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THE INFLUENCE OF CONSTITUTIONAL COURT'S AND HIGHEST ADMINISTRATIVE COURT'S FINDINGS ON INTERPRETATION OF TAX INSTITUTES

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Annotation. *The aim of this article is to determine how can new interpretations of old institutes change the status of the taxpayers and tax administrators and to suggest what can the Ministry of Finance do to solve the problem – it can try setting a uniform interpretation of tax institutes. It deals with two findings of the Constitutional Court of the Czech Republic concerning two institutes described in Tax Administration Act: time-limits for tax assessment and tax inspection; and one finding of the Highest Administrative Court concerning local taxes. Court interpretation is only one of several possibilities of interpretation. Continental system of law differs from the Anglo-American system and we should search for information in the acts, and court practice should be used only alternatively.*

Keywords**:** *legal interpretation, tax law, tax administration, time-limits for tax assessment, tax inspection, local tax, court practice.*

Introduction

At the end of the year 2008 Constitutional Court of the Czech Republic adopted two decisions dealing with two institutes, described in the Tax Administration Act. Both decisions are very "innovative", and instead of respecting consistent court practice, change the usual practice of the tax administration bodies and contemporary interpretation of those institutes.

The aim of this article is to determine how can new interpretations of old institutes change the status of the taxpayers and tax administrators and to suggest what can the Ministry of Finance do to solve the problem – it can try setting a uniform interpretation of tax institutes.

The second part of this article analyzes the judgment of the Highest Administrative Court dealing with local charges. Although the definition and the purpose of a local charge was not the issue of the case, the Highest Administrative Court tried to define it and the result can cause many problems in future practice of the municipalities.

First of all we must underline that legal norms dealing with public law, including tax law, must be clear enough so that there is only one way of interpretation. If there are more possible interpretations of a public law norm, the one that does not infringe upon somebody's rights (or infringe upon somebody's rights the least) must be used. This principle *in dubio pro libertate* is enshrined in the constitutional order[1] (Constitution of the Czech Republic and Declaration of Basic Rights and Freedoms) and it is the structural principal of the liberal and democratic state preferring the freedom of the individual and his rights to state.[2]

Personally I do not agree with the contemporary situation in the Czech Republic in the area of legal interpretation, especially as regards tax law. Court interpretation is only one of several possibilities of interpretation, but many people, state offices, and courts believe that court interpretation is the fact, which can not be changed (or hardly can be changed). But we are not in the Anglo-American system of law, our legal culture is absolutely different, and we must search for information in the acts, while the court practice should be used only alternatively.

On the other hand, the practice of the Constitutional Court (and as well the Highest Administrative Court) is very important, because the Constitutional Court is the highest court in the Czech Republic, its findings are definitive, and there is no right of appeal. However, the interpretation of the Constitutional Court and the Highest Administrative Court is not a law, it is not binding (nevertheless, there is a risk that next finding will be issued using the same interpretation) and it can be changed by another finding of these Courts.

1 Filip, J. *Ústavní právo České republiky* [Constitutional Law of the Czech Republic]. Brno: Masaryk University, 2003.

2 Finding of the Constitutional Court I. US 643/06.

1. Time-Limits for Tax Assessment

Let us have a look at the first problematic finding of the Constitutional Court of the Czech Republic[3]. It deals with the time-limits for tax assessment. Section 47/1 of the Tax Administration Act[4] provides: "*Unless otherwise provided for by this or another Act, a tax may not be assessed or additionally assessed, and an entitlement to a tax deduction may not be recognized, after the lapse of three years from the end of the taxable period during which the duty (obligation) to file a tax return or statement arose, or during which tax liability arose without a concurrent duty to file a tax return or statement.*" The text is not very clear, but it is in force for more than sixteen years and I have never noticed any doubts about the meaning and the sense of the text. Surely the time-limits for tax assessment are foreclosure periods. The purpose of tax assessment limitations was to encourage tax institutions to exercise their rights and obligations timely and, in terms of legal certainty of tax subjects, to establish a situation where after the expiry of certain time-limit, their obligations expire too.[5]

