

ENTREPRENEURS SHALL NO LONGER BE SUBJECT TO DOUBLE JEOPARDY DUE TO OMBUDSMAN'S INTERVENTION

Based on the application of the Ombudsman, the Constitutional Court decided that entrepreneurs shall no longer be subject to double jeopardy and shall no longer be fined, if they have not caused damage to the State.

Ombudsman has received applications pertaining to the fact that economic subjects, in case of overstating the losses in the income return filed with the tax authorities can be subjected to double jeopardy by both the Law on Income Tax and the Law on Taxes, as well as by the Code of Administrative Offenses.

There were cases when citizens were subjected to liability even when the overstatement of the calculated loss has not caused any reduction of tax liability, that is to say, no property damage has been caused to the public and the State. Besides that, when imposing a liability established by the Law on Income Tax, no circumstances, such as the circumstance of carrying out the act with fault were taken into consideration.

Ombudsman Karen Andreasyan has appealed the provision of the Law on Income Tax (Article 69, Paragraph 3, 1st sentence) in the Constitutional Court, according to which tax payers are charged with fines in case of overstating the loss in the income return filed with the Tax Authority. According to the Ombudsman, such regulations were restricting the right of a person to property and the right to hold entrepreneurial activity. These regulations also violate the principle of not being subjected to liability twice, for the same act.

The Constitutional Court provided its legal stance regarding the enforcement of the provision. The Court held that the contested provision is enforceable only in the case when the incorrect calculation of the loss causes unfair fulfillment of income tax obligations. Moreover, the Court noted that in the law enforcement practice this provision shall not be interpreted and enforced in a way so that:

- a) There is a double jeopardy for the same act.
- b) Fines are charged under the circumstance when the overstated loss, due to different reasons, has not caused the non fulfillment of tax obligations.

Besides that, it was mentioned in the Decision that the legal stances of the Constitutional Court shall be applied both in the Law on Income Tax, and the Law on Taxes.

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