Annual Center Review '14

THE SYSTEM OF STATE PURPOSE FUNDS IN SLOVAKIA

▪

Information on Public Finance in the Czech Law,Transparency and Free Licences

▪

Tax gap management by public tax authorities in the Polish tax system

▪

НАЛОГОВОЕ АДМИНИСТРИРОВАНИЕ В РЕСПУБЛИКЕ БЕЛАРУСЬ:
ОСНОВНЫЕ ТЕНДЕНЦИИ РАЗВИТИЯ И ПРОБЛЕМЫ

▪

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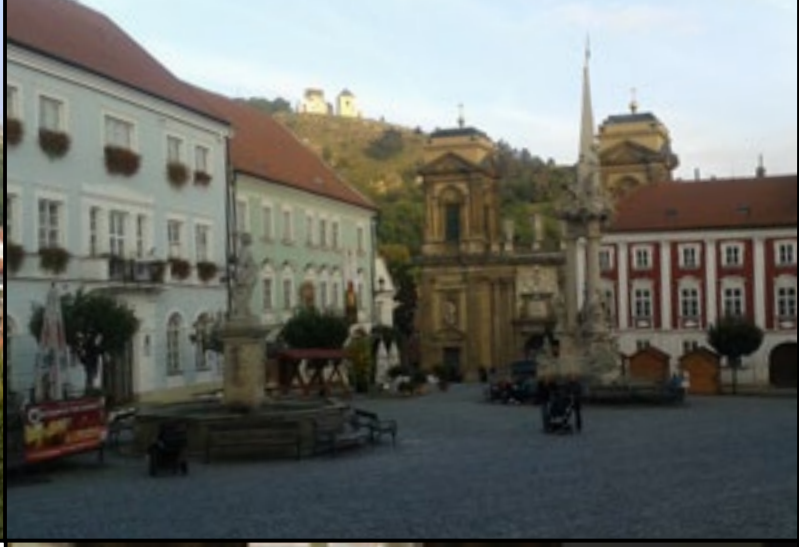

XIII INTERNATIONAL CONFERENCE „SYSTEM OF FINANCIAL LAW", Mikulov 2014




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Dear Readers

It is a great pleasure to introduce you to the new issue of the Annual Center Review. The Annual Center Review, as a joint project of the Association Information and Organization Center for the Research on the Public Finances and Tax Law in the Countries of Central and Eastern Europe as well as the Faculty of Law at the University of Białystok will present scientific accomplishments of the Association Center and the Faculty in the area of research on the issues concerning finances of the countries in this part of Europe.
It is very important that in this issue you can find articles both professors and young representatives of science.

Still the basic language of the publication is English. It is also possible to publish in Russian. In this issue we publish article related to tax administration in Republic of Belarus.

A very important event and an example of international cooperation between universities was the Polish-Czech double doctorates by Michał Kozieł and Damian Czudek. In this issue we publish the interview with the authors of dissertations and theses.

The present issue also presents report from the conference organized by the Association Center - XIII International Scientific Conference, which took place in Mikulov. The next conference will be organized in Kosice (Slovakia).

In this issue we also publish a report on the VIII International Academic Financial Conference "Modern Problems od Financial Law" organized in Grodno. We also present information on the initiatives taken by the Faculty of Law at the University of Białystok, concerning Central and Eastern Europe.

I invite you to cooperation and submission of articles for the next issue, to send texts of research papers in English or Russian.

I wish you pleasant reading.

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НАЛОГОВОЕ АДМИНИСТРИРОВАНИЕ В РЕСПУБЛИКЕ БЕЛАРУСЬ: ОСНОВНЫЕ ТЕНДЕНЦИИ РАЗВИТИЯ И ПРОБЛЕМЫ

TAX ADMINISTRATION IN REPUBLIC OF BELARUS: MAIN TRENDS AND CHALLENGES

Аннотация: В статье рассматриваются проблемы понятийного аппарата категории налоговое администрирование. Исследованы научные подходы к данному понятию. Автором сделан вывод, что меры, принимаемые по усовершенствованию налогового администрирования, направлены на упрощение налоговых процедур, осуществляемых налоговыми органами.

Предлагается продолжить реформирование в области налогового администрирования с внедрением перечня электронных ресурсов, что позволит максимально сократить нагрузку на налоговые органы.

Автор указывает, что необходимо закрепить на законодательном уровне понятие «налоговое администрирование» включив в Общую часть Налогового кодекса Республики Беларусь - понятие следующего содержания: «Регламентированная нормативными правовыми актами организационная и управленческая деятельность государственных налоговых органов, направленная на контроль за соблюдением налогового законодательства, обеспечивающая своевременную и полную уплату налогоплательщиками в бюджеты налогов, сборов (пошлин) и иных обязательных платежей. Указанное понятие позволит разработать наиболее системный и эффективный подход к администрированию в налоговой сфере.

This article discusses the conceptual apparatus category of tax administration. Studied scientific approaches to this concept. The authors concluded that the measures taken to improve the tax administration, aimed at simplifying tax procedures carried out by the tax authorities.

It is proposed to continue the reform in the area of tax administration with the introduction of the list of electronic resources that will minimize the burden on the tax authorities.

The author points out that it is necessary to fix on the legislative level, the concept of "tax administration" included in the general part of the Tax Code of the Republic of Belarus - the concept as follows: "Regulated normative legal acts of the organizational and management activities of state tax authorities, aimed at monitoring compliance with the tax laws to ensure timely and full payment of the tax payers of taxes and duties (duties) and other obligatory payments. These concepts will develop the most systematic and efficient approach to the administration in the tax area.

Ключевые слова: налоговое администрирование, управление, контроль, налоговое регулирование.
Keywords: tax administration, management, control, tax regulation.

Введение.

Налоговое администрирование является одним из основных элементов эффективного функционирования налоговой системы и экономики государства. Одной из основных проблем государства является обеспечение поступления в бюджеты всех уровней и во внебюджетные фонды налогов, сборов и иных установленных законом платежей. Финансовая деятельность государства по получению налогов будет действенной только в том случае, если в стране существует оптимальный механизм налогового администрирования.

Эффективность налоговой системы обусловлена полнотой выявления источников доходов в целях обложения их налогами и минимизацией расходов по их мобилизации и обязанности уплате.

Целью налогового администрирования является исполнение налоговой политики государства, которая проводится в отношении всех участников правоотношений регулируемых налоговым законодательством.

Недостатки администрирования налогов приводят к увеличению налоговых правонарушений, снижению поступления налогов в бюджет и разбалансированности действий уполномоченных государственных органов.

На данный момент в налоговом законодательстве и науке налогового права нет цельного представления о налоговом администрировании как о полностью сформировавшемся правовом явлении. В целях совершенствования правового регулирования налогового администрирования приобретает актуальность теоретическая задача об определения правовой природы налогового администрирования.

Основная часть.

Рассмотрим точки зрения об определении понятия «налогового администрирования», существующие в научной юридической литературе.

По мнению И.А. Перонко и В.А. Красницкого, налоговое администрирование - это система управления государством налоговыми отношениями. Налоговые отношения являются предметом налогового администрирования.[1]

Если рассматривать администрирование как управленческую деятельность, то следует рассматривать в двух аспектах: общее государственное управление и специальное государственное управление (внутриотраслевое, подведомственное).

Г.А. Василевич отмечает, что государственное управление ассоциируется с национальным суверенитетом, суверенностью, воплощением государственности. Причем содержание суверенитета, и учение о суверенитете всегда имели конкретную направленность, были связаны с решением насущных вопросов общественной жизни.[2]

Иной позиции придерживается О.И. Чуприс, считая, что государственное управление представляет собой особый вид социального управления с присущими ему признаками.[3]

Общее государственное управление осуществляют высшие законодательные и исполнительные государственные органы. Прежде всего, их деятельность направлена:

- на разработку основных направлений налоговой политики;
- на рассмотрение и утверждение государственного и местных бюджетов, на всесторонний анализ об исполнении бюджета, о полном и своевременном поступлении налогов в бюджетную систему;
- на принятие нормативных правовых актов;
- разработка проведение организационных мероприятий, повышающих эффективность работы налоговых органов и налогового контроля;
- создание благоприятных условий и оказание мотивирующих воздействий на плательщиков, например, предоставление налоговых льгот или упрощение системы налогообложения.

Что же касается специального управления, то оно осуществляется внутри своей системы, органами в отношении нижестоящих подчиненных и подведомственных организаций.

Иванова В.Н. считает, что четкого разделения понятий как «государственное управление в сфере

налогообложения» и налоговое администрирование», «налоговый контроль» в науке финансового права отсутствует.

Отталкиваясь от признаков государственного управления, можно констатировать:

1) государственное управление в сфере налогообложения представляет собой вид деятельности по осуществлению государственной исполнительной власти в сфере налогообложения;

2) это непрерывная, постоянная работа и планомерная работа с применением регулятивных и контрольно-надзорных процедур;

3) государственное управление в сфере налогообложения осуществляется специально созданными органами;

4) государственное управление в сфере налогообложения основывается на принципе организационности, предусматривающем исполнение как внутренних, так и внешних административных функций.[4]

Свои функции налоговые органы осуществляют посредством налогового администрирования, под которым В.А. Красницкий понимает организацию и осуществление эффективной деятельности субъектов налогового контроля – налоговых инспекций, систем управления налоговыми отношениями.[5]

Таким образом, Иванова В.Н. приходит к выводу, что рассмотрение категорий управления и администрирования, что последняя категория является составной частью управления. Она указывает, что администрирование представляет собой регулятивную составляющую управления, неразрывно связанную со второй составляющей управления – контрольно-надзорными процедурами. Наиболее полно в качестве управленческой деятельности раскрывает содержания понятия А.Г. Иванов, где под налоговым администрированием понимает регламентированную законами и другими правовыми актами организационную и управленческую деятельность уполномоченных государственных органов и других уполномоченных законами субъектов по обеспечению возникновения, изменения и прекращения налоговой обязанности и обеспечению поступления налогов в бюджетную систему государства. Он подразделяет администрирование налогов на две основные стадии это добровольное исполнение субъектом налоговой обязанности и принудительное исполнение, а также привлечение его к налоговой ответственности.[6]

А.С. Титов определил налоговое администрирование, как совокупность норм (правил), методов, приемов и средств, при помощи которых специально уполномоченные органы государства, осуществляют управленческую деятельность в налоговой сфере, направленную на контроль за соблюдением законодательства о налогах и сборах, за правильностью исчисления, полнотой и своевременностью внесения в соответствующий бюджет налогов и сборов, а в случаях, предусмотренных законодательством – за правильностью исчисления, полнотой и своевременностью внесения в соответствующий бюджет иных обязательных платежей.[7]

Т.А. Измайлов пришел к выводу и выделил три трактовки налогового администрирования:

