities [23, p. 88]. This statement cannot be underestimated.

Dispute resolution is regulated by Section 19 of the Russian Tax code.

Pursuant to par. 2 art. 138, the decisions of tax authorities of non normative character, as well as actions and failure to act of their public officials (except decisions of non normative character on individual complaints, appeal complaints and decisions of non normative character of the Federal Tax Service as well as actions and failure to act of its officials) can be appealed to court only after submitting the administrative appeal to the hierarchically higher tax authority according to the provisions of the Tax code.

As it follows from the aforementioned provisions, the extrajudicial dispute resolution stage is compulsory in Russia.

As practice has shown, the mentioned rule (at least in terms of decisions rendered as a result of field tax inspections) only delays the moment of the judicial recognition of the invalidity of non normative decisions of the tax authority (certainly, given the outcome of the dispute).

Romania deals with a similar situation. According to par. 1 art. 7 of the 2004 Law of

[34] Charter on direct taxes from 1893 (as ammended in 1903) // Collection of laws of the Russian Empire. 1903. Vol. V. P. 144.

[35] Law of the USSR from April (23) 1990 № 1443-I «On income tax of the citizens of the USSR, foreign citizens and stateless persons» // Bulletin of Soviet of People's Deputies and the Supreme Soviet of the USSR 1990. № 19, art. 320 (inoperative)

[36] Tax code of the Republic of Belarus from December (19) 2002 // National register of legislative acts of the Republic of Belarus. 2003. № 85, art. 2/977.

[37] Tax code of the Republic of Tadjikistan from december (3) 2004 // Legislative acts bulletin of the Republic of Tadjikistan. 2004. № 12, art. 688, 689.

[38] Tax code of Turkmenistan from October (25) 2005 // Bulletin of the Parliament of Turkmenistan. 2005. № 3–4, ст. 37.

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Romania № 554/2004 "On administrative dispute"[39], the administrative stage of appealing a decision of the tax authorities is compulsory.

In Russia, for instance, another approach is applied. The 2015 Code on administrative judicial procedure regulates the appeal of normative acts and acts having normative characteristics (par. 2 art. 1). The legal regime applied to the appeal of non-normative acts is governed by rules of civil or of arbitrazh procedures.

Meanwhile the issue of understanding the legal nature of the administrative procedure is a complex one. According to the mentioned 2004 Law of Romania, individuals have the right to appeal administrative and administrative-jurisdictional acts of public authorities (par. 1 art. 2) and in the case of the latter the appeal can be addressed directly to court (par. 2 art. 6). The 2004 Law does not provide for any criteria for differentiating administrative acts from administrative-jurisdictional acts.

Relevant jurisprudence is also rather controversial. Since par. 4 art. 21 of the Constitution of Romania stipulates that the administrative-jurisdictional procedure is facultative and free of charge, the Constitutional court has heard several cases on the matter. Controversially, in some cases the administrative procedure in tax matters has been qualified as administrative (decisions of 2000 (October) № 208[40], 2003 (November) № 411[41] and 2004 (April) № 176[42]), in others – as administrative-jurisdictional (decisions № 409/2004[43] and № 478/2004[44]).

With respect hereto Romanian authors point out different criteria for the ascertainment of the legal nature of the procedure under discussion [24, p. 52; 25, p. 18; 26, p. 34; 27, p. 613] the application of which leads to the conclusion that the administrative stage of appeal is compulsory in tax matters. The introduction of such criteria into the 2004 Law would be a proper solution for the current ambiguity of interpretation.

The right of appeal is granted with respect to two groups of decisions: administrative and decisions equivalent to them. The latter includes failure to act of administrative authorities, particularly, untimely rendering of decisions or unjustified refusal to render a decision. A similar provision is incorporated in art. 11–13 of the 2018 Administrative code of Moldova[45].

A distinctive feature of the regulation of dispute resolution on the territory of Romania is the fact that the lawmaker has granted the right to appeal non-normative administrative acts to a wide range of subjects, i.e. particulars whom the act under appeal is not addressed directly (par. 1 art. 1 of the Law of Romania "On administrative dispute"). This approach indicates that a non-normative act can have normative characteristics, i.e. affect legal interests and rights of a group of individuals. The observance of the mentioned rule is guaranteed by procedural time limits: 6 months for appealing a decision addressed to another subject compared to 30 days in all the other cases. The Constitutional court of Romania in a 2007 decision (№ 797/2007[46]) has held that any limitation of the right of third parties to appeal an administrative decision that has not been adressed to them directly in unconstitutional. In other words, even the 6 months

[39] Law of Romania from December (2) 2004 № 554 «On administrative dispute» // M.Of. № 1154. 07.12.2004.

