

Fundamental rights in tax case law of the Constitutional Court

Abstract

The thesis deals with the case law of the Czech Constitutional Court where the reason for the judicial review was a claimed infringement of a fundamental right or legal principle.

The first part gives a brief description of the background, defining the theoretical and constitutional basis for judicial review of tax regulations and decisions, the relevant fundamental rights, and the methods and standards of review applied by the Constitutional Court, in general and tax case law.

The core of the thesis is then an analysis of selected tax cases and Constitutional Court decisions. For each case there is a brief background outlining the circumstances under which a particular law was passed, followed by the analysis itself, and finally a summary of each case in terms of the rights or principles claimed / found to have been infringed and the methods and standards of review applied by the Constitutional Court.

The results of the analyses are then summarised and compared against the general points of reference; then common elements of the cases and decisions are identified.

The conclusion of the thesis is that in the cases analysed, the legal regulation in question had not been carefully enough examined from the perspective of its impact on fundamental rights of its addressees and its compliance with constitutional principles (equal treatment, legal basis for imposing duties), either because it involved partial, unsystematic changes to a legislation already in existence at the time, or because the sponsors of the bills had not given enough consideration to these aspects and the deficiencies were not remedied even during parliamentary debate. As for the criteria of the review, one new element is a claimed infringement of the right to privacy by the new reporting duties, while in one case the infringement was also confirmed by the Constitutional Court; however, the case law in this area has not yet stabilised. In two cases a conflict between the new legislation and the principle of legal basis for imposing duties was claimed (and found); the Constitutional Court thus confirmed its standpoint on tax duties being imposed by the executive in the form of secondary legal regulations, and on reporting duties being stipulated solely by a printed form issued by a tax administration. As for the methods and tools of judicial review of tax regulations and decisions, the Constitutional Court, despite its declared deference, applied standard instruments: an extreme disproportionality test in the review from the perspective of infringement on the right to ownership, a rationality test in the review from the perspective of

infringement on the right to enterprise, and a proportionality test in the review from the perspective of infringement on the right to informational self-determination. Unconstitutionality due to infringement of a fundamental right was only established where the proportionality test was applied, and it is apparent that, in the judicial review of tax laws, the rationality test fails (and in essence blends with the extreme disproportionality test).

It is thus concluded that the Constitutional Court in principle continues its approach established in its previous case law, i.e. that taxation, as a political (and therefore non-justiciable) question, has to be approached with deference. A certain shift as to the intensity of judicial review may be observed in dissenting opinions, where the idea is voiced that it may be appropriate to apply the proportionality test rather than the less strict rationality test. In tax cases, the Constitutional Court strictly insists on a legal basis for imposing duties.

Key words: fundamental rights, taxes, Constitutional Court