

THE PAST AND THE PRESENT OF SECURITY MEASURES IN TAX ENFORCEMENT PROCEEDINGS

A biztosítási intézkedések múltja és jelene az adóvégrehajtási eljárásban

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The precautionary measure, as a legal institution that can be used in advance, places the interests of the obligee (tax authority) under legal protection in such a way that, if the statutory conditions are met, it enables the securisation of a claim that is the subject of the main case and the possibility of its satisfaction at a later date by taking specific enforcement actions. It also prevents the taxpayer (debtor) from taking away his assets subject to enforcement by behaving contrary to the requirements of reasonable management and concluding bad faith transactions, and thus thwarting the success of the satisfaction enforcement. In my study, I emphasize presenting the development of the precautionary measure that can be used in tax enforcement and its current regulation.

Keywords: *tax law, tax liability, tax administration, tax enforcement proceedings, security measure, enforcement law*

A biztosítási intézkedés előzetesen igénybe vehető jogintézményként a jogosult érdekeit helyezi törvényi védelem alá oly módon, hogy a törvényi feltételek fennállása esetén meghatározott speciális végrehajtási cselekmények fogantatása révén lehetővé teszi az alapügy tárgyát képező követelés biztosítását, valamint későbbi időpontban történő kielégítésének lehetőségét. Ezáltal annak is gátat szab, hogy az adózó (adós) az észszerű gazdálkodás követelményeivel ellentétes magatartás tanúsításával, rosszhiszemű ügyletek megkötésével elvonja végrehajtás alá vonható vagyonát, és így megghiúsítsa a kielégítési végrehajtás sikerét. Tanulmányomban arra helyezem a hangsúlyt, hogy bemutassam az adóvégrehajtásban igénybe vehető biztosítási intézkedés kialakulását és jelenlegi szabályozását.

Kulcsszavak: *adó jog, adókötelezettség, adóigazgatás, adóvégrehajtási eljárás, biztosítási intézkedések, végrehajtási jog*

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1. The historical roots of security measures

1.1. The first attempts of tax law to independence: the Act XCI of 1990

Seen from an interdisciplinary perspective, security measures have a long history. However, it has taken a relatively long time to emerge and gain ground in tax law relations as a separate legal institution from administrative law.

The *Act XCI of 1990* (hereinafter: Act of 1990), which for the very first time in Hungary, intended to regulate the main rules governing tax law in a separate legal form, can be considered as the first step in taxation and tax administration in the present sense,¹ initially did not contain provisions on security measures. Thus, as a background legislation, the rules laid down in *Act IV of 1957* on the General Rules of State Administrative Procedure (hereinafter: Act of 1957) were applicable, on the basis of Section 4, Subsection 1 of Act of 1990.² The change was brought about by *Act XLII of 2002* on modifying the Acts on taxes, contributions and other budgetary payments, which included the security measure among the legal measures that could be used in the context of tax enforcement, which was increasingly becoming independent.

With this amendment, Act of 1990 did not fully adopt the rules of Act of 1957 (nor could it, because of the specific nature of tax enforcement), but merely laid down the aspects of order and its two types likewise: if the legal conditions of security measure were met, the tax authority could order the securisation of the financial claim or the seizure of specific things.³ The law did not know the legal institution of temporary security measure, nor did Act of 1957. The Act of 1990 did not contain any specific provisions on the performing of security measures, but provided for the application of the rules of the judicial enforcement proceedings for the rest, by means of a reference provision in Section 91, Subsection 4.⁴ Overall, I believe that our first Code-like Act provided an excellent basis for the development

¹ The Act of 1990 attempted to regulate the rules governing tax administration and tax enforcement in a single Act – although this was not fully achieved, as the legislation on taxation (mainly the details of the rules) was scattered in several Acts and government decrees. For more information about the reform of 1988 of the tax system and the historical background to the Act of 1990, see: ERDŐS Éva: A pénzügyi jog fejlődési tendenciái. *PUM Sectio Juridica et Politica* 2004/2., 213–230.

² It is worth noting, that for almost a quarter of a century after its entry into force, even the Act of 1957 itself did not contain provisions on security measures – they were introduced by the Act I of 1981, as the modification of the Act of 1957, to fill a gap. The legal institution was therefore not even present in administrative enforcement in the general sense until that date. For more information on Section 87, which was subsequently introduced into Act of 1957, see: Ministerial statement of reasons on Act I of 1981 on amending and consolidating Act IV of 1957 on the general rules of state administrative procedure; Detailed statement of reasons on Section 87.

³ Act of 1990, Section 91, Subsection 1.

⁴ Given that the rules on security measures only became part of the Act of 1990 on the 1st of January 2003, the provisions of the Act on judicial enforcement proceedings currently in force were applicable as background legislation.

of the legislation on security measures – moreover, the rules of Act of 1990 show a high degree of similarity with the body of law laid down in the current Act on tax administration.

1.2. Security measures in Act of 2003

In the period of following the entry into force of Act of 1990, the shortcomings of the legislation have been exposed – as reflected by the fact that in its thirteen years it has been amended more than fifty times to a greater or lesser extent. As a result, the rules of the Act have been unevenly detailed in terms of the rights and obligations associated with taxation and the technical tax provisions. There has also been a need to modernise the rules in order to facilitate the exercise of taxpayers' rights and to fulfill the obligations, which should be carried out using the most modern techniques possible in the interests of simplification. In addition, major changes were also needed to introduce electronic tax administration.⁵ Given that two thirds of the Act were affected by these amendments, the legislator considered it preferable to consolidate the provisions governing the tax administration procedure in a new Act. This led to the adoption of *Act XCII of 2003* (hereinafter: Act of 2003), which, like its predecessor, also included the rules governing tax enforcement.