The easiest way to interpret a legal text is to provide an example: lets say a taxpayer had income from a flat sale in 1998 (on 20 January). Tax return for this taxable period must be filed by the end of March 1999. After this date, a tax office can start its activities – it can control, ask for additional evidence, etc. The time-limit starts running: until the end of taxable period, during which the duty to file a tax return or statement arose (31 December 1999 – "plus") and additional three years until the end of the third year counting from the end of the taxable period, during which the duty to file a tax return or statement arose (31 December 2002). It means that the time-limit for tax assessment is "three years plus", not only "three years". This is the interpretation of the Ministry of Finance, the whole tax administration, administrative courts, including the Highest Administrative Court and all the taxpayers, who pay their taxes from 1993 to this date.

However, the Constitutional Court stated that this time-limit is to be interpreted extensively, because the legal term "*the end of the taxable period during which the duty (obligation) to file a tax return or statement arose*" does not mean 31 December 1998 (what would be rational for the Constitutional Court), but 31 December 1999. According to the finding of the Constitutional Court, the instrument by which tax offices extend the time-limit, is the limit for the tax return filling (31 March 1999). Thus, the uncertainty of a taxpayer is longer. In fact, the Constitutional Court shortened the time-limit for tax assessment to the period of "three plus zero", calculated from the end of the taxable period. This interpretation is *contra legem*.

Ironically, in the same finding the Constitutional Court says that "*public authorities are obliged to contribute to the interpretation and application of the law to legal certainty of the people and thus to meet their legitimate expectations*". I want to add that all legitimate expectations were disrupted by the finding of the Constitutional Court.

3 Finding of the Constitutional Court I. US 1611/07.

4 Tax Administration Act, as amended. Act no. 337/1992 Sb.

5 Finding of the Constitutional Court II. US 493/05.

The Ministry of Finance had two possibilities with respect to the finding of the Constitutional Court:

1. To do nothing. As we said above, in continental legal culture, the court practice should be used only alternatively, even if the findings (especially by the Constitutional Court) can influence one's interpretation of the act.
2. Take a stand on the finding and provide the tax administrators with inbformation.

The Ministry of Finance chose the second possibility. Thei approach is to follow the principle "three plus zero" in cases that have not yet been finished or have not even been initiated, although it is not clear why they apply this principle because it is absolutely *contra legem*. If cases have been already lawfully finished, the principle "three plus" would still be adhered to.

In my opinion, the approach of the Ministry is not very fair to the taxpayers. There are two different principles applied, sometimes even for one taxable period and there was no amendment of the legal text. It would have be better not to give any instructions to tax administrators and keep applying the principle "three years plus". Implementation of the findings of the courts (including findings of the Constitutional Court) could have be different and legal interpretation of time-limits of tax assessment could still be "correct" and unchanged.

2. Tax Inspection

The second problematic finding of the Constitutional Court deals with tax inspection, respectively inasmuch arguments on tax inspection are concerned. Section 16/1 of the Tax Administration Act[6] provides: "*Tax inspection is carried out by an official of tax administrator in order to establish or examine the tax base or other circumstances decisive for the correct determination of the tax. ... The tax inspection is organized to the extent necessary for achieving the purpose laid down in this Act.*" Although the purpose of the Tax Administration Act is not expressed explicitly, we can say that the purpose is to ascertain, assess and discharge the tax liability properly and completely.

