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Tomáš Sejkora[1]
Jakub Kvapil[2]

Why obey the law when you can ignore it? A message from the Czech Financial Administration?[3]

Abstract

This paper represents brief case study from the Czech Republic which is devoted to the issue of the indisputable part of the excessive VAT deduction. Its aim is to point out the strange situation we witnessed as professional community when tax administration under the flag of the ministry of finance refused to obey generally binding legal regulation settled by the finding of the Constitutional Court. In this context, the state outlines standards of behaviour pursuant to which the law is not applied equally on all participants of legal procedure. Concerning scientific methods, this paper is the result of qualitative research where the methods of analysis, synthesis and deduction were used.

Keywords: Tax Law, Constitutional Court, Good Administration Principle, Excessive VAT Deduction

Streszczenie

Niniejsze opracowanie stanowi krótkie studium przypadku z Republiki Czeskiej. Poświęcone jest kwestii bezspornej części nadmiernego odliczenia podatku VAT. Jego celem jest zwrócenie uwagi na dziwną sytuację, której byliśmy świadkami jako środowisko zawodowe, gdy administracja podatkowa „pod flagą" ministerstwa finansów odmówiła przestrzegania powszechnie obowiązującej regulacji prawnej rozstrzygniętej orzeczeniem Trybunału Konstytucyjnego. W tym kontekście państwo wyznacza standardy postępowania, zgodnie z którymi prawo nie jest stosowane jednakowo wobec wszystkich uczestników procedury prawnej. Jeśli chodzi o metody naukowe, niniejsze opracowanie jest wynikiem badań jakościowych, w których zastosowano metody analizy, syntezy i dedukcji.

Słowa kluczowe: prawo podatkowe, Trybunał Konstytucyjny, zasada dobrej administracji, nadmierne odliczenie VAT

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[1] Tomáš Sejkora – Dr, professor associate at Charles University in Prague, Attorney at Law specialized in taxation, https://orcid.org/0000-0001-8405-5938

[2] Jakub Kvapil – Palacky University in Olomouc, https://orcid.org/0000-0001-7933-8140

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1. Introduction

Recently, we have seen an increasing trend of individual jurisdictions increasing their demand on tax compliance with the intention of more efficient collection and possibly enforcement of tax obligations of tax subject. In this direction occurs legislative regulations that fundamentally targets on the efficiency of tax collection and limiting the possibility of tax evasion. From these not only regulatory initiatives we can point out e.g., Council Directive 2017/952/EU of 29. May 2017 (Directive ATAD) which is introducing among other things general anti-avoidance rule and resolving hybrid inconsistencies, development of jurisprudence in the application of the principle of prohibition of abuse of law at EU and national level,[4] general results achieved under OECD BEPS, or monitoring so called VAT Gap evaluating the difference between the correct and expected collection of VAT and VAT, that is truly collected by the financial administrations.

All of the measures mentioned above are focused for the financial administration to have effective tools for fight with tax frauds and tax evasion. It is clears, that policy on the development of tax law is especially focused on protection of the interests of the state's fiscus. In contrast, it is difficult to look for specific initiatives that would focus on effective setup of internal financial administration procedures to make the procedure of the financial administration more efficient also in relation to the taxpayers. It is possible to say the hypothesis that at the moment when the cost of increasingly expensive tax compliance is reduced, tax evasion and tax frauds will be reduced because threshold at which is this infringement of the law still profitable and worth a risk will be reduced as well. This will also lead to decrease of costs for the operation of the financial administration and on tax compliance. Personally, we therefore perceive that it is necessary for the financial administration to respond flexibly to requirements of the taxpayers and to act in accordance with the law and the court's decisions and it is necessary that the financial administration will interpret the relevant generally binding legislation in the sense mentioned above. Into this background we would like to include a case study from the Czech Republic which is focused on one of the decisions of the Constitutional Court and the following reaction of the Czech financial administration.

[4] Section 8, paragraph 4 of the act no. 280/2009, Tax Procedure Code.

