

Abstract

Abuse of Public Law in Judicial Decisions

This thesis discusses the relevance and meaning of the principle of "abuse of law" in Czech public law, and consists of six chapters.

A brief opening chapter sets out the aim of the thesis, namely to provide a theoretical analysis of the concept of abuse of law, using conclusions that are established in Czech jurisprudence.

The second chapter deals with the substantial rulings of the Czech Supreme Court viewing the abuse of law concept in terms of civil law, because the abuse of law principle came to light firstly in Czech civil law. The prospective enactment of the abuse of law principle in the Czech Civil Code Bill is also mentioned.

The third chapter is crucial to this thesis, and reflects the approach of the Czech Supreme Administrative Court (the SAC) to the doctrine of abuse of law. The first Czech ruling in which the concept of the abuse of tax law occurred was *Divers*, no. 1 Afs 107/2004 – 48. In *Divers*, the SAC construed a very in-depth argument supporting the applicability of the abuse of law principle to the field of taxation (which is part of public law). Then the process during which the SAC developed the abuse of law concept in its rulings, including the first application of the *Halifax* two-stage abuse test is described. The parallel concepts of dissimulation, tax fraud and tax law circumvention are also mentioned.

The fourth chapter concentrates on the evolution of the abuse of law principle in EC law. During the first 20 – 25 years, the European Court of Justice was reluctant to use the abuse of law doctrine in a clear or confident way and preferred to combat abusive situations using a teleological interpretation of the legislation. However, within the last few years there has been a radical change of attitude, largely due to the development of an abuse test. A turning point came with the rulings, which applied the abuse test to VAT and corporate taxation.

The fifth chapter compares and contrasts the abuse of law concept in some jurisdictions, and the different instruments used to tackle it, such as GAAR (general anti avoidance rule) or judge-made doctrines.

The final chapter examines the principle of abuse of (public) law by challenging it with the general principles of legality and legal certainty, and examines some of the values that enable the persistence of the abuse of law concept, and finally conclude that it is coherent with law as well as with the values of a democratic society