In the Constitutional Court's finding[7] we can read that "*from the perspective of the constitutional law, tax inspection means limiting personal sphere of qualified individuals. Such restrictions (in addition that they must be provided for by the law) must simultaneously correspond to the target and be in relation to this objective. In terms of a legal state is therefore necessary to insist on the requirement that such restriction or distortion of an individual's autonomous sphere should be clear and the reason legitimatizing the use of such restrictions should be known in advance and be material. In other words, the reason of tax inspection can not be formulated in such a general way as an interest on tax collection, which is the purpose of the Tax Administration Act, but there must be a suspicion supported by specific facts that a particular tax entity has not fulfilled their tax liability, or fulfilled it, but not fully. In this context, the Constitutional*

6 Tax Administration Act, as amended. Act no. 337/1992 Sb.

7 Finding of the Constitutional Court I. US 1835/07.

Court considers it appropriate to indicate the analogy with criminal proceedings in which restrictions of an individual and implementation of investigative powers of the state cannot be sufficiently based on thee fact that the aim of state activities is to detect and prosecute crime. The individual can be restricted only if there are specific facts to suspect that a particular individual is guilty of infringement. The Constitutional Court is aware of several important differences between tax administration and criminal proceedings, but from the constitutional perspective required public authorities to respect freedom of the individual sphere, the requirements for the implementation of the government investigative powers are essentially identical. This is because every individual has his freedoms and limitation of freedoms must be measurable so as to avoid disproportional intervention." […] "*It would be the implementation of wickedness, if the tax administrator could carry out tax inspection at any time and for any reason the tax bodies, respectively in cases where it deems appropriate and it were "on trial*"."

The Constitutional Court stated that "the lack of a priori reasons to initiate tax inspection and the absence of communication complainant" are unconstitutional. According to the majority opinion[8] contained in the preamble to the findings, tax inspection may be undertaken only if the tax administrator suspects reducing the tax liability (which is also required to disclose controlled entity). If there is no such suspicion, or if the tax administrator does not express these suspicions at the start of the tax inspection, it is a formal act, and therefore unconstitutional.

In my opinion, the Constitutional Court's conclusion is not acceptable due to the lack of distinction between tax inspections on the one hand and accusatory proceedings on the other hand. The Constitutional Court incorrectly applies requirements of accusatory proceedings to tax inspection. Tax inspection and accusatory proceedings have different purposes, which are reflected in assumptions for their use. Tax inspection may be a random check whether the tax was set correctly. In a situation where doubts arise, the tax administrator does not use tax inspection, but accusatory proceedings. In case of accusatory proceedings the law requires that there are doubts as characterized in Section 43 of the Tax Administration Act (by the finding that there was "suspicion"). These doubts must be made known to the tax subject – so specifically and certainly so that the tax subject has a possibility for clear answer. In contrast, for the purposes of tax inspection there is no need of any doubts about correct determination of taxes. The aim is "only" to identify or check whether the tax has been set correctly.

The conclusion does not mean that tax inspection allows the tax administrators to apply state power against the tax subjects wilfully. The principle of adequacy[9] was several times mentioned in the practice of the Supreme Administrative Court. It is essential that the tax administrator chooses the least burdensome means, which in case of tax inspection is its implementation inasmuch it is strictly necessarily.

I can not agree with the aim to link tax inspection to criminal proceedings and the related reflection on the "presumption of guilt". The use of public authority in criminal

8 2:1. Many of the arguments of the alternative point of view by dr. Janků are the same as the ones mentioned in this article.

9 Tax Administration Act, as amended, Act no. 337/1992 Sb., Section 2/2.

proceedings and in tax inspection is substantially different in nature and content, the subject is entirely different, and the positions of the authorities who apply public authority and of those to whom the public authority is directed are very different. The tax administrator that accedes to the tax audit, in any case does not anticipate that the controlled tax subject reduced its tax liability, just as for example Czech Trade Inspectorate does not check restaurants, only when there is a reasonable suspicion of violations of health standards, or the Police of the Czech Republic does not stop only those participants on traffic operations, who are suspected of violating the road traffic regulations, etc. The tax administrator only examines whether the controlled subject determined the payable tax correctly. The possibility of tax inspection is to be understood in the context of an overall concept of tax proceedings, which is based on the fact that the tax subject calculates the tax himself (so called "auto-application"[10]). Therefore, the tax administrator must also be authorized to verify that the tax subject calculated his tax correctly. It should be noted that it is practically unrealistic to examine each tax return immediately. From this point of view, we can certainly infer that random tax inspection is in the public interest and it contributes to proper tax levy, and thus to the fulfilment of state budget revenue.