- налоговое администрирование как система управления;
- налоговое администрирование как управление налогами;
- налоговое администрирование как организация и осуществление деятельности субъектов налогового контроля за соблюдением налогового законодательства.[8]

В.И. Фонова же раскрывает содержание данного понятия через использование одного из следующих терминов: управление; уполномоченные органы; налоговые отношения. В.И. Фонова считает, что раскрытие содержания налоговое администрирование как управления налоговыми отношениями (подразумевает расширительное толкование термина) не вполне верным и рассматривает налоговое администрирование в двух аспектах:

1) как процессуальную деятельность, в основе которой лежит налоговое производство;

2) как систему управленческих отношений по взаимодействию между компетентными органами исполнительной власти, урегулированными

нормами административного права.[9]

А.В. Брызгалин делает вывод, что понятие «налоговое администрирование» - это категория собирательная, условная, и можно только предположить, что наука и практика только в будущем должны определиться с этим понятием и его содержанием.[10]

По нашему мнению, налоговое администрирование можно рассматривать как своеобразный механизм управления в налоговой сфере, при этом она раскрывает содержание данного термина как «повседневную деятельность налоговых органов и их должностных лиц, обеспечивающую своевременную и полную уплату налогоплательщиками в бюджеты налогов, сборов и иных обязательных платежей». Считаем, что «данный подход к понятию налогового администрирования можно определить в широком смысле слова. Поскольку основной формой налогового администрирования являются различные виды налогового контроля и способы его проведения, учет налогоплательщиков и объектов, подлежащих налогообложению; проведение налоговых проверок и принятие решения по ним; принятие правоустанавливающих решений по вопросам налогового права; опрос налогоплательщиков и других лиц; проверки данных учета и отчетности; осмотр помещений и территорий, где могут находиться объекты, подлежащие налогообложению, или использование для извлечения прибыли и др.

Так, мы приходим к тому, что все определения и толкования термина «налоговое администрирование» можно разделить на 3 подхода:

- узкий подход: подразумевает налоговое администрирование как налоговый контроль, процесс осуществления налогового контроля, деятельность налоговых органов, определенные методы воздействия для достижения определенных целей;
- широкий подход: определяет налоговое администрирование как систему управления налоговыми отношениями, как часть налоговых отношений, систему управления налоговыми отношениями, налоговое право и налоговую политику;
- комплексный подход: указывает на то, что налоговый контроль выступает частью администрирования, а само администрирование – часть управления налоговой системой.

Администрирование налогов как вид государственной деятельности строится и базируется на определенных принципах. Принципы включают основополагающие идеи установления, выражающие объективные закономерности организации уполномоченных государством органов, осуществляющих налоговое администрирование, обоснованные направления реализации их компетенции, задач и функций, отражающие базовые конституционные положения и лежащие в основе правотворческой деятельности, исполнения налоговой обязанности и деятельности налоговых органов. К ним можно отнести следующие принципы: законности, гласности, открытости и прозрачности; справедливости, всеобщности налогообложения и равенства налогоплательщиков перед законом; беспристрастности; определенности налогов и сборов, удобства; эффективности; добровольного исполнения налоговой обязанности; ответственности компетентных органов и лиц за ненадлежащее исполнение процессуальных действий и принятых решений; права на защиту субъектам налогового администрирования; презумпции невиновности налогоплательщика; соблюдения налоговой тайны; неотвратимости юридической ответственности.[11]

Перед налоговым администрированием стоит ряд необходимых задач:

1) исполнением налогового законодательства;
2) правильностью исчисления налогов;
3) полнотой исчисления налогов;
4) своевременностью внесения налогов и иных платежей;
5) учет плательщиков.[12]

Для реализации поставленных задач в налоговом администрировании используются определенные методы, однако единого подхода к определению методов, характерных для налогового администрирования, на данный момент не выработано.

Например, считается, что к методам налогового администрирования относятся: налоговое планирование, налоговое регулирование и налоговый

контроль.

По мнению К.С. Бельского, государственные органы, осуществляя налоговое администрирование, используют следующие методы: "1) метод налогового администрирования, обусловливающий добровольное исполнение налогоплательщиком обязанности по уплате налога; 2) принудительное исполнение по уплате налога; 3) налоговый контроль".[13]

Совершенствование налогового администрирования является неотъемлемой частью налоговой политики и устойчивого социально-экономического развития государства. Своевременное и полное поступление налоговых платежей, прежде всего, зависит от эффективности налогового администрирования.

В Республике Беларусь, начиная с 2006 года, активно проводится налоговая реформа. Реформа, направленная на адаптирование и гармонизацию налоговой системы Республики Беларусь с действующими в европейских странах, придание налоговому законодательству характер, стимулирующий добросовестное исполнение налоговых обязательств и деловую инициативу. Видится необходимым придать контрольной (надзорной) деятельности предупредительный характер, перейти к преимущественному использованию профилактических мер, направленных на предотвращение правонарушений при осуществлении предпринимательской деятельности.

Необходимость кардинальных перемен и изменений налогового права связано, прежде всего, с социально-экономическим развитием государства и стремительно изменяющимся общественными отношениями в данной сфере.

Согласно «Программе социально-экономического развития Республики Беларусь на 2011–2015» главными задачами в налоговой сфере выделяют такие как:

1) совершенствование структуры и механизмов взимания установленных налогов и сборов с ориентацией на максимальное приближение по их составу и периодичности уплаты к налоговым системам развитых стран;

2) радикальное упрощение процедур налогового администрирования и контроля, укрепление позиций страны в мировых рейтингах.[14]

Для реализации поставленных задач данной Программы разработаны «Мероприятия по выполнению Программы социально-экономического развития Республики Беларусь на 2011–2015 годы»[15], а именно для налоговой сферы это радикальное упрощение процедур налогового администрирования и контроля, укрепление позиций страны в мировых рейтингах. В частности можно отметить такие мероприятия как максимальное привлечение плательщиков к системе электронного декларирования и расширения перечня предоставляемых сервисов.

На данный момент в практике внимание уделяется электронному декларированию. В целях развития новых форм взаимодействия налоговых органов с плательщиками разработана и внедрена автоматизированная информационная система «Расчет налогов», обеспечивающая электронный документооборот с плательщиками.

Функционирование данной системы направлено на упрощение процедур налогового администрирования и создание максимально комфортных условий для исполнения плательщиками своих налоговых обязательств.

Плательщик имеет возможность посредством системы электронного декларирования направлять в налоговые органы следующие документы в электронном виде:

1 – налоговые декларации;

2 – заявления:

- о выдачи справки о наличии (отсутствии) задолженности перед бюджетом; переносе срока проведения плановой проверки;
- о зачете (возврате) излишне уплаченных (взысканных) сумм налогов, сборов (пошлин), пеней;
- о переходе на упрощенную систему налогообложения;

3 - уведомления о принятии решения о ликвидации или реорганизации организации и т.д.

В целях либерализации экономических отношений хозяйствующих субъектов в соответствии с Директивой Президента Республики Беларусь № 4 развитие налогового администрирования направлено

на завершение гармонизации налоговой системы Республики Беларусь с налоговыми системами действующими в европейских странах, а также придать налоговому законодательству характер, стимулирующий добросовестное исполнение налоговых обязательств и деловую инициативу.

В контрольной деятельности налоговых органов стоит задача придать контрольной (надзорной) деятельности предупредительный характер, перейти к преимущественному использованию профилактических мер, направленных на предотвращение правонарушений при осуществлении предпринимательской деятельности.[16] Для этого необходимо установить, что:

1 - проверки не должны нарушать производственно-хозяйственную деятельность проверяемых субъектов предпринимательской деятельности. Любое приостановление деятельности может осуществляться только в определенных законодательными актами случаях и продлеваться исключительно по решению суда;

2 - плановые проверки в отношении добросовестно исполняющих обязательства перед бюджетом и не имеющих фактов нарушений законодательства субъектов предпринимательской деятельности должны проводиться не чаще одного раза в пять лет;

3 - контролирующим органам при осуществлении в отношении субъектов предпринимательской деятельности мониторингов и других аналогичных мероприятий, не являющихся проверками, запрещается использовать полномочия, предоставленные данным органам для проведения проверок.

Так же обращается пристальное внимание на выявление лиц, которые осуществляют предпринимательскую деятельность без государственной регистрации, так как теневой сектор оказывает существенный вред экономике государства и интересам иных субъектов хозяйствования.

В целях эффективного осуществления налогового контроля и обеспечения защиты экономических интересов государства от вреда, причиняемого в результате незаконной минимизации сумм налоговых обязательств, разработан реестр коммерческих организаций и индивидуальных предпринимателей с повышенным риском совершения правонарушений в экономической сфере (далее реестр).[17]

Разработка реестра была направлена на комплексное предупреждение ряда экономических правонарушений и уголовных преступлений, совершаемых в предпринимательской среде с использованием лжепредпринимательских структур.[18]

В данный реестр включению подлежат коммерческие организации и индивидуальные предприниматели (субъекты предпринимательской деятельности). Например, в случаях, когда в деятельности субъекта предпринимательской деятельности согласно вступившему в законную силу приговору суда установлены признаки лжепредпринимательства или субъект предпринимательской деятельности не расположен по месту нахождения, указанному в учредительных документах коммерческой организации. Данный реестр был разработан недавно и представляет своего рода новацию для налогового контроля.

Также одним из концептуальных направлений деятельности налоговых органов является проведение широкой информационно-разъяснительной работы, направленной на повышение налоговой грамотности плательщиков.

Оценка результативности налогового администрирования в стране по мнению Н.А. Филипповой представляет собой количественную и (или) качественную характеристику, отражающую результат (эффект) от налогового администрирования, а также меру достигнутой им эффективности.[19]

Эффективность налогового администрирования в Республике Беларусь как сферы деятельности по управлению поступления налоговых платежей, формирующих доходную часть в государственный и местные бюджеты Республики Беларусь можно оценить по статистическим данным.

Исходя из анализа статистических данных Министерства по налогам и сборам Республики Беларусь следует сказать, что основная доля доходов консолидированного бюджета, около 97 % формируется за счет налоговых поступлений (если сравнивать с 2012 годом, то поступление

данных платежей увеличилось на 18 %). Увеличился уровень выявленных нарушений: в 2008 году данный показатель составил 75,1 %, а в 2013 году данный показатель вырос на 24 %. В свою очередь это повлекло и рост поступлений налоговых платежей в доход бюджета по результатам контрольных мероприятий. Предпринимаемые меры для выявления незаконной предпринимательской деятельности также привели к положительным результатам, так к 2013 году количество выявленных случаев увеличилось на 14000.

