

LEGAL REGULATION OF TAXES IN THE PERIOD OF THE FIRST CZECHOSLOVAK REPUBLIC AND AT PRESENT

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Abstract

The aim of this article is to evaluate opinions on taxes and tax legislation at the time of the First Czechoslovak Republic and to compare these views with current opinions on taxes in the Czech Republic and with the current state of tax legislation in the Czech Republic. Obviously, we are faced with many problems of tax legislation of the period of the First Czechoslovak Republic even now. On the other hand, there is considerable improvement in certain areas.

Key words

Tax; Legal Regulation; Tax Legislation.

1 Introduction

Taxes and tax law are the topic of many experts, politicians and other persons. This was already true in the past at the time of the First Czechoslovak Republic. Legislation in the field of tax law is referred to as tax legislation.

The aim of this article¹ is to evaluate opinions on taxes and tax legislation at the time of the First Czechoslovak Republic and to

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compare these views with current opinions on taxes in the Czech Republic and with the current state of tax legislation in the Czech Republic. Methods of description, comparison, synthesis and analysis are used in the paper.

The hypothesis that needs to be confirmed or denied is: Current tax legislation faces similar problems as tax legislation at the time of the First Czechoslovak Republic.

In the individual parts of the article, we will focus on five topics related to taxes and tax legislation, which we consider important. It concerns the constitutional basis of taxes and tax legislation, the structure of the tax system, the protection of taxpayers, the formal aspects of tax legal regulation and the amendments of tax laws.

At the end of the article, we assess whether the hypothesis has been fulfilled or not.

2 Constitutional basis of taxes and tax legislature

The constitutional basis of taxes and tax legislation, or more precisely tax law, was during the First Czechoslovak Republic section 111 of the Constitutional Charter of the Czechoslovak Republic of 1920. According to this provision, **taxes and public levies could be imposed only on the basis of the law**. Thus, the constitutional charter used the term "veřejné dávky" (public levies) for the designation of taxes in the broad sense of the word. However, some authors² have supported using the term "berně" (other Czech word for levies than "dávky") for the designation of taxes in the broad sense of the word.

The term "veřejné dávky" is also used in the Civil Code in the section 2961 that regulates the funeral expenses in connection with compensation for damage. Pursuant to that provision the person who caused damage is required to compensate the person who has incurred the costs of funeral to the extent that these costs have not been paid by a public funds under another law. This is especially the so-called "pohřebné" (funeral), which is the state social support benefit provided under the State Social Support Act³. Thus, the Civil Code uses the term "veřejné dávky" for designation of transfers from the expenditure side of public budgets. The term "veřejné dávky" has thus changed from the monetary levies representing particular part of the public revenues of public budgets to monetary payments provided from public budgets as expenditures.

realized in the years 2017 – 2019 at the Faculty of Law of the Charles University, SVV 260 360/2017.

² For example Funk – compare FUNK, Vilém, Naše berní právo. Základy právních předpisů o daních a veřejných dávkách. Praha: Knihovna Sborníku věd právních a státních, 1934. 263 pages, p. 15.

³ See sections 47 and 48 Act No. 117/1995 Sb., on State Social Support, as amended.

Nor is the term "berně" (other Czech word for levies than "dávky") currently often used. The exception is Radvan and Mrkývka who used the term "berní právo" (levies law) but they, however, add that this term cannot be recognized as a dogma but as a didactic tool.⁴

However, much more important than the use of the term for designation of taxes in a broad sense of the word is the content of the above-mentioned provision of the Constitutional Charter of 1920 or more precisely the interpretation of the term "na základě zákona" (on the basis of the law).

Funk says that *"the only interpretation that can be admitted as acceptable is that the law according to our constitution must lay down all substantial rules of material and formal nature"*.⁵ However, he stated in his later work that the wording of the particular provision gives rise to various interpretations since the term "daně" (taxes) and the term "veřejné dávky" (public levies) are not precisely defined. He added that due to this uncertainty particular adjustments have been made to some payments, that are undoubtedly taxes in the broad sense of the word (Funk said that they are public levies), without authorization by law even by ministerial decrees.⁶

Currently, the article 11 (5) of the Charter of Fundamental Rights and Freedoms provides that *"taxes and charges may only be imposed on the basis of the law"*. The question arises as to how it is with other taxes in a broad sense of the word (for example duties, levies, premiums, contributions, etc.), whether these monetary payments can be imposed only on the basis of the law or whether the law is unnecessary for their imposition. There is a rather unequivocal answer to this question that even these monetary payments can be imposed only on the basis of the law specifically on the basis of the article 4 (1) of the Charter of Fundamental Rights and Freedoms.⁷

More important, however, is the interpretation of the term "on the basis of the law". In this respect, reference can be made to the book "Daňové

⁴ RADVAN, Michal, et al. Finanční právo a finanční správa: Berní právo. 1. edition. Brno: Doplněk, Masarykova univerzita, 2008. 509 pages. ISBN 978-80-210-4732-7, 978-80-7239-230-8. p. 44.

