

Imposition of taxes by subordinate legislation

Abstract

This diploma thesis is focused on assessing to what extent the Czech tax law (and fee law) is in compliance with the constitutional limit contained in Article 11, Section 5, of the Charter of Fundamental Rights and Freedoms, according to which taxes and fees may be imposed only on the basis of a statute. It was, therefore, studied whether, and if so in what way, the taxes and fees are imposed by subordinate legislation. For these purposes, it was necessary to define the criteria by which the constitutionality of particular subordinate legislation could be assessed. The ‘on the basis of a statute’ expression must be interpreted in such a way that the existence of subordinate legislation is not a priori excluded, however, a statute must contain basic structural elements of taxes (or fees). As a corrective, I have added the aspect of legitimacy to the evaluation in this thesis in order to eliminate the strictly formal application of the first criterion.

The importance of Article 11, Section 5, of the Charter is that the imposition taxes by a statute guarantees citizens greater influence and greater control over the taxation. These guarantees should not be unreasonably weakened by creating a wide range of legal empowerment for the executive, where this influence and control is eliminated. From the analysis, it was found that under the current system, most of the taxes are affected by subordinate legislation, however, most of subordinate legislation was found to be in compliance with the constitutional limits, i.e. the extent of the subordinate legislation is set sufficiently by a statute. In my opinion, the Czech tax law (and fee law) is in principle within the limits of Article 11, Section 5, of the Charter. I see a possible exception in the determination of real estate acquisition tax, where I consider the extent of legal empowerment in favor of the executive to be wide, the undesirably features are present also at the determination of income tax.

Keywords

Taxes; Fees; Taxation