

Tax system Disputes Perceived as a Psychic Suffering from Formal to Pragmatism Tax

KawitYav, Lucid¹, Amadi Mustapha², Mbale Kizekele Allen³

¹ University of Lubumbashi: Junior Lecturer, Master Student in Clinical Psychology and Criminology / Home Security

² Independent Researchers, Master Student in Economics and Environmental Criminology

³ University of Lubumbashi: Associate Professor, Doctor in Criminology

Abstract: *In the objective of elucidating a problem situation, we have sought to understand taxsystem disputes perceived as psychic suffering. So we say that this research is not conceived ex nihilo (from nothing). It is based on observation of practices that operate in the tax environment in the area of disputes resolution between economic operators and the Tax Administration in the Democratic Republic of Congo. The research field is the DisputesOffice and Claims Office of the General Directorate of Taxes of Katanga in Lubumbashi. Theoretical approaches, techniques of collecting and analyzing data help to understand what the actors call “psychic suffering” and the paths taken by the interviewees to deviate the bureaucratic formalism (respect of tax procedures) towards pragmatism in order to resolve theirtax problems. Although this second way does not follow the process provided by the tax legislation, in the manner of economists, participants behave rationally “to weigh the relative costs and benefits” in their favor. Some key words are found in the work and the place of their semantics is thus approached.*

Keywords: Tax disputes, Tax Notice, Tax Claim and Psychological Trauma

1. Introduction (or Problem Definition)

The topic of this research is a result of observations made in the review, by the Tax Administration, of contentious decisions challenged by certain economic operators. In accordance with the procedure in this matter, the Tax Administration cannot change the decision, once made and pronounced by the latter. It is completely unsuccessful for the benefit of other authorities and in this case for courts and tribunals. But, the practices of the participants show another reality that we are developing throughout this work. Two reading grids allowed us to “elucidate” and to “understand” certain practices of the concerned participants namely the theory of public choices and the theory inherent in psychic trauma.

First, in addressing the question related to the study of the functioning of tax bureaucracies, that of the Provincial Directorate of Taxes of Katanga in Lubumbashi, this matter of economic criminology touches criminology in its thrust of social control. By its paradigm of social control or social reaction, this study, on the one criminological hand, seeks to understand the dispute resolution mechanisms by tax officials in the matter of disputes between their administration and economic operators and vice versa; conflicts engendered by the different taxes.

Secondly, Congolese or Lubumbashi taxpayers do not pay tax with their own free will. Thus, by way of illustration, they consider taxes as “an element that creates stress”. And in case of disputes, they still perceive it as “psychic suffering”. Thus, taxpayers and agents of tax administration develop mechanisms of adaptation to this pain to survive with. It is for this reason that this study is also to be located in the first axis of clinical psychology. This axis of psychology deals, in a deep way with the psychic processes of an individual at the origin of normal behaviors.

To do this, a central question is the epistemological epicenters of this research, namely, how do disputes resulting from contentious decisions at the Provincial Tax Directorate in Lubumbashi end?

It is therefore a research that aims to understand how the disputes phase ends at the level of tax services. For Dilthey, cited by Leman- Langlois (2007: 41.42), the concept *understand*, (in German, *verstehen*) does not mean to accept, forgive or trivialize. It means in a scientific sense, being able to be accountable for the reasons that make an actor act in one way or another. Having located the field of research, its angles of study and the central question of research, it is up to us to specify the theoretical foundations approached and considered relevant in its approach.

2. Theoretical Foundations

The theoretical foundations are focused on the state of the question, the theoretical approaches and the constituency of the concepts. Three aspects are respectively addressed below.

2.1 State of the Question

Tax services in the DRC, as also tax itself, because of its missions as its relations with the economic operators, have always been investigated by tax sociologists and other social and scientific categories (journalists, columnists, etc.).

It is in this respect that Leroy (2010:22) shows that “tax sociologist has as mission, among other things, to study the policy of taxation and exemption of various socio-economic categories, the history of tax revolts, various categories of avoidance of tax (error, evasion, fraud, functioning of tax bureaucracies and controversies around the weight of taxes)”.