Результатом упрощения налогового администрирования стало продвижение Республики Беларусь в международных рейтингах. Страна в исследовании Всемирного банка «Doing Business-2013» вошла в тройку наиболее активных стран-реформаторов и показала хорошие результаты по индикатору «Налогообложение».[20]

Выводы:

Исходя из выше изложенного, следует, что:

1. Необходимо закрепить на законодательном уровне понятие «налоговое администрирование» включив в Общую часть Налогового кодекса Республики Беларусь - понятие следующего содержания: «Регламентированная нормативными правовыми актами организационная и управленческая деятельность государственных налоговых органов, направленная на контроль за соблюдением налогового законодательства, обеспечивающая своевременную и полную уплату налогоплательщиками в бюджеты налогов, сборов (пошлин) и иных обязательных платежей. Указанное понятие позволит разработать наиболее системный и эффективный подход к администрированию в налоговой сфере.

2. Налоговая сфера является одним из направлений на пути социально-экономического развития государства, одним из которых является совершенствование налогового администрирования.

3. Меры, принимаемые по усовершенствованию налогового администрировании направлены на упрощение налоговых процедур, осуществляемых налоговыми органами.

4. Предлагается продолжить реформирование в области налогового администрирования с внедрением перечня электронных ресурсов, что позволит максимально сократить нагрузку на налоговые органы.

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THE SYSTEM OF STATE PURPOSE FUNDS IN SLOVAKIA

1. INTRODUCTION

In the period of creation of the very first state budgets an important requirement was set out demanding that the **state budget** should be *the only financial fund* of the state which collects all incomes and incurs all expenses, in other words, that the state budget should be a complete financial fund of the state. This idea was promoted at the turn of 17th and 18th centuries by presenting initial reflections on the state budget as a financial fund of the state and the only document about public finance in the state.

Next decades of historical development changed the idea about the state budget in favor of its understanding as a financial fund which contains *the most important* revenues and expenditures of the state. On this basis, the state budget was considered as a major, though not exclusive,center of financing state needs. In this sense it has to be regarded that the state budget is the **first** (priority) center of financing state needs. Alongside with the state budget, in the conditions prevailing in the Slovak Republic (hereinafter referred to as "SR"), there is, however, another center of financing state needs represented by the existing **system of state purpose funds.**

The establishment of financial funds started even in the conditions of a common state of Czechs and Slovaks and, consequently, after social and political changes initiated in November 1989 and after changes in national status of the former "Czechoslovak state", found this system in Slovakia to be a very "fertile ground" for their development.

The fund´s financing has the character of special purpose financing, the aim of which may be either long-term stability of some government expenditures with a direct link to specified incomes, but also the creation of allocation of financial resources which is an alternative to direct subsidy[1].

Financial funds may have different character, may be divided in various manners and may be distinguished by possessing their own distinct scope of independence which ensures their legal form and legal status.

As we are trying to define the aspect of the fund being an element of public finances, more precisely their financial (monetary) substance, it is then obligatory to take into account the fact that public administration (which includes the creation and use of financial funds) consists of state administration, self-administration (municipality) and public-law institutions. The above mentioned division corresponds with the system (scheme) of financial

funds which currently exists in Slovakia.
Public financial funds, taking into account current legal situation in Slovakia, may be divided into:

a) state funds (in accordance with the Constitution of the Slovak Republic[2] state funds ought to be oficially referred to as "state purpose funds"),
b) other public financial funds (privatization funds, funds of public institutions and other funds).

All public financial funds (both state purpose funds and other public financial funds) are characterised by the fact that all of them are *financial funds* existing *outside the state budget (or other public budgets)* which have *legal personality.* The following common features are typical of these financial funds:

- their creation consists of specific, mostly earnmarked (purposeful) sources,
- they are created for the purpose of financing specific tasks mostly in fields where elasticity and flexibility of their creation and financing are required,
- they are established by a legal act (law) or, in exceptional cases, under the law as well,
- part of their financial resources comes from the state budget, or, as appropriate, from other public budgets,
- their management is subject to public control in accordance with special regulations,
- they have their own internal organisational structure stated by law, or, as appropriate, by statutes or by-laws,
- they are under legal rules of public law.

The number of funds which are outside the state budget (involved with the state budget only by financial relations or even without such a relation) leads to atomization of public finances. This fact leads to hindering public control over their creation, in particular regarding their use, which is connected with the risk of a possible distortion of overall results of the state's financial management. Taking into account the aspect of isolation and a relatively independent existence of a particular fund, it may be expected that it will, as a result, create its own financial policy (independently from the policy of other public funds) which may, consequently, differ from the budget policy represented by state budget. All of the above applies to both systems - that of other public financial funds and the one of state purpose funds as well.

2. THE NATURE AND FUNCTIONS OF STATE PURPOSE FUNDS

State purpose funds in Slovakia represent a separate entity, relatively independent from the state budget, which is specifically intended for financing specific tasks beyond the state budgetary financial resources.
State purpose funds as a segment of public finances are created "at the state level", they have a national scope and are designed to cover expenses of national importance. These funds are especially entitled - by legal acts in particular cases - for financing specific tasks if this kind of financing is justified. They are applied in situations when:

1. there is a possibility to define a certain portion of financial resources targeted for use without a withdrawal of their purpose,
2. there is an option to limit the scope of financed tasks by the amount of own financial resources of a relevant special purpose fund,
3. there is a requirement for more flexible and more operational financing of specific tasks.

In addition to the positive aspects of such kind of financing, until recently, there has been a relatively big disadvantage of the existence of state purpose funds in Slovakia, with implications for budgetary and financial management of the state, namely a disproportionate number of special purpose funds. At the beginning of 2001, there were as many as eleven special purpose funds in the Slovak Republic that were outside the state budget, which led to the above mentioned consequences - a significant atomization of public finances. This atomization was responsible for hindering the control over financial management of state (public) financial

resources while there was a distortion of an overall view on this management. As a result, it may be stated with a certain amount of satisfaction that with effect from 1 January 2002 ten state purpose funds were abolished.
A possibility of establishing state purpose funds is enabled by Article 58 of the Constitution of the SR. Following the constitutional regulation on the establishment of state purpose funds in Slovakia, the second part of law on budgetary rules lays down general principles of their management[3]. The above mentioned law defines a state purpose fund as a legal entity which is established by law for financing specially designated tasks of the state. This means that by defining the concept of state purpose fund the law maker emphasizes the idea of legal personality of the fund in connection with its financial, purpose-oriented substrate. Laws (legal acts) which are the basis for establishing state purpose funds provide similar approaches in defining the nature of particular state purpose funds. Legal acts governing individual state purpose funds mostly state that a fund is a legal person and specify who represents the fund, what constitutes its incomes, what purpose it should pursue etc.

The proper law under which a special purpose fund is established must contain and regulate at least the following aspects:

a) a clear statement that it is a state purpose fund established under the provisions of the Constitution of the SR,
b) a definition of the aim for which the fund is established,
c) the constitution of the government agency (ministry) having jurisdiction over the management of the fund,
d) the organizational structure of the fund and the definition of the competences of the fund's bodies,
e) the form and essential elements of organizational law governing the internal organization of the fund, including the procedural steps of its approval,
f) a definition of resources and needs of the fund,
g) methods and forms of using financial resources of the fund,
h) disposition options and dispositional bans concerning the property and financial resources of the fund,
i) the nature and limits of financing expenses related to the administration of the state purpose fund,
j) the regulation of financial relations with the state budget.

A central government body established by law (currently a relevant ministry) is the administrator of state purpose funds. The administrator shall submit to the ministry of finance:

- a draft of the budget of the state purpose fund for a relevant financial year,
- an overview of assets and liabilities of the fund, and
- a draft of final account of the state purpose fund.

The resources of state purpose fund and the rules of their use are provided by law which establishes a particular fund. Moreover, a subsidy from the state budget granted by the fund's administrator in the extent approved by the state budget law may be a supplementary source of the state purpose fund.
The budget of the special purpose fund is approved by the government of the SR together with the draft of law on the state budget. The draft of the fund's budget is submitted by the fund administrator to the government of the SR by 15 August of the given year, if the government of the SR does not determine a later date.

What is even more characteristic of the existence of special purpose funds? Those funds are described by the following features:

- legal form of their establishment,
- creation for the purpose of financing specific designated tasks,
- legal personality - the fund is a legal entity,
- inability (impossibility) to establish other legal entity,
- their own budget which is by financial relations connected to the budget of the ministry,
- management of the fund is carried out by the

relevant ministry,
- advisory body of the fund is the Council of the fund established by the competent minister,
- activities of the fund are regulated by the fund´s statute approved by the government of the SR,
- the fund´s financial resources are kept in special accounts in the State Treasury,
- transfer of balances of the fund to the following year,
- no legal right for providing financial resources from the fund,
- unused resources from the fund shall be cleared at the end of the year and returned to the fund,
- the fund is created using its own resources and, if necessary, it may receive a subsidy from the state budget as a supplementary source,
- by approving the final account NR SR may determine the duty of the state purpose fund to provide payments to the state budget, up to the amount of the subsidy received.

The relation between the government of the SR, the National Council of the SR (hereinafter referred to as "NR SR") and the state purpose fund is not balanced because of the prevailing system of redistribution of financial resources between the state budget and the state purpose fund. When the state purpose fund does not have financial resources, it usually receives them from the state budget. In the case of a surplus of resources, however, it does not redistribute them to the state budget. Moreover, there is no liability of the state for obligations of state purpose funds even if they act by the state's disposal. In this respect there is a principle that the SR is not liable for obligations of the fund and the fund is not liable for obligations of the SR.

3. THE CURRENT SYSTEM OF STATE PURPOSE FUNDS IN SLOVAKIA

There are three state purpose funds existing under current conditions in Slovakia:
- *National Nuclear Fund for decommissioning of nuclear installations and the management of used nuclear fuel and radioactive waste (legislative glance "Nuclear Fund")*
- *State Housing Development Fund,*
- *Environmental Fund.*

1. The Nuclear Fund

The National Nuclear Fund was created in 2006 by Act no. 238/2006 Z. z.[4] The Nuclear Fund is a legal person established in Bratislava.
The Nuclear Fund collects and manages financial resources designated for the final product of nuclear power (e.g. decommissioning of nuclear facilities, including management of the remaining radioactive waste, transportation and storage of used nuclear fuel etc.) and disposes of nuclear materials and radioactive waste whose origin is unknown etc.

