Dny práva 2011 – Days of Law 2011 [online]. Brno: Masarykova univerzita, 2012 ISBN (soubor) 9788021047334. Dostupné z: http://www.law.muni.cz/content/cs/proceedings/

INDIRECT EFFECT OF DIRECTIVES IN CASE-LAW OF THE CZECH COURTS

ROMAN ŘÍČKA

Faculty of Law, Masaryk University, Czech Republic

Abstract in original language

K zajištění dodržování Unijního práva, vyvinul ESD za dobu svého působení několik významných institutů. Jedním z nich je i nepřímý účinek (směrnic) vyžadující, aby národní orgány vykládaly národní právo v souladu s Unijním právem (směrnicemi). Takováto situace představovala mj. pro národní soudy přirozeně novou výzvu a bylo otázkou, jak si s ní poradí. Tento článek se snaží, po stručném představení samotného institutu, zodpovědět otázku, jak si s tímto principem poradily konkrétně soudy České republiky. Uvědomují si tyto vůbec svou povinnost konformní interpretace? A jestliže ano aplikují tento princip také v praxi nebo ho spíše nechávají stranou? Analýza tří rozhodnutí Českých soudů nám jasně ukazuje, že v této oblasti nejsou české soudy rozhodně pozadu.

Key words in original language

Nepřímý účinek; směrnice; Von Colson; národní soudy; interpretace; judikatura; Evropský soudní dvůr; Nejvyšší správní soud.

Abstract

Within the period of its existence, the ECJ has developed several significant institutes, the purpose of which is to ensure keeping the Community/Union law. The indirect effect (of the Directives) represents one of such means. It requires that national authorities interpret national law in accordance with EC/EU law (its directives). Such situation naturally embodied completely a new challenge to (i.a.) the national courts, in the context of which there arose a question of how they would succeed. The aim of this article, after a brief introduction describing the institute itself, is to answer the question of how the Czech courts in particular have dealt up with the principle mentioned above. Do they realize at all their duty of the Euro-conform interpretation? If so, do they follow this duty in their decision-making, or do they rather tend to put it aside? Analyzing three judgments of the Czech courts shows clearly that the courts of the Czech Republic are far from falling behind in this sphere.

Key words

Indirect effect; the directive; Von Colson; national courts; interpretation; case-law; European Court of Justice; The Supreme Administrative Court.

1. INDIRECT EFFECT (OF DIRECTIVES)?

Interpretation of EU law is used to be primarily associated with European Court of Justice[1]. The reason is that this subject is empowered to determine its "correct/right" interpreting. However the truth is that it is necessary for each institution, which wants to apply Union law, to interpret this law, of course including national courts. This challenge must be faced by national courts in the first place because of principle of direct effect, which was stipulated firstly in case Van Gend en Loos[2], or rather, talking about EC directives, in Van Duyn case[3]. However development of EC law has shown that ECJ would "force" national judges to deal with even bigger challenge than represents direct effect of Union law, since in case Von Colson[4] the Court for first time stated existence of principle of indirect effect – in this case concretely in connection with directives[5]. As well as with the direct effect there is a couple of conditions[6] connected with this principle, under the which it could be applied, nevertheless for the purpose of this article it's not necessary to analyzed them. In the context of our theme it is sufficient to explain what this principle means for the national institutions (courts). When looking for simple explanation of the principle, it is enough to say that it represents duty of national authorities to interpret "*…national law rules in accordance with the spirit of non-implemented or inappropriate implemented directive*"[7],[8]. In light of the quotation is purpose of

---

[1] Court, ECJ.

[2] Judgment of the European Court of Justice of 5. 2. 1963, c.n. 26/62. *Van Gend en Loos v Netherlands Inland Revenue Administration*.

[3] Judgment of the European Court of Justice of 4. 12. 1974, c.n. 41/74. *van Duyn v Home Office*.