If the applicant contests the merits of the taxation imposed on him, we are talking about disputes of taxation. As in the French tax system (Grosclaude and Marchessou, 2011 :290): “This procedure offers the taxpayer the opportunity to obtain the discharge of charges that he considers unfounded. ... or the rule of law applied to his tax situation did not comply with the tax legislation”.

For him, Collet (2015 :144) insists on the fact that the originality of the challenges of decisions of the tax administration is first of a non-jurisdictional nature (prior complaint and conditioned at the level of tax services) and the deadline infinitely longer granted to the economic operator to challenge the tax decision (six months).

Lamarque and Négrinet Ayrault (2011:1295) specify that the disputes of the imposition or contentiousness of the base or the litigation of the establishment of the tax, contains a major procedural specificity which is due to the structure of tax authority. Indeed, it has two steps: the first-which is mandatory and takes place before the tax administration. It precedes the jurisdictional step of tax litigation, which is only of a possible nature.

According to Mbambu Munoki (2012: 320), the interest of the individual to apply to the tax administration is well established. This type of request allows him not only to know precisely the content of his file and to make his point of view heard, but also allows him to be reinstated in his rights and even to obtain legal measures “favor”(Tax rebates or penalties).

In conclusion, previous studies on litigation show that disputes between tax services and economic operators must find, in the first instance, solutions within state tax administrations. It is only in case of dissatisfaction of the economic operator with his request that a way is still offered to him to address the legal authorities. As the review of the contentious decisions issued by the Tax Administrations is rare and the economic operators, instead of addressing the specific legal instances (Courts and Tribunals), the previous literature is silent. And this is the originality of this research which is in addition, analyzed from the interdisciplinary angle (criminological and psychological).

2.2. Theoretical approaches

From the exploitation of the literature review and the interviews with the resource persons, it is the theory of public choices and the theory inherent to psychic trauma that have proved to be relevant in the referral of the topic of the present work.

2.2.1 Theory of Public Choices (JAMES MC GILL BUCHANAN and GORDON TULLOCK, 1996)

We make ours the affirmations of Aymar (1992: 87.88) according to which tax systems require to be studied in a theoretical framework where individual and collective tax behaviors are found both in the economic system and in the political-institutional system. This theoretical framework is that of public choice theory”.

Like any other theory, the theory of public choices has its date of creation, its foundation, its scientific status, its main axes and its explanatory assets. In the context of this research, its contribution is based precisely on one of the aspects relating to its main axes, namely the bureaucrat or civil servant of the State.

Indeed, the *public choice* model emphasizes that the personal interest that motivates human action in the private sector can be applied to decision-making in the public sector as well. When a person becomes a *politician* or *civil servant*, s/he is always motivated by his/her personal interest.

Indeed, the economic analysis of bureaucracy, according to the grid of the theory of public choices, shows that the bureaucrats seek their interest rather than that of the organization (for which they perform). Bureaucrats are often looking for attributes such as prestige, promotion, high income and other real or unknown needs by their employer (the Government).

2.2.2. Theory inherent to the psychic trauma of (Crocq , L., 2014)

We use the psychic trauma theory because it allows us to provide extenuating explanations for the traumatic event in which we refer to the breaking and entering of the defenses of the psyche. Then, we say that psychic trauma or trauma is a fact or a phenomenon of break-in of the psyche, and overflowing of its defenses by violent excitations related to the occurrence of an event that is aggressive or threatening to life or integrity (physical or psychological) psychic of an individual who is exposed as a victim, witness or actor. We have mobilized this theory by the fact that it helps us to understand how the management of tax disputes constitutes or can be considered as psychic suffering by the actors involved in our research.

2.3 Circumscription of key concepts

Our attention focused on four recurring concepts obtained both in the official texts relating to the disputes between Congolese tax officials and economic operators.

2.3.1. Tax disputes

This is the set of disputes born as a result of tax impositions at the charge of an economic operator or at the time of their recovery (collection) by the Administration of Taxes. Within the Tax Administration (in DR Congo) there exist specialized or technical services having as attributions the treatment of contentious issues: *The Disputes Office and Litigation Directorate*.