The Nuclear Fund is managed by the Ministry of Economy of the SR. The financial resources of the Nuclear Fund are mostly paid to the Fund as:

a) contributions from holders of licenses for the operations of nuclear facilities that generate electricity, for each megawatt of installed electricity capacity and the selling price of the electricity produced in a nuclear facility (mandatory contributions);
b) transfer of budgetary expenditures from the account of the Ministry of Economy, as a levy which is collected by operators of the transmission system and operators of the distribution system. The transfer is used for payment of debt incurred in the process of gathering the resources intended to cover the cost of the final product of nuclear power, generated during the previous operations of nuclear facilities for producing electricity; the levy is included in the price of the electricity delivered to final customers;
c) fines imposed by the Nuclear Regulatory Authority under a special regulation;
d) interests (income) on deposits in the accounts of the Nuclear Fund;
e) voluntary contributions from natural or legal persons;
f) grants and contributions from the European

Union (hereafter referred to as the "EU") and other international organizations, financial institutions and funds to defray the costs of final product of nuclear power;
g) subsidies from the state budget for the reimbursement of costs incurred by the disposal of nuclear materials or radioactive waste whose origin is unknown. Those subsidies are granted in full to cover the unavoidable cost of treatment and disposal of nuclear materials and radioactive waste whose origin is unknown. The subsidies are provided under state budget law;
h) subsidies from the state budget provided for other reasons than on the basis of the government's decision. Those subsidies are provided under state budget law;
i) incomes from financial transactions in the financial market, including the purchase of securities (but only with the consent of the Ministry of Finance);
j) other sources - if provided by special legislation or international agreement;
k) fees from applicants for permits for activities leading to irradiation with radioactive sealed sources under a special regulation etc.

Financial resources of the Nuclear Fund may be used for eligible expenses incurred as payment for activities related to final product of nuclear power, the final part of the management of institutional radioactive waste and nuclear materials and radioactive waste whose origin is unknown.
The resources of the Nuclear Fund may be granted only for the purposes related with the fund's activity to a specified legal or natural person, e.g. an entrepreneur who fulfills the conditions laid down by law.
The property and financial resources of the Nuclear Fund may not be used for business activities, establishment of a legal entity or as contribution to business of other legal or natural persons.
The Nuclear Fund pursues its activities according to the approved budget for the relevant financial year. Draft budget of the Fund is submitted by the administrator of the Fund to the government of the SR. Along with the draft budget, the Fund submits an opinion of the Nuclear Regulatory Authority of the SR to the government of the SR no later than 15 August of the given year, if the government of the SR does not specify a later date.

2. The State Housing Development Fund

The State Housing Development Fund is currently governed by Act no. 607/2003 Z. z. (*Zbierka zákonov*, Slovak abbreviation for the Collection of Laws) on the State Housing Development Fund[5]. The Fund, however, became a part of the state purpose funds in 1996.
The Fund finanses the implementation of the priorities of state housing policy adopted by the government of the SR concerning expanding and building of state housing.
The Fund is a legal person established in Bratislava. It should be stressed that the text of the legal act does not mention the fact that it is a state purpose fund; on the other hand, the legal act includes a reference to the provision of § 5 of the law on budgetary rules of public administration which deals with special purpose funds. For the purposes of the legal act, the fund is treated as a financial institution serving for the implementation of financial engineering instruments under the relevant EU legal acts.

The Ministry of Transport is responsible for the administration of the Fund in order to support construction and regional development in the SR.
The resources of the fund consist of:
a) loan repayments and payments of interests from loans granted by the Fund,
b) penalties for breaching contractual terms,
c) incomes from the resources deposited in the State Treasury, with the exception of incomes from resources provided by the Fund from the state budget,
d) incomes from proceeds of execution (enforcement) on which a contractual lien was placed,
e) balances of the Fund to 31 December of the previous financial year and the balances of financial resources provided by the Fund from the state budget,
f) unexpended balances of aid that has been returned to the applicant (excluding balances of

returned unused aid provided from the state budget in the previous years),
g) contributions provided by the National Property Fund, under the conditions stipulated by a special regulation,
h) donations,
i) subsidies from the state budget,
j) financial resources from the EU,
k) other sources – if it is stated in a special regulation.

The resources of the Fund may be used for
a) supporting the priorities of the state by expanding and building of state housing. Basic forms of support are loans and irretrievable contributions,
b) implementing the government insulation program,
c) managing the Fund.

The budget of the Fund is approved by the government of the SR. The Fund is required to submit a draft budget to the government through the fund administrator each year no later than 15 August, if the government does not specify a later date.
The modifications of the Fund's budget, which affect the surplus or deficit of the general public administration budget in uniform methodology applicable to the EU are subject to the government´s decision. Other amendments to the Fund´s budget are subject to the decision of the competent minister after the recommendation of the Fund´s board. The resources allotted to fund´s management, apart from the costs of keeping accounts and banking services shall not exceed 3% of the annual resources of the Fund.
The Fund manages its resources pursuant to its approved budget. The budget of the Fund is linked (connected) by financial relations to the budget of the ministry. After the financial clearance of its relation to the state budget and approval of the state final account by the NR SR, the balance of the Fund as of 31 December of the given year is transferred to the next financial year. The Fund's director is responsible for administering the financial resources of the Fund.
The Fund´s resources are kept in separate accounts in the State Treasury. The financial resources for the implementation of the insulation program are kept in a separate account established in the State Treasury.
The Ministry of Finance of the SR monitors the management of the Fund´s resources. The resources of the Fund are provided under a contract with an applicant.

3. The Environmental Fund

The Environmental Fund was constituted by Act no. 587/2004 on the Environmental Fund[6]. Unlike the previous fund this law explicitly specifies that the Environmental Fund is a state fund. The Fund is a legal person established in Bratislava.
The Fund was created to provide state aid to the environment.
The management of the Fund is performed by the Ministry of Environment of the SR. The Fund's director - the head of the Fund - is appointed and dismissed by the Minister of the Environment.

The majority of the Fund's resources is obtained from:
a) fines imposed by government authorities dealing with environment protection,
b) payments for inclusion on the list of qualified persons to assess the impact of activities on the environment,
c) incomes from public collections designated for environment protection,
d) levies, fines and penalties for violation of financial discipline in the management of the Fund,
e) charges for wastewater discharge into surface waters or charges for groundwater intake exceeding simple collection of water,
f) charges for air pollution from large and medium pollution sources,
g) non-refundable aid,
h) incomes from resources deposited in the State Treasury (excluding incomes from resources provided by the Fund from the state budget),
i) donations and contributions from domestic and foreign legal entities and individuals,
j) penalties for breaching contractual terms,
k) incomes from proceeds of execution (enforce-

ment) on which a contractual lien was placed,
l) balances of the Fund to 31 December of the previous financial year except the balances of financial resources provided by the Fund from the state budget,
m) contributions provided by the National Property Fund under the conditions stipulated by a special regulation,
n) the financial resources returned to the originator of an accident,
o) installments of repayable support from the Fund,
p) payments of interests on loans granted by the Fund,
q) financial resources obtained from the sale of quotas of greenhouse gases or pollutants,
r) financial resources from the EU.

The resources of the Fund may be granted and used primarily for:
a) support activities aimed at achieving the objectives of the state environmental policy at the national, regional or local level,
b) support for exploration, research and development aimed at identifying and improving the state of the environment,
c) support for environmental education and promotion thereof,
d) support for finding solutions in the cases of extremely serious environmental situations or solutions for removing environmental loads,
e) support by the eliminating the results of emergency situations and consequences of extraordinary deterioration of water quality, or extraordinary threat to water quality, or serious harm to the environment,
f) management of the Fund,
g) revenues paid to the state budget in the given financial year,
h) reimbursement of costs related to environmental protection as a public service by decision of the minister,
i) support for projects dealing with achievable and measurable savings in greenhouse gas emissions,
j) financing of research and development in the area of power efficiency,
k) modernization of facilities oriented towards power savings among consumers,
l) increasing the power efficiency of existing buildings, including insulation,
m) covering costs connected with professional and administrative support for the fulfillment of obligations of the SR to reduce greenhouse gas emissions,
n) support for the transition to a low-carbon transport and the transition from private transport to public transport,
o) irreversible financing of environmental projects prepared in cooperation with the European Bank for Reconstruction and Development under the previous order of the ministry,
p) reduction of the effects of former mining activities and removal of old mining works under a special regulation,
q) support for the management of forests which are damaged by air pollution,
r) implementation of measures to protect forests against the spread of harmful elements in the territory in which the implementation of measures is limited for reasons of nature and landscape protection etc.

The draft budget, created according to a uniform methodology applicable to the EU, with the estimated amount of the Fund's resources and the estimated amount of the provision and use of resources, as well as changes in the approved budget of the Fund which affect the deficit or surplus of the public administration budget is approved by the government of the SR on the proposal of the minister.
Resources used for the Fund´s management, apart from the costs of keeping the accounts and banking services shall not exceed 3% of the annual resources of the Fund. The Fund manages its resources pursuant to its approved budget.
After the financial clearance of its relation to the state budget and approval of the state final account by the NR SR, the balance of the Fund as of 31 December of the given year is transferred to the next financial year.

The director of the Fund is responsible for the management of financial resources.
The Fund´s resources are kept in separate accounts in the State Treasury. The Ministry of Finance of the SR monitors the management of the Fund´s resources.

4. DEVELOPMENT OF THE SYSTEM OF STATE PURPOSE FUNDS IN SLOVAKIA

The foundations for the creation of the second center of financing state needs through state purpose funds were laid during the existence of the joint federal state of Czechs and Slovaks. Their establishment became a characteristic sign of organisational structure of the existing budgetary system. It was assumed that, together with the increasing importance of reducing state expenses and the transition to self-government funds, the significance of state purpose funds would grow as well. As it was emphasized in the earlier literature,[7] state purpose funds should be established as a result of direct involvement of the sovereign's (the state's) finance especially in the economic sphere, but also in the sphere of social consumption.
Legal possibility to create and use state purpose funds in this period was provided by constitutional law of the Czechoslovak federation[8]. According to this regulation, the federation and the two republics were allowed to create their own state purpose funds connected to the state budget, while funds were established by law.
The sharp increase of these funds in the Slovak Republic in the former federal state could be noticed in 1991. The truth is that the first such fund, which operated under the name of the State fund for soil fertilization, had been established even earlier, in 1969. The following text offers a brief documented history of creation of state purpose funds, and their later reduction in Slovakia.
All of these funds were managed by a relevant ministry and there was a director in charge of each fund. The funds had legal pesonality (except for the State fund for soil fertilization) and were established in Bratislava.
The State fund for soil fertilization was the first fund, which was established in 1969, in both republics. Legal relations of the fund were governed by Act no. 179/1969 Zb.[9] Its purpose was to contribute to the financing of measures related with soil fertilization.
The resources of the fund were mainly charges for withdrawal of agricultural land from agricultural production, subsidies from the state budget of the republic and other income such as interests, installment loans etc.
As far as various objectives financed from the fund are concerned, there were grants and loans granted to farms, cooperatives and privately employed farmers for the construction and maintenance of land drainage facilities, the construction of irrigation facilities for the arable land, grassland and other soil fertilization events.
The State fund for culture Pro Slovakia was established by Act no. 95/1991 Zb.[10] as a purpose fund designated for supporting cultural development and management of its assigned resources. Its purpose was to encourage and support cultural activities, programs and initiatives of social interest in the SR nationwide and in the local context.
The fund was created mainly from donations and other contributions from domestic and foreign legal and natural persons, but also from the proceeds of the fund and securities acquired from other entities, from lotteries and other similar games operated by the fund administrator. The resources of the fund were also levies and penalties for unauthorized use or retention of the resources from fund Pro Slovakia, subsidies from the state budget, bank loans, fines for damage of cultural monuments etc.
The State environmental fund of the Slovak Republic was established by Act no. 128/1991 Zb.[11] for the purpose of centralizing financial resources and their use for actions related to the creation and protection of the environment. Part of this fund became the State water management fund and the Fund of air protection.
The resources of the fund were fines for wastewater discharge and for groundwater extraction, fines imposed by government bodies responsible for water management, fines for air pollution, fines from the authorities of air protection and nature protection, interests on financial resources in accounts of financial institutions and interests on loans granted by the fund, subsidies