⁵ FUNK, Vilém, Naše berní právo. Základy právních předpisů o daních a veřejných dávkách. Praha: Knihovna Sborníku věd právních a státních, 1934. 263 pages, p. 42.

⁶ FUNK, Vilém: Daň a její zákonitost: přednáška řádného profesora práva finančního a vědy finanční JUDr. Viléma Funka, kterou proslovil při svém uvedení v úřad rektora University Karlovy 14. ledna 1939. Praha: 1939, p. 24.

⁷ See BAKEŠ, Milan. Daň poplatky a ústavní právo. In: Pocta Prof. JUDr. Václavu Pavlíčkovi, CSc. k 70. narozeninám. Praha: Linde, 2004. 614 pages. ISBN 80-7201-487-0. p. 566.

příjmy veřejných rozpočtů” (Tax revenues of public budgets)⁸ that emphasizes the interpretation that the duties can be imposed only by law and not by secondary legislation. Secondary tax legislation is therefore admitted. The practice is, however, that the legal regulation of individual taxes in a broad sense of the word is contained almost exclusively in regulations with force of law. Secondary legislation regulates rather marginal issues.

The exception was the government decree implementing the Sales Records Act⁹ which was repealed by the Constitutional Court. The Constitutional Court deduced that the legislation contained in this decree should be contained in the act itself because it was about determination of exceptions to the fulfilment of the obligations laid down by law.

Before the Constitutional Court¹⁰, however, another related problem is currently being solved, namely the issue of so-called tax filing forms¹¹, which are used especially for the filing of tax returns and the registration procedure. The essence of the dispute is whether these filling forms should not be issued in the form of secondary legislation.

The issuing of forms¹² was common even in the First Czechoslovak Republic. An example is the Act on direct taxes¹³. Rather than the illegality of these forms, the number of them, the uneconomic nature of their publication and the administrative burden associated with their filling has been pointed out. Novotný says: *"There are over 6,000 different formulas in use, they have a variety of formats, inconsistent text and purpose Central standardization of formats, types, papers, texts, and concentration of printing would save very large amounts costs of paper and printing The country merchant who has a house a small field with potatoes and a 1000 CZK labour loan has to fill in*

⁸ BOHÁČ, Radim. Daňové příjmy veřejných rozpočtů. Praha: Wolters Kluwer Česká republika, 2013. 329 pages. ISBN 978-80-7478-045-5. p. 61 an.

⁹ Government decree No. 376/2017 Sb., on excluding some revenues from the sales records.

¹⁰ Usoud.cz [online]. 2018. [cit. 2018-07-10]. Návrh na zrušení části § 72 daňového řádu. Retrieved from: <https://www.usoud.cz/projednavane-plenarni-veci/>.

¹¹ For more see TULÁČEK, Michal. Formulářová podání podle daňového řádu ve světle aktuální judikatury [Systém ASPI]. daucEXP - DAUC.CZ - expertní příspěvky (Wolters Kluwer) [cit. 2018-07-03]. ASPI_ID LIT246935CZ. Retrieved from: ASPI system. ISSN: 2336-517X.

¹² In the terminology of First Czechoslovak Republic "vzorů" or "vzorců" (patterns or formulas).

¹³ Act No. 76/1927 Sb., on direct taxes.

thirty pages of the big office format of various declarations to the tax authorities annually..."¹⁴.

The main argument of the complainants is that the obligations should be determined directly by law and not by the filing form. It can be said that the obligation to submit the relevant filing is set out by law with the fact that the law generally states what the content of the relevant submission should be. In fact, complainants demand a greater specification of the obligation directly in the act alternatively in the secondary legislation.

If the Constitutional Court accepted the complainants' claim the forms would probably be issued by the Ministry of Finance decree. This would lead to a large increase in these types of legislation.

It can be summarized that the constitutional basis of taxes and tax legislature today and in the period of the First Czechoslovak Republic is basically the same. However, the interpretation of these constitutional provisions is problematic.

3 The structure of tax system

Regarding the form of the tax system there is a significant difference between the First Czechoslovak Republic and the present Czech Republic.