[4] Judgment of the European Court of Justice of 10. 4. 1984, c.n. 14/83. *Von Colson and Kamann v Land Nordhein-Westfalen*.

[5] it is necessary to say that this principle is connected also with other sources of Community/Union law, however it is directive which represents point of interest of this article.

[6] they were stipulated by the ECJ in his decisions e.g. judgment of the European Court of Justice of 8. 10. 1987, c.n. 80/86. *Kolpinghuis Nijmegen BV*.; 13. 11. 1990, c.n. C-106/89. *Marleasing SA v La Comercial Internacional de Alimentacion SA*.; 16. 12. 1993, c.n. C-334/92. *Wagner Miret v Fondo de Garantía Salarial*.; 26. 9. 1996, c.n. C-168/95. *Luciano Arcaro*.; 5. 10. 2004, c.n. C-397/01. *Pfeiffer v Deutsches Rotes Kreuz, Kreisverband Waldshut Ev*.

[7] Šišková, N. in ŠIŠKOVÁ, N., STEHLÍK, V. *Evropské právo. 1, Ústavní základy Evropské unie*. Praha : Linde, 2007. p. 132.

[8] original definition from Von Colson case, which has been re-phrased by the following case-law of the Court, sounds: "*…obligation arising from a directive to achieve the result envisaged by the directive and their duty under*

analyzed principle obvious, it is de facto again about l'effet utile of EC law, because in words of Paul Craig and Gráinne de Búrca "*The Court thereby sought to ensure that directives would be given some effect despite the absence of proper implementation.*"[9]. In other words the indirect effect could be described as "supplement" of direct effect, because it could be apply even in situations, where DE can't be (e.g. because provision of the directive is not concrete enough). Therefore it is no doubt that IE represents step forward in evolution of (l'effet utile of) Union law, however in connection with its birth and its future there has been an important question – how the national courts will deal with this principle? For its importance this question was chosen as main topic of this article, or more precisely as Czech citizen let me re-phrase it to such question – "Do the Czech courts as well apply the principle of indirect effect of directives?". Whether the courts of the small central Europe country have this principle on their mind or not I will try to find out through the analysis of several judgments of its courts. As a result of such analysis reader should be able to answer question whether the doctrine of indirect effect has remained on theoretical level or has become practical matter. Let's see the first judgment.

2. JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 26. 10. 2006, C.N. 1 AS 28/2006.

At the beginning of the following analysis it is necessary to state one note. It is aim of this article to find out whether Czech courts keep on mind their duty of harmonious interpretation, not to describe in detail following cases. Therefore we will focus right on the question of application of Von Colson principle[10], not to description of merits of the case neither to analysis of applied national law. Nevertheless we can't of course disregard completely the background of the case,

---

article 5 of the Treaty (nowadays art. 4, par. 3 TEU*1) *to take all appropriate measures , whether general or particular , to ensure the fulfilment of that obligation , is binding on all the authorities of member states including , for matters within their jurisdiction, the courts . it follows that , in applying the national law and in particular the provisions of a national law specifically introduced in order to implement directive no 76/207 , national courts are required to interpret their national law in the light of the wording and the purpose of the directive in order to achieve the result referred to in the third paragraph of article 189* (nowadays art. 288, par. 3 TFEU*2)" – judgment of the European Court of Justice of 10. 4. 1984, c.n. 14/83. *Von Colson and Kamann v Land Nordhein-Westfalen*. (par. 26).; *[1] Treaty on European Union, 12010E/TBL, Official Journal C 83 of 30 March 2010, in consolidated version.; *[2] Treaty on the Functioning of the European Union, 12010E/TBL, Official Journal C 83 of 30 March 2010, in consolidated version.

[9] CRAIG, P., DE BÚRCA, G. *EU Law. Text, Cases, and Materials*. 4. ed. Oxford : Oxford University Press, 2008. p. 287.

[10] synonym for indirect effect of directives.

however we will described it just as much as it is necessary to our purpose.