I appreciate the point of view of the Ministry of Finance in this matter. The Ministry decided to "ignore" this judgment and tax administrators were appealed to continue random tax inspections. The reason is not only the lack of understanding of the institute called "tax inspection", but also the dissenting opinion by one of the judges. This alternative point of view hopefully means that in the future this judgment will be topped by a new and cleverer judgment by the Constitutional Court of the Czech Republic.

3. Local Charge v. Local Tax

The legal regulation of the economic autonomy of local self-government is mentioned in the constitutional order of the Czech Republic. According to Article 8 of the Constitution of the Czech Republic, the local self-government is guaranteed. The right of local communities to self-government (provided that economic independence is the essential requirement for fair local government) also includes authorization to expect that legislators will promote economic autonomy. Economic independence is clearly reflected in the provisions of Article 101, paragraph 3 of the Constitution, which provides that local self-government may have their own property and operate under their own budgets units as public corporations. Economic autonomy of local self-governments is also guaranteed by the European legislation – the European Charter of Local Self-Government.[11] This document, in its Article 9, entitled "Financial Resources of Local Authorities" represents some principles of economic independence:

10 Mrkývka, P.; Radvan, M. Berní právo – obecná ustanovení. [Tax Law – General Provisions]. In: Radvan, M. et al. *Finanční právo a finanční správa – Berní právo.* [Financial Law and Financial Management – *Tax Law*].. Brno: Masaryk University and Doplněk, 2008, p. 60-61.

11 European Charter of Local Self-Government is an international treaty adopted by the Council of Europe on 15 October 1985 in Strasbourg. Czech Republic signed it on 28 May 1998 and it was published in the Collection of Laws under number 181/1999. For the Czech Republic it came into force on 1 September 1999.

1. "*Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.*" In the Czech Republic the Constitution,[12] as well as small budgetary rules[13] or local establishment[14] include the right to own financial resources.

2. "*Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*" It should be noted that this rule should be observed constantly, regardless of changes in legislation. Perhaps that is why there are frequent tension between the views of the state and local authorities when the other side points to the increase in power without adequate financial compensation.

3. "*Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.*" In this context, it is necessary to think about the actual term "local tax". Marková[15] recognizes local tax, if it is considered as the instrument of the adaptation of the revenue base of local self-government, the objectives and priorities of local people. She defines the criteria which local taxes should have and as an essential criterion she indicates possessive criterion (tax revenue is the income of the municipality) and the criterion of rate (the amount of tax rates is set by the municipality). The additional criteria are criterion of revenue (tax is administered by the municipality; that is why we should better talk about the administration criterion) and the criterion of decision-making (the municipality defines the tax base). However, none of the local taxes levied in the European Union meet all of the criteria, and therefore, the question arises how many criteria must be met in order to consider a levy as the local tax. If we opted only to the first criterion, all shared taxes would be local taxes. If the second criterion is applied, local taxes are for example all vested taxes, with some, though limited fiscal powers (for example, local taxes, and partly real estate tax). Using of the third criterion, local taxes are all local taxes, but not the real estate tax. The same also applies to the fourth criterion.

Babčák[16] uses five aspects crucial for the designation of local taxes:

- the municipality must be authorized to decide on establishment or cancellation of local taxes,
- the municipality must be authorized to decide on certain structural elements of the tax (taxpayer, subject, tax base, tax rate, date of the tax return, payment conditions),

12 The Constitution of the Czech Republic, Art. 101, paragraph 3.

13 Budgetary rules on local budgets, as amended. Section 7 of the Act No. 250/2000 Coll.

14 Act on Municipalities, as amended, Section 2 of the Act No. 128/2000 Coll.

15 Marková, H. Vlastní nebo sdílené daně obcím? [Owned or shared taxes for municipalities?] in: Kandalec, P., Kyncl. L., Radvan, M., Sehnálek, D., Svobodová, K., Šramková, D., Valdhans, J., Žatecká, E. (ed.). Days of public law: sborník příspěvků z mezinárodní konference. [Days of public law: Proceedings from international symposium]. (CD-ROM). Brno: Masaryk university, 2007, p. 2.