[40] Decision of the Constitutional Court of Romania from October (25) 2000 № 208/2000 [Electronic source]. Acces through the legal research system "Legalis" (accessed: 17.06.2020).

[41] Decision of the Constitutional Court of Romania from November (4) 2003 № 411/2003 [Electronic source]. Acces through the legal research system "Legalis" (accessed: 17.06.2020).

[42] Decision of the Constitutional Court of Romania from April (20) 2004 № 176/2004 [Electronic source]. Acces through the legal research system "Legalis" (accessed: 17.06.2020).

[43] Decision of the Constitutional Court of Romania from November (16) 2000 № 208/2000 // M.Of. № 1063. 16.11.2004.

[44] Decision of the Constitutional Court of Romania from January (20) 2004 № 478/2000 // M.Of. № 69. 20.01.2005.

[45] Administrative code of the republic of Moldova from July (19) 2018 // M.Of. № 309-320. 17.08.2018.

[46] Decision of the Constitutional Court of Romania from September (27) 2007 № 797/2007 // M. Of. № 707. 19.10.2007.

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limitation of the time period for appeal fails to comply with par. 2 art. 2 of the Constitution of Romania which states that the right of free acces to justice belongs to everyone and cannot be limited by legislation.

The administrative jurisdiction of the tax authority depends on the vertical delimitation of competences, i.e. between central and territorial tax authorities. In Romania the broadest competence is vested to territorial authorities due to their proximity to the taxpayer. Nonetheless, the question of delimitation of the mentioned competences represents a problem of the Romanian regulation.

According to the Romanian Code of tax procedure, the competences of tax authorities can be divided into 4 types: general, subject matter, territorial and special (art. 29-45) [28, c. 94]. The provisions of the Code are to be construed together with the norms of the Code of civil procedure (par. 2 art. 3). General competence the division of competences between tax authorities and other public bodies which have powers in tax administration (namely, local specialized administration with authority in levying taxes and other duties). The subject matter competence entails the hierarchical division of powers [29, c. 401]. Territorial competence indicates that the tax authority can exercise the administration of the obligations of taxpayers who have their domicile on the supervised territory. Rules on special competence regulate the cases of conflict of competence.

In respect hereto Romanian authors point out the disadvantages of the legal technique related to the lack of a legal definition of the term «competence» and the confusion of different types of competences [30, c. 64–65; 31, c. 186–189]. Although the Code of tax procedure does not contain any indication as to the legal effects of such confusion of competence, representatives of the doctrine of the tax law of Romania say it would lead to the nullity if the act [19, c. 115].

Unlike Romania, the vertical division of powers of tax authorities in Moldova can be characterized as centralized. Since 2017 the Council on dispute resolution functions within the State fiscal agency[47]. Pursuant to the new rules, the decisions of tax authorities can only be appealed to the Council on dispute resolution given the limitations on the amount of the tax liability. Previously such complaints were seen by the territorial divisions of the tax authorities with the application of general rules of procedure (art. 267–274 of the Tax code of Moldova).

Subject matter jurisdiction. Georgia has a rich history of the organization of judicial authorities [32, p. 5], particularly, it is known that in Iberia (III century B.C.E. – 537 C.E.) the second authority in the state (after the king) was the “supreme judge and commander” [33, p. 67]. Furthermore, jurisprudence was considered a source of law [34, p. 30].

From the historical point of view, civil and criminal disputes were usually resolved by mediators appointed by the parties. Their decision was final. The abolition of the mentioned institution began with the installment of the Russian domination [35, c. 285–288].

After the adhesion of Georgia to the territory of Russia, judicial resolution was criticized: an unknown language, the complexity of procedure, extended period of proceedings. Regardless of further changes, the discontent of the people was still in place [36, c. 31, 78–79].