Finally let's start with the case mentioned above – 1 As 28/2006. The Supreme Administrative Court[11] was deciding about legal remedy[12], which was submitted by Industrial Property Office (defendant)[13] against judgment of City Court Praha[14], which decided previous dispute in private person "I.C." (suitor)'s favour by overruling previous decision of IPO (of 3. 12. 2004). What was point of declared dispute? Problem lied in the registration of certain mark (of the third subject) into registry of trademarks. Suitor disagreed with mentioned registration and having used all possible legal remedies situation resulted into point, where IPO submitted the legal remedy mentioned above called „kasační stížnost". Heart of the matter, the reason for primary suit of I.C. was acting of IPO when it was evaluating mark, which was under the registration process, and deciding pleaded marks. Concretely, from the point of view of suitor and consequently also in the opinion of City Court Praha, IPO made a mistake when it performed its evaluation in limited range ignoring several relevant criterions, by witch IPO disrespected settled case-law of ECJ regarding this area (SABEL[15] and Canon[16]). Opinion of IPO was of course opposite declaring that its decision went fully along with case-law of the Court. On the other hand the suitor, in reaction to "kasační stížnost", pointed out the Directive 89/104[17] which approximates the laws of the Member States relating to trademarks, and reminded that "*relevant regulations of national law implementing the Directive must be interpreted in the light of the wording and aim of the Directive*"[18]. Consequently he added that if ECJ in mentioned judgments SABEL and Canon mandatory expressed its opinion how to interpret text of the Directive 89/104, then the Court de facto also mandatory expressed how the relevant national regulations implementing the

---

[11] the SAC.

[12] concretely we are talking about legal remedy called "kasační stížnost".

[13] IPO.

[14] falls into Regional courts.

[15] Judgment of the European Court of Justice of 11. 11. 1997, c.n. C-251/95. *SABEL BV v Puma AG, Rudolf Dassler Sport*.

[16] Judgment of the European Court of Justice of 29. 9. 1998, c.n. C-39/97. *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

[17] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, 31989L0104, Official Journal L 40 of 11 February 1989.

[18] Judgment of the Supreme Administrative Court of 26. 10. 2006, c.n. 1 As 28/2006.

Directive should be interpreted. In such situation the SAC had to decide about legal remedy submitted by IPO. Talking about legal argumentation of the SAC, let's pointed out just that passages regarding indirect effect, ignoring the rest of its considerations.

"Turning point" of the SAC argumentation was statement that for this case had been relevant act n. 441/2003 Coll.[19] in consolidated version not the previous one (n. 137/1995 Coll.). Why is this so important? It is because mentioned act had been drafted for the period following admission of the Czech Republic to the EU, which means that main inspiration for this act had been the Directive 89/104. Talking about national provision (of 441/2003 Coll.) which was applied in the case it is essential to say that explanatory report (to 441/2003 Coll.) directly stated that it has base in transposition of the Directive 89/104. In the light of these facts the SAC observed that "*When applying national law, no matter if prior or following the Directive, the national court, which interprets such law, must do it as much according with the meaning and purpose of the Directive as possible, so result prescribed by the Directive would have been achieved, and consequently art. 249 paragraph three of the Treaty establishing the European Community20 would be fulfilled.*"[21]. In connection with applied national provision (§7 of 441/2003 Coll.) then the SAC added that "*It is therefore obvious that when interpreting §7 of the act of trademarks it is on principle necessary to do it in a such way so that the interpretation would be conform with relevant provisions of the Directive n. 89, particularly with its art. 4, and thus also with the case-law of ECJ, which relate to interpretation of this article.*"[22]. In context of these statements it is evident that the SAC had been fully aware of principle of indirect effect of directives. Consequently it is not surprise that the SAC approved procedure of City Court Praha, which interpreted relevant national provisions in conformity with art. 4 of the Directive 89/104, by which this court clearly proofed that it is not just highest Czech courts that are aware of Von Colson principle[23]. To conclude our analysis remain to say that the SAC's argumentation result of course into rejection of "IPO's legal remedy" ("kasační stížnosti").