2. Decision of the Constitutional Court file number II. ÚS 819/18 of 22. February 2019

In 2019 The Constitutional Court heard the constitutional complaint concerning the procedure of the financial administration authorities in relation to payment of the undisputed part of the excessive VAT deduction. In this case, the Complainant which the financial administration refused to pay part of the excessive deduction, was a company operating in a field of cladding of commercial building and halls, and metal trading. Let's focus on the facts and background of the case. The financial office for the Pardubice Region initiated several tax audits and doubt-removal procedures against the complainant in order to verify, inter alia, it's VAT obligations for specified periods, that is during January and April 2015. The disputed part between the compliant and authorities of the financial administration was about excessive deduction in the amount of 400.000 CZK (Czech crowns) from the total applied excessive deduction in the amount of approx. 52 million CZK. Rest of the excessive VAT deduction wasn't audited or disputed by the tax administrator and that is why the compliant requested a narrowing of the control, only in relation to the disputed part of the excessive VAT deduction. The tax administrator didn't narrow tax audit and for the duration of tax audit he withheld the entire claimed amount of the excessive VAT deduction.

After completing the tax procedure including first instance appeal the complainant decided to file an administrative lawsuit for defence against unlawful interference at the regional court, which dismissed the lawsuit. In its reasoning, the regional court concluded that the appropriateness of the procedure of narrowing the tax audit can be considered, but lawsuit for defence against unlawful interference is not a legal instrument used to authoritatively determine the administrative authorities, which procedure they have, for reasons of suitability, to use. Subsequently the complainant decided to defend herself against the procedure of the tax administrator and against the decision of the regional court by cassation complaint to the Supreme Administrative Court of the Czech Republic. This court also rejected the complainant's argument, and her cassation complaint was dismissed on the ground that carousel frauds are one of the largest threats to the functioning of the EU tax collection system and one of the most difficult to detect, and the metal trading is one of the fields, in which carousel frauds are the most common and therefore procedure of the tax administrator is legitimate.

The Supreme Administrative Court of the Czech Republic stated that it is not apparent from the file material that the financial administration has made only superfluous and purely formal acts and concluded, that undisputed part of excessive VAT deduction must follow the fate of the disputed part of the excessive Vat deduction. According to this court's decision, it is not possible to divide excessive VAT deduction and to return the undisputed part before the fate of the disputed part of the excessive VAT deduction is decided.

The complainant filed the constitutional complaint in which she objected unconstitutional interference with the right to protection of property guaranteed by Article 11, paragraph 1 of the Charter.[5] The complainant stated that the contested decisions of the administrative courts were issued in breach of the principle of equality and the prohibition of arbitrariness of public authorities under Article 2, paragraph 2 of the Charter and Article 2, paragraph 3 of the Constitution.[6] The financial administration commented on the constitutional complaint by stating that they perceive the excessive VAT deduction as an indivisible item of VAT, and the cause of this comes from the unitary structure of this tax. As a result of this perception of the excessive VAT deduction (As a indivisible item VAT) the taxable person cannot be paid the undisputed part of the excessive VAT deduction until all the self-taxable supplies in the tax year have been decided.

The Constitutional Court dealt with following question; whether there is an interference with the right of property, the question of the lawfulness of the interference with the complainant's right of property and, last but not least, it analysed the tax administrator's procedure under the Tax Procedure Code. Procedure of the authorities of the financial administration has been subjected to a detailed review of the Constitutional Court and concluded that procedure of financial administration in regards of payment of undisputed part of the excessive VAT deduction is unconstitutional and an unjustified interference with the complainant's rights, concluding the complainant's right to property has been interfered with. According to the Constitutional Court, in a situation where taxes and fees are collected, there is *ex lege* a legitimate interference with property of the tax subject, because it reduces his assets by the amount, he will be liable to pay. Therefore, withholding excessive VAT deduction has also an impact on the complainant's property, since during the period the taxpayer cannot dispose of its funds while the excessive deduction is withheld. Not every interference with the rights

[5] Charter of Fundamental rights and Freedoms.

[6] Constitutional Act no. 1/1993 Col., Constitution.

guaranteed by the Charter is a violation of a fundamental right, that is why The Constitutional Court proceeded to examine the lawfulness of the interference with the complainant's right to property.