During Soviet times tax disputes were resolved both by courts and state arbitrazh (courts on economic cases). Provisions in this respect can be found in the tax legislation of that time: disputes arising from tax and other duties claimed to the state budget according to the Regulation on levying delayed tax and other duties payments (enacted by 1932 Decision of the Central Executive Committee and the Council of People’s Commissars № 48 and № 1402[48]) were referred to the subject matter jurisdiction of state arbitrazh authorities pursuant to art. 9 of the Rules on the resolution of economic disputes by state arbitrazh courts (enacted by the

[47] Decree of the State fiscal service of the Republic of Moldoa from June (14) 2018 № 327 // M.Of. № 246–254. 06.07.2018.

[48] Decree of the Central Electoral Committee and the Soviet of People’s Deputies № 48 and № 1402 from September (17) 1932 “Regulation on levying taxes and other duties” // Collection of legislative acts of the USSR. 1932. № 69, art. 410-b (inoperative)

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1980 Decree of the Council of Ministers № 440[49]).

Subsequently the resolution of tax disputes by arbitrazh courts and the dualism arising hereto (of the legal regime for individuals and entities) can be found in the legislation of several states and territories on the former USSR territory. However, such model of regulation is not characteristic for Moldova where only courts of general jurisdiction are authorized to solve tax matters.

Paragraph 1 article 146 of the 2004 Tax code of Georgia provided for dispute resolution in the Ministry of Finance system of authorities, in arbitrazh and in court. Furthermore, the arbitrazh dispute resolution was regulated by Section 21 of Part VIII of the Code.

The grant of the right to choose between the arbitrazh and the court has been positively characterized by Georgian researchers [37, p. 66]. Subsequently, the possibility of submitting a tax dispute to arbitrazh has been recognized as an error of the Government [38, c. 56, 75–76]. As a result, the arbitrazh is not mentioned in the effective Tax code of Georgia.

Tax disputes are resoluted by the courts of general jurisdictions of Georgia that activate on the basis of the same-named organic law. The system of courts with general jurisdiction does not entail the existence of a separate administrative court as such. Meanwhile some scientists think that an "administrative court" nevertheless exists and its activity is governed by the 1999 Administrative procedure code of Georgia[50] which is based on other procedural rules (in comparison to courts of general jurisdiction). Such body functions as an integral part of a single judicial system as separate chambers and panels whithin civil, appeal and cassation authorities [39, p. 107].

District (city) courts exercise first instance jurisdiction over administrative disputes, except cases submitted to the jurisdiction of magistrate judges according to Art. 6 of the Administrative procedure code.

According to par. 2 art. 1 of the Administrative procedure code of Georgia, the provisions of the 1997 Civil procedure code are to be applied within administrative dispute resolution unless provided otherwise.

A similar provision on the application of civil procedure rules in administrative disputes (including its first stage – the administrative appeal) is incorporated in par. 1 art. 28 of the 2004 Law of Romania.

Similarly to Georgia, tax disputes in Moldova and Romania are resoluted by courts of general jurisdiction. Contrary to the fact that jurisprudence is not a source of law, the jurisprudence of the highest courts defines the interpretation of tax rules. The judicial resolution of tax disputes has been a matter of interest for researchers since the beginning of the XX century [40, c. 2]. Modern research on tax dispute resolution [41] is heavily criticized due to lack of complex and systemic analysis of the tax dispute in conjunction with other divisions of tax law. Relevant analysis of judicial dispute resolution in Moldova resumes to the designation of controversial legal issues arising in practice [42, p. 697] and briefly mentioning the topic in administrative law studies [43, c. 120].

It should be noted that specialized administrative courts led by the State council have been functioning in Romania in the XIX century.

Now administrative tax tribunals are courts of first instance for tax disputes in Romania. The subject matter jurisdiction of such tribunals arises when the disputed debt is under 3 million Romanian lei and if the act under appeal has been rendered by a local authority. Provided that the act in question is delivered on the regional level, the dispute shall be resoluted by the relevant administrative division in the general jurisdiction tribunal. The decision can further be appealed in the courts of general jurisdiction and in the High court of cassation and justice of Romania. The Moldovan judicial system is similar and consists of courts of general jurisdiction led by the Supreme court of justice.