In my opinion, the Act of 2003 was a key codification act, since the appearance of the tax administration rules known today can be linked to the entry into force of this Act. As far as security measures are concerned, the Act fully incorporated the passages of our first generation tax law, so that the application of the Act on judicial enforcement proceedings was still necessary – with the exception that the seizure of a vehicle as a security measure was executed by entering the seizure of the vehicle in the seizure report or, if it was possible, by seizure of the vehicle's registration papers. Rulings ordering security measures could not be executed with respect to cultural goods listed in the certificate specified in the Act on the Special Protection of Borrowed Cultural Goods, during the period of special protection.⁶

It is important to emphasise, that the appearance of application of the temporary security measure in tax enforcement is also linked to this Act, since the amendment of *Act CXL of 2004*⁷ on the General Rules of Administrative Proceedings and Services (hereinafter: Act of 2004), which replaced the Act of 1957, raised this legal institution to the level of law. The primary purpose of the creation of temporary security measure was to ensure that the authorities have the right tools to take action

⁵ Ministerial statement of reasons on Act XCII of 2003 – General statement.

⁶ Act of 2003, Section 149, Subsection 4. – It should be noted, that these passages have nowadays been incorporated in the Act on Enforcement Proceedings to be Implemented by the Tax Authority.

⁷ Act CXL of 2008 amending the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

in cases requiring immediate acts.⁸ In this regard, the Act of 2003 Section 5 was supplemented by Subsection 2b, which declared, when ordering security measures provided for in the Act on the General Rules of Administrative Proceedings and Services, the tax authority had to apply the provisions of the Act of 2003 relating to security measures. Thus, the scope of the Act of 2004 was extended once again to the main Act on tax law.

1.3. The road to today's regulations

It is clear, that tax law is one of the most, if not the most dynamically developing and frequently changing area of law. It is important, that the rules governing taxation at any time must meet the demands of the diversity of life situations and keep pace with a legal environment that is constantly evolving. As a consequence, periodic reviews and updating the legislation is absolutely necessary and justified.

In the 2010s, the simplification and clarification of certain procedural laws and the creation of procedural rules in line with modern expectations were again emphasized as key objectives. The decision of the legislator to codify administrative and other procedural laws has also led to a focus on the rules on taxation.

According to the *Concept of the Act on the Rules of Taxation discussed and adopted by the Government on the 4th of April 2016*, the aim of the re-regulation is to reflect the fact that the state, through the tax authority, provides a customer-oriented service and assists taxpayers in fulfilling their tax liabilities – while doing so in a way that does not harm the revenue interests of the budget and promotes voluntary compliance by taxpayers.⁹ As far as possible, it was also important to create a short, transparent, understandable and easy-to-follow regulatory environment; to establish procedures that can be completed within a reasonable time by revising procedural deadlines and the remedy system; to reduce the number of occasions when taxpayers need to contact the tax authority in person by making better use of the information and data available; and to reduce the administrative burden on taxpayers.¹⁰ A further expectation was that the reform of taxation law¹¹ should be a further step towards the separation from administrative law and a greater degree of autonomy than it was in the past Acts. As a result, a completely new legal structure has been created, where the taxpayers, tax authorities and courts as well have to face

⁸ TÓTH Kincső: Az elsőfokú eljárás. In: Petrik Ferenc (ed.): *A közigazgatási eljárás szabályai I-II. – Kommentár a gyakorlat számára*. HVG-Orac Lap- és Könyvkiadó, Budapest, 2016. (E-commentary), Commentary on Section 29/A.

⁹ Ministerial statement of reasons on Act CL of 2017 on the Rules of Taxation – General statement.

¹⁰ Ministerial statement of reasons on Act CLI of 2017 on Tax Administration and the Regulation of Tax Administration – General statement.

¹¹ For more information on the changes affecting the regulations of the Act on the Rules of Taxation, the Act on Tax Administration and the Act on Enforcement Proceedings, see: KÖVÁGÓ Zoltán: Az adózás rendjének újrászabályozása. *Adóvilág* 2017/13–14., 2–11.

new challenges.¹² Consequently, from the 1st of January, 2018, the tax administration procedure is governed by a three-pillar regulatory system:¹³

- the Act CL of 2017 on the Rules of Taxation, which contains detailed rules on tax administration and the provisions governing certain procedures;
- the Act CLI of 2017 on Tax Administration and the Regulation of Tax Administration (hereinafter: Tax Administration Act), which provides a general framework for the tax administration as a whole; and
- the Act CLIII of 2017 on Enforcement Proceedings to be Implemented by the Tax Authority (hereinafter: Tax Enforcement Act), which lays down specific rules applicable to the enforcement actions of tax authorities.

The reform has also brought some changes to the regulation of security measures – although these are more technical changes, as the legal institution has not fundamentally changed in substance and function. Some of the provisions declared in the Act of 2003 were removed and placed in the Tax Administration Act, and the rules regarding the enforcement of security measures was declared in the Tax Enforcement Act. It should be pointed out, that the rules on temporary security measures have been introduced as a separate legal institution applicable to tax enforcement, as the brand new special possibility of authorisation of payment.