In 1918 the reception of Austro-Hungarian law took place with the failure to replace these provisions during the period of the First Czechoslovak Republic or more precisely they have succeeded only partially in replacing them.

Funk said in 1934 that "*There has not yet been a full unification of legislation and therefore the legislation of former Austria is in force on the territory of Czech and Moravian-Silesian and the legislation of former Hungary is in force on the territory of Slovakia and Carpathian Ruthenia, as regarding the charges, excise taxes on sugar, on alcohol and on mineral oil, card stamp, pension law applicable to indirect taxes, moreover with regard to limitation periods and certain procedural rules*"¹⁵. In the field of direct taxation, the unification of the legislation was made especially by the Act No. 76/1927 Sb., on direct taxes, and in the field of customs duties by the Act No. 114/1927 Sb., on customs.

Novotny points out that tax legislation suffers from "*multiplicity and diversity of norms*", namely Austrian, Hungarian, Czech, Moravian, Silesian norms, and points to the fact that in one state territory the interstate agreements between former Austria and former Hungary

¹⁴ NOVOTNÝ, Jan M. *Reforma berní*, Praha: own edition, 1937. 79 pages. p. 24.

¹⁵ FUNK, Vilém, *Naše berní právo. Základy právních předpisů o daních a veřejných dávkách*. Praha: Knihovna Sborníku věd právních a státních, 1934. 263 pages, p. 16.

apply¹⁶. The absence of the general tax act like the German Reichsabgabenordnung¹⁷ was also considered as negative¹⁸. On the basis of the above-mentioned facts it is evident that the tax system in the First Czechoslovak Republic was complex and confusing and there was no general tax law that would contain general rules for all taxes and their administration.

On the other hand, the creation of the Czech Republic in 1993 succeeded in adopting a general tax act regulating the administration of taxes and charges¹⁹ which was replaced by the Tax Procedural Code that came into effect on 1 January 2011²⁰. This fact should be seen positively because such a general regulation unifies the particular area of law, contains general principles and contributes to the uniform interpretation of tax laws.

Similarly, new tax laws, regulating taxes in the narrower sense, have been adopted and come into effect in 1993. The reception of Czechoslovakian law was realized in the field of charges and other similar monetary payments but these regulations were gradually replaced by new regulations.²¹

We believe that the current tax system can be further improved. Certainly, it would be possible to formally classify a series of monetary payments similar to taxes and charges that fulfil the features of taxes or charges as taxes or charges. This would certainly help to make the tax system in the broad sense of the world more transparent. Why is monetary payment referred to as a levy when it is a tax from the material point of view? The reason may be to hide the true nature of the payment.

Another option is to reduce the number of individual taxes, charges and other similar monetary payments. The less taxes in the broad sense of the word the tax system in a broad sense of the word will be simpler. On the other hand, it is true that the less taxes in the broad sense of the word are imposed the more unfair the tax system in a broad sense of the word can be since there will be no taxation of certain objects of taxation and some objects of taxation will be taxed more than now.

¹⁶ NOVOTNÝ, Jan M. Reforma berní, Praha: own edition, 1937. 79 pages. p. 22.

¹⁷ Archive.org [online]. 2018. [cit. 2018-07-10]. Reichsabgabenordnung. Retrieved from: <https://archive.org/details/Reichsabgabenordnung>

¹⁸ FUNK, Vilém, Naše berní právo. Základy právních předpisů o daních a veřejných dávkách. Praha: Knihovna Sborníku věd právních a státních, 1934. 263 pages, p. 18.

¹⁹ Act No. 337/1992 Sb., on administration of taxes and charges, as amended.

²⁰ Act No. 280/2009 Sb., Tax Procedural Code, as amended.

²¹ An exception is, for example, Act No. 565/1990 Sb., on Local Charges, as amended.

However, Funk's statement, that is quite up to date, says that "*the tax system should be simplified and modified so that private business is not undermined, but its healthy development is allowed.*"²²

It can be summarized that the structure of the tax system today is clearer than the structure of the tax system of First Czechoslovak Republic. The new tax laws were adopted with effect from 1993 and the general act governing tax administration is in force. However, the tax system can be constantly improved.