According to Section 85, paragraph 1 Tax Procedure Code, the object of tax audits is tax liability, allegations by the taxpayer or other circumstances relevant to the correct determination and assessment of tax relating to a single tax procedure. According to Section 85, paragraph 3 Tax Procedure Code, range of the tax audit can be expanded or narrowed during the audit by following the procedure for initiating the audit. Similarly, according to Section 90, paragraph 3 Tax Procedure Code, if, during the procedure for removing doubt, the tax administrator finds grounds for continuing in proving, it shall initiate a tax audit withing the range of these grounds. According to the Constitutional Court it is possible to find out that the Tax Procedure Code allows the tax administrator to examine that part of the payment about which there is reasonable doubt before assessing tax and therefore does not give the tax administrator the right to withhold the undisputed part of the excessive VAT deduction derived from those taxable payments which, as an undisputed cannot be a part of the verification. The Tax Procedure Code does not explicitly allow to dispose of withheld part of the undisputed part separate from the disputed amount, but *a contrario* in any Section it doesn't give a right to withhold undisputed part of excessive deduction together with the disputed amount. The Constitutional Court therefore concluded, that if a law does not provide the specific procedure which a tax administrator can separate the excessive deduction to the undisputed and disputed parts, it is impossible to conclude from that tax administrator can withhold an entire amount of the excessive deduction. Such a procedure of the tax administrator goes beyond the limits of constitutional law, sine in accordance with Article 2, paragraph 3 of the Constitution and Article 2, paragraph 2, of the Charter, state power may be exercised only within the limits and in the way prescribed by law. The interference with the complainant's right to property is unlawful because there is no legal basis for the tax authorities to withhold the disputed part of the excess deduction together with the undisputed part. For the tax administrator to proceed in this way, it would be necessary for such a method to be explicitly regulated by law. Although the interference with the complainant's right to property was not lawful and the Constitutional Court was thus able to terminate the review, as it concluded that the withholding of the undisputed part of the excessive deduction together with the disputed part was a violation of the right to

property guaranteed by Article 11, paragraph 1 of the Charter, the Constitutional Court continued its examination of the tax administrator's procedure and considered the constitutionally compliant procedure that the tax administrator could use in similar cases.

According to the Constitutional Court, although the Tax Procedure Code does not provide for the possibility of a partial decision of the amount of tax liability in the Section 139, such a decision is not impossible under the Tax Procedure Code. Section 134, paragraph 2 of the Tax Procedure Code states that, for the purposes of determining the subject-matter of the tax proceedings, the tax is assessed either in relation to the tax period or in relation to an individual fact. In the context of the Tax Procedure Code, the tax may be reassessed within the same tax period and in the context of a supplementary assessment, both at the initiative of the taxpayer and at the initiative of the tax administrator. A similar procedure could therefore be followed in relation to the individual facts relevant to the assessment of the tax. In the present case, the decision of the tax administrator to assess the undisputed part of the excessive deduction and to pay the undisputed part of the transaction to the complainant in accordance with the provisions of Section 101, paragraph 1 of the Tax Procedure Code would be appropriate, since that procedure does not preclude the subsequent assessment of tax on the transactions entrusted to the tax administrator in accordance with the provisions of Section 143, paragraph 1 of the Tax Procedure Code.

To summarize the conclusions of the Constitutional Court in the present case, the withholding of excessive VAT deductions is interference to the right of property of the complainants, because there was no legal basis for such withholding of the excessive deduction. The financial administration should have used constitutionally compliant procedure which would not have infringed the complainant's right to property and should paid the undisputed part of the excessive deduction to the complainant.

3. What was the approach of the financial administration?

What is interesting about this case? It is the financial administration's response. According to the Czech law the decisions of the Constitutional court binding on all authorities and persons.[7] The decision

[7] Article 89, paragraph 2 Constitutional Act no. 1/1993 Col., Constitution.