Overall I believe, that the tax system, which has been modified in several aspects, has contributed greatly to the autonomy of the tax administration. In my point of view, perhaps the greatest contribution of the taxation reforms is that the Act CL of 2016 on General Public Administration Procedures (which replaced the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services) excluded tax and customs administration procedures from its scope.¹⁴ Thereby the legislator broke with the hierarchy of legal sources and the applicability of the Act of General Public Administration Procedures, so the Act CL of 2017 on the Rules of Taxation no longer contains regulations, which requires the application of the Act on Administration Procedures to the tax administration proceedings as a background legislation.¹⁵

2. Doctrinal issues concerning the ordering of a security measure

2.1. General statements

In the context of the preliminary tax enforcement proceeding (typically a tax audit), a situation can easily arise where an obligation of a payment is established (for example, the auditor declares a tax deficiency) or the tax authority is expected to

¹² PFEFFER Zsolt: A joggal való visszaélés tilalma az adójogban. *Magyar Jog* 2018/4., 193.

¹³ This statement is true with the addition that our legislation regarding taxation also includes and is bindingly applicable to certain substantive Acts and lower level of legislation, containing detailed rules.

¹⁴ Act CL of 2016, Section 8, Subsection 1 c).

¹⁵ KAMPLER Béla: Valóban adózóbarát? Az adóigazgatásban érvényesülő jogorvoslati rend és a 2018-tól hatályba lépett új előírásainak elemzése. In: Gellén Klára (ed.): *Gazdasági tendenciák és jogi kihívások a 21. században*. Iurisperitus, Szeged, 2018, 116.

make a decision on a claim. If, during the preliminary procedure, there are already reasonable grounds to believe that the debtor would remove the assets at his disposal from the enforcement proceeding, in order to fail the successful outcome of a subsequent enforcement proceeding, it is essential to have a legal institution which the tax authority can use to secure the claim in order to ensure that the debtor would comply with his payment obligation, with the help of the executive force of the state – this is the purpose of security measures.

In an universal, comprehensive approach, the security measure is not a separate administrative matter, but an immediately enforceable action by the tax authority under the conditions and cases laid down by Tax Administration Act.¹⁶ It is in fact a special legal institution with a precautionary, temporary nature, which can be used prior to the enforcement procedure and which, in substance, protects the tax authority by creating a guarantee situation which allows the subsequent tax enforcement procedure to succeed. The purpose of the institution is not the immediate satisfaction, but the satisfaction of the claim at a later date. Furthermore, with its help, it can be prevented that the debtor – with his misused behavior – would remove the coverage not yet available,¹⁷ and thus causing an administrative delay in the satisfaction of enforcement. However, it should be pointed out, that the use of this institution is only appropriate, when the debtor has – or can reasonably be expected to have within a short period of time – an asset at his disposal, on which the security measure can be effectively performed.

The rules governing the ordering of security measures are placed in the Tax Administration Act, while the provisions regarding to its performing are placed in the Tax Enforcement Act, with a note, that regarding to Section 3 of Tax Enforcement Act, the Act on judicial enforcement proceedings¹⁸ must be applied as a background legislation. In the light of the passages set out in Tax Administration Act, there are two important elements for the ordering of a security measure: on one hand, a decision declaring or presuming the payment liability (which can be a decision, notes or minutes), and on the other hand, an order which essentially orders a security measure. This order is issued by the tax authority that made the decision establishing the payment obligation,¹⁹ then in accordance with the content of the order prescribing a security measure,²⁰ it is performed by the enforcement body (bailiff) in the taxpayer's (debtor's) jurisdiction. According to Tax Administration Act Section 82,

¹⁶ KOVÁCS Ferenc: Az adóigazgatási eljárás általános szabályai. In: KOVÁCS Ferenc (ed.): *Nagykommentár az adóigazgatási rendtartásról szóló 2017. évi CLII. törvényhez*. Wolters Kluwer, Budapest, 2023. (E-commentary) [hereinafter: Ferenc Kovács (Tax Administration)]

¹⁷ FÖLDES Gábor: Az adózás rendje. In: Simon István (ed.): *Pénzügyi jog II.* Osiris Kiadó, Budapest, 2007, 111.

¹⁸ Act LIII of 1994 on judicial enforcement.

¹⁹ Tax Administration Act Section 82, Subsection 3.

²⁰ In the order prescribing a security measure, the tax authority shall indicate the competent tax enforcement bailiff whom it shall contact for the purpose of performing the security measure and execution of the financial claim.

Subsection 4, an appeal can be lodged against the order prescribing a security measure – but it has no suspensive effect on the implementation of the order.

In relation with security measures, from 2019 it has been clarified that if enforcement proceedings are initiated following a security measure, then the effect of the action performed in the course of implementing the order prescribing the security measure shall extend to the execution procedure as well. This rule guarantees that if an enforcement proceeding was initiated against the taxpayer, it will not be necessary to repeat all the acts carried out in the context of security measures in order to effectively enforce the claim.²¹

It is important to point out, that the name of the legal institution is a quasi-generic term, since – depending on the stage of the preliminary procedure – it includes both the „classical” security measure and under certain legal conditions, the order for a temporary security measure. I therefore consider it essential to present, examine and analyse the forms of security measures that can be used in tax enforcement.

2.2. “Classical” security measure: securisation of a financial claim

Under Section 82, Subsections 1-2 of Tax Administration Act, as a „classical” security measure, the tax authority shall order the securisation of the financial claim, if it is likely that the future fulfilment of a claim is in danger, and if the time limit for fulfilment determined in the tax authority decision establishing the payment liability has not expired yet. The Tax Administration Act thus lays down conjunctive conditions, requiring the existence of two: on one hand, the claim of the tax authority is yet to be fulfilled, so enforcement proceedings cannot be brought to recover it, since one of the legal conditions is still missing. Therefore, the decision of the tax authority is not yet enforceable (for example, because the person entitled to appeal has appealed against it), or it is enforceable, but the time limit for fulfilment laid down in the decision has not yet expired. On the other hand, there are reasonable grounds to suspect that the future fulfilment of the liability prescribed in the decision on the merits is at risk.