Pursuant to art. 142 of the Russian Tax code, the complaints (statements of claims) on the decisions of tax authorities and the actions or failure

[49] Decree of the Soviet of Ministers of the USSR from June (5) 1980 № 440 «On the adoption of Rules on the resolution of commercial disputes by state arbitrazh and of the Regulation on the State Arbitrazh of the Soviet of Ministers of the USSR» // Collection of legislative acts of the USSR. 1980. № 16–17, art. 104 (inoperative)

[50] Code on administrative procedure of Georgia from July (23) 1999 // Legal bulletin of Georgia. № 39(46). 06.08.1999.

to act of their public officials submitted to court are examined and resoluted according to the civil procedure or arbitrazh procedure legislations.

The arbitrazh courts of districts, arbitrazh courts of appeal and the arbitrazh courts of the subjects of the Russian Federation are authorized to resolute disputes concerning legal entities.

Economic disputes in Transnistria are resoluted by state arbitrazh. However, unlike in Russia, there is no dualism as to the legal regime of economic dispute resolution for individuals and entities. Pursuant to art. 1 of the 1996 Constitutional law of the PMR № 24-KZ "On the Arbritazh court of the PMR"[51], the Court under discussion is the highest judicial authority for the resolution of economic disputes and other disputes stipulated by legislation. The Arbitrazh court has the authority to examine cases with the participation of entities and self-employed individuals, unincorporated entities, citizens who are not self-employed and foreign entities (par. 2, 5 art. 21 of the Code of arbitrazh procedure of the PMR[52]). Civil and administrative procedure rules govern the arbitrazh resolution of disputes (art. 21-1, 21-2). The decision of the Arbitrazh court can be revised in the cassational procedure (Chapter 20), the supervisory procedure (Chapter 22) and upon discovery of new facts (Chapter 23).

Similar models of the resolution of tax disputes by an arbitration court (state of commercial) are hard to be found somewhere else. Exceptions can be identified in the legislation of Abkhazia, notably, art. 19 of the 1994 Law of Abkhazia "On the State Tax Service of the Republic of Abkhazia"[53] and art. 350 and 395 of the 2000 Customs code of Abkhazia[54] that provide for the possibility to file a claim in arbitrage.

Conceptually, the main issue with respect to Russia, Abkhazia and Transnistria is the name of the relevant court. Truth be told, in Russia such regulation entails the application of two laws on procedure: the 2002 Civil procedure code[55] and the 2002 Arbitrazh procedure code[56].

Similarly to Russia, issues on complying with the tax legislation and the practice of its application can submitted to the Constitutional court of Georgia

Up to now the Constitutional court of Georgia has heard a considerable number of cases on the conformity of the provisions of the 1993 Law of the Republic of Georgia "On the principles of the tax system"[57] and the tax codes to the norms of the 1995 Georgian Constitution[58], particularly, art. 15 (right to life), 20 (right to privacy), 21 (protection of private property), 35 (right to education), 41 (commercial secrecy), 42 (right to trial) [44, pp. 63, 216, 270, 478, 690].

According to art. 1 and 4 of the 1994 Law of Moldova № 317 «On the Constitutional court»[59], the named Court is the only body of constitutional jurisdiction in Moldova and is granted with authority to exercise constitutional control over laws, regulations and decisions of the Parliament, presidential decrees, decrees and resolutions of the Government. The 1995 Code of constitutional judicial procedure of Moldova[60] governs the rules of

[51] Constitutional law of the PMR from December (5) 1996 № 24-KZ «On the Arbitrazh court of the PMR» // Collection of legislative acts of PMR. № 96–4.

[52] Code on the arbitrazh procedure of the PMR from February (19) 1998 // Collection of legislative acts of PMR. № 98–1.

[53] Law of Abkhazia from April (15) 1994 № 100-c "On the State tax service of the Republic of Abkhazia" // Collection of legislative acts of the Republic of Abkhazia. 1995. № 3, art. 140.

[54] Customs code of Abkhazia from december (28) 2000 // Collection of legislative acts of the Republic of Abkhazia. 2006. Vol. № 25. P. 51.

[55] Code on civil procedure of the Russian Federation from November (14) 2002 // Collection of legislative acts of the Russian Federation . 2002. № 46, ст. 4532.

[56] Code on arbitrazh procedure of the Russian Federation from July (24) 2002 // Collection of legislative acts of the Russian Federation . 2002. № 30, ст. 3012.