of the Constitutional Court is therefore of a generally binding legal nature and in this particular case represents a binding way of interpreting the provisions of the Tax Procedure Code in question, which not only tax subject but also the tax administrator are obligated to follow. Thus, the public expected the tax administrator to approach the problem of partial decisions in the way determined by the Constitutional Court, but the opposite was true. The Director General of the General Financial Directorate has publicly stated to media that "In the opinion of the General Financial Directorate, the conclusions of the Constitutional Court stated in the decision, that under the current form of the legislation the conclusions cannot be generally applied."[8] This statement was subsequently supported by the Minister of Finance Alena Schillerová, who told to "Hospodářské Noviny", that "The conclusions from the Constitutional Court cannot be accepted, respected and it cannot be applied because the legislation does not allow it."[9] In other words, the public authorities publicly and explicitly refused to follow the law, moreover, the law that was determined in a constitutionally compliant procedure as a part of the protection of constitutionality by the Constitutional Count, in the last instance. According to Article 83 of the Constitution, it is the Constitutional Court as a judicial protection authority, which is to evaluate, inter alia, the constitutionality of the legislative activity of the legislature, but also the conformity of the exercise of executive power with the constitutional order. Thus, there has been a completely shocking denial of one of the fundamental pillars of the functioning on the rule of law in the Czech Republic, when the executive power refused to follow the boundaries defined by the legislative power interpreted by the Constitutional Court.

However, we want to think beyond the Constitutional Court's thoughts on whether there is really no legal basis on the basis on which the financial administration could pay the undisputed part of the excessive deduction to the taxpayer. Could the authorities of the financial administration infer the obligation to pay the undisputed part of the excessive VAT deduction by using teleological interpretation of Tax

[8] T. Čemusová, *Finanční správa nerespektuje rozsudek Ústavního soudu. ‚Nelze to aplikovat,' píše ředitelka v interním pokynu*, 2019, https://www.irozhlas.cz/zpravy-domov/financni-sprava-ustavni-soud-nerespektuje-nadmerny-odpocet-dph-vraceni_1904230600_tec (accessed: 29.11.2021).

[9] M. Ťopek, J. Prokeš, *Berňák se dál bude chovat způsobem, který soud označil za protiústavní. Firmám nebude vracet nadměrné odpočty DPH*, 2019, https://archiv.hn.cz/c1-66559290-bernak-neumi-vyhovet-ustavnimu-soudu-ohledne-neopravnene-zadrzovanych-vratek-dph-hrozi-tak-dalsi-zaloby (accessed: 29.11.2021).

Procedure Code? Moreover, in a case where there is extensive case-law, supplemented by constant administrative practice, in which is said, that you cannot only rely on language interpretation, but it must be supplemented by systematic interpretation and above all by teleological interpretation. In addition, is it possible that the authorities of the financial administration could have inferred the obligation to pay the undisputed part of the excessive VAT deduction based on the principle of "good administration?"

4. Teleological interpretation of the Tax Procedure Code

As a teleological interpretation we consider such interpretation of the legislation, which "begins with the words of the law, proceeds through the systematic context, notes the genesis of the law and the will of the legislature, and culminates in an understanding of the purpose of the statutory provision."[10] The Constitutional Court has commented on the binding nature of the literal wording of a legal norm, concluding that "[c]ourt [the general court – author's note] is not absolutely bound by the literal text of a statutory provision, but **may and must** deviate from it when it is required for compelling reasons by **the purpose of the law**, the history of its creation, its systematic coherence, or one of the principles that have their basis in a constitutionally consistent legal order as a meaningful whole. In doing so, arbitrariness must be avoided; the court's decision must be based on rational reasoning."[11] Based on the facts mentioned above (or, more precisely, public authorities that authoritatively decide on the right and obligations of subordinate subject) must proceed from the purpose and meaning of the statutory provision and must apply the legal rules in a constitutionally consistent procedure.

Section 1, paragraph 2 of the Tax Procedure Code provides that tax administration is a procedure which is aimed at the correct **determination** and **assessment** of taxes and ensuring their **payment**. Commentary literature states on this provision that "[t]ax administration is thus only a procedure whose aim is the correct determination and assessment

[10] P. Osina, *Teorie práva*, Praha 2013, pp. 139–140.