2.3.2. Notice of Taxation

Taxation is a notification of tax debt sent by agents of Tax Administration to an economic operator. This notification is established following the interpretation and application of legal and regulatory provisions, particularly with regard to tax declarations controls or accounting documents or any overlapping data relating to the activities of the economic operator.

2.3.3. Tax claim

This is the challenge note of a tax levy sent by the economic operator to the Tax Administration. This claim or protest may concern either the amount of the tax or the manner in which the tax is claimed by the tax authorities, as well as the tax penalties (based on tax due on the principal). The claim may also concern the refund of an overpayment that means in the case where the economic operator paid more tax than he owed or he paid the disputed tax before he gets a total or partial relief.

2.3.4. Psychic trauma

According to Lebigot (2004), a psychic trauma is an intrusion of psychic apparatus due to a traumatic event. The traumatic image is not accompanied by anguish but by fear, a complete disappearance of all psychic activities. When it becomes encrusted, it is denied and it reappears a little later to consciousness.

In the context of our work, tax disputes characterize a particular syndromic organization whose manifestations reflect in the aftermath the effects of the psychological trauma encountered in sudden situations of unexpected and violent confrontation that may lead to the closure of an institution or commercial establishment. It includes at once a part of reality that is related to the event, and a part of subjectivity in which the subject is engaged.

Thus we say that tax disputes at the Disputes Office is a potentially traumatic agent that is a circumstance, a situation, an event susceptible by its suddenness and violence to lead to a trauma.

3. Method

3.1. Context or procedure

Our study has as investigation field the Disputes Directorate of Tax Office in Lubumbashi.

3.1.1. Presentation of the Disputes Directorate

Located at the junction of Sendwe and Tabora Avenues in Lubumbashi Commune, the Disputes Directorate through its Claims Instructions Office, reviews deals with all litigation disputes between:

- Firstly, the economic operators at the Synthetic Tax Centers (tax services operating at the level of territorial communes and which manages the taxpayers owning annual turnover less than or equal to 80,000,000 Congolese Francs) and;
- Secondly, claims for which the amounts to be forgiven (or canceled) are less than 500,000,000 Congolese Francs.

The Disputes Directorate is headed by a Division Manager who offers the Provincial Tax Director any form of contentious decision. The latter being the signatory of these decisions.

3.2.2. Participants

The participants are made up, on the one hand, by agents of the tax administration, and on the other hand, by economic operators.

1. On the side of Tax Administration

In the Disputes Directorate, the responders are, in a hierarchical manner, the Disputes instructor, the head of the Claims Instruction Bureau, the head of Disputes Directorate. At the Tax Center of Lubumbashi, the chain of participants is made up of the litigation instructor, the head of the Office of Assistance and Litigation, and the head of the Center.

2. On the side of economic operators

The economic operators concerned by this study are owners of commercial companies that appealed against contentious decisions issued by Tax Administration on the one hand, and the agents of certain taxpayers, on the other hand.

3.3.3. Measures

In the face of legal and regulatory requirements in the examination of tax disputes, elucidating and understanding the practices of the participants force us to get closer to them. Because, as Luckerhoff and Guillemette point out (2012:1) the inductive path allows to arrive at an original understanding of the phenomenon under study". The practices of the actors are therefore to collect from themselves in a field of concrete actions. As Poupart argues (1997:175) "Social behaviors cannot be understood or explained outside the perspective of social actors". So, the semi-directive oral interviews were based on a maintenance schedule. Grid composed of some questions that relate to the conduct of economic operators and tax officials once the Tax Administration has already ruled on the appeal brought by the applicants. The descriptive methods are based on many concrete cases of the behavior of the participants involved in the treatment of tax disputes and the treatment of these disputes. The use of thematic analysis (Blanchet and Gotman, 2001) consisted in extracting from the whole body of field data, the main themes, the sub-themes stemming from the answers from the semi-structured interview grids and the professional experiences of the actors. These themes from the oral speech sequences of the participants formed the sections (commented) that relate to the results of this research.