4 The protection of taxpayers

Novotny stated in 1937 that he saw the problem of the tax system "*in the lack of legal protection of the taxpayer and in the unnecessarily high authority of the office*". Examples were the impossibility of a taxpayer's defence against the inactivity of the office and the lack of means by which it is possible to obtain compensation for damage caused by the exercise of official authority²³. Both of these examples are no longer up to date since the Tax Procedure Code regulates the protection against inactivity of the tax administrator²⁴ and it is also possible to defend against the tax administrator's inactivity before an administrative court.²⁵

However, today's legislation of taxable entities protection, which is contained especially in the Tax Procedural Code and the Code of Administrative Justice, can be considered as much more substantial. In this respect, we believe that the new tax procedure codes adopted after 1989 (Act on Administration of Taxes and Charges and the Tax Procedure Code) and their application within the framework of the constitutional order of the Czech Republic have brought about a major change.

First of all, it is necessary to mention the regulation of the right to judicial and other legal protection that is laid down by the Charter of Fundamental Rights and Freedoms²⁶ and the regulation of the principles of tax administration that is laid down by the Tax Procedure Code²⁷,

²² FUNK, Vilém: Daň a její zákonitost: přednáška řádného profesora práva finančního a vědy finanční JUDr. Viléma Funka, kterou proslovil při svém uvedení v úřad rektora University Karlovy 14. ledna 1939. Praha: 1939, 24 pages.

²³ NOVOTNÝ, Jan M. Reforma berní, Praha: own edition, 1937. 79 pages. p. 26.

²⁴ See Sec. 38 of Tax Procedural Code.

²⁵ See Sec. 79 an. of the Act No. 150/2002 Sb., Code of Administrative Justice, as amended.

²⁶ See Sec. 36 an of the Charter of Fundamental Rights and Freedoms.

²⁷ See Sec. 5 to 9 of the Tax Procedure Code and Sec. 2 of the Act on Administration of Taxes and Charges.

previously by the Act on Administration of Taxes and Charges. The taxable entities are provided with legal protection not only in the framework of tax administration, but also in the framework of judicial review within the administrative judiciary, possibly in the constitutional judiciary.

The completion of this process was the adoption of the Tax Procedural Code and its redefinition of the objectives of tax administration. According to the Act on Administration of Taxes and Charges 1992, the purpose of tax proceeding was to set and collect taxes so that the tax revenues of public budgets are not reduced.²⁸ However, the purpose of the tax administration according to the Tax Procedure Code is the correct identification and determination of taxes and securing the payment of taxes.²⁹ Although some authors consider this change to be symbolic³⁰, it can be considered as a confirmation and completion of the process of emancipating the rights of taxable entities.

It should be added to this that, in our view, any excesses that lead to a breach of the purpose of tax administration, such as excessive preference of public interest in gaining revenues of public budgets and excessive preference for the rights of taxable entities, are harmful. These tendencies should, in principle, be balanced and directed towards the purpose of tax administration, i.e. to set and collect the tax in the right amount.

It can be summarized that there is a large improvement in ensuring the protection of the rights of tax entities between the legal regulation of the First Czechoslovak Republic and the current legal regulation.

5 Formal aspects of tax legal regulation

The tax laws in the period of the First Czechoslovak Republic were criticized for a number of imperfections. According to Novotný, these tax laws were characterized by "*total inconsistency of their construction and their main concepts. There is no uniform and complete scheme on which basis all taxes would be clearly and unambiguously construed and the precision of individual concepts lacks.*"³¹

At present, tax laws are also being criticized for lack of clarity and non-systemicity.³²

²⁸ See Sec. 2(2) of the Act on Administration of Taxes and Charges.

²⁹ See Sec. 1(2) of the Tax Procedure Code.

³⁰ BAXA, Josef, et al. *Daňový řád. Komentář. I. díl.* Praha: Wolters Kluwer ČR, a. s., 2011, 800 pages. ISBN 978-80-7357-564-9. p. 3.

³¹ NOVOTNÝ, Jan M. *Reforma berní*, Praha: own edition, 1937. 79 pages. p. 26.

³² For example see Aktualne.cz [online]. 2018. [cit. 2018-07-10]. *Správa daně z příjmů je nepřehledná. Může za to řada výjimek i časté změny v zákoně, zjistil NKÚ.* Retrieved from: <https://zpravy.aktualne.cz/ekonomika/sprava->

Funk also pointed out that "*Tax laws, both before and nowadays, are prepared in ministerial departments without maintaining uniform points of view in defining basic concepts. The processing of tax laws does not take sufficient care, especially where the laws are quickly issued to ensure public revenues of them as soon as possible.*"³³

As regards the first complaint, we believe that positive development in tax law over recent years can be highlighted. If a new tax law is adopted, or more precisely new tax is regulated, such a legal norm has a clear structure and a constant adjustment of the structural elements of the tax and its administration. First, the structural elements of tax are set out in the usual order (taxable subject, tax object, tax base, tax rate, tax calculation, tax period and budgetary determination of tax) and consequently specific procedural rules for the administration of the tax are laid down in accordance with the general legislation regulating the administration of taxes i.e. the Tax Procedure Code. An example of such tax laws are regulations governing the tax on the acquisition of immovable property³⁴ or the tax on gambling³⁵.