[11] Decision of the Czech Constitutional Court as of 4th of February 1997, f. n. Pl. ÚS 21/96.

of taxes and their payment. Incorrect determination or assessment of the tax is not tax administration, and it is clear under Section 10, paragraph 1, that the tax administrator is not authorized to make such (incorrect) determination and assessment".[12] In the context of the provisions of Section 1, paragraph 2, of the Tax Procedure Code, reference should also be made to Section 5, paragraph 2, of the same Act, which further provides that the tax administrator shall exercise his powers only for the purposes for which and to the extent to which they are vested to him by or under the Act. Could the authorities of the financial administration therefore not have inferred the obligation to pay the undisputed part of the excessive VAT deduction from a teleological interpretation of the Tax Procedure Code?

It follows from the foregoing that the procedure of the financial administration should be focused on the correct determination and assessment of the amount of taxes, i.e. if the disputed and undisputed part of the excessive deduction was determined and assessed, the objective of the financial administration should have been to pay the undisputed part of the excessive deduction, since such a procedure is in accordance with the provisions of Section 1, paragraph 2 in conjunction with Section 5, paragraph 2 of the Tax Procedure Code, since procedures in tax administrator should be carried out only in relation to the determination and payment of such tax, which belongs to the public budget. Only such tax collection is considered to be legitimate interference with the right to property under Article 11, paragraph 5 of the Charter. In the event that the tax administrator proceeded by withholding the entire amount of the excessive tax deduction (both disputed and undisputed) it can be concluded that such a procedure is inconsistent with Section 1, paragraph 2 of the Tax Procedure Code, since such a procedure is not focused on the correct detection, determination and, above all, payment of taxes, since the tax administrator knew that part of the excessive deduction was claimed in accordance with the statutory provisions. Since the withholding on the entire excessive deduction in breach with Section 1, paragraph 2 of the Tax Procedure Code, it was therefore in breach with Section 5, paragraph 2 of the Tax Procedure Code, since the tax administrator is empowered by law to exercise his powers to the extent that they are vested on him by the Tax Procedure Law. Therefore, if the action of the tax administrator was not supported by an explicit legal rule regulating the procedure for tax administrator and was not even in

[12] P. Nováková, *§ 1 [Vymezení pojmů]*, [in:] O. Lichnovský, R. Ondrýsek a kol., *Daňový řád*, Praha 2021, p. 2.

accordance with the objective of the correct determination, assessment and payment of taxes, such action by the tax administrator was ultra vires. It follows from the foregoing that the authorities of the financial administration should have inferred the obligation to pay the undisputed part of the excessive deduction on the basis of a teleological interpretation of the provisions of Section 1, paragraph 2 of the Tax Procedure Code and that the explicit provision authorising the tax administrator to make a partial decision was not necessary for the payment of the undisputed part of the excessive deduction.

5. Principle of "good administration"

It is generally accepted, that the principles of good administration have evolved in close connection with the principle of procedural fairness and the rule of law, and that each authority of public administration should consider these principles as the basis of its activities, both in relation to the efficiency of the performance of the relevant part of the public administration and in relation to its accountability for its performance.[13] Moreover, in the area of EU law, which clearly includes the regulation of indirect taxes, and thus VAT, the principles of good administration are an immanent part of the legal systems across all EU Member States. Indeed, the Court of Justice of the EU has in the past recognised 'good administration' as a general administrative principle and thus part of EU law.[14] Gradually, the principle of 'good administration' has also permeated positive legislation, where it is necessary to refer in this context to The European Code of Good Administrative Behaviour of 1 March 2002. Furthermore, 'good administration' has become part of the EU Charter of Fundamental Rights.[15]

The principle of good administration is also fully applicable to tax proceedings, where reference can even be made to Instruction No. MF-4 on setting time limits in tax administration, which states that "(interested persons) shall notify the tax administrator's supervisor closest to the tax administrator who violated the above principle of the violation of this principle (to proceed in the proceedings without unnecessary

[13] M. Batalli, A. Fejzullahu, *Principles of Good Administration under the European Code of Good Administrative Behavior*, "Pécs Journal of International and European Law" 2018, no. 1, p. 27.

[14] Decision in the Case 255/90 P. Jean-Louis Burban v European Parliament, ECLI:EU:C:1992:153.