[57] Law of the Republic of Georgia from December (21) 1993 "On the general principles of the tax system" // https://www.matsne.gov.ge (accessed: 17.06.2020).

[58] Constitution of the Republic of Georgia from August (24) 1995 // Bulletin of the Parliament of Georgia. 1995. № 31–33, art. 668.

[59] Law of the Republic of Moldova from December (13) 1994 № 317 «On the Constitutional Court» // M. Of. № 08. 07.02.1995.

[60] Code on constitutional jurisdiction from June (16) 1995 // M.Of. № 53–54. 28.09.1995.

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procedure.

A classical arbitration dispute resolution cannot be excluded both in Georgia and in Russia.

The Tax code of Moldova and the Tax procedure code of Romania do not contain provisions on alternative dispute resolution mechanisms.

The lex generalis on questions of administrative appeal (par. 1 art. 28 of the Law of Romania "On administrative dispute") stipulates that the norms of the Law should be construed together with the rules of civil procedure. The 2010 Civil procedure code of Romania[61] indicates arbitration and mediation as alternative dispute resolution mechanisms.

The 2018 Administrative code of Moldova does not contain provisions on alternative dispute resolution mechanisms applicable administrative procedures. The 2006 Law of Moldova "On mediation"[62] designates the application of mediation in civil and criminal disputes, as well as on administrative offences cases. The application of the mediation procedure is not limited to the mentioned types of disputes which leads to the conclusion that the use of mediation in tax disputes is possible. In 2010 a pilot project on the application of alternative dispute resolution mechanisms has been launched in 6 regions of Moldova [45, p. 4]. Consequently, the use of alternative dispute resolution mechanisms on the national level is theoretically possible. However this conclusion is not validated by examples from the administrative or judicial practice.

Similarly to questions of legal liability, in the context of dispute resolution one more issue is of utmost interest since it clearly illustrates the use of the same legal instruments by the legislators of the states under discussion.

This statement can be confirmed basing on the example of the following provisions:

- according to par. 1 art. 5 of the 1998 Law of Georgia "On the state duty"[63], an exemption from the payment of the state duty is stipulated in cases heard by courts of general jurisdiction, particularly, for tax authorities – in all disputes; for financial and credit and other regulatory bodies as plaintiffs or defendants - in cases regarding the collection of fees, state duties, other obligatory payments to the state budget as well as of refunds from the budget and in special proceedings cases;

- pursuant to par. 1(19) par. 333.36 of the Tax code of the Russian Federation, an exemption from the payment of the state duty is stipulated for state authorities, local self-government authorities, participating as plaintiffs (administrative plaintiffs) or defendants (administrative defendants) in disputes brought before the Supreme court of the Russian Federation, general jurisdiction courts and magistrates, in all cases heard by the Supreme court of the Russian Federation according to the civil procedure legislation of the Russian Federation and the legislation on administrative judicial procedure and for cases heard by courts of general jurisdiction and by magistrates.

Provisions on the exemption from the state duty in cases heard by the Supreme court of the Russian Federation pursuant to the arbitrazh procedure legislation of the Russian Federation and by the arbitrazh courts are incorporated in par. 1(1) art. 337 of the Tax code of the Russian Federation. The authorities that benefit from such exemption are listed in the same paragraph – prosecutors and other authorities addressing the Supreme court of the Russian Federation and arbitrazh courts in cases provided for by legislation for the protection of state and (or) public interests.

Within a comparative analysis framework the mentioned provisions are the same except two aspects.

Firstly, the content of the legal provisions can be qualitatively the same regardless of whether such provisions are incorporated into a code or a law and the rules under discussion can have a historical background: according to art. 879 of the Charter of civil procedure of the Russian Empire (1892

[61] Civil procedure code of Romania from July (1) 2010 // M.Of. № 247. 10.04.2015.

[62] Law of the Republic of Moldova from May (16) 2006 № 192/2006 "On mediation and organization of the profession of a mediator" // M.Of. № 441. 22.05.2006.

[63] Law of Georgia from April (29) 1998 № 1363 «On the state duty» // Bulletin of the Parliament of Georgia. № 19–20. 30.05.1998.

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version)[64], public administrations were exempt from stamp, judicial and clerical duties, except court charges which had to be paid on a general basis.