16 Babčák, V. Miestne dane a miestne poplatky – stav a perspektiva. [Local taxes and local taxes – the status and outlook]. in: Radvan, M., Mrkývka, P. (ed.). *Financování územní samosprávy ve sjednocující se Evropě – Sborník 1. Mezinárodního právnického symposia.* [Financing of local self-government in unifying Europe – Proceedings from 1st International legal symposium]. (CD-ROM). Brno: Masarykova univerzita, 2005, p. 1–6.

- the municipality must be able to significantly influence the revenue of local taxes (the power to increase or decrease basic rates, exemptions, reliefs),
- the revenue must be the original income of the budget of the municipality, without any possibility to use the revenue for needs of another budgets,
- local tax must come from local sources.

However, local taxes, as defined by Babčák, do not seem to exist. For example, Slovak local charge on municipal waste, known as the local tax, is obligatory by law.

Králik and Jakubovič[17] define local taxes as mandatory fiscal payments of individuals and legal entities, a source of the local budget. They are collected from the local population or legal entities with the point of the seat, place, etc. in the given municipality. In addition to the functions of supplementary sources of the local budget, they may be the main source of the revenue.

Peková[18] defines some of the characteristics of taxes for local budgets, for example, a stable tax base and the resulting long-term stable revenue, low risk of tax evasion and easily detectable tax liability, the inability to convert the revenue into another municipality or region, and to ensure certain tax revenue and administrative modesty.

Mrkývka[19] gives three possible models in the construction of local taxes: 1) local taxes are all taxes with revenue to the local budgets; 2) local taxes are introduced and administered by local self-government units; 3) local self-government unit is required to collect all local taxes, and municipalities have the option in accordance with local conditions to adjust the taxation of corrective elements (exemptions, reductions, increasing taxes). The first model is referred to as the least rigid, respectively as the most free. According to foregoing, we could consider the Czech real estate tax as the local tax. The second model of local taxes defines the Czech local charges and the third characteristic describes municipal taxes proposed in the Czech Republic in 2000.

In our view, the question of defining local taxes is purely theoretical and not very practical. There is no doubt that a municipality must be able to assess some local taxes, however, this right will be limited by law with regard to Article 11, paragraph 5 of The Charter of Fundamental Rights and Freedoms. And in this case, it is more a political question on whether and in what form and to what extent the municipalities will receive options to assess and / or collect local taxes. If we read the definitions above and on their basis, we needed to create our own definition, the local tax would be a financial levy, determined to municipal budget that can be influenced (talking about tax base, tax rates or one of the correction elements) by the municipality. It is not crucial, whether the taxpayer obtains from the municipality any consideration or if it is a regular or a single levy – local taxes include the tax in the strict sense, thus – the charges. There is no difference between a tax and a charge, including their functions: fiscal, regulating and stimulating.

17 Králik, J.; Jakubovič, D. *Finančné právo.* [Financial law]. Bratislava: Veda, 2004. p. 50.

18 Peková, J. *Hospodaření a finance územní samosprávy.* [Management and finance of local self-government]. Praha: Management Press, 2004, p. 264.

19 Mrkývka, P. *Některé úvahy o materiálním základu veřejné správy.* [Some reflections on the material base of public administration]. Časopis pro právní vědu a praxi 2/2003, p. 156.

4. "*The financial systems, on which resources available to local authorities are based, shall be of sufficiently diversified and buoyant nature to enable them to keep pace, as far as practically possible, with the real evolution of the operating cost.*" It should be noted that the diversity of potential incomes of the municipalities is maintained. The list of income opportunities can be found in small budgetary rules, other sources of funding may be provided through the National Fund, or various forms of irrecoverable incomes (grants, loans, and the issue of municipal bonds). However, we can hardly speak about flexibility in the Czech Republic.