[15] Charter of Fundamental Rights of the European Union, f. n. 2012/C 326/02.

delays) and for the purpose of handling submissions of persons involved in tax administration within reasonable time limits, taking into account in particular the principles of **'good administration'**". This document which came from the Ministry of Finance of the Czech Republic, although lacking general binding force, but is still binding on the subordinate authorities of the financial administration. It is therefore clear that even the central tax administration authorities, recognises the principle of good administration as a corrective applicable in tax law. Similarly, the principle of the good administration is referred to in the commentary literature, which states that "[t]he principle of legitimate expectation is expressly enshrined. The principle of foreseeability, which is one of the main principles of good administration, obligates the administrative authority to decide in a manner consistent with the way it has decided similar cases in the past or to justify why it has departed from its previous practise in a particular case."[16] The Supreme Administrative Court ruled in its judgment no. 1 Afs 293/2018 – 28 of 21 March 2019 that if "the obligation to issue a notice for proposals is no fulfilled by the grant provider (Section 14f(1)–(3) of Act No. 218/2000 Coll., on Budgetary Rules) the possible imposition of a levy for breach of budgetary discipline, including a penalty, is not fulfilled by the provider of the subsidy, the tax administrator must take care of the correction of this error within the framework of the ongoing tax proceedings concerning the breach of budgetary discipline. The tax authority will therefore generally have to ensure that the procedure set out in Section 14f of the Budget Rules Act is followed and only then decide on the possible imposition of a levy for breach of budgetary discipline. Such a procedure follows from the principle of good administration, which imposes a general obligation on administrative authorities to cooperate and coordinate their activities" There is therefore no dispute about the application of these principles in the tax process, either among the professional community or on the side of the public authorities.

The essential elements of the principle of good administration are compliance with the law, proportionality and accountability.[17] However, none of these elements of the principle of good administration was fulfilled in the case before the Constitutional Court. The tax administrator did not act in accordance with the law, since acting in accordance with the law involves interpreting it according to its meaning, respecting in particular the opinions of the superior authority and

[16] M.E. Grossová, L. Matyášová, *Daňový řád: Komentář*, Praha 2015, p. 170.

[17] D. Hrabcová (ed.), *Souhrnná zpráva o činnosti Veřejného ochránce práv za rok 2006*, Brno 2007, p. 114.

the constant case law of the courts.[18] As was already outline above, the procedure in accordance with a law must be seen in the light of a teleological interpretation of the provisions of Section 1, paragraph 2 of the Tax Procedure Code. However, the tax administrator's procedure was not proportionate either. We regard as a proportionate a procedure where the authority of administrative administration interferes with the rights and legitimate interests of persons only where it is necessary to achieve the purpose of the proceedings and only to the extent necessary. The withholding of the undisputed part of the excessive VAT deduction was already disproportionate in the proceedings before the financial administration authorities, since at that time the excessive VAT deduction in dispute between the tax administrator and the complainant was only 400.000 CZK out of a total excessive deduction of approx. 52 million CZK. If the tax administrator had acted in accordance with the principle of good administration, or the principle of proportionality, which is an immanent part of the principles of good administration, then it would have paid the complainant the undisputed part of the excessive deduction and continued to carry out tax audits only in relation to the disputed part of the excessive deduction. Lastly, the principle of accountability was not observed by the financial administration. That principle provides, first of all, that an administrative authority should not avoid examining a preliminary question or taking a decision on a matter falling within its competence, and it is therefore a responsibility of that authority to deal with all the parties' objections and submissions. However, if there is a mistake, it is responsibility of such authority to admit its mistakes and to take effective remedial measures without delay.[19] However, no such action was taken by the financial administration; on the contrary, the financial administration authorities continued to insist, even after the Constitutional Court's decision, that it could not be applied and expressed the view that they would continue to apply the procedure found unconstitutional by the Constitutional Court.

Based on the principle of good administration, the financial administration should therefore have inferred that it was obliged to pay the undisputed part of the excessive VAT deduction to the taxpayer. When applying the principles of good administration in tax proceedings, it is possible to infer an obligation to the tax administrator which is not directly imposed by law, thus extending its obligations in relation to

[18] *Ibidem*.

[19] K. Černín, *Souhrn hlavních principů dobré správy. Principy dobré správy*, Brno 2006, pp. 18–19.

taxpayers. Therefore, the financial administration should have already applied the principle of good administration in the proceedings conducted by the tax administrator and inferred the obligation to pay the undisputed part of the excessive VAT deduction to the taxpayer. By the procedure applied to the complainant, the authorities of the financial administration infringed the principle of good administration, which consists in the obligation to act lawfully, proportionately and accountably in administrative proceedings.