Secondly, from the point of view of a practitioner and regardless of the historical past, one can argue that the exemption from the state duty for tax authorities leads to the disruption of the public and individual rights balance. If this approach has grounds on the first stage of initiating the process for purposes of protecting public revenues, preferences should not be applied within later stages. As personal experience shows, the opposite approach leads to the abuse of power by public officers of the tax authorities.

International dispute resolution. Traditionally, the resolution of disputes falls within the jurisdiction of national courts. Since the end of the World War II courts have been more inclined to seek the resolution of disputes in an international context. Research shows that as of now a dozen of tribunals is in charge of a wide range of questions, ranging from environmental issues to criminal liability [46, p. 2]. Despite considerable differences in the legal nature and competence of such tribunals, many of them are granted the right to exercise control over national legislation with respect to its compliance with international treaties.

Nowadays there is no special court or tribunal with exclusive competence in tax disputes. Neither are there international procedural rules adressed to tax relations with foreign particulars or with a foreign element. These circumstances should not be construed as to diminuish the importance of international dispute resolution.

It should be noted that whilst the use of mediation in tax dispute resolution on the national level is unlikely, it fits in the international order quite naturally.

Arbitration clauses can be found in par. 5 art. 26 of the Agreement between the Government of Georgia and the Government of the Kingdom of the Netherlands on the avoidance of double taxation and prevention of tax evasion with regard to taxes on income (Hague, 2002) and in par. 5 art. 24 of the Agreement between the Government of the Russian Federation and the Government of the Kingdom of the Netherlands on the avoidance of double taxation and prevention of tax evasion with regard to taxes on income and property (Moscow, 1996).

The aforementioned provisions are the only examples of the incorporation of an arbitration clause into the double tax treaties of Georgia and Russia. The existence of such norms does not mean that they have been copied. Interestingly, this conclusion cannot be drawn solely from the fact that the provisions are different: the agreement concluded by the Government of the Russian Federation does not stipulate for a two year period (during which all difficulties and hesitations arising from the interpretation and application of the agreement have not been solved by the competent authorities of the Contracting Parties by means of an amiable procedure) and it is expressly stipulated that a complaint can be examined by means of arbitration only with the consent of both competent authorities.

It is likely that the provisions under discussion are an example of the common practice of the other contracting party.

The main issue concerns the approach of the authorities of the Kingdom of the Netherlands who insist on including the arbitration clause. Notably, such clause has been incorporated into the Dutch double tax treaties with some other states on the territory of the former USSR, for instance, in the agreements with Moldova and Uzbekistan Узбекистаном [47, с. 65].

Arbitration clauses are included in othe double tax treaties of Moldova and Romania, for example, art. 26 of the Agreement between the Government of the Republic of Moldova and the Government of the Italian Republic on the avoidance of double taxation and prevention of tax evasion with regard to taxes on income and capital (Rome, 2002) and art. 26 of the Agreement between Romania and the Unites Mexican States on the avoidance of double taxation and prevention of tax evasion with regard to taxes on income and capital (Mexico, 2000).

The incorporation of an arbitration clause

[64] Charter of civil procedure of the Russian Empire // Collection of laws of the Russian Empire. Vol. XVI, part 1.

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into the text of double tax treaties contributes to the enhancement of the effectiveness of the amiable procedure between the contracting parties. In the absence of such provision the competent authorities are merely under the obligation to use the best endeavors to resolute the dispute which does not guarantee the attainment of a result.

Apart from double tax treaties, arbitration clauses can also be included into trade treaties. This conclusion is illustrated by art. 384 of the Association agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and the Republic of Moldova, of the other part (Brussels, 2014). It is stipulated that if the parties fail to reach an agreement upon consultations with respect to trade or trade related measures, the party who initiated consultations has the right to demand the formation of a panel. Furthermore, the rules governing the formation of such panel, the rendering of the decision of the panel, the bona fide execution of the mentioned decision and the consequences of the failure to do so are set forth in art. 385–406.

Essentially coinciding provisions are incorporated in art. 248–270 of the Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Georgia, of the other part (Brussels, 2014). This example speaks of the use of the patterns of the other contracting party similar to the approach to double tax treaties.