5. "*The protection of financially weaker local authorities calls for an institution of financial equalisation procedures or equivalent measures designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.*" The problem is the differentiation of territorial units of the richer and poorer, which is the case of the many causes of whether affected (support for the construction leading to higher real estate tax revenue, their own economic activity), or not affected (setting the allocation of proceeds of centrally collected taxes) by the municipalities. Marková[20] refers to the balancing of conflicting principles of deserving and of solidarity when the latter is aimed at balancing the gap between poor and rich regions.

6. "*Local authorities shall be consulted, in an appropriate manner, on the way in which re-distributed resources are to be allocated to them.*" The debate is undoubtedly kept, and recently more and more views and needs of municipalities are taken into account.

7. "*As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.*" This rule, of course, does not forbid subsidies in individual cases, but tries to minimize them in proportion to non-specific ones.

8. "*For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*" Grants, loans and bond issue are one of the possible sources of local self-government incomes. To all these possibilities, however, municipalities have approached with caution, because in all property relations the municipality acts in its own name, on its account, and above with its responsibility.

The issue of economic autonomy of local self-government units in the Czech Republic is taken very seriously, as demonstrated by the fact that the Czech Republic while ra-

20 Marková, H. Finanční zdroje místních společenství a Evropská charta místní samosprávy v podmínkách ČR [Financial resources of local communities and the European Charter of Local Self-Government in terms of the Czech Republic]. In: Radvan, M.; Mrkývka, P. (ed.). *Financování územní samosprávy ve sjednocující se Evropě – Sborník 1. Mezinárodního právnického symposia.* [Financing of local self-government in unifying Europe – Proceedings from 1st International legal symposium]. (CD-ROM). Brno: Masarykova univerzita, 2005, p. 5.

tifying the European Charter of Local Self-Government notified that the Czech Republic does not consider itself bound by provisions i. a. Article 9, paragraphs 3, 5 and 6.

For example Peková[21] draws attention to the fact that for certain quality of the territorial self-government, it is necessary not only to manage its finances in certain basic principles (such as the management of the annual budget, a sufficient degree of local or regional autonomy, the principle of solidarity between richer and poorer communities, the transparency of the financial system and the associated possibility of public control, stability of the system and its rules, administrative efficiency and modesty). In this context, it should be also noted that both the current government proposals for the "Law on Local Taxes" on the basis that the role of local taxes should not be negligible, local taxes should create sufficient potential of local taxes for public services and extend the possibilities of municipalities to effectively regulate local development, were returned, respectively rejected by the Chamber of Deputies.

As it appears, municipalities and mainly regions are in drawing up their budgets dependent on the allocation of revenue (income tax, VAT), and their own options are very limited. Finally, even though one hundred percent of the real estate tax goes to municipal budgets, it is not administered by municipalities. The disposition of municipalities with taxes and the amount is modest, too. Pařízková[22] notes that until the municipalities will not be able to at least partially influence the amount of tax revenue, there will still be a threat for their autonomous actions.

Example of further development in this area could be Slovakia. Local charges were simply renamed to local taxes and real estate tax was added to the group of local taxes. This tax has become one of the municipal incomes, and local authorities have the possibility to decide themselves about this tax. From this perspective, the real estate tax is one of the local taxes together with tax on dogs, tax on use of public spaces, tax on accommodation, tax on vending machines, tax on non-winning gaming devices, tax on entry and stay of motor vehicles in the historic part of town and tax on nuclear facilities. The fact that taxes on real estate are in the group of local taxes means primarily the fulfilment of the principles of economic autonomy; they are entitled not only to decide on the amount of the tax itself but also on the introduction of the tax. Municipalities are also exclusive administrators of the real estate tax.

The question of the economic autonomy of local self-government units is very much discussed in academic circles and other symposia. Not only the "Union of Towns and Municipalities of the Czech Republic", as well as other professionals and theorists often point out that municipalities and regions in the Czech Republic do not have sufficient privileges to the introduction and selection of local taxes, which ultimately leads to either lack of infrastructure equipment and the low level of services provided by mu-

21 See Peková, J. *Hospodaření a finance územní samosprávy*. [Management and finance of local self-government]. Praha: Management Press, 2004, p. 197–200.