The existence of the liability being at risk is an essential condition, which must be clearly justified in the order which prescribes the security measure, with pointing out the reasons explicitly. The probability must be assessed by taking into account the taxpayer’s previous tax discipline, his behaviour during the tax procedure establishing the payment liability, his financial situation and the amount on which the security measure is based. The risk of the future fulfilment of a claim is illustrated by the following examples, which can be considered typical in the practice of tax authorities: the fact that the taxpayer was an executive officer of a company which was terminated in the current or previous year, in a liquidation procedure; he has engaged in activities contrary to the requirements of reasonable management; if the taxpayer has previously been granted a payment reduction by the tax authority but

²¹ KOVÁCS Ferenc (Tax Administration): i. m. Statement on Section 82. § (E-commentary).

refused to fulfill the requirements; and that the taxpayer's affiliated company has been terminated in liquidation or compulsory liquidation proceedings.

2.3. Temporary security measure

Where there are reasonable grounds to suspect that the future fulfilment of the liability that may be prescribed in the decision on the merits is at risk, the tax authority shall take the measures set forth in Section 82, as temporary security measures, before making a decision to the merits of the case, within five days upon the occurrence of the circumstances giving reasons to them.²²

By comparing this passage of Tax Administration Act and the provisions governing the "classical" security measure, it can be concluded that these two legal institutions are, at first reading, almost identical – however, it is essential to point out some nuanced, but more significant differences.

First and foremost – and perhaps highlighted on the most important difference between these two institutions – it should be emphasised, that while in the case of a "classical" securisation of a financial claim, the decision of the tax authority is already existing, while in the case of a temporary security measure, there is no decision on the merits establishing a payment liability. In fact, a situation arises in which the taxpayer may expect the tax authority to decide on his payment liability in the future, but no such decision has been taken yet. However, it is reasonable to assume, that he would later seek to remove his assets from execution, either by transfer of by other acts in bad faith. The Tax Administration Act thus creates the possibility for the tax authority to order a securisation of a financial claim on the debtor's assets as a temporary security measure – given that with the lack of a decision on the merits, there is no place for a "classical" security measure.

For example, this may be the case if the tax authority appoints a contributor organisation to carry out a specific act of demolition, and the cost of the specific act is already included in the decision appointing the contributor organisation, but in this stage of the procedure, the order on bearing the costs cannot be issued (it is only possible after the actual performance of the act and the issuing of an invoice). The performer of a specific act will then be aware of the costs and acting in bad faith, may encumber or alienate the property (or even other assets) that is at the location of the act. If the taxpayer's dishonest behaviour, which is contrary to the requirements of reasonable management is discovered, the tax authority will order a temporary security measure against the taxpayer's assets to secure its claim in relation to the participation of the contributor organisation involved in a specific act.

Another important difference is, while a "classical" security measure can be ordered until the date on which the tax authority's decision becomes due. In contrast, in the case of a temporary security measure, the tax authority has only five days to decide on that. The five-day time limit in question must be calculated from the moment the circumstances arise – a condition which the Curia has also emphasised

²² Tax Administration Act Section 83, Subsection 3.

in its case-law.²³ It should be pointed out, that this five-day period is a term of preclusion, and once it has expired, no further temporary security measures may be ordered. If, however, a temporary securisation of a financial claim is ordered after five days, it is considered to be out of time and cannot be performed.²⁴

All in all, therefore, exemplified by the cost of the implementation of a specific act, the cases in which a temporary security measure and a “classical” security measure can be distinguished as follows:

- If the order appointing a contributor organisation to carry out a specific act (so an order on the costs of the enforcement is yet to be made), and within five days the tax authority becomes aware of such a behaviour on the part of the debtor, which may suspect that the future fulfilment of the liability is at risk, a *temporary security measure* can be ordered.
- If, however, the act has already been carried out, an invoice has been issued, and the tax authority has issued an order for the expenses, but it is not yet enforceable (not final, not due), in this case a “classical” security measure may be ordered.

2.4. Authorisation of payment

As of the 1st of January 2018, the Tax Administration Act has added a new legal institution to the rules of security measures, which is a special possibility to authorise a payment. On explicit request of the taxpayer, in the sequence and amount determined by him, the tax authority may authorise the payments to certain persons from the blocked account, if the tax authority – in the course of a tax audit – blocks the taxpayer’s payment account as a security measure or temporary security measure. The authorisation of payment must be submitted to the authority which ordered the security measure, not to the body who is performing the enforcement. It is important, that the taxpayer must provide evidence in his application, which justifies that he is not able to make his payments from other sources than the blocked property or that his activity suffered disproportionate restraints. However, payments from the blocked account may be authorised until the decision declaring the payment obligation, serving as a basis for the security measure becomes final.

The Tax Administration Act sets a short time limit of fifteen days for the tax authority to adopt decision on the application of authorising a payment. The tax authority decides on the authorisation in the form of an order, which may be an order upholding or dismissing it in whole or in part. The Tax Administration Act Section 84, Subsection 4 allows to lie an independent appeal against the order rejecting the authorisation of payment and authorising partial payment, with a note that the order

²³ Decision of the Curia no. 35.171/2020/4.

²⁴ This was also established in the decision of the Curia mentioned earlier, for more information on the facts, see: DARAI Péter: Egy kúriai döntéssel kapcsolatos aggályok. *Magyar Jog* 2021/12., 685–694.

authorising partial payment may be enforced without paying regard to the appeal lodged against it.