---

[19] it is a Czech Trademark Act.

[20] nowadays art. 288, par. 3 TFEU.

[21] Op. cit. 18.

[22] Op. cit. 18.

[23] of course even more important than the fact that the court was aware of the principle is the fact that the court fulfilled all its duties resulting from it.

3. JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 29. 8. 2007, C.N. 1 AS 3/2007

As a confirmation that previously analyzed decision was not coincidence, but clear proof that Czech courts follow the principle of indirect effect, as well as introduction to the second part of this article I decide to analyze another judgment of the SAC – 1 As 3/2007. Once again we will not solve the background of the case, just follow the SAC's argumentation as regards principle of indirect effect.

In present case the SAC had to solve problem whether certain service provided by company called T.O.C.R. fall under the term "převzaté vysílání" (kind of transmission[24]) or not. Answer to this question should decide which national act regulates such service. The SAC dealt with the problem firstly from the point of view of the national law and stated that for service of T.O.C.R. is decisive whether it is fulfilling characteristic features or not, and at the same time that way of spreading of such service does not matter. To support its argumentation The Supreme Administrative Court decided to visit area of EU law, which represents interesting part of the judgment.

At first the SAC pointed out that Czech law, which regulates pursuing of radio and television broadcasting (act n. 231/2001 Coll.) i.a. implements the Directive 89/552[25] on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (in version of the Directive 97/36[26]). In connection with this Directive it is important to us that ECJ dealt with interpretation of contained term "television broadcasting" in its judgment M. B. v Commissariaat voor de Media[27]. In mentioned case ECJ had solved similar problem as the SAC – whether service provided by M.B. company fall under the term "television broadcasting". Also answer of the Court was similar to the SAC opinion. The ECJ stated that the manner of transmission is not determining element. Important is whether service correspond with features of "television broadcasting" as stated by the Directive 89/552.

---

[24] content of the term is not important for our purposes.

[25] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, 31989L0552, Official Journal L 298 of 17 October 1989.

[26] Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 31997L0036, Official Journal L 202 of 30 July 1997.

[27] Judgment of the European Court of Justice of 2. 6. 2005, c.n. C-89/04. *Mediakabel BV v Commissariaat voor de Media*.

In the light of relationship between the Directive and the act n. 231/2001, the SAC consequently stated that it is necessary to use Von Colson interpretation. Interesting is the way in which the SAC did it. We could say that the SAC declared the need in two steps. At first the Supreme Administrative Court pointed out that it had repeatedly stated that law acts of Community (EU) and case-law of ECJ serve as appropriate interpretative clue when interpreting Czech law regulations. The SAC added that it stands even in cases which had arise from facts, which prior the entry of Czech republic into EU. Condition, under the which Community law and ECJ's case-law serve as inspiration to (national) interpretation, which need to be fulfilled is that interpreted provision of Czech regulation was adopted in order to harmonize Czech law with Community law and at the same time the Czech lawmaker had not expressed intention to differ from act of Community law (Union law)[28]. As we can see, in this first step the SAC already talks about conform interpretation, however because it adds that such interpretation is suitable also for cases which have base in period which prior entry of Czech into EU, therefore the SAC does not state that there is a duty to perform Von Colson interpretation, but only express that Union law and case-law of ECJ represent just interpretative clue for interpreter and nothing more. However because the case solved by the SAC was connected with period following the entry of the Czech into Union, there was need for the SAC to add second step.