6. Conclusion

The problem with the approach taken by the financial administration in the present case is that there was no "legal basis" for the approach taken by the financial administration. The financial administration is obliged to act in accordance with Article 4, paragraph 1 of the Charter, which provides that "[c]onditions may be imposed only on the basis of the law and within its limits and only while preserving fundamental rights and freedoms."[20] However, the financial administration's authorities have interpreted and, unfortunately, continue to interpret this article in such a way that every step taken by the tax administrator must have a legal basis, without distinguishing between situations in which the taxpayer's rights are legitimately interfered with and situations in which, on the contrary, the financial administration should minimise its interference with the taxpayer.

In cases where the rights of the taxpayer are interfered with (e.g., both the disputed and undisputed part of the excessive VAT deduction is withheld), it is necessary that there is a legal basis for such interference. If the situation is the other way round, i.e. by not acting or by referring only to the existing language of the rules, the rights of the taxpayer are only now being interfered with (e.g. assessing whether the undisputed part of the excessive VAT deduction can be paid to the taxpayer), then there does not need to be a specific legal basis for such action by the public authority, since this procedure will be based on a teleological interpretation of the legislation in question, the provisions of Section 1, paragraph 2 of the Tax Procedure Code defining the objective

[20] Article 11, paragraph 5 Constitutional Act no. 2/1993 Col., Charter of Fundamental rights and Freedoms.

of tax administration, and also on the application of the principles of good administration.

The payment of the undisputed part of the excessive VAT deduction cannot be regarded as an obligation which is directed negatively (to the detriment of taxpayers) and should therefore be established by law in accordance with Article 4, paragraph 1 of the Charter. On the contrary, it is an obligation imposed on the tax administrator and is imposed for the benefit of the taxpayer, and therefore, in this situation, the obligations of the tax administrator can be inferred from the general legal regulation, even though they may not be implied directly from the pure language of the legal rule. In the case of extension of the tax administrator's obligations in favour of the tax subject, there can be no violation of Article 4, paragraph 1 of the Charter; in fact, in the past, the courts and the financial administration itself have already extended the obligations of tax administrators and thus created the law in favour of tax subjects (cf. the judgment of the Supreme Administrative Court of 21 March 2019, no. 1 Afs 293/2018 – 28, or the already mentioned MF Instruction No MF-4).

It is all the more surprising that the financial administration has persisted in its unlawful procedures, since the issue of the possibility of refunding the undisputed part of the excessive deduction was also considered by the Court of Justice of the European Union in the proceedings under C-446/18, where the judgement of the CJEU was issued on 11 May 2020, with the conclusion that the EU legislation does not exclude the refund of the undisputed part of the deduction. The result was therefore perfectly clear, namely that a substantial part of the financial administration's arguments were wrong. Nevertheless, the financial administration persisted in its unlawful practice until the legislature adopted an amendment to the Tax Procedure Code introducing new provisions in Sections 174a and 174b on advances of tax deductions. Unfortunately, with effect from 1 January 2021, Czech taxpayers were thus exposed to the unlawful practice of the tax administrators for almost two years.

Therefore, to return to the context, under tax policy, jurisdictions take effective measures to prevent tax evasion and establish many rules that allow taxpayers' tax claims to be examined, the substance of transactions to be examined and the purpose of tax administration to be achieved. In this context, the financial administration is unable to offer taxpayers even the lowest standard that is necessary in a democratic state to expect from public authorities, namely compliance with the legality of their procedures. At a time when the financial administration,

including the Minister of Finance, is publicly declaring that it will not comply with generally binding legislation that is binding on public authorities, the polarisation between the financial administration and tax subjects will continue to deepen, which, from our point of view, cannot lead to more effective tax collection in the long term. If, as in the above-mentioned case, the financial administration acts deliberately illegally and publicly proclaims it, it is to be expected that there will also be illegal tax-evasive behaviour on the part of the tax subjects, since it is the State that sets the standard for the behaviour of taxpayers in such administrative practices.

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