from the state budget, loans of banks and other entities, incomes from public collections and lotteries, donations and other contributions etc.
In the past, the fund provided subsidies and grants, credits and loans intended for financing environmental actions. In addition, the fund was used for supporting environmental education actions and disseminating information on the environment.
The State fund for forest development of the SR was established by Act no. 131/1991 Zb.[12] for the purpose of collecting financial resources for the reproduction and enhancement of forests, the reduction of the effects of harmful factors on forest ecology and forest management.
The resources of the fund were mainly subsidies, income from fines imposed upon legal persons for the infringement of the law on forest management, payments from forest´s operators in relation to forest disasters, interests on financial resources in financial institutions, donations and other contributions, as well as bank loans.
The State fund for market regulation of the Slovak Republic in agriculture was established by Act no. 270/1991 Zb.[13] The fund was established to support constant adaptation of producers of agricultural products to changes in the food market and its reasonable balance.
The Fund‘s resources were mainly subsidies from the state budget, revenues from the sale of products obtained from state intervention purchases, repayments of loans, export of products, agreed contributions from market participants (e.g. for exceeding quotas), interests on the resources of fund deposited in financial institutions, revenues from financial penalties of applicants for unauthorized use or retaining of financial resources provided by the Fund etc.
The resources of the Fund were intended for state intervention purchases of products, for the costs of transport, storage, treatment, processing and marketing of products obtained from state intervention purchases, interests on loans etc.
The State water management fund of the Slovak Republic was established by Act no. 318/1991 Zb.[14]
The Fund's resources were subsidies from the state budget for developing investments, as well as other needs related to the activities of aquaculture facilities, loans from financial institutions, interests on financial resources of the Fund, incomes from activities of the Fund, incomes from penalties imposed upon applicants in the cases when the Fund‘s resources were not used under specified conditions, donations and contributions from individuals and legal persons, fees for groundwater extraction etc.
Financial resources of the Fund could be used for covering the nominal developing water management structures, for hydro-geological survey, for minimizing the consequences of accidents during water management works and at the facilities caused by natural factors, for reducing negative economic effects of using limited water resources caused by natural factors, accidents, rationalization measures, for changes in the production process for customers, for the technology which will be applied in enterprises of water management etc.
The State health fund was established by Act no.193/1992 Z. z.[15] as a purpose fund which collects financial resources assigned for the suport and development of healthcare.
The fund was created mainly from donations and other contributions from domestic and foreign legal and natural persons, from proceeds of public collections and lotteries, from proceeds of the Fund, from proceeds of fines for violations of laws that protect natural health spas, natural healing resources and natural mineral water sources, from penalties for unauthorized use or retention of financial resources received from the Fund, from subsidies from the state budget, from revenues of the privatization of health facilities etc.
The financial resources of the Fund were used as contributions for financing selected priorities of health programs and the development of selected fields of health care and prevention, the construction of selected investment projects and the purchase of medical equipment, for activities related to the protection and development of natural medicinal resources and sources of natural mineral waters, for the promotion of selected health problems and health care, as well as for the payment of

unsecured needs of organizations of the health sector.

The State fund for protection and development of agricultural land was established by Act no. 307/1992 Zb.[16] Its purpose was to provide financial resources to preserve and restore the natural features of agricultural land and to develop agricultural land in general.

The Fund´s resources were mostly charges and fines, government designated part of the proceeds of the Slovak Land Fund, subsidies from the state budget and other resources.

The State fund for road management was established by Act no. 153/1993 Z. z.[17] Its purpose was to collect financial resources and to use them for the construction, repair and maintenance of roads and highways.

The State fund for road management was created mainly by income shares of excise duty on hydrocarbon fuels and lubricants at 80% per year, income shares of road tax of 70% per year, economic activities related to activities of the Fund, subsidies from the state budget, credits and bank loans, contributions etc.

The resources of the Fund were used for the construction of roads, repair, maintenance and other undertakings connected with the management of highways and state roads, and other preparatory work to ensure the activities associated with the construction, repair and maintenance of highways and state roads, for credits and loans, for the construction, repair and maintenance of road sections belonging to the municipality under the contract between the ministry and the municipality etc.

The State fund for physical culture was established by Act no. 264/1993 Z. z.[18] The purpose of the Fund was to collect financial resources and use them for the development and support of physical culture.

The resources of the Fund were mostly proceeds from lotteries, bettings and other similar games designated for public purposes of physical education and sport, incomes from public collections, securities acquired by others, charges and penalties for unauthorized use or possession of resources of the Fund, donations and contributions from domestic and foreign legal entities and individuals, loans from legal entities, interests on the resources of the Fund deposited in financial institutions, interests on the resources generated by the Fund, from other economic activities of the Fund, as well as subsidies from the state budget.

The resources of the Fund were used to support selected projects of material and technical base of sport and physical education facilities and equipment, construction, maintenance, renovation, modernization and reconstruction of sport and physical education facilities and equipment, to support talented youths in the field of physical culture, to promote the Slovakian national teams in all sport disciplines and age groups, to support our Olympic movement, to support the fight against doping, to support top sports in Slovakia etc.

The State support fund for agriculture and food of the Slovak Republic was established by Act no. 40/1994 Z. z.[19] as a state purpose fund designated for the support of developing programs in agriculture and food industry and the development of the land market.

The Fund's resources were mainly composed of the revenue amounting to 50% of the total from the privatization of state enterprises covered by the fund manager from the National Property Fund and the Slovak Land Fund, proceeds from the liquidation of state enterprises covered by the fund manager, the share of the rent for the lease of land administered by the Slovak Land Fund in the amount designated in the budget of the Slovak Land Fund for the given financial year, bank credits and loans, installment loans granted from the Fund, interests on loans granted by the Fund and interests on financial resources deposited in a financial institution, fines and penalties imposed on the applicant for breaching the conditions laid down by the Fund or for the unauthorized retention of the Fund's resources, external loans and other forms of foreign aid, donations and contributions from legal and natural persons, as well as subsidies from the state budget.

The main objective of using the Fund's resources was to support transformation, restructuring and privatization of agriculture and food, dynamization of the creation of resources, labor productivity growth and increasing efficiency of capital goods in agriculture and food production, to increase competitiveness of production and export performance of agriculture and

food and to promote regional development programs for agriculture and food industry.

The first fund from the above mentioned scheme of state purpose funds to be repealed in 1992 was the State fund for soil fertilization.[20]

In 2001, there was a substantial reduction in state purpose funds. The State fund of market regulation of the Slovak Republic in agriculture[21] was the first one to be abolished, and, subsequently, all the remaining nine state purpose funds were repealed by the law on the abolition of certain state funds.[22] The reason for the abolition of these funds was to enable swift recovery of the entire public finance sector, especially regarding the increased responsibility of the state for public deficit. As a result, nowadays only three state purpose funds (presented in the previous section) have remained in Slovakia.

Summary

In this paper the author deals with problems of implementation and use of state purpose funds in Slovakia. The author emphasizes that the system of state purpose funds currently represents the second center of financing of state needs in the Slovak Republic.

In the next section of the paper, the author reflects on whether the creation of financial funds existing outside the state budget does not lead to atomization of public finance.

While elaborating on the nature of state purpose funds, the author draws the readers' attention to the fact that these funds represent a separate entity in Slovakia, relatively independent from the state budget, and that they are intended to finance specific tasks beyond the state-budgetary resources. According to the author, their application is possible in the cases where:

1. there is a possibility to define a certain portion of financial resources targeted for use without a withdrawal of their purpose,

2. there is an option to limit the scope of financed tasks by the amount of own financial resources of the relevant special purpose fund,

3. there is a need for more flexible and more operational financing of specific tasks.

In the next two sections, the author analyzes the current legal situation of state purpose funds and presents a brief outline of the development of their system in Slovakia.

[1] *See: Marková, H.: In: Bakeš, Karfíková, Kotáb, Marková a kol.: Financial law, 6. edition, C.H.Beck, Prague, 2012, p.118.*

[2] *See art. 58 par. 3 of the Constitution of the Slovak Republic (ústavný zákon č.460/1992 Zb. v znení neskorších predpisov).*

[3] *Zákon č.523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.*

[4] *Zákon č.238/2006 Z. z. o Národnom jadrovom fonde na vyraďovanie jadrových zariadení a na nakladanie s vyhoretým jadrovým palivom a rádioaktívnymi odpadmi (zákon o jadrovom fonde) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.*

[5] *Zákon č.607/2003 Z. z. o Štátnom fonde rozvoja bývania v znení neskorších predpisov.*

[6] *Zákon č.587/2004 Z. z. o Environmentálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.*

[7] *See more: Slovinský, A. a kol.: Basics od czecho-slovak financial law, UK, Bratislava, 1992, p.53.*

[8] *Art.11 par.6 of ústavného zákona č.143/1968 Zb. o československej federácii v znení neskorších predpisov.*

[9] *Zákon č.179/1969 Zb. o Štátnom fonde na zúrodnenie pôdy v znení neskoršieho predpisu.*

[10] *Zákon č.95/1991 Zb. o Štátnom fonde kultúry Pro Slovakia v znení neskorších predpisov.*

[11] *Zákon č.128/1991 Zb. o Štátnom fonde životného prostredia Slovenskej republiky v znení neskorších predpisov.*

[12] *Zákon č.131/1991 Zb. o Štátnom fonde zveľaďovania lesa Slovenskej republiky v znení neskorších predpisov.*

[13] *Zákon č.270/1991 Zb. o Štátnom fonde trhovej regulácie Slovenskej republiky v poľnohospodárstve v znení neskorších predpisov.*

[14] *Zákon č.318/1991 Zb. o štátnom vodohospodárskom fonde Slovenskej republiky v znení neskorších predpisov.*

[15] *Zákon č.193/1992 Z. z. o Štátnom fonde zdravia v znení neskoršieho predpisu.*

[16] *Zákon č.307/1992 Zb. o ochrane poľnohospodárskeho pôdneho fondu v znení neskorších predpisov.*

[17] *Zákon č.153/1993 Z. z. o Štátnom fonde cestného hospodárstva v znení neskorších predpisov.*

[18] *Zákon č.264/1993 Z. z. o Štátnom fonde telesnej kultúry.*

[19] *Zákon č.40/1994 Z. z. o Štátnom podpornom fonde pôdohospodárstva a potravinárstva v znení neskorších predpisov.*

[20] *Fund was repealed by law n.307/1992 Zb. o ochrane poľnohospodárskeho pôdneho fondu v znení neskorších predpisov. Unused financial resources of fund were transferred to the State fund for the protection and improvement of agricultural land.*

[21] *Repealed by zákon č.491/2001 Z. z. o organizovaní trhu s vybranými poľnohospodárskymi výrobkami v znení neskorších predpisov.*

[22] *Zákon č.553/2001 Z. z. o zrušení niektorých štátnych fondov, o niektorých opatreniach súvisiacich s ich zrušením a o zmene a doplnení niektorých zákonov v znení neskoršieho predpisu.*

Questions to
Damian Czudek PhD and Michał Kozieł PhD

Why did you decide on a joint doctorate Faculties of Law of the University in Brno and the University of Bialystok?

