TEORETICKÉ A PRAKTICKÉ ASPEKTY PRÁVNÍ ODPOVĚDNOSTI V ČESKÉM DAŇOVÉM PRÁVU

THEORETICAL AND PRACTICAL ASPECTS OF LEGAL LIABILITY WITHIN CZECH TAX LEGISLATION

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Abstrakt

Článek se zabývá problematikou právní regulace ve finančním, resp. daňovém právu z pohledu českého právního řádu. Snaží se v základních rysech postihnout především nedostatky platné a účinné právní úpravy a samotného legislativního procesu, přičemž stranou zájmu zcela nezůstávají ani vazby mezinárodní. Práce svým obsahem reaguje především na relativně nedávno přijaté změny v právní úpravě sankcí v daňovém právu a na zavedení některých nových institutů.

Klíčová slova

Právní odpovědnost, daňové právo, zákonodárství, sankce, wild riders (tzv. přílepky)

Abstract

This article is dealing with legal regulation in financial law, or more precisely in tax legislation in the point of view of the Czech legislation. It struggles to mention mainly the failures of valid and effective legal regulation and of the legislative process in itself in basic characteristics, while not forgetting also international linking. The work intends to react mainly with its subject to relatively shortly adopted changes in law regulation of sanctions in the tax law and to establishing of some new institutes.

Key words

Tax law, legal liability, legislation, sanctins, wild riders („stick-ons“)

Legal Liability as an integral part of social liability

It is generally true that „if we want to research a specific phenomenon in society (in our case one of the kinds of legal liability), it is necessary to do so in an objective context of other social phenomenons, which it is interconnected with and whose integral part it is as a system of lower order.“[1]

Legal liability in respect to above mentioned facts cannot be regarded as the highest and the most comprehensive system of liability in the society. Such system is presented by a general social (society´s) liability, where the legal liability takes place as one of the layers in the social liability structure.

The financial legal liability (as a specific branch in legal liability) is part of the **legal liability system**. It is though only **one kind of different kinds of society´s (social) liability**, which further includes e.g. moral or political liability. According to some authors is even legal liability in itself an issue falling within not only legal field of study, but also an ethical, philosophical, sociological or often also economical issue[2].

Different forms and lability instruments perform next to each other and necessary blend together and complete each other in many aspects in a normal life. To differentiate individual lability degrese is important e.g. when distinguishing different saction catalogues, which the affected lability systems have disposal of.[3] We differentiate (social) liability:

- legal liability
- moral liability
- political liability,
- etc.

Legal liability belongs to the oldest legal institutes. Each legal system must (sooner or later) deal with the question, if and in which way will it reply to the cases, when subject of

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1 for more details see Průcha, P.: Správně právní odpovědnost se zaměřením na problematiku stíhání přestupků. Brno, UJEP, 1988, p. 11 ff.

2 see Boguszak, J, Čapek, J.: Teorie práva. Praha, CODEX Bohemia, 1997, p. 141

3 see Gerloch, A.: Teorie práva. 2. edition. Dobrá voda, Aleš Čeněk, 2001, p. 155

law is inconsistent with mandatory legal norm. General theory of law defines legal lability as „use of adverse legal consequences stated by the legal norm towards them, who have broken legal duty“[4].

The financial legal liability within the tax legislation and proceedings

The financial legal liability[5] means the entity's (perpetrator's) obligation to take the adverse consequences of its illegal acting as set forth in the financial legislation standards – sanctions. The sanctions in tax law may thus be deemed as effects of the financial legal liability[6].

The basic legal regulation in tax processes and thus also in regulation of lability and of sanctions for breach of legal tax regulations in the Czech Republic is the Tax Administration Act. This act celebrated this year rather sad anniversary – it has been amended for the 50th time during its fifteen years existence (in force since 1.7.1992, effective since 1.1.1993) and another changes are being discussed in the Parlament of the Czech Republic.

The tax norms in the Czech Republic are amended very often and in many cases hastily, which has been unhappy praktice. Within legislative process is not such praktice unusual that some legal norms as amending regulations of financial legal laws (in the Czech Republic a name „sticks-on“ has become commonly used) are integrated into legal norms not being contentually related to, so that they can be dealt with quickly and agreed.[7]

One of the cases of recently can be used an importat change in penalty law regulation as sanction for breach of pecuniary characteristics:

Till the end of 2006 penalty under § 63 Tax Administration Act as sanctions were used in case the tax administration registered arrears of tax towards tax debtor. The penalty

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4 see Harvánek, J. a kol.: Právní teorie. Brno, IURIDICA BRUNENSIA, 1998, p. 234

5 As well as the liability in the tax law, which is one of the subsystems of the fiscal part of financial law

6 for mor details see Sramkova, D: Penalty Tax Law - Sanctions for the breach of legal tax regulation in the Czech Republic. In The problems of the financial law evolution in Central and Eastern Europe within the integraftion processes. Bialystok-Vilnius : WP UwB & Talmida, 2004. 93 p. + CD.