22 See Pařízková, I. *Finance územních samosprávných celků,* [Finance of local self-government units]. Brno: Masarykovu univerzita, 1998. P. 116. See Pauličková, A. *Zákonná úprava daňových príjmov rozpočtu obce v Slovenskej republike.* [Legal regulation of tax incomes of municipal budgets in Slovakia]. Právník 8/2003, p. 801–802.

nicipalities, or the total debt of the municipality, respectively the region. But as we can see, not only in Slovakia, but in all other European countries and in the articles of the theorists local charges and local taxes are very important not only from the perspective of stimulating and regulating function, but especially because of their fiscal importance. But what is the opinion the Czech Highest Administrative Court? This Court in its judgement notes, that the charges can be broadly defined as one of the public revenues. Public bodies impose taxes on individuals in such a way that they at least partially cover costs associated with the activities, caused by the activities of these individuals. Fees and taxes are authoritative contribution subordinate economy, "*but the tax only with respect to the carrying capacity, charges with a view to individual benefit*". Therefore, "*the top aim of a charge is never yield*".[23] Bakeš notes that "*while tax payments are usually not equivalent, without direct consideration, they are non-recurring, collected in connection with any consideration of the State or its institutions, regions, municipalities, etc.*".[24] I would like to underline the word "usually" because e.g. a dog charge is a regular payment without any consideration, which means it is a tax rathern then a charge. But as I mentioned above, it is not so important how we call the public duty. The Highest Administrative Court continues: "*Arguments that dog charging corresponds to the legitimate objective of raising funds to meet the public budget needs and exemptions constitute only exceptions, are completely inadequate considering the essence of charges. Their purpose is not the fulfilment of the public budget, but establishment of some reciprocity between the charge and the actions of public authorities (principle of equivalence*). *The purpose of the dog charge is not primarily to strengthen the municipal budget because it can be done by property tax and not a charge.* (In this regard I must only agree, considering the definition of the tax.) *The dog charge has no other purpose than to reduce or even, in some cases, offset the negative consequences associated with breeding dogs. Therefore, it is not a coincidence that the amount of the charge is different when dogs are bred in flats and dwelling houses. The argument of the complainant through the legitimate objective of the charge due to the fulfilment of the public budget is therefore refuted.*"

I strictly do not agree with the Highest Administrative Court's finding and I must protest: local charges, including a dog charge, are local taxes and must be local taxes, so that the economic autonomy of municipalities not only in the Czech Republic could work.

Conclusions

Legal theorists mention several possibilities of legal interpretation:[25]

1. generally binding legal (authentic) interpretation; this type does not exist in the Czech Republic,

23 Engliš, K. *Finanční věda,* [Financial Management]. Brno: Fr. Borový v Brně, 1929, p. 74 et seq. However, note that this book is 80 years old.

24 Bakeš, M. et al. *Finanční právo.* [Financial Law]. Praha: C. H. Beck, 2003, p. 87.

25 See for example Knapp, V. *Teorie práva.* [Legal Theory]. Praha: C.H.Beck, 1995, p. 169–170.

2. Court interpretation for the unification of the practice of the courts; this type is very useful and in the Czech Republic it is the task of the Highest Court, the Highest Administrative Court and partially of the Constitutional Court;
3. court interpretation legally binding, but only *inter partes*, not *erga omnes*;
4. doctrinal interpretation, which is not binding, but has an influence on interpretation practice;
5. constant interpretation leading to constant practice of the courts.

As I mentioned above, I do not agree with the contemporary situation in the Czech Republic in the area of legal interpretation. As we can see, court interpretation is only one of several possibilities of interpretation. Our continental system of law is different from the Anglo-American system and we should search for information in the acts and practice of the courts should be used only alternatively. I believe that all lawyers in the Czech Republic including judges are aware of this and the few of wrong judgments will not be respected in practice and will be soon forgotten or preferably topped by different judgments which are a part of "reasonable" constant practice of the courts.