If the taxpayer fulfills his liability to provide evidence, the tax authority upholds the application in whole. As appropriate, the Tax Administration Act excludes any possibility of appeal, independent or otherwise against this order, so the order authorising a payment becomes final and consequently enforceable upon notification of the decision.

In the event of authorisation of payment, the tax authority shall immediately request the payment service provider that keeps the taxpayer's blocked payment account to perform payment, because the payment is not made to the taxpayer, but it is directly made by the payment service provider to the entitled people.²⁵ The payment authorised by the tax authority may not be used to cover any other claim, it is exempt from any other execution.

3. The rules on performing security measures

3.1. The forms of security measures

In the view of security measures, the enforcement order itself is the order of security measure, which enables the performing of the act to be enforced within the framework of the legal institution and thus the claim at risk to be secured. According to the Tax Enforcement Act Section 96, the resolution ordering security measures on financial claims shall be delivered by the bailiff to the judgment debtor on the spot (at the debtor's residence or registered office), since it is of particular importance that the security measure – and thus the securisation of a claim – should be unexpected and the debtor should not be able to have his assets seized. This also overturns the order of satisfaction, as if the debtor has a representative, the bailiff would have to firstly notify the representative of the security measure ordered against the debtor – which would raise serious concerns as it would follow the premature notification of the debtor and the debtor's behavior in bad faith.

At the time of delivering the order, the bailiff calls the judgment debtor to *immediately pay* the amount to be protected: it is the simplest way, because if he does so, the enforcement of the security measure is completed. But if the judgment debtor fails to comply with this, the bailiff *attaches the properties* of the judgment debtor. The procedure is similar in that case as well, when the debtor (or his representative) is not present when the bailiff is delivering the order, because the failure of delivering the enforcement order does not prevent the attachment of the assets. The bailiff draws upon a seizure report, listing the judgment debtor's movable property for the purposes of seizure, and then sends its copy with the enforcement order by post to the debtor and his representative. The reason of these provisions is given by the purpose of security measures, which is to grant the possibility to the tax authority to take immediate actions to ensure that the liability, which is the subject of the procedure is secured for the enforceability of the resolution made in the main

²⁵ KOVÁCS Ferenc (Tax Administration): op. cit. Statement on Section 84.

proceedings in the future.²⁶ If the debtor has properties which can be seized on the spot and provide appropriate coverage to secure the claim, no further action is necessary – otherwise the bailiff will move on.

It is important to note, that Tax Enforcement Act Section 5 declares that the sequence and time of enforcement actions shall be determined by the tax authority within the limits determined by this Act – according to this principle, as a main rule, in tax enforcement proceedings there is no order when it comes to the performing of enforcement acts. However, in contrast to this provision, the rules for enforcement acts implemented within the framework of security measures does contain a certain order: because the bailiff may only move forward and initiate further enforcement acts, if the previous one was not successful – but only if it is in accordance with the principles of proportionality and effective procedure. The order laid down by Tax Enforcement Act must be taken into account while performing the enforcement acts, as must the fact that the implementation of security measures may not endanger the subsistence of the judgment debtor and his close relatives living with him, and also the impossibility of his economic activity.

If the attempt on seizing the assets on the spot is unsuccessful, the tax authority – according to the next step – can by way of a separate order, *seize central subsidies* including tax reclaims and tax refunds owed to the judgment debtor and reviewed by the tax authority up to the amount of the liability determined in the order providing for the security measures with respect to financial claims. The consequence of the measure is that the judgment debtor's right of disposal over the seized sum shall cease during the effect of the security measure: the debtor cannot dispose of subsidy, but the seized amount must be taken into account as secured.²⁷

In the absence of central subsidies which can be seized, the bailiff *seizes the debtor's movable and immovable property*. The Tax Enforcement Act lays down special provisions compared to the general rules in relation to the *seizure of a vehicle* within the framework of a security measure, since in this case it can be implemented by recording the vehicle in a vehicle seizure report and/or, if possible, by the seizure of the registration papers. If the *seizure of real estate property* is necessary, the tax authority immediately calls upon the real estate supervisory authority in order to have the right to enforcement registered for the protection of financial claims – for the subsequent procedure, the provisions of Section 52 governs *mutatis mutandis*. It should be pointed out, that Section 96, Subsection 6 of Tax Enforcement Act excludes the cultural goods from the orders providing security measures.

If the debtor does not have any seizable assets, the tax authority performs the security measure on the amount handled by the payment service provider – it is

²⁶ KOVÁCS Ferenc: A biztosítási és ideiglenes biztosítási intézkedés keretében fogatosított végrehajtási cselekmények szabályai. In: Kovács Ferenc (ed.): *Nagykommentár az adóhatóság által fogatosítandó végrehajtási eljárásokról szóló 2017. évi CLIII. törvényhez*. Wolters Kluwer, Budapest, 2023. (E-commentary) Statement on Section 96. [hereinafter: Ferenc Kovács (Tax Enforcement)].

²⁷ Ministerial statement of reasons on Act CLIII of 2017 – Statement on Sections 95–97.

called the *bailiff's intervention for the freezing of assets*, which involves the freezing of the debtor's bank account. In this case, the tax authority – in the view of Tax Enforcement Act Section 96, Subsection 7 – instructs the payment service provider handling the amount owed to the judgment debtor not to pay the sum to be secured either to the judgment debtor or to others from the account, and if the balance of the account does not reach the sum to be protected, act similarly with future payments. The bailiff's intervention for the freezing of assets is not subject to any specific formality, but requires all the information (name of the debtor, tax number, payment account number, quantification of the amount to be secured) which the payment financial institution considers indispensable for the execution of the request.²⁸ The payment service provider must immediately start the measures required to comply with the tax authority intervention, and must also fulfill its obligation to notify the tax authority within eight days upon delivery of the request about the sum for which the measure could be implemented. If the intervention is partially successful, the judgment debtor's assets that are not yet seized may only be seized up to the remaining amount of the claim. However, in the case of a security measure, the freezing the debtor's bank account the rules of exemption in respect of sums placed on payment accounts must be applied as well.