7 The entire situation is also completed by a relatively short legisvacancial period.

was computed for each day of arrears[8] commencing at the day, when the particular amount was payable. The tax debtor had to pay a penalty of 0.1% of the amount of his underpaid tax for each day of delay.

If the difference was ascertained by the tax administrator, the penalty was computed under the above mentioned provisions using a double rate of 0.2%. This penalty could have been imposed for a maximum of 500 days of default. After this period penalty would have reached 100 % of arrears. For each additional day of default was stated a penalty in the amount of 140% of the discount interest rate stated by the Czech National Bank which was effective on the first day of the appropriate calendar quarter. In respect to the discount interest rate (to 1.9.2007 2.25; in the past no more than 13 %) would this have been an acceptable penalty rate.

From 1st January 2007 though is a new legal regulation effective, where the tax administration officers are allowed to impose sanctions to the debtors in a new form, which is according to 230/2006 Coll., amended by Tax Administration Act, instead of using hitherto valid penalty. The new penalty is a sanction for tax duty shortening, and that is why its extent is invariable: 20 % at additionally imposed taxes or at decreasing tax allowances and 5 % at decreasing tax losses. As a tax subjects motivating tool for the right setting of taxes was a regulation supplemented, according to which the penalty is not applied, should the last known tax duty be changed based upon the additional tax return filed by the tax subject itself.

Another change to the original state of affairs from 2006 made by the above mentioned „stick-on“ rests in the shift of priority of payments. Nowadays the tax duty payment covers the settlements in the following order:

1. costs arising from tax proceedings
2. fines and penalties
3. increases in respect of a particular tax
4. oldest tax arrears
5. current tax payments
6. interest.

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[8] A tax debtor is in arrears if he fails to pay the due amount of the tax by the due date.

This means consequently that a penalty gets the priority over the tax in itself when paying taxes, while it occupied the last place in a range after the interests before[9].

Even though a certain change was expected, it is difficult to answer the question unambigously, if the new penalty system is going to be more equitable to the tax debtors and for the tax administration more profitable. When however considering the way of implemented amendment of the penalty system, it can be found the worst ever. While the previous changes of the original § 63 Tax Administration Act from the 90s were made legislatively clear (meaning by a direct amendatory Act of this Act), this fundamentals amendment was implemented by a form a so called „stick-on" to the Act no. 230/2006 Coll. from 25th April, 2006, which changed the Act no. 89/1995 Coll. , about the statistical service, as amended, and other „related" laws. To look for relations between Tax Administration Act and the Act of Statistical Service is a task not directly easy. Fittingly is this situation described by[10] mentioning that „as far as the looking for relation between this service with tax penalty system it is clear that our lawmakers still follow the principles according to which everything is related to everything."

The system of sticks-on to the law norms, which has been widely used by our lawmakers, brings with itself some problems dominy out from the fact that these „sticked-ons" and non-systematic amendatory acts of laws are not subject to an ordinary legislative proceedings. They are not discussed in that way as normal law amendments and no introductory bills to them exit, which makes them extremely difficult to interprete them. It is also difficult to register all possible liations to other regulations affected by the amendatory act.

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[9] The above mentioned amendatory Act concurrently introduces also a new regulation of interest on overdue payment (§ 63 Tax Administration Act) as price of the money required by the state for a not performed duty of a tax subject to confess and return tax in the by law requested amount and by the by law requested time into national budget. According to up-to-date law diction amounts the value of default interests yearly to repo rate (2T repo rate) stated by the Czech National Bank, increased by fourteen percentual points, effective on the first day of the calender half-year. Default interest is enforced for five years of arrears the latest. Repo rate, decisive for default interests setting in the second half-year of 2007 is rate effective to 1.7.2007, which was at amount of 2.75% - we talk thereinafter of a default interest in full amount of 14.75%. To compare: Default interest in private law relations is in the Czech Republic stated according to governmental order no. 163/2005 Coll. from 23rd March, 2005. The value of default interests complies at the same time with yearly repo rate stated by the Czech National Bank, increased by only seven percentual points.