4. Presentation of Data, Analyzes and Discussions of Results

Before commenting on the tax texts on which our object of study is based, it is necessary to give some brief clarifications on the contentious procedures.

4.1. Disputes procedures of taxation in the Democratic Republic of Congo

The provisions of Article 105 of Law No. 004/2003 of March 13, 2003, as amended and supplemented by Ordinance-Law No. 13/005 of February 23, 2013, provide that "the Tax Administration has the obligation to decide on the claim of an applicant within six (6) months following receipt of the claim" (General Directorate of Taxes, Tax Code, 2017: 375).

Thus, after examining an appellant's appeal, the decision of the tax administration explicitly takes one of the following four forms:

- A decision of total relief, that is to say that the applicant benefits from the total discharge of the amount put at his expense;
- A partial relief decision, that is to say the applicant benefits from the discharge of a part of the imposition charged to him but must pay the remaining part;
- A rejection decision, in such circumstances, the collection services of the Tax Administration are in the position of full right in order to collect the entire sum contested by the applicant and;
- A tax surcharge decision (the Litigation Instructor adds to the initial assessment the amounts deemed not taken into account by the Taxator).

As in the case of addressing to the Tax Administration, the economic operator contests all or part of the tax charges imposed on him, the decision of partial relief or the decision of rejection or the decision of tax surcharges may harm him.

In such circumstances, the petitioner may attack the Tax Office by appealing to the Administrative Court of Appeal (Article 108 of Law No. 004/2003 of 13 March 2003 as amended and supplemented by Ordinance-Law No. ° 13/005 of 23 February 2013, in General Directorate of Taxes, Tax Code, 2017: 378).

It is here that this work is located by the fact that instead of applying to the Administrative Court of Appeal (criminal jurisdiction), some economic operators return to the Tax Administration to seek the appropriate solution.

4.2. Emerging practices

During this research, some of the tax and non-tax practices of the participants showed cases of challenging tax disputes decisions by using certain techniques developed in the following pages.

4.2.1. Reopening of the administrative phase

The practice of reopening tax disputes in tax litigation is made by the Tax Directorate at the request of certain applicants and in other cases by tax officials. It is for this reason that Kabi, agent of DM Engineering addressed the head of the Disputes Directorate as follows :

"I have come with your rejection decision. My boss required me to finish this litigation here at the Disputes Directorate. What is the tax for if I have to go to the Court of Appeal to solve a tax problem? ..."

A tax authority who wrote a letter to the Disputes Directorate challenging a decision of rejection written by BUKIRIBUKIRI Company said the following

"... The Disputes Directorate has assigned 10 million Congolese Francs as summons for November's revenue. We are already on the 25th and we have only achieved 6 million. As this society disturbs us by proposing to pay us 3 million Congolese Francs, we will reach the minimum threshold of 90% that the Disputes Directorate requires us ..."

When his colleague reminds him that it would be contrary to the complaints procedure, his boss tells him
"... Between respecting the procedure and carrying out the assignments that the High Management has set for us, what is pragmatic or useful for the State?"

And to add,
"We are a financial regulator, bound to maximize revenue and not a justice ministry. Do you want me to be called incompetent?"

Indeed, the Tax Administration cannot reverse a decision already made and this is justified by the need to give the taxpayer a certain security and not to leave him under a decision always revocable. But, the arguments of these actors show that in front of the same service priorities (monthly assignments) the actors can act differently.

Thus, the analysis of speeches of tax officials shows that the setting by the General Directorate of Taxes in Kinshasa, the monthly revenue to be made by the provincial services, becomes a kind of "threat" in the head of tax officials. This threat is all the more important because, although unilaterally fixed, the non-realization of these tax revenues exposes the service manager to requests for explanations and / or disciplinary actions. By setting down the limits of the monthly income to its different services downstream, the tax Office maintains the psychosis or the trauma in the head of the animators of its services. These revenue assignments (or tax missions) scare the agents (not to be qualified as incompetent). From this fear the psychic trauma, it would lead them to discouragement but the participants seek the ways and means to safeguard their prestige or post (for fear of being qualified as incompetent). This fear orients their attitude in certain social interactions, of the win-win kind, towards tax officials. The behavior of tax officials is also motivated by the search for honor. Honor linked to the realization of tax revenues fixed by their hierarchy. The forcing of the agent Kabi can be understood by the fact raised by the theory of public choices which maintains that each action must serve a personal interest of multiple individuals (Mbale Kizekele 2017: 371). Let's look at the second kind of participant practices in resolving disputes after contentious decision-making.