A special situation arises, if the amount on the debtor's payment account covers the claim, but previously his assets have been seized. In such cases, the tax authority must decide on to maintain the seizure on the assets or the bank account – if the latter, the assets must be released from seizure.

In the order, the last enforcement act within the framework of security measures is the *garnishing of income*. It can be carried out as a last act, if the judgment debtor has no other asset that may serve as a cover for the sum to be protected and that may be subject to enforcement. It should be noted, that the rules of exemption in respect of incomes must also be applied as well.

3.2. Specialities in the field of performing

The Tax Enforcement Act Section 95, Subsection 2 states, that the tax authority have to implement the ruling made by the judgment creditor authority on the basis of the general administrative procedures for ordering the seizure or attachment of a specific thing as a security and/or temporary security measure by applying the rules of the judicial enforcement Act with respect to seizure – so in this case, the claim is a claim to individually defined asset.²⁹ Under this passage, the rules are according to whether a movable or immovable property is seized or impounded.

The bailiff delivers the order of seizure of movable property to the judgment debtor in person, and seizes the property. The seizure of movable property is carried out by inspecting the movable property and recording it in the seizure report. If it comes to impoundment, the bailiff must place such movable property in a secure

²⁸ DARAI Péter: A zárolás iránti végrehajtói felhívás I. *Céghírnök* 2018/5., 7.

²⁹ PESTOVICS Ilona: *Bírósági végrehajtás*. Novissima, Budapest, 2005, 239.

storage place (cabinet, chest, etc.) or in a separate room, and have to lock and affix his seal on it. If the seizure of perishable things is necessary, they have to be sold immediately following seizure.

If the decision made by the judgment creditor authority is to seize or impound an immovable property, in respect of the seizure of immovable property, the bailiff must call upon the real estate supervisory authority to enter the fact of sequestration in the real estate register. Thereafter, if the legal conditions are met, the bailiff will place the property in the care of an impoundment administrator.³⁰

In respect of security measures, the seizure process shall be concluded upon seizure or sequestration, or upon the seizure of central subsidies, in the case of the seizure of claims and garnishment of incomes upon payment to a separate account and upon the issue of notice to the payment service provider.³¹ However, the sale of seized assets can only take place after the enforcement of satisfaction – it is important to underline, that there is an exception for perishable things, which must be sold immediately. The Tax Enforcement Act also lays down a similar provision for the amount received from the judgment debtor and/or recovered in the course of the proceedings, when it declares that they cannot be accounted for the liability until the enforcement for satisfaction is ordered; it must be held in the bailiff's account – with the exception of frozen central subsidies. However, the Tax Enforcement Act Section 97, Subsection 2 provides that sums of money frozen in the course of implementing temporary security measures or security measures, may be accounted for by the tax authority in enforcement proceedings for other debts and/or the tax authority may sell the seized assets even if the right to satisfaction has not yet opened in a case affected by temporary security measures or security measures, but the enforcement proceedings commenced for other debts cannot be completed successfully by way of other enforcement actions.

3.3. The effect of security measures, cases of termination

When it comes to the effect of security measures, the Tax Enforcement Act declares, that enforcement actions implemented on the basis of the order providing for security measures cannot be repeated after the commencement of enforcement proceedings – just as acts performed under the effect of security measures are not effected by its termination. The effect of seizure implemented in the course of enforcement of a security measure must also extend to the enforcement proceedings as well.

The cases of termination of the legal institution are declared in Tax Administration Act and Tax Enforcement Act. According to Tax Administration Act, if the time limit for fulfilment determined in the tax authority decision establishing the payment liability has expired, the security measure is terminated. In this situation, the obstacles in front of the tax enforcement procedure are “removed”, if an enforcement order is issued, the enforcement for satisfaction can be initiated – from

³⁰ See more: SZÉLL-CSELÓSZKI Dóra: A biztosítási intézkedés. *Executio* 2019/1., 53–55.

³¹ Tax Enforcement Act Section 97, Subsection 1.

this date, there is no longer any security measure. Furthermore, if the decision on which the execution procedure is based is annulled, the security measure must be terminated as well.³²

According to termination, Tax Administration Act declares, that in the tax authority decision declaring the payment obligation, the tax authority is obliged to provide for termination of the prescribed temporary security measure (and, if the conditions thereof exist, may provide for ordering security measures). Furthermore, if the subject of security measures is seized or impounded during criminal proceedings, the ongoing procedure for the enforcement of the security measure must be terminated.

If the security measure is terminated; if the judgment debtor has paid the amount to be protected; or the cover of the claim is secured on his account or deposited by the satisfaction of the notice issued for the payment service provider; or if the judgment debtor offers other appropriate cover for the amount to be secured, the tax authority shall release the seized asset from the seizure.

3.4. Costs of the enforcement

Every costs and expenses, which arise in tax enforcement proceedings in connection with the recovery of debt shall be considered as costs of enforcement. As a cost of enforcement, the tax authority is entitled to such as expenses, the minimum cost as well as the standard enforcement cost allowance, which are advanced by the tax authority and borne by the judgment debtor.³³ This provision also applies to enforcement acts taken on the basis of an order for security measures. It is important to note, that the general rules on enforcement costs are subject to the specific passages of Chapter X of Tax Enforcement Act, and also to the detailed rules on the *Decree of the Ministry of Finance no. 8/2018. (III. 19.)* (hereinafter: Decree).