The SAC therefore admitted that situation is noticeable different, when we talk about cases which fall under the period when state is already member of Union. In such moment the Community (Union) law do not serve just as appropriate interpretative clue, but as obligatory interpretative clue, and this stands not just for situations, where the Directives were not implemented correctly into national law. The SAC subsequently pointed out to well know cases of ECJ as Océano Grupo Editorial SA v Roció Murciano Quintero[29], Sabine Von Colson and Elisabeth Kamann v Land Nordhein Westfalen[30],[31]. As we can see, in the second step *the SAC does not talk any more about interpretative clue, but clearly about duty* to perform Von Colson interpretation. In the light of mentioned conclusion it was consequently possible for the SAC to state that verdicts of ECJ from case M.B. v Commissariaat voor de Media are fully applicable in case n. 1 As 3/2007 and support the conclusion of the SAC mentioned

---

[28] Judgment of the Supreme Administrative Court of 29. 8. 2007, c.n. 1 As 3/2007.

[29] Judgment of the European Court of Justice of 27. 6. 2000, c.n. C-240/98. *Océano Grupo Editorial SA v Roció Murciano Quintero*.

[30] Judgment of the European Court of Justice of 10. 4. 1984, c.n. 14/83. *Von Colson and Kamann v Land Nordhein-Westfalen*.

[31] Judgment of the Supreme Administrative Court of 29. 8. 2007, c.n. 1 As 3/2007.

above. In other words for final decision of the SAC it's therefore fundamental only the fact, whether service of T.O.C.R. company fulfills the features of the term "převzaté vysílání", which need to be interpreted accordingly with the Directive 89/552 and case-law of ECJ.

The rest of the judgment is therefore logically dedicated to question, whether the service does or doesn't fulfill mentioned features. Because this is not anymore relevant to our theme it's enough to say that the SAC decided in the end that service really does fall under the term. For us is nevertheless much more important that *once again Czech court proofed that respects his duty to perform Von Colson interpretation*. Furthermore, in my point of view, also passage where the SAC talks about cases connected with period which prior the entry of the Czech into EU should be stressed, no matter that in such situation the Union law and ECJ's case-law represent only interpretative clue so we can't talk about duty to perform "conform interpretation". Just the fact that Czech courts also in such cases has taken EC (EU) law and ECJ's case-law into consideration is in my opinion at least notable. Finally there is one more case, one more analyze, in front of us which is as well connected with The Supreme Administration Court – 2 Afs 178/2005.

4. JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT OF 15. 8. 2008, C.N. 5 AZS 24/2008

Heart of the problem in this case was represented by problematic relationship between §16(2) of the act n. 325/1999 in version effect to 31. 8. 2007 (Czech Act on Asylum - CAoA) and §12 of the same act. §16(2) CAoA expressed – "*An application for international protection shall also be rejected as manifestly unfounded if it is apparent from the applicant's procedure that he/she has filed it with the aim to avoid a threatening expulsion, extradition or transfer for criminal prosecution to a foreign country although he/she might have applied for granting of international protection earlier, unless the applicant proves the contrary*". Second mentioned provision - §12 of CAoA includes reasons for granting of asylum. Reason why the SAC needed to solve relationship between §16(2) and §12 CAoA wasn't the fact that he would have never dealt with it before, but the fact that it yet had not had opportunity to solve this relationship after the transposition of the Directive n. 2004/83[32] in connection with expiration of the period for its transposition – these facts create, in the words of the SAC, "qualitatively new situation in Czech asylum

[32] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 32004L0083, Official Journal L 304 of 30 September 2004.

law"[33]. In other words, the SAC had solved mentioned relationship just in context of "old situation".

At the beginning of its argumentation the SAC pointed out its relevant case-law, which prior transposition of the Directive n. 2004/83. It is not necessary to describe individual cases, all we need to say is that in connection with relationship of §16(2) and §12 CAoA the SAC expressed that if conditions stated in §16(2) CAoA are fulfilled then granting of asylum under the §12 CAoA is without any other conditions and in all situations excluded, and that stands even in situations, when applicant for asylum would be threatened by persecution related to asylum relevant reasons[34]. After the SAC repeated this "previous" rule it was necessary to find out whether the fact that the Directive had been implemented and at the same time its implementation period had expired – in light of which Czech courts must interpret Act on Asylum and other relevant national acts accordingly to the text and purpose of the Directive – has any impact to the rule mentioned above, or whether there is no any shift regarding its previous case-law.