[10] see Kobík, J: Penále a úrok u doměřeného daňového subjectu - úvahy nad novou právní úpravou. Daňový expert. Citation taken over from ASPI: IČ 27635 (LIT).

The future of the „sticks-on“

With regard to above mentioned seems a judicial act of the Constitutional Court of the Czech Republic no. Pl. Con. 77/06 from 15th February 2007[11] to be an important deed. Thanks to it a question standing in a way in the interface of political and legal liability was relatively lively discussed in the Czech Republic at the beginning of this year. The case discussed comes also from the financial law, even though from the banking field: The Constitutional Court was deciding compensation for clients of three banks.[12]

The court concentrated on the fact that the compensation was „sticked-on“ to another, not related Act. This often criticised habit of the Members of Parliament will not be tolerated by the Constitutional Court any more – all thirteen present judges sustained the view of the rapporteur Eliška Wagnerová, according to which the MPs "had smuggled" the compensation in the Act in a inadmissible way.

In the extensive grounds of the cited decision is i.a. written: „Act must be predictable and consistant as for the form and content. ... It is not possible to be acquainted with the system of law of the Czech Republic without using information technology. Through this law becomes completely unpredictable for its adressees."

Leaving the limited space for proposed amendments can be of following nature:

1. exceeding the intensity of the given amendment, or
2. extensive exceeding of the subject stated by the proposed amendment.

In this respect the situation in world´s parliamentary practice is reminded:
The first case is usually labelled as so called „**legislative riders**“ by the U.S. doctrine, whose use is often discussed in the U.S., nevertheless they are regarded as unwelcome, but constitutionally conforming form of the amendatory acts.

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[11] see http://www.judikatura.cz/cgi-bin/jus/aspi_lit_vt?WVCNC+2800+jus-1+p%25F8%25EDlepek+q+l#lema0/

[12] The proposal concerned abolishing part of the Act no. 319/2001 Coll., which became a part of the interim provisions of the Act on the basis of the Act no. 443/2006 Coll.

It is necessary to diferentiate another case from the first one, labelled as „**wild riders**“. In this case exceeding the criteria of the test used on the basis of so called germaneness rule, i.e. rule of close relation. With other words, it is estimated, if in the case given can the amendment be viewed as an ordinary amendatory act or amendment which the Czech environment used to label with above mentioned informal term „stick-on“. In such case a regulation of a completely different and unrelated Act is attached to the proposal of the Act by means of an amendatory act. The rule of close relation (germaneness rule) has been used in the american Congress since 1789 and expresses the demand, according to which an amendatory act must be related to the same subject as is the proposal being discussed at the moment in the legal proceeding. It is based upon the idea of the Capitol being allowed to deal with only one subjectly defined matter at the same time. The purpose of this is to secure an ordinary proceeding to the intent of an informed and subjectly preparded discussion and to secure the flexibility and effectivity of the Capitol´s proceedings. Should an amendatory proposal be suggested, which doesn´t comply with this rule, can an objection be raised by another Member of Capitol.

Except from solution given in the system of the U.S. legislative refers the Czech Constitutional Court in its grounds of the judgment also to the practice of dealing with amendments e.g. in France, mainly with judicature of the Constitutional Council, where the presumption concerning the amendment (amendatory act) to have to be related to the discussed text of the proposed act. Should there the subject matters not comply, would it be regarded as inadmissible „legislative riders“. Should the number of amendatory proposals, through which the MPs and Senators would like to evade the conditions of the legislatory proceedings (accelerate, pass unnoticed etc.), increase massively, the legislative proceedings could be less transparent.

Conclusion

In conclusion can be said, the Czech Constitutional Court tends to require „close relation“ of the amendatory act to the discussed matter for the next time. Sticks-on should be recognised and not allowed already by the person administering the meeting of the House of the Parliament. The judges also reproached behaviour of president Václav Klaus in their grounds, because he didn´t put a veto on the act neither refused to sign it. His signature

should „be according to Art. 51 of the Constitution and according to theory opinion authentication of the ordinary finished legislatory proceedings".

With respect to the quantity of amendatory cases, which could be called the stick-on, decided the Court not to abolish retrospectively all acts created thanks to the sticks-on broadly. Whenever it receives similar complain, it will takeinto consideration also „principles of legal safeguard and protection of acquired rights".

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