Damian Czudek: Decisions, and even the possibility of cotulelle and obtaining double degree there has not been from the beginning. However both departments (Faculty of Law, University of Bialystok and the Faculty of Law, Masaryk University) agilely cooperate for a long time dealing with financial law and taxation. The idea of dual leadership of doctoral thesis and its common defense was a result of this collaboration and wish of its extension to the field of doctoral studies. Subsequently, relevant contracts which means compliance of requirements of both legal systems were signed.

Miłchał Kozieł: With regard to my origin (knowledge of Czech and Polish language), dissertation topic (Tax process / Procedura podatkowa) and key used method - comparison of Polish and Czech facts, this opportunity was basically tailor-made for me and it would be unwise to do not take this chance. The possibility of closer and closer cooperation and adequate consultation with recognized experts attracted me. Great thank you goes to my trainers doc. Mrkývka (Masaryk University) and prof. Etel (Uniwersytet w Białymstoku). This opportunity was built on their long friendship and cooperation. They were the creators of the idea of cotutelle).

What was the cooperation between universities?

Damian Czudek: With my colleague Koziel, who subsequently joined the study under the dual leadership, we realized the cooperation especially in the form of consultations, either individually with trainers or other experts - theoreticians and practitioners, or through participation in conferences, seminars and workshops, or in the context of discussions and other contributions. The joint projects are still ongoing.

Miłchał Kozieł: Personal experience of participation in international conferences and cooperation in their organization were the stimuli for the establishment of civic association Centre Prawa Polskiego / Center of Polish law (www.centrumpp.org) as a platform for expansion of international scientific cooperation at the level of doctoral and master's degree students and young scientists in the wider area of Visegrad. Thanks to an active and friendly student community at the Law Faculty of the University of Bialystok and initiation of prof. Etel we established cooperation, jointly implemented several research projects and had the opportunity to exchange views, experiences, materials and establish friendships.

Tax Procedure - Formalized acts with a focus on delivery

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Supervisors:
doc. JUDr. Petr Mrkývka, Ph.D.,
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prof. zw. dr. hab. Jadwiga Gluminska-Pawlic,

Annotation
The dissertation thesis deals with analyzing and comparing of tax legislation process in the Czech Republic and Poland and its place in the legal system. The first part of the dissertation thesis defines basic terminology and different views on the issue of tax process and of legal respectively financial-legal relationship, focusing on force of non-compliance of form certified by law. The basic aim of the work is evaluation of the current state of the delivery particularly in the tax process in both countries. Comparison with delivery in the framework of the Administrative Code, respectively Kodeks postępowania administracyjnego and delivery in other procedural provision will not be omitted. With regard to the ongoing computerization of the public administration in the Czech Republic and Poland, the author is interested also in new opportunities and trends in delivery and communication between entities.

Resume
Delivery is one of the main institutes of procedural law with major importance for all branches of law and to ensure the procedural rights of the parties and realization of substantive rules. There is not one standard norm on delivery, but a kind of legal norms that are relate to it.
It is therefore a mean of communication vested to public authorities in order to inform involved persons about key legal matters. The aim of the delivery is to make documents sent by public authorities received to their recipients.
Nowadays, there are computers in all areas of our lives, and this dissertation thesis is written in an electronic form and shall be electronically inserted into the designated system - a database by appropriate person, at a specified date, and has predetermined effects. In this case of course it is an opposite procedure.
Computerization, however, has also affected the public administration and communication with citizens. It is also definitely one of the manifestations of the so-called "good governance", because of it's undoubtedly dues: to speed up , make openness and awareness of the citizens with better access to public administration.
The main goal of this dissertation thesis is to evaluate the current status of delivery as a legal institute in both surveyed countries (Czech Republic and Poland). It is based on the analysis of the legal and actual status and subsequently formulates recommendations for changes in this institute, particularly with regard to its efficiency, economic performance of the individual methods, anti-avoidance, user friendliness, and not least with regard to the clarity and the current fragmentation of treatment delivery as around the legal system.

These are my working hypothesis:

Hypothesis no. 1

Filling the delivery rules is an obligatory condition of delivery.

Although institute of delivery is very strictly and formally regulated, with regard to the effects created by receipt, it must unfortunately conclude that the fulfillment of the rules for delivery in itself is not an obligatory condition for delivery. But it is a necessary condition for accession of the fiction of delivery. It can be said here that although the Czech Republic has the principle of priority in electronic form and in accordance with the principle of legitimate expectations and predictability, and also in connection with the afore-mentioned principles of good governance, a delivery in inaccurate form should be invalid. But in the case the document is delivered "in paper" instead of electronic the delivery is valid with regard to physical access to the document and the principle of substantive law. Although the state provides many formal obligations for citizens the state is sometimes not obliged to fulfill the form strictly.

In Poland, the situation is somewhat different because priority form is not defined. The authority may therefore choose the method of delivery, and deliver anywhere, although opinions vary regarding to priority of the form and those who are delivered.

Hypothesis no. 2

Unification of delivery conditions in procedural law is not only possible, but also beneficial.

With regard to the results of the analysis of rules governing the delivery in key processes in the Czech Republic and Poland and the question can be stated that unification is not only possible, but also beneficial, and it slowly takes place in both countries. With regard to advanced e-government, and in particular introduction of data boxes mandatory for public authorities and many entities, namely for legal entities and as lawyers, notaries, bankruptcy trustees, executors, i.e. those who comes into frequent contact with authorities coming from the professional point of view.

This method has become essentially universal and mainly preferred over other methods of delivery. In connection with this, it had also to be uniform period for the imposition of fiction and introduction of the compulsory delivery address, which is also associated with computerization, particularly with the launch of public registers.

In Poland, there was also a certain unification and development of e - government, where the key electronic information and communication channel of public administration public is portal - ePuap. Unlike our legislation it is a voluntary agent for delivery and even if the taxpayer agree or upon his request.

Regarding the content point of view, the modifications in all three investigated processes are substantially the same, respectively the foundation is the same and with moderately specifics of the area. Of course, the closer is the legislation of tax and administrative process, because its proximity and shared history; largest specifics are in the civil process. But the legislation of these three processes do not conflict, on the contrary, they can be was supplemented to formulate one codex on delivery which should of course include electronic forms, i.e. the law on electronic legal actions and authorized conversion of documents.

In Poland the situation is very similar. If we compare the legal provisions of the delivery in Ordynacji podatkowej and Kodeksie postępowania administracyjnego they are basically word for word identical. Larger differences and specificities includes the provisions of Polish civil procedure, but again methods of delivery as well as the effects do not differ so much that they cannot be unified.

Hypothesis no. 3

Norms governing the service are inherently "hybrid". Depending on the perspective, these norms can be regarded bothly as substantive or procedural provisions.

Regarding to the point of view, respectively the evaluation criteria, norms governing the delivery can be considered especially in the ongoing process and other activities of public authorities as procedural institute serving to protect the constitutional rights and to ensure compliance of obligations of the parties, and on the other hand these norms have substantive features, particularly with regard to content that can have. They can have a fundamental substantive implications for the legal status of the addressee.

The problem of tax administration efficiency is necessarily related to the way of public administration financing, and also with the concept of responsibility for its performance. Therefore, in view of above, this quote of Ronald Reagan closes my dissertation thesis: „Government is like a baby. An alimentary canal with a big appetite at one end and no responsibility at the other".

Michal Kozieł, *PhD, Faculty of Law, Masaryk University, Czech Republic*

Constitutional aspects of public debt limitation in European Union countries (dissertation thesis)

Public debt, its amount and implementation of rules of limitation are currently among the main topics in the European Union and its Member States. The original role of public debt as an instrument for the elimination of economic fluctuations has been recently shifted to a significant degree in favor of indebtedness in the period of recession, as well as in the period of growth.

The aim of the modern states and also of the European Union is to reduce the amount of public debt to a tolerable level by restrictive measures to consolidate public finances. While life in debt is easy, repayment of debt is more difficult. The government always comments enthusiastically on any economic growth in the order of tenths of a percent, but nobody addresses the maintenance of public debt and its repayment in the order of percent of GDP per year. Deficit financing has recently become a trend, and governments do not seek to balance the budget, but they consider that it is a huge success when budget deficit falls below 3% of GDP, which leads to the fact that public debt grows. The reasons for the current high levels of public debt in most states are to be found especially in the history. Irresponsible management of public funds in connection with the transformation of centrally planned economies was the result of the fact, even in times of surplus, that legislatures approve deficit budgets and deficits grew further when economic situation in the world deteriorated.
The European legislators discovered that the only way to stabilize public finances and forcing Member States to conduct responsible management is to establish rules limiting public indebtedness at a constitutional level. Each Member State has handled it in its own way. Some have not started to implement those rules yet, others have had similar provisions in their constitutions for many years. Over time, a number of basic rules have been identified. These rules should lead to a reduction in the public debt by capturing the institutional level. The institutional level has been chosen so that these rules could have specific legal force and thereby importance.

While examining the issue many specific problems arose which have to be solved, e.g. definition of public debt, calculation of government debt, the cost of public debt management, liability, constitutional rules, the differences in the surveyed countries or impact of the European Union law. They have been gradually addressed in chapter 2. All these problems proclaim one basic finding - something is happening. The issue of public debt and the rules limiting public debt are in the field of interest of both the public au-

thorities and the public, and this should be perceived in a positive way. Of course, if they are introduced rules limiting public debt, and these rules are ineffective for various reasons, then something is wrong. But on the other hand, when there are no rules, there is a possibility of arbitrariness of executive and legislative power, which is neither restricted nor responsible. Therefore, none of the rules at the constitutional level in the surveyed countries were found to be perfect.