As a minimum cost, with respect to the seizure of movable and immovable properties, ten thousand forints shall be paid, which have to be paid once for seizing (or attempted to be seized) multiple movable properties at the same place, at the same time, and separately for each seizure of movable or immovable properties based on the vehicle-, watercraft- or aircraft register.³⁴

For effectuating the enforcement of financial claims, the tax authority shall be entitled to ten thousand forints standard cost allowance, irrespective of any costs and standard cost allowance that may be charged on the basis of any other legal regulation. Thus, as a general rule, for performing the securisation (enforcement) of a financial claim, and for performing a specific act, the tax authority is entitled to ten thousand forints as well as a standard cost allowance – in the latter case, cost allowance is charged per places. The tax authority shall notify the judgment debtor

³² Tax Administration Act Section 82, Subsection 5

³³ An exception to the general rule is, for example, the case where an expert appraiser is appointed during the procedure – in this case, the fee incurred in connection with the appointment of the expert appraiser is borne by the person who initiated the expert appraiser procedure.

³⁴ Decree of the Ministry of Finance no. 8/2018. (III. 19.) Section 2, Subsection 4.

on charging him with the standard cost allowance and the minimum cost within eight days. The judgment debtor may complain about the charging of the standard cost allowance and/or the minimum costs in a compliant which he may lodge against the enforcement action on which the costs are based. The tax authority shall issue an order regarding other costs.

The Decree defines the costs which the tax authority may charge as notary's expenses.³⁵ Thus, for example, in the context of the performance of an order for a security measure, during the enforcement of a specific act, the costs of contribution belonging to the contributor organisation, the costs of the impoundment administrator, the fee for a guardian ad litem (for example, if the debtor lives abroad and has no representative), and any other costs supported by invoices.

However, with regard to the nature of the legal institution – the costs incurred in the performing of a security measure may be charged as enforcement costs only within eight days of the enforcement procedure taking effect. If the procedure ends with performing the security measure and no enforcement for satisfaction is carried out, the costs are borne by the tax authority, or in the case of enforcement on request, by the judgment creditor authority.

If the cost of the enforcement act cannot be enforced in a tax procedure, it is borne by the tax authority – but, in the same context, there is a specific cost-sharing in the case of enforcement of a security measure on request. If the performing of the security measure was taken solely for the benefit of the requester, the requester bears the unrecovered cost, and if both tax and other public debts were enforced, then the tax authority and the requester bear the costs on a claim-by-claim basis.³⁶ But, if the requester fails to meet his payment obligation, the tax authority may issue a decision, which is considered as an enforcement order.

4. Practical aspects of security measures

As far as the administrative review of decisions made in tax proceedings, it can be noted, that the judicial practice concerning security measures is not insignificant. In view of the particular importance of case law, I consider it appropriate to present a few cases from practice which highlight the main legal disputes, legal arguments of the plaintiff and the cardinal points emphasised by the court.

The precedent-setting decision of the *Curia*, no. 35025/2021/7. focuses on a temporary security measure ordered in a tax audit procedure in relation with a tax deficiency and its contributions exceeding fifty million forints. In its order, the tax authority stated, that on the basis of the available information, the taxpayer is a member of a chain which was established for the purpose of tax evasion, and its managing director has also played a role in numerous companies over the past twenty years that later ceased to exist following liquidation or compulsory cancellation

³⁵ Decree of the Ministry of Finance no. 8/2018. (III. 19.) Section 2, Subsection 1.

³⁶ Ministerial statement of reasons on Act XLI of 2018 on the amendment of certain tax laws and other related laws, and on the special immigration tax – Statement on Section 208, 5.

proceedings and accumulated tax arrears. The taxpayer appealed against the order, but the tax authority of second instance upheld it and the taxpayer brought an administrative law action. In his action, the taxpayer challenged the existence of the risk of the future fulfilment of a claim, if the five-day limit set by the Tax Administration Act was held, and the fact that he would be a member of a chain, established for tax evasion. However, the administrative court declared the action unfounded and dismissed it.

Subsequently, the taxpayer (the plaintiff in the proceedings) filed an application for review, requesting the repeal of the final judgment and the order of the tax authority. In his justification, he stated that the order for temporary security measure is unlawful, because the tax authority of first instance did not prove appropriately that the future fulfilment of the claim is at risk. The Curia upheld the decision, pointing out, when ordering a temporary security measure, the legislator *does not require complete certainty or proof* of the risk to the later satisfaction of the claim, *but rather a lower degree of certainty, a “reasonable assumption”*.

The decision of the *Budapest Environs Regional Court no. 702149/2022/13.* was also based on similar facts. The tax authority conducting the audit ordered the securisation of a financial claim against the plaintiff as a temporary security measure for an amount of more than four hundred million forints. Within this framework, the tax authority blocked the bank account of the plaintiff company, seized two vehicles and requested the registration of the right of enforcement against the property owned by the plaintiff. The tax authority highlighted that the basis for the temporary security measure is that the taxpayer, who took the plaintiff position during the hearing, did not cooperate with the tax authority during the main proceedings, has not fulfilled his tax return obligation for more than two years, and that enforcement proceedings had previously been initiated against him. The plaintiff has applied against the order ordering a temporary security measure, which was dismissed by the tax authority, considering that the tax authority issued its decision of first instance and at the same time ordered a security measure. The tax authority of first instance justified its decision by stating that, due to the plaintiff taxpayer's previous behavior, it can be reasonably assumed that he will not fulfill his obligation to cooperate in the future and the payment obligation imposed on him.