Starting its consideration the SAC remembered origin of the duty (i.a. of the Czech courts) to perform Von Colson interpretation – it comes from art. 10a and art. 1(2) of the Czech constitution and through these provisions from the fundamental principles of Community (Union) law[35]. Consequently the SAC added references to important (relevant) judgments of ECJ – Von Colson and Marleasing. It referred as well to its previous case-law i.a. to judgment 1 As 3/2007[36]. Apart of basis of the indirect effect of directives the SAC remembered also some of important restrictions of this principle like e.g. time point since when national authorities have duty to perform Von Colson interpretation. The SAC as well expressed agreement with the ECJ conclusion (see e.g. case Innovative Technology[37]) about order in which direct and indirect effect should be used by courts. Despite that conditions under the which indirect effect of the directives could be used is not theme of this article, let's remembered that by the opinion of the ECJ the national authorities should at first try to interpret national provisions accordingly to EC (EU) law and only if that is not possible than such institution should use (of course also just if required conditions are fulfilled) principle of direct effect. When looking for reason of said rule we can remember words of Sacha Prechal (nowadays judge of

---

[33] Judgment of the Supreme Administrative Court of 15. 8. 2008, c.n. 5 Azs 24/2008.

[34] Op. cit. 33.

[35] Op. cit. 33.

[36] see chapter 3.

[37] Judgment of the European Court of Justice of 11. 1. 2007, c.n. C-208/05. *Innovative Technology Center GmbH v Bundesagentur für Arbeit*.

ECJ), who expressed that "*Consistent interpretation constitutes, in general, a less drastic incursion into the national legal system then direct effect. […] However, where consistent interpretation will come close to distorting the meaning of national provisions, direct effect may be preferred and will perhaps even be dictated by legal certainty.*"[38]. So as I have stressed, the SAC agreed with this rule, which was important considering that facts, on which its case was built, were dated to 23. 8. 2007, which means after the expiration of transposition period of the Directive 2004/83. Knowing that duty to Von Colson interpretation is "in play" and being aware of mentioned rule the SAC started to analyze provisions of the Directive to find out what is their meaning for the case. Having finished it, the SAC realized that it follows from the relevant provisions of the Directive 2004/83 in connection with related Directive 2005/85[39] that "…*an application for international protection shall also be rejected as manifestly unfounded, if the applicant submit an application "only" with the aim to delay or frustrate execution of previous or potential decision, which would lead to his/her expulsion, however submission of application after the delivery of decision on administrative expulsion, does not a priori exclude granting of asylum or subsidiary protection, if he/she is threatened by persecution for asylum relevant reasons*…"[40]. The word which need to be stressed in quotation is "*only*" because in wording of §16(2) CAoA it could not be found. Consequently comparing mentioned conclusion with the rule expressed in the SAC's previous case-law this court realized that his previous interpretation of §16(2) is not in conformity with Czech's obligation towards the EU.

Before we will continue towards the end of this part of the article I feel need to clarify one thing. Analyses of the Directives performed by the SAC could give incorrect impression that Czech court had interpreted relevant provisions of the Directives by itself instead of asking the ECJ what is correct interpretation of them. Of course that's not true. Reason why it didn't ask ECJ was simple. The SAC had considered mentioned provisions as so called "acte clair" – situation when is no need to ask ECJ for interpretation because answer to such question is generally known[41]. In other words it represents situation

---

[38] PRECHAL, S. *Directives in EC law*. 2. ed. Oxford : Oxford University Press, 2006. p. 314.

[39] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, 32005L0085, Official Journal L 326 of 13 December 2005.