4.2.2. Computer blockages of current account

Faced with other cases of contentious decisions and interrelations between participants, some solutions were found on the side of tax receivers. It is for this reason that the tax officer of the CDI, Mr. Pakapaka told us of the data processing in these terms

"The manager of DJAH WILAYE SARL Company told us that the company was unable to pay the 75 million he claimed after the rejection decision. What to do? We arranged with the colleagues of the IT Bureau to clear these debts ... Provided that the economic operator reassures us about our accounts ..."

Another head of office (collection), Mr. X corroborates with the speech of this tax officer in these terms:

“... We work on complicated files with our head of office pruning the current account ... We have to show that we work too ...”

When we asked some of these bailiffs about these practices, some people told us that they know that they are *neither ethical nor work ethical*, but they constitute a *tax tolerance*. As the theory of public choice and Mbale Kizekele shows (2017:166), most of the public administration agents of the State (including those of the DR Congo) are motivated by the search for their utility. Utility that can contain more complex components than simply altruism, the search for power, etc. and in such circumstances the search for honor in the practice of their profession.

A taxpayer operating a pharmaceutical depot on Moero Avenue in Lubumbashi Commune and to whom we had asked the question about a probable dispute that he would have opposed to the tax authorities, replied in the affirmative by giving us his reasoning on which he is leaning to finish with the agents of the Tax Office in these terms

“Tax agents as well as those from the court are just asking for money if they have a file. Without solution, I was obliged to appeal to the tax officer who had come to deposit their debt paper; and I did it in order for me to find a solution ...”

The autopsy of these few interviews shows that both on the side of tax officials and on the side of economic operators, fear settles and turns into psychic trauma (As developed by Crocq, L., 2007).

On the one hand, speeches such as “The agents of Taxes as well as those of the court are only asking for money ...” show that fear. And to overcome it or not to cumulate or add up sufferings, Some economic operators rely on (instead of going to the Court of Appeal) tax officials to resolve their tax dispute again.

On the other hand, this fear is reflected on the side of tax officials by speeches like “We have to show that we work too ...” As if to say that there is a hammer above the heads of tax officials so that they must achieve the goals set by their administration.

4.2.3. Liquidation of commercial companies or services

Faced with tax burdens caused by the collection services of the Tax Administration following a decision of rejection or partial tax relief, some economic operators are taking the plunge. Among some cases experienced, let us take the one of INKATA SARL Company (Service Providers in the field of road freight transport). Pursued for the sum of 150 million Congolese francs, its trustee said he no longer hold the mandate against the tax authorities.

“... Its legal counsel submitted the company's liquidation file to the Tribunal. Afterwards, they also notified me of this liquidation. I become useless towards you ...”

This escape, mounted from scratch, in the form of liquidation, a company can be assimilated to an

anachoretic. Indeed, Bouvier, Esclassan, and Lassale (2014: 656) show that by anachoretic, “it is the fact for a taxpayer who is facing tax burdens, not to rebel; but he withdraws to a place. That act makes him inaccessible. He stops working, abandons his properties and goes to take refuge in remote places”.

As the theory inherent in the psychic trauma of Crocq, before the psychological impotence to tackle the contentious decision, by overflowing its defenses, the economic operator resigns himself. Thus, some business leaders as a result of fear abandon commercial activities.