In addition to the arbitration mechanism, some international treaties stipulate a specific dispute resolution regime which can be engaged in tax matters as well. Such agreements include, particularly, the European Convention on Human Rights (Rome, 1950) and the Agreement establishing the World Trade Organization (Marrakesh, 1994). Georgia, Moldova and Russia are parties to the aforementioned agreements.

The European Convention on Human Rights provides for the right of direct acces of particulars to the dispute resolution mechanism. Procedural questions related to the activity of the European Court on Human Rights are regulated by art. 19–51 of the Convention.

Taxation is only mentioned in art. 1 of the 1st Protocol to the Convention. It is stipulated that every natural or legal person has the right to peaceful enjoyment of one's possessions. This rule should not be construed as to impair the riths of the state to ensure the payment of taxes. At first sight, this is the only provision of the Convention with application to tax matters. Meanwhile, upon a closer view, it turns out the aforementioned statement is not entirely accurate.

Article 6 of the Convention, for example, stipulates the right to a fair trial. As a general rule the provisions of art. 6 are only applied to criminal and civil cases. It should be noted that in some cases tax issues can also fall within the scope of art. 6. Apart from the mentioned rules, tax matters can also be covered by art. 7 (interdiction of discrimination) and art. 4 of Protocol 7 to the Convention (non bis in idem).

Georgia and Moldova have participated in several tax disputes resoluted by the European Court on Human Rights (cases «Prigala c. Republique de Moldova»[65] and «Khoniakina v. Georgia»[66], accordingly).

The issue of the applicability of the norms of the European Convention on Human Rights on the territory of Transnistria is of utmost theoretical and practical importance. Academic research shows that pursuant to art. 1 of the Convention, the state bears a positive obligation to undertake all possible measures in order to ensure the observance of human rights according to international law on the territory of Transnistria despite the lack of the actual control over the mentioned region [48, c. 119–187]. Consequently, the state is bind to exercise best efforts as to ensure the effectiveness of the observance of human rights on its whole territory. This conclusion is applicable within the current situation between the Republic of Moldova and PMR. In other words, despite the limited legal instruments for the protection of human rights, the

[65] Requête no. 36763/06. CEDH. 13.02.2018 // URL: https://www.coe.int/fr/web/execution/archives-republic-of-moldova_backup#{%2232759912%22:[9]} (accessed: 17.06.2020).

[66] Application no. 17767/08. ECHR. 19.06.2012 // URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-111521%22]} (accessed: 17.06.2020).

state nevertheless still has certain available mechanisms of protection. In case a particular brings a dispute before the European Court of Human Rights, the actions of the state (possibly relating to tax issues) shall be evaluated from the perspective of making use of all possible (even minimal) measures to ensure the enforcement of the provisions of the Convention. Up to now there is no data on the initiation of disputes before the European Court of Human Rights by Transnistrian particulars.

The legal basis for the WTO dispute resolution mechanism is the Understanding on rules and procedures governing the settlement of disputes (Marrakesh, 1994).

Georgia did not participate in tax disputes within the WTO mechanism[67]. Due to the non-application of antidumping duties, the participation of Georgia in the relevant, fairly common types of disputes will resume to being a complainant or a third party.

Moldova has been party to a number of cases brought before the Dispute Settlement Body. One of such cases concerns internal taxation issues.

In 2011 the representatives of Moldova have initiated consultations with Ukraine regarding the excise taxation of distilled spirits[68]. The Ukrainian regime for excise taxation was deemed to be discriminatory with respect to Moldovan goods and contrary to WTO agreements provisions. Particularly, the 2008 modifications to the 1996 Law of Ukraine № 178 «On excise taxation of ethylic alcohol and alcoholic beverages»[69] has introduced a term which is allegedly breaching the norms of art. III of the General agreement on trade and tariffs. The new rule introduced a lower excise tax rate for goods produced locally compared to Moldovan goods. Now the dispute is to be seen by an already established panel.

Russia has filed several complaints within the WTO dispute resolution mechanism, including tax issues, notably, concerning excise taxation and tariff regulation («China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum»[70]; «Russia — Tariff Treatment of Certain Agricultural and Manufacturing Products»[71], accordingly).

4. Results

The analysis of the aforementioned issues of the tax law of Georgia, Moldova and Russia leads to a number of conclusions some of which are important for the legal regulation of taxation of other state and territories of the former USSR.