In its claim, the plaintiff alleged that the order of the tax authority of first instance was extremely incomplete, as no credible circumstances were identified that would specifically justify the risk of the claim being fulfilled at a later date. The regional court stated in its decision that the tax authority *had clarified the facts in its order in a comprehensive manner* and had revealed the relevant factual elements, so the plaintiff's claim was unfounded.

The decision of the *Budapest Environs Regional Court no. 701832/2022/9.* aims to examine the legality of the bank account freeze implemented by the tax authority within the framework of a temporary security measure. The plaintiff filed an enforcement objection against the enforcement act taken, and then an appeal against the order rejecting the objection, but the tax authority of second instance upheld the first-instance order. The taxpayer, who took the plaintiff's position, filed an action in

which he stated that he found the order in question and the seizure taken on its basis to be unlawful, and therefore requested the court to annul it. However, the Regional Court found no evidence of an infringement and, given that *the plaintiff only alleged, but did not prove or explain*, the alleged infringement, it dismissed the action.

In my opinion, the precedent-setting decision of the *Curia*, no. 35448/2022/10., is of particular importance. The Tax and Customs Directorate of Hajdú-Bihar County of the National Tax and Customs Administration (hereinafter: NTCA) initiated enforcement proceedings against the debtor to recover the tax deficit and contributions of more than two hundred million forints. The debtor company initiated bankruptcy proceedings – in which the tax authority announced its creditor claim – and then concluded a bankruptcy agreement and undertook to pay part of the debt to the tax authority. Subsequently, the East Budapest Tax and Customs Directorate of the NTCA as the authority of first instance, also established a larger tax deficit at the plaintiff company within the framework of a tax audit procedure and ordered the securisation of a financial claim as a temporary security measure. According to its assessment, it established the risk of satisfying the claim at a later date, given that the taxpayer:

- engages in tax evasion practices;
- a significant part of the amount of his invoices subject to deduction was fictitious invoices;
- based on the available data, he participated in an invoicing chain designed to obtain an unlawful tax advantage;
- his total tax arrears are close to six hundred and seventy million forints;
- he failed to fulfill his obligations under the payment facilitation; and
- he undertook to reimburse a negligible amount of his debt to the tax authority according to the previously concluded bankruptcy agreement.

The debtor company appealed against the order, but to no avail. The debtor therefore brought an action before the court of first instance, alleging that the tax authority had violated the provisions on the ordering of a temporary security measure and the taxpayer's fundamental rights to property and to a fair trial. The plaintiff argued that the tax authority had not shown that it was likely that his future payment obligations would be at risk. He believed that the approval of the bankruptcy arrangement was not a new fact, in view of which the temporary security measure could be ordered, so the tax authority misused the rules of tax enforcement procedure with the temporary security measure. Since the court of first instance found the claim partially well-founded, the defendant tax authority annulled the order with effect extending to the first-instance order as well – for this reason, the tax authority applied to the *Curia* with a request for review.

In its counterclaim for review, the plaintiff argued that the tax authority had only indicated the bankruptcy arrangement as the circumstance giving rise to the temporary security measure. According to its argument, the court of first instance had correctly determined that the circumstances underlying the vulnerability of the claim had existed well before the defendant's decision, the content of the order

approving the bankruptcy arrangement did not contain anything new compared to the previously known facts, and therefore the measure was late.

The Curia ruled in favor of the tax authority in the defendant position – it found that the court of first instance had wrongly accepted the plaintiff's argument and had also incorrectly interpreted the consequences of approving the bankruptcy arrangement. In its decision, the Curia declared that *the receipt by the tax authority of the court order approving the bankruptcy arrangement and terminating the bankruptcy proceedings may constitute grounds for taking a temporary security measure*, if the tax authority, as a creditor, does not receive the tax debt previously established by its final decision, as this fact *constitutes essential information regarding the taxpayer's future ability to pay or willingness to pay*.

Overall, based on my examinations into case law, I believe that plaintiffs mainly dispute the circumstances of the ordering of the legal institution before the court, rather than the legality of specific enforcement actions – although this is by no means exclusive. In my opinion, in the majority of cases decided by the courts, the ordering of a temporary security measure is the subject of the examination, while there are only rare examples of security measures in the “classical” sense in judicial practice – just as there are few instances of a court decision that fully complies with the plaintiff's (debtor's) claim.

Conclusion

Concluding the results of my research, I believe that the legal institution of security and temporary security measures is an essential part of tax enforcement proceedings. Given that bad faith debtor behaviors can move over an extremely wide range and can thus easily thwart the successful conduct of subsequent satisfaction enforcement, both tax authority and budgetary interests may suffer. Thus, it is absolutely necessary for the tax authority to have an institution that can prevent attempts to make tax enforcement impossible.

Examining the development of the legal institution, I came to the conclusion that, as a result of the characteristic tax law reforms of recent years, a unified legal framework was created regarding security measures, instead of the previously fragmented provisions that relied heavily on background legislation. In my opinion, this new legislative approach greatly facilitates and simplifies both the field of legal application and the researches and analyses of theoretical jurists.

In connection with the study of the current legal framework, I believe that the regulation is comprehensive and modern, and the legal institution itself is useful and indispensable. Although the ordering of its two forms is subject to strict legal conditions, and its application is possible prior to the enforcement procedure, in an extraordinary, special situation requiring action, in my opinion, this is precisely its essential function: serving the efficiency of the enforcement of satisfaction, and ensuring the interests of the tax authority as the obligee.

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