Based on a detailed analysis carried out in chapter 3 in all four Visegrad countries, it was found that the most effective constitutional rule that could be recommended to the Czech Constituent Assembly, is the debt rule (with respect to the current ratio of public debt to GDP). The established rule would, however, not be restricted to the establishment of a fixed limit of 60% or 50% of GDP, but should gradually reduce this limit so that in the end, the public debt could be repaid. To enhance the efficiency of debt rules, it would be appropriate to introduce additional rules (balanced budget rule, expenditure rule, or revenue rule), but that would take into account also modern trends in this area and would be capable of reacting to unexpected events in the form of economic recession, natural disaster or, God forbid, war.

It appears that the introduction of independent fiscal institutions is also necessary (but not within already existing ones, such as the Czech National Bank, but brand new ones), which would take over budgetary responsibility in the state and, therefore, they should have adequate powers. But it is important that the Government ought to set the objective aiming at gradual reduction of the public debt leading to its total elimination, rather than just slowing its growth down, and just introducing rules limiting public debt at a constitutional level should help. Rules at the European level, which were described in chapter 4 should be helpful.

The main objective of this work was to investigate and formulate basic constitutional rules by which the selected EU Member States (Czech Republic, Poland, Hungary, Slovakia) and the European Union as a whole achieve public debt limitation, as well as to assess the current situation in this area in a critical manner and propose changes *pro futuro*.

With respect to the main objective, the following working hypotheses have been defined:

Hypothesis no. 1:
Limiting public debt by constitutional rules is necessary.

Based on the results of the analysis in the surveyed countries, it is possible to state that current public debt limitation by constitutional rules appears to be the most effective form of implementing the rules mentioned. In all of the four surveyed countries, change or introduction of new constitutional rules requires a special procedure (qualified majority rule, etc.), which gives the adopted provisions a higher degree of stability and long-term effect. These two properties are necessary for the effective functioning of the rules limiting public indebtedness, because, given the current level of public debt, its reduction is a matter of years, not a single election period. Probably, it might take decades to reduce the amount of debt to an acceptable level, and it is guaranteed more by the institutional level than by the legal one.

It is partly possible to negate the hypothesis that the rules for the reduction of public debt introduced by European laws are sufficient, but the relation between the secondary law of the European Union and the constitutional order of the Member State has not even been clarified yet. Furthermore, the European Union may sometimes appear toothless and careless in enforcing the obligations and constraints. Thus, a higher degree of stability is guaranteed by national instruments.

Hypothesis no. 2:
Legal regulation of limiting public debt in the Czech Republic is insufficient as compared to other states of Visegrad Group.

This hypothesis can be clearly confirmed. While the legal systems of Poland, Hungary and Slovakia contain provisions restricting public indebtedness at the constitutional and statutory level, in the case of the Czech Republic, there is a clear deficit in this area. What is missing is any rule at the constitutional level, particularly debt rule, that limits the amount of debt in relation to GDP. At the legal level, there is a minimum of relevant rules (multi-annual planning, among others). The conclusions would be certainly different if the draft of constitutional law on fiscal responsibility and implementing laws had been approved last year, but it did not happen. It is also desirable that there should be a degree of constitutionalisation of financial law in the Czech Republic that would ensure the sustainability of public finances.

Hypothesis no. 3:
By limiting public debt at the legal system level, the intended purpose is not achieved and it may result in circumvention of the rules.

This hypothesis was partially confirmed. In most surveyed countries the constitutional rules limiting public debt materialized in the form of legal provisions and the implementation of constitutional rules. Many of the basic rules limiting public debt in these countries were reflected in the constitutions, but, e.g. in Poland, the legislature went much further when discussing restrictive rules than the framers of the constitution, introducing debt thresholds that the constitutional framers anticipated. This, however, led to further problems associated particularly with the gradual disappearance of statutory provisions or their replacement by other provisions. The change in the law is not difficult to ensure for the ruling coalition, but in the event of a constitutional majority it has created a bigger problem. The government may abuse its majority in the parliament to alter or cancel the rules enshrined in the law , and that does not help in achieving the originally intended purpose. On the other hand, neither the excessive constitutional regulation is a positive step, as it limits the rules of political competition; nor at the same time there is a need for more frequent changes in response to future developments.

Partial negation of this hypothesis stems from the awareness that even the limitation of public debt at the constitutional level does not guarantee that these rules will fulfill the intended purpose. Firstly, it may happen that the government has also a constitutional majority (as it is currently the case in Hungary), and secondly, even if constitutional rules at issue are a priority, their meaning and conceptualization may not be precise enough. Not even the best rules enshrined at the constitutional level will deliver the intended purpose if they are circumvented (e.g. through the escape clause).

Hypothesis no. 4:
The role of the European Union in reducing public debt and establishing constitutional rules limiting public debt are essential.

Throughout the entire paper I have emphasised the fact that the European Union is the common denominator of all the introduced rules limiting public indebtedness. The European Union has been gradually assuming the role of the monitor of budgetary discipline in the member states, as it is aware of the dire consequences that the high public debt and high deficits may have.
The rules have already been at the European level for more than 20 years, and during that time they have undergone major developments. Especially recently, it has been noticed that they have significant influence on national legislation regarding the implementation of rules limiting public debt. This refers essen-

tially to a debt rule, balanced budgets, expenditure rules and income regulations. The recent trend has been towards the gradual improvement so that they could respond smoothly to economic cycles, and also ensure their organizational security in the form of independent authorities at the national level.

Through its directives, the European Union is trying to unify various systems of national rules in order to guarantee the minimum standard (including the establishment of constitutional rules). Recently, the EU has added a new method - an international treaty (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) ratified by the Member States to introduce additional rules limiting public debt.

The introduction of rules limiting public debt to a constitutional level also has its disadvantages. In view of the fact that there is a blending of economics and law, the rights to the application of restrictive provisions of macroeconomic variables might be exercised. However, it is within the power of contemporary governments to predict accurately which direction economic development will take, as these values have major impact on the calculation of the ratio of public debt to gross domestic product, as well as on the potential implementation of sanctions. The rules limiting public debt also have to allow for unexpected changes.

The Member States of the European Union, but also the European Union itself, in the last few years have made significant steps to stabilize public finances. These steps are not perfect and flawless, but it is necessary to evaluate particular efforts in a positive way, as they introduced important changes. This is particularly evident in the example of Visegrad countries surveyed - Poland, Hungary, Slovakia and the Czech Republic, which obediently, albeit sometimes with difficulty, try to consolidate public finances by reducing public deficit and public debt. The rules adopted in each country to a constitutional and statutory levels, as well as the EU rules having supremacy over them, should help to achieve this objective. The Czech Republic is, unfortunately, the final state of the four, which lacks at least basic national rules limiting public debt.

It is currently too early to assess whether the effective solutions will be adopted. Everything depends on the economic development of a given country. It would be presumptuous to state that the introduction of the abovementioned solutions would change the situation in public finances magically for the better, but it would not. Yet, even perfect rules at constitutional and legal level will not be able to improve the current status quo without being applied properly and respected with no exceptions. Improving the selection of mandatory payments to the public budget on the revenue side and the management of public funds are the issues associated with this problem, without which the correction of public finances cannot be accomplished. Even if it is at least the result of the introduced rules limiting public debt, it will be possible to assess their impact as at least positive.

Since legal systems continue to evolve, this dissertation will never be complete and perfect. Always a new fact a new piece of knowledge or newly-established rule may appear and completely modify the way the problem is perceived. In conclusion, I would like to paraphrase a quote of Assaeuse Lucius Seneca, who once said that *"the time will come when our descendants will be amazed that we did not know things so obvious."* Even in this case, I believe that the time will come when the next generation will be shaking their heads in disbelief looking at the groundbreaking solutions that are now applied in order to reduce public indebtedness, because it will be clear that these solutions are not at all perfect. However, we need to start somewhere, and for starters, I consider the solutions adopted currently to be sufficient, being aware that their success will be examined in the future.

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Information on Public Finance in the Czech Law, Transparency and Free Licences

Introduction

The aim of this article is to outline the legal regulations on the transparency of public finance and to illustrate one of the specific areas suitable for publishing the public sector information using free licences.[1] The article is based on existing publications on public budgets, financial law; it also incorporates a relatively less frequently discussed area of financial transparency in legal regulations. In constitutional law or political science papers, transparency is considered to be an important instrument of constitutional law, whereas financial law often omits this area.

Free licences are pre-drafted semi-contracts which allow content creators to licence intellectual property rights to any entity who downloads data online or uses any other distribution channel. They are practically based on the non-formalist approach allowing people to freely share and distribute content under certain limitations which are specified in the licence (there are both unlimited and limited free licences). The aim of this article is to discuss the basic issues of creating, processing and publishing public sector information by public agencies. Processing the data is one of main concerns of public agencies in a knowledge-based society.

This article contains a substantial question: "Should the distribution of Public Sector Information be paid or free?" It may be transformed into the following hypothesis: "Public Sector Information should be published using a free licence of some type, at least in some situations." I will confirm or disprove this hypothesis by analyzing legal regulations in the Czech Republic in the context of the European Union regulations.

I will start by discussing the transformation of societies in Central and Eastern Europe and the role of transparency in the process. The continuation will be aimed at transparency in public finance and financial law in selected contemporary texts. The second part of the article will involve the area of public goods and public sector information. The article will finish by comparing paid licences and free licences. In the last part, the response to the specified hypothesis will be found.

Transformation of Society and Transparency in Public Finance

In its articles or books, the theory of public finance usually does not discuss transparency issues and leaves this matter either to administrative law or to

ICT law. On the contrary, in social sciences, transparency is considered an important part of democracy. According to Karklins, achieving full transparency is one of the basic issues of post-communist transformation.[2] The risk against which the information may function is the misuse of public power which can lead to the so-called state capture. In such conditions, the effectiveness of public finance may be reduced. As it has been pointed out by Shleifer and Treisman,[3] corruption and similar actions in the society have been a great issue in all post-communist countries. Transparency has been considered as one of the instruments for anti-corruption fight.

It is substantial to emphasize that the principle of transparency may have similar roots as the principle of publicity that is mentioned regarding validity of legal norms.[4]

The main role of transparency in the society is to allow constitutional control by the general public. There are several authors stating that transparency is one of the democratic requirements. One of the authors who mentioned this connection in the past was Mrkývka.[5] He emphasized the fact that the lack of transparency may in some cases simplify the misuse of power, which proves to be a correct assumption.

The principle of transparency has been mentioned in several financial law texts as one of the principles in public fund management, for example by Piotrowska-Marczak.[6] Other principles of public funds management mentioned by her are effective allocation, avoidance of expenditure and task duplication along with the consolidation of public expenditures. Public Funds Management itself involves reasonable amount of information provided to all entities involved. Although it may not be visible at first sight, in some cases the information duties for specific sovereign wealth funds[7] are required by the law.

The public sector is an important tool of fulfilling state goals. When we focus on one specific Czech Republic's regulation on Public Sector Information, it is based on the Free Access to Information Act no. 106/1999 Sb. as amended. This act covers both free access to PSI and PSI re-use by enterprises and their customers. The Act stipulates in § 4 that the obliged public bodies have a duty to disclose or publish information in the regime of access.[8] It also covers the re-use of public sector information which is substantially different from simple access to PSI.