[40] Judgment of the Supreme Administrative Court of 15. 8. 2008, c.n. 5 Azs 24/2008.

[41] ŠLOSARČÍK, Ivo. Evropský soudní dvůr a předběžná otázka podle čl. 234 SES. *Europeum* [online]. Praha: Institut pro evropskou politiku EUROPEUM, published 6th December 2004 [cit. 2011-10-30]. Accessible at: <http://www.europeum.org/doc/arch_eur/ISlosarcik_team_europe.pdf>.

when the way of interpretation of some provision(s) is so clear and obvious that there is no reason to ask ECJ. Having finished this little note we can finish our analysis of the case 5 Azs 24/2008.

When the SAC realized that it must change its interpretation of §16(2) CAoA to be in conformity with requirements of EC (EU) law, then this court had to find out whether it is actually possible to interpret mentioned provision in Von Colson way. *The SAC in its judgment stated that it is possible* and consequently it also analyzed under what conditions the provision of §16(2) CAoA, interpreted in the light of Von Colson principle, may be applied. Finally the SAC of course dealt up with question whether such conditions are in solved case fulfilled. However that is not anymore part of the judgment which interested us and therefore there is no reason to describe the SAC's consideration in this area.

What should be said in the end of our analysis? What results from description of the case n. 5 Azs 24/2008? At first it is once again the fact that as well as first two cases also this one proofs that Von Colson principle is respected and followed by the Czech courts. However as we can see, the SAC dealt up with indirect effect in this last case in much more detail. It not just pointed out the foundations of duty of national authorities/courts to perform Von Colson interpretation, not only referred to some of (the most) relevant cases of ECJ, but the SAC as well considered time restrictions of indirect effect as well as its relation to the principle of direct effect. To sum up in my point of view this last case proofs not just that the Czech courts do the Von Colson interpretation, but something much more important, that they understand how the indirect effect works and what is its position in Community/Union law.

5. CZECH COURTS AND VON COLSON PRINCIPLE? FEW LAST WORDS.

At the beginning of this article I declared main question – "Do the Czech courts as well apply the principle of indirect effect of directives?" – with intention to find the answer to it in following text. Whether I was really successful is in the end on consideration of each reader, but in my point of view I have proofed that Czech courts really do apply the Von Colson principle. All three analysis showed to us that the Supreme Administration Court (and not just it – see e.g. City Court Praha in first analyzed case, or Decision of the Constitutional Court of 17. 3. 2009, c.n. IV. ÚS 2239/07. (par. 18)) the principle of indirect effect really applies when deciding its cases. Each of introduced judgments was furthermore dealing up with different issue – intellectual property, media, asylum law – the reason for that was to show that application of indirect effect of directives is not common just in connection with one specific area. Another criterion, when I was choosing cases for my analysis, was the date when the judgments were pronounced – 26. 10. 2006, 29. 8. 2007, 15. 8. 2008. As we can see the SAC has been consistent in using indirect effect. To support this fact we can refer also to quite new judgment from 1. 2. 2010 (c.n. 5 Afs 68/2009), where was the Von Colson principle applied as well.

Different issues, different (Czech) courts, different years – yes we could probably find more judgments to support even more the conclusion that the Czech courts respect and apply the Von Colson principle, however in my point of view, if we summarize all mentioned facts, then the foundations of said conclusion look enough solid to me. Finally we shouldn't forget the fact, that the Czech Republic is member of the European Union for just about 7 years, which is quite short time comparing to the membership of some other countries. Therefore it is logical that the case-law of the Czech courts does not contain as much judgments concerning application of the Von Colson principle as we could found e.g. in Germany, Italy etc.. Nevertheless this article proofs, at least I hope, that it is reasonable for the future to expect that the number of such judgments, pronounced by the Czech courts, will definitely rise.