However, in the case of dissolution or liquidation of a company, the liquidator must inform the Tax Administration of this in case of dissolution or liquidation and, failing such notification, the liquidator is bound to pay the taxes and other duties due jointly and severally with the company (article 80 of the Law n° 004/2003 of March 13th, 2003 on the reforms of fiscal procedures, in Code of Taxes 2017:365). But the reality shows that companies disappear, the liquidators do not insure their tax liability on the profits made and which are due (Ikas Kasiam IK, 2001:34). But, the Tax Administration is not involved in this process only notices with surprise and ultimately this tax hemorrhage that can be named without being contradicted “an economic crime”.

4.2.4. Abandonment of commercial activities

As a result of fear, some taxpayers have towards state services, the abandonment of activities has been noticed as a way of “resolving” tax disputes arising from unsatisfactory disputes decisions. Mr. Pakavile, contentious instructor finds that it is normal to return to the contentious decision by the fact that taxpayers only yield by fear.

“When you tell them that they are not right in the work done by auditors, they make things longer. Often when we give them the rejection decision, they wake up from their sleep having forgotten that they had a problem with taxes and rush to beg us to return to the disputes.”

Actually, there are those who have fled by closing the activities. This is the example of the owner of Establishments AMBASSADEUR who flatly refused to address the Court of Appeal in these terms

“If you tax people, you do not give me reason; why can I still go to the Court of Appeal? You are all agents of the state. Even your colleagues of the Justice will blame me.”

Njoo pale minabiacha lwangu mushikuye kuninyanganya n yumba

(Reason why I abandon the activities before seeing my house taken away by you.)

Indeed, tax services complain about the disappearance of taxpayers. This disappearance significantly increases the number of so-called untraceable taxpayers and consequently the tax debt to the State. Most of these taxpayers often become so as a result of a tax debt (unpaid) or as a result of a tax collected but, they did not return it to the account of the

Treasury (case of the tax on the added value in Lubumbashi). This disappearance appears as modisoperandi (next to the formal procedures they know better). Behind this apparent resignation hides a tax debt.

As the Public Choice theory shows, in such circumstances, whether it is the “liquidation” of the trading company or the “abandonment” of commercial activities, economic operators act rationally and in their own interest to avoid tax obligations. Similarly, referring to Crocq's theory of psychic trauma, the “liquidation” of commercial companies and the “abandonment” of commercial activities appear to be of two forms of tax resignation adopted by some claimants as a result of their insolvency. Economic operators act rationally and in their own interest to avoid tax obligations. Both of these forms of tax avoidance create losses in tax revenue. These losses are comparable to economic crimes of a nature of escape and tax evasion.

5. Conclusion

Procedures in tax matters show that tax procedures are strictly interpreted. As if to say, they have an absolute character or imperative execution. In the eyes of tax lawyers, the practices of some taxpayers and Congolese tax officials in Lubumbashi show that the tax wheel can also turn otherwise. This study thus challenges us if it is necessary to solve the problems of the society only by legal mechanisms (formal), bringing aside practices of actors. These practices have a dual functional aspect.

This same economic operator for whom the tax legislator has provided mechanisms to “deliver” him from excess, exaggeration or tax terrorism avoids them by forcing even the hand of tax officials. This tax administration, which causes psychosis both to its agents and to its economic operators, can be solicited by the latter to find out solutions ... As an actor interconnected by certain realities, tax officials become like “doctors” of economic operators to whom they have inoculated pathogenic viruses that cause illnesses (tax debts) and for which they (tax agents) seek remedies (tax relief decisions). Although the results of this research may be ambiguous from the point of view of procedural tax practitioners, they are encouraging from the point of view of economic theory (microeconomics). Thus, this research is a kind of iceberg in this tax circle, (as Mankiw and Taylor (2013: 10) points out that the law also influences behavior by playing on incentives.) In the case of this study, this behavior relevant to the assignments of tax revenues that the Tax Administration is required to make. Finally, this criminological study carried out *in situ* reminds us of Leman-Langlois, (2007: 38) who emphasizes that “the empirical deals with what is, as ugly, ineffective, dangerous or undesirable as it may be judged personally”. This study does not escape this reality. Decisions made by actors may seem “cold and relentless”, but from the point of view of tax revenues, they make sense.

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