The obligatory administrative dispute resolution stage does not meet the interests of taxpayers, withholding tax agents and third parties since it limits possible variants of their behavior. The provisions of the legislations of Moldova and Russia attest the obligatoriness of the extrajudicial dispute resolution. In some cases the positive effect of providing for a wide range of subjects who can appeal an administrative decision is minimized by the existence of a compulsory administrative stage of appeal. This situation in characteristic, particularly, for Romania.

National dispute resolution does not provide for the application of classical arbitration. Meanwhile, particular features can be observed in the resolution of disputes by the state arbitrazh – the dualism of the legal regime for individuals and entities.

On the international level there are different instruments (for example, arbitration) and mechanisms (particularly, within the WTO and the European Convention on Human Rights) that can be employed in the resolution of tax disputes arising from double or multilateral treaties. Unlike national resolution, the international order provides for a wider range of legal means for the resolution of disputes.

The international arbitration dispute resolution is regulated by the provisions of double tax treaties. Within the international legal order in matters of taxation, particularly, on the question of including an arbitration clause in double tax treaties,

[67] Georgia – Member information – WTO [Electronic source] // https://www.wto.org/english/thewto_e/countries_e/georgia_e.htm (accessed: 17.06.2020).

[68] WT/DS423/4. 07.06.2011.

[69] Law of Ukraine from May (7) 1996 № 178/96-BP "On excise taxation of ethylic alcohol and alcoholic beverages" // Bulletin of the Supreme Rada of Ukraine. 1996. № 28, art. 131.

[70] WT/DS431/17. 26.05.2015.

[71] WT/DS485/11. 15.06.2017.

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the representatives of Georgia, Moldova and Russia (being rather new participants to negotiations) tend to agree with the position of other contracting states and include such provisions in their international agreements. Similar tendencies can be pointed out in respect to trade agreements, namely, within regional cooperation.

The model of distribution of provisions on legal liability for the breach of tax legislation depends on the content of tax laws, i.e. on the inclusion or exclusions of norms on liability. There are three models of regulation of the aforementioned provisions in the legislation of former USSR territories. Such models can be applied to the regulation of taxation in other states, for example, in Romania.

The regulation of the liability in Romania, for example, is considerably influenced by Government in spite of a direct constitutional prohibition in this respect. The amendment of tax norms by means of delegated legislation leads to the breach of predictability of the regulation.

In respect to Georgia, Moldova and Russia the common legal heritage of the USSR influences the effective provisions on the liability for breach of tax legislation (e.g. in respect to types of sanctions, criminal norms and issues of the liability of public officials).

In some cases due to the application of the principle of self-determination of peoples on the former USSR territory, on one hand, basic laws are still effective, particularly, the Code on administrative offences, on the other, the authors of the tax legislation have borrowed the best practices of their neighbor states.

The application of the mentioned general principle of international law leads to a number of difficulties for national producers of goods and service providers. Considerable differences can be observed in respect to the regulation in Transnistria and on the rest of the territory of Moldova. The situation does not contribute to ensuring the predictability of regulation for all taxpayers, including Transnistrian business entities.

The effect of the legal provisions under discussion in Russia unlike Georgia and Moldova is not territorially limited.

5. Conclusions

Generally, besides the existence of certain differences in regulation, the most considerable part of provisions on liability and dispute resolution in Georgia, Moldova and Russia are similar. The similarity of norms is sometimes determined by the use of the common legal heritage and attests the impossibility of instanteneous denial of the historically formed samples of regulation.

Certainly, the list of differences and similarities under discussion is not comprehensive. It can always be supplemented with new examples. The essential is to remember that the differences and similarities are characteristic for a certain period of time. The legal regulation of taxation is quite a dynamic sphere and permanent changes can significantly change the situation. Particularly, the law of the Customs union (Russia being one of its members unlike Georgia and Moldova) can have considerable effect on taxation.

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ISSN 2542-1514 (Online)

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BIBLIOGRAPHIC DESCRIPTION

Shepenko R.A., Nani L. Legal regulation of liability for tax offnces and tax dispute resolution in Georgia, Moldova and Russian Federation. *Pravoprimenenie = Law Enforcement Review*, 2020, vol. 4, no. 3, pp. 46–68. DOI: 10.24147/2542-1514.2020.4(3).46-68. (In Russ.).