Literature:

1. Monographs, articles etc.[42]

   a. CRAIG, P., DE BÚRCA, G. *EU Law. Text, Cases, and Materials*. 4. ed. Oxford : Oxford University Press, 2008.

   b. PRECHAL, S. *Directives in EC law*. 2. ed. Oxford : Oxford University Press, 2006.

   c. ŠIŠKOVÁ, N., STEHLÍK, V. *Evropské právo. 1, Ústavní základy Evropské unie*. Praha : Linde, 2007.

   d. ŠLOSARČÍK, Ivo. Evropský soudní dvůr a předběžná otázka podle čl. 234 SES. *Europeum* [online]. Praha: Institut pro evropskou politiku EUROPEUM, published 6th December 2004 [cit. 2011-10-30]. Accessible at: <http://www.europeum.org/doc/arch_eur/ISlosarcik_team_europe.pdf>.

2. Case-law[43]

   a. Judgment of the European Court of Justice of 5. 2. 1963, c.n. 26/62. *Van Gend en Loos v Netherlands Inland Revenue Administration*.

   b. Judgment of the European Court of Justice of 4. 12. 1974, c.n. 41/74. *van Duyn v Home Office*.

   c. Judgment of the European Court of Justice of 10. 4. 1984, c.n. 14/83. *Von Colson and Kamann v Land Nordhein-Westfalen*.

[42] sorted alphabetically by the (first) author.

[43] sorted by judgment date.

d. Judgment of the European Court of Justice of 8. 10. 1987, c.n. 80/86. *Kolpinghuis Nijmegen BV*.

e. Judgment of the European Court of Justice of 13. 11. 1990, c.n. C-106/89. *Marleasing SA v La Comercial Internacional de Alimentacion SA*.

f. Judgment of the European Court of Justice of 16. 12. 1993, c.n. C-334/92. *Wagner Miret v Fondo de Garantía Salarial*.

g. Judgment of the European Court of Justice of 26. 9. 1996, c.n. C-168/95. *Luciano Arcaro*.

h. Judgment of the European Court of Justice of 11. 11. 1997, c.n. C-251/95. *SABEL BV v Puma AG, Rudolf Dassler Sport*.

i. Judgment of the European Court of Justice of 29. 9. 1998, c.n. C-39/97. *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

j. Judgment of the European Court of Justice of 27. 6. 2000, c.n. C-240/98. *Océano Grupo Editorial SA v Roció Murciano Quintero*.

k. Judgment of the European Court of Justice of 5. 10. 2004, c.n. C-397/01. *Pfeiffer v Deutsches Rotes Kreuz, Kreisverband Waldshut Ev*.

l. Judgment of the European Court of Justice of 2. 6. 2005, c.n. C-89/04. *Mediakabel BV v Commissariaat voor de Media*.

m. Judgment of the Supreme Administrative Court of 26. 10. 2006, c.n. 1 As 28/2006.

n. Judgment of the European Court of Justice of 11. 1. 2007, c.n. C-208/05. *Innovative Technology Center GmbH v Bundesagentur für Arbeit*.

o. Judgment of the Supreme Administrative Court of 29. 8. 2007, c.n. 1 As 3/2007.

p. Judgment of the Supreme Administrative Court of 15. 8. 2008, c.n. 5 Azs 24/2008.

3. Acts of law[44]

[44] sorted by publication date.

a. First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, 31989L0104, Official Journal L 40 of 11 February 1989.

b. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, 31989L0552, Official Journal L 298 of 17 October 1989.

c. Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 31997L0036, Official Journal L 202 of 30 July 1997.

d. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 32004L0083, Official Journal L 304 of 30 September 2004.

e. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, 32005L0085, Official Journal L 326 of 13 December 2005.

f. Treaty on European Union, 12010E/TBL, Official Journal C 83 of 30 March 2010, in consolidated version.

g. Treaty on the Functioning of the European Union, 12010E/TBL, Official Journal C 83 of 30 March 2010, in consolidated version.

Contact – email
182667@mail.muni.cz