The change has also taken place as regarding the unified processing of tax laws. In 2010 Tax Legislation Department was established at the Ministry of Finance which is, among other thing, responsible for unifying the structure and form of tax laws and it ensures their unity and content coherence. There is a lot of work for this department. Especially, it is necessary to replace the old tax laws of 1992, which no longer correspond to the current requirements of the tax law.

It can be summarized that the formal aspects of tax legal regulation were in the period of the First Czechoslovak Republic and are now referred to the lack of clarity and the non-systemicity. However, in the recent years, it is possible to see a positive trend in the development of tax legislation.

6 The amendments of tax laws

In terms of tax laws, it is not only their content and form that are important, but also the frequency of their changes.

Funk, in 1939, blames the tax laws for having been "*changed many times and in the short time which has led to confusion and impediment of tax administration. The legislature is the reason for the great*

dane-z-prijmu-je-neprehledna-muze-za-to-rada-vyjimek/r~b7d97134863611e782f9002590604f2e/

³³ FUNK, Vilém, Naše berní právo. Základy právních předpisů o daních a veřejných dávkách. Praha: Knihovna Sborníku věd právních a státních, 1934. 263 pages, p. 18.

³⁴ Legal regulation of Senate No. 340/2013 Sb., on Real Estate Acquisition Tax, as amended.

³⁵ Act. No. 187/2016 Sb., on Gambling Tax, as amended.

difficulties of the tax administration." Funk adds that *"Various governmental designs have been implemented at short notice and inadequately handled both materially and formally ..."*³⁶ He therefore points to the numerous and frequent changes to tax laws and, secondly, to their inadequate quality caused by the frequency of their adoption.

The frequency and speed of tax law changes is a problem even today. However, it is difficult to find a solution to this problem as taxes are one of the foremost political topics because they affect a wide range of recipients and must react to the development of the economy. Therefore, their legal regulation will be constantly changed.

Nevertheless, a certain solution is to observe particular rules and principles when realizing these changes, namely general legal principles, principles of structure of particular taxes and legislative principles. A specific expression of these rules and principles is, for example, the requirement to change only the parameters and not the nature of the basic essential elements of the tax or the requirement to comply with the principle of legislative restraint.

It can be summarized that number and frequency of the amendments of tax laws were the problem in the period of the First Czechoslovak Republic and are the problem nowadays.

7 Conclusion

The aim of this article was to evaluate opinions on taxes and tax legislation at the time of the First Czechoslovak Republic and to compare these views with current opinions on taxes in the Czech Republic and with the current state of tax legislation in the Czech Republic.

The second aim was to verify or rebut this hypothesis: Current tax legislation faces similar problems as tax legislation at the time of the First Czechoslovak Republic. Five topics have been described and evaluated for this purpose with the following conclusions:

- 1) The constitutional basis of taxes and tax legislature today and in the period of the First Czechoslovak Republic is basically the same. However, the interpretation of these constitutional provisions is problematic.
- 2) The structure of the tax system today is clearer than the structure of the tax system of First Czechoslovak Republic. The new tax laws were adopted with effect from 1993 and the general act governing tax administration is in force. However, the tax system can be constantly improved.

³⁶ FUNK, Vilém: *Daň a její zákonitost: přednáška řádného profesora práva finančního a vědy finanční* JUDr. Viléma Funka, kterou proslovil při svém uvedení v úřad rektora University Karlovy 14. ledna 1939. Praha: 1939, 24 pages.

- 3) There is a large improvement in ensuring the protection of the rights of tax entities between the legal regulation of the First Czechoslovak Republic and the current legal regulation.
- 4) The formal aspects of tax legal regulation were in the period of the First Czechoslovak Republic and are now referred to the lack of clarity and the non-systemicity. However, in the recent years, it is possible to see a positive trend in the development of tax legislation.
- 5) Number and frequency of the amendments of tax laws were the problem in the period of the First Czechoslovak Republic and are the problem nowadays.

Obviously, we are faced with many problems of tax legislation of the period of the First Czechoslovak Republic even now. On the other hand, there is considerable improvement in certain areas (the structure of the tax system, the protection of tax subjects). The above hypothesis was only partially confirmed.

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