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KONSTITUCINIO TEISMO IR AUKŠČIAUSIOJO ADMINISTRACINIO TEISMO SPRENDIMŲ ĮTAKA MOKESČIŲ INSTITUTŲ INTERPRETAVIMUI

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Santrauka. *Šiuo straipsniu siekiama nustatyti, kaip naujas senų institutų interpretavimas gali pakeisti mokesčių mokėtojų ir mokesčių administratorių statusą ir pateikti pasiūlymus, ką Finansų ministerija gali padaryti, kad problema būtų išspręsta – pabandyti nustatyti vienodą mokesčių institutų interpretavimą. 2008 m. pabaigoje Čekijos Respublikos Konstitucinis Teismas priėmė du sprendimus, susijusius su dviem institutais, apibrėžtais Mokesčių administravimo akte. Abu sprendimai – labai „naujoviški“. Juose nesilaikoma nusistovėjusios teismų praktikos ir keičiama įprasta mokesčių administravimo institucijų praktika bei šių institutų interpretavimas.*

Čekijos Respublikos Konstitucinio Teismo pirmasis problematinis sprendimas yra susijęs su mokestinio įvertinimo terminais. Šis terminas yra „Trys metai plius“. Konkretus

pavyzdys pateikiamas straipsnyje. Konstitucinis Teismas pareiškė, kad šis laiko terminas interpretuotinas plečiamai ir savo sprendime sutrumpino šį laikotarpį iki „Trys plius nulis". Toks interpretavimas yra contra legem. Atsižvelgdama į šį sprendimą, Čekijos Respublikos finansų ministerija planuoja taikyti principą „Trys plius nulis" tais atvejais, kai vertinimas dar nesibaigė ar nebuvo pradėtas. Jei vertinimas jau teisėtai baigtas, laikomasi „Trys metai plius" principo. Tai nėra labai sąžininga mokesčių mokėtojų atžvilgiu, kadangi taikomi du skirtingi principai, kartais net vieno mokestinio laikotarpio atžvilgiu, ir teisės aktas nebuvo pakeistas.

Antrasis Konstitucinio Teismo probleminis sprendimas yra susijęs su mokesčių patikrinimo priežastimis. Konstitucinis Teismas pareiškė, kad „a priori priežasčių trūkumas, norint inicijuoti mokesčių patikrinimą ir pranešimo skundo pateikėjui nepateikimas" prieštarauja Konstitucijai. Autoriaus nuomone, Konstitucinio Teismo išvada nepriimtina, nes nebelieka skirtumo tarp mokesčių įvertinimo ir kaltinamojo proceso. Autorius negali sutikti su mokesčių įvertinimo ir kaltinamojo proceso sulyginimo tikslu ir susijusia pastaba apie „kaltės preziumavimą". Autorius vertina požiūrį Finansų ministerijos, nusprendusios „ignoruoti" šį sprendimą, ir mokesčių administratoriai toliau gali vertinti mokesčius atsitiktine tvarka.

Antroje straipsnio dalyje apibrėžiama vietos rinkliavų ir mokesčių sąvoka bei jų funkcijos atsižvelgiant į Aukščiausiojo administracinio teismo sprendimą.

Teismų interpretavimas – tik viena iš interpretavimo galimybių. Mūsų kontinentinės teisės sistema skiriasi nuo anglosaksų sistemos ir mes turėtume ieškoti informacijos teisės aktuose, tuo tarpu teismų praktika turėtų būti remiamasi tik alternatyviai. Reikia tikėtis, kad praktikoje nebus laikomasi keleto neteisingų sprendimų, jog jie bus greitai pamiršti ar, dar geriau, pakeisti kitais sprendimais, kurie būtų dalis „pagrįstos" nusistovėjusios teismų praktikos dalis.

Reikšminiai žodžiai: *teisinis aiškinimas, mokesčių teisė, mokesčių administravimas, mokestinio įvertinimo terminai, mokesčių patikra, vietos mokestis, teismų praktika.*

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