Transparency has more levels - the first level, access to PSI, makes information available for the general public as it is. It is the main level of current transformation in Central European countries. But the development continues and the society slowly starts to use the second level of transparency, transparency in PSI re-use, which is closely connected with making information available for enterprises to create secondary information sources with added value for their customers.[9]
Open governance is a specific issue but it is involved in building the financial system of the state. The lack of transparency in the public sector may distort the functioning of the economy. The partial phenomena which may appear due to the lack of transparency cause a conflict of interests. This conflict may lead to non-effective decisions in the public sector practice or to a misuse of public funds.[10]

Although the European regulatory framework does not state this relation explicitly, the foundations of the transparency rules in EU member states' public finance usually stand on the constitutional law regulations. But as it was visible in the previous discussion, constitutional law is just one direction of the argumentation which we may face.

Another possible argument is the necessity of transparency for full effectiveness of public finance. This causal nexus is based on the necessity of full information for the maximum output in the economy. Although achieving the maximum output is a theoretical concept in alignment with the perfect competition, real economies and legal regulations are trying

to get as close as possible to the perfect competition and to the optimum economy. The existing imperfectness in the economy has been one of reasons used for inventing theories which involve imperfect markets.[11]

Public Sector Information and Public Goods

The definition of public sector body having a duty to make the PSI accessible according to § 2 Act No.106/1999 Sb., on Free Access to Information as amended, is derived from the public procurement directives no. 92/50/EEC as amended, 93/36/EEC as amended, 93/37/EEC as amended and 98/4/EC as amended. The Czech literature on the topic includes mainly books by Kužílek which describe free access to information in the Czech Republic. Kužílek does not discuss trading the PSI on the re-use market.[12]
Information is a substantial part of the public sector in an information society, part of this information is produced by the public sector.[13] As we may have seen in the past few years, the PSI market has rather been growing despite the lack of attention from the public administration, mainly until 2012. In 2012, the government joined the Open Government Initiative and outlined the necessary steps in order to facilitate the opening of the public sector and creating larger amounts of Open Data.[14]

The back link is present there - free access to Public finance is based on fulfilling the status of a entity obtaining public resources ("veřejné prostředky") according to § 8b Free Access to Information Act. This provision has been introduced to the act by the parliamentary deputy's legislative proposal which has been passed without any link to any open long-term strategy. This provision is now observed by the general public as a correct regulation allowing their supervision over public financing. Currently, this provision is very often used by the media and by non-governmental organizations for obtaining information on financing from public sources. When the information regards corporations, there is no reason not to disclose the information to the public. When the information regards natural persons, there are limitations imposed by the Data Protection Act (in the Czech Republic the Act no. 101/2000 Sb. as amended).[15]

As it has been decided by the Czech Supreme Administrative Court, every entity has the right to obtain Public Sector Information on public funding provided to private persons (under the specific circumstances mentioned in the decision). The caveat is that the entities who obtain the data including wages are not directly entitled to use it in any way which may involve further processing and aggregation of this data (he or she may do so in general but is fully liable for processing and aggregation of this data, which exceeds reasonable use, without explicit consent of its respective owners).[16]
One caveat connected with ensuring transparency of the sector is complete separation of budgetary regulations from regulations concerning free access to information (both areas are regulated by completely different acts having no direct link from budgetary acts to free access act).

Moreover, agencies do not have proper motivation to publish the data online for free.
The limits of processing personal data, PSI, which is also covered by personal data protection, may be limited in its further processing.
Public Goods include the goods which may be consumed by all entities - it is both non-excludable and non-rivalrous, anybody may consume this good. Public goods include public health, homeland security, state defense, fire protection, public lights, public roads etc. There are certain public goods which are partially excludable or partially rivalrous. They may also be theoretically non-excludable but in real life their consumption is limited by real capacity (e.g. teaching in schools).

Public Sector Information is distributed in two legal regimes, Access to PSI and PSI re-use. In the access regime information is provided as is without the need

for further processing, whereas in re-use data processing is expected. The freely available information is a sort of public good because it may be read, used, multiplied and transformed substantially (unless there is a special limit, e.g. space and time constraint or specific limitation by intellectual property rights).

There is one question connected with this topic - should the distribution of Public Sector Information be paid or free? There is probably a basic standard of public goods which should be upheld by the state. The PSI provided for free has the form of a public good and therefore (regarding the aforementioned legal regulations and theories) should be in some extent provided for all enterprises in the re-use regime, which confirms the hypothesis put forward in the introduction. The same conclusion is also supported by Art. 3 part 1 Directive 2003/98/EC on the re-use of public sector information as amended and Art. 1 part 3 of its amendment Directive 2013/37/EU.[17] The latest amended version of the directive is currently being implemented into the Czech law and is expected to be implemented during 2015.

There have been some situations in the past regarding historical contracts concluded by the public administration.[18] An important example is the Information System of Public Transportation Timetables. This system is filled by the data from public transportation operators, it is collected by the private company CHAPS, spol.s r.o. which transforms the data into a database for the IDOS system that serves the general public in terms of providing timetable search results, ticket reservations and other related services. In this context, the private company is a public body per se which has a duty to provide the data (with a refund).[19] Historically, the contract with this company was beneficial to the state because the every-day data processing generated no costs for the state but the company was unwilling to provide the data for re-use due to economic reasons (which may be clear from the private viewpoint).
A separate area of transparency is the register of public procurement which is currently being prepared in the Czech Republic. The Czech ministries and other agencies sometimes publish their contracts and data included therein. In some cases the contracts were not disclosed and there may be reasonable doubts about the efficiency and economy of specific contracts. Within the past few years, the process of renewing the public procurement contracts has been very intense and thousands of contracts were terminated. There are still numerous contracts remaining.

Charges versus Free Licences

The basis of information society depends on information in both public and private sectors. It facilitates trading goods and the provision of services on the market while allowing better decisions on preferences (presumably). As it has been mentioned earlier, there are some reasons why to publish the PSI for free. And there are more methods of publishing PSI or making them available. One of these methods, free licences, may be used by public agencies for publishing the PSI. The basic issues of this use will be described later on in this article.
According to the economic definition of public goods,[20] the information may be a public good because it may be consumed (read, processed, re-written, copied etc.) by any person without limiting other persons. In order for the information to be a public good it also has to be provided for free. When it is provided at a charge, it is only a partially public good or a private good.

Charges are limited by Art. 6 Re-use Directive to the accountable costs. They include costs of collecting, the costs of production and reproduction (we may call them costs of data processing as a whole). The last charge available involves costs of disseminating documents. All these costs may include both costs of data processing that would happen even if there had been no request for specific items of information and costs which have been specific for the request. The first type of costs is the one which should probably be funded

by the state, whereas the second type may be paid by private entities and therefore charged.
These charges are also a type of public income covering the expenditures which may arise while ensuring transparency of the public sector. The problem with PSI is that the income from PSI disclosure is usually smaller than the costs. On the contrary, there have been some cases of telic charges which are imposed in order to prevent the entities from requesting the information.

One of the important alternatives to charging the public or enterprises is using free licences. Free licences are very simple to conclude and there are no public expenditures on drafting a specific licence on PSI because it is provided for free. The process of publishing the data involves the selection of an existing free licence and linking it on the Public agency's website along with the published data.

Licence is not required when PSI content involves only numbers and simple information or any other information of non-copyright nature. On the contrary, statutory licence or contractual licence (may be in a form of free license) is required for legal use when copyrighted PSI content is provided. When the state makes PSI accessible using free licences, it safeguards transparency to a greater degree than in a normal situation of simply making PSI accessible.

The extent to which the state makes the PSI available using free licences should be set by the public policy. For example, in the United Kingdom, the extent of PSI publishing is rather large, hence a special free PSI licence has been created. In the Czech Republic the creation of a specialized license is not expected but international free licences are available and applicable.
In international circumstances there are two major groups of licenses:

- Open Data Commons (ODC) which are aimed at providing open data, i.e. they may be used only for licensing databases and its content,[21] and
- Creative Commons 4.0 which may be used for licensing both copyrighted works and databases (licensing databases has not previously been contained in CC3.0, it is quite a novelty).[22]

There are several regimes of PSI licensing:

- Unlimited licensing which is factually licensing by public domain licenses - ODC-PD and CC Zero (the latter is not applicable in the Czech Republic),
- Licensing including information on the author ODC-By and CC4.0-BY,
- Licensing including information on the author and the obligation to share the derivative works under the same type of license ODC-ODbL or CC4.0-BY-SA,
- Licensing including information on the author with a prohibition to create derivative works CC4.0-BY-ND,
- Licensing including information on the author with a prohibition to use the work for commercial purposes CC4.0-BY-NC.

For Creative Commons licenses, the aforementioned limitation clauses may be combined, e.g. CC4.0-BY-NC-SA, CC4.0-BY-NC. For Open Data Commons, no other combinations of clauses exist. The licensed content's usage is always limited by the obtained entitlement consisting of specific grants (e.g. grant to use the copyrighted work). The entitlement is different from the original author's set of entitlements, moral rights and economic rights. The rights which may be granted using the license are limited to the author's economic rights. The rights granted by the license are different from the author's rights.[23]

The situation regarding databases is similar. The difference is that the creator of the database has only economic rights which include the right to extract and the right to re-utilize the database, he or she is allowed to dedicate a database to a public domain.
Generally, the licensees of free licenses may legally use the copyrighted work only in the limits imposed by the license or by the law (e.g. using statutory citation

license or statutory official license). When this context is applied to public sector information, public bodies could be encouraged to use free licences for publishing public sector information including financial information on public finance.

Conclusion

I would like to conclude the fact that transparency has been proclaimed as one of the basic principles of public finance. The following hypothesis has been confirmed: "Public Sector Information should be, at least in some situations, published using free licences of some type," mainly in the second and third part of this paper. The extent to which the state makes PSI available using free licence should be set by a public policy of each individual state. For example, in the United Kingdom, the extent of PSI publishing is rather large, hence a special free PSI licence has been created. The publication of information in the public sector may be an important financial question in current budgets and may also facilitate achieving transparency. Although the specific solution depends mainly on non-legal conditions, financial law should, in general, facilitate transparency in the public sector. As it has been argued in this article, the motivation behind opening the PSI should be part of public finance and of regulations on external audit and supervision in public finance.

Abstract

The aim of this article is to outline the legal regulations on the transparency of public finance and to illustrate one of the specific areas suitable for publishing public sector information using free licences. The article is based on existing publications on public budgets and financial law; it also incorporates a relatively less frequently discussed area of financial transparency in legal regulations. In constitutional law or political science papers, transparency is considered to be an important instrument of political science or constitutional law, whereas financial law often omits this area. Free licences are pre-drafted semi-contracts which allow content creators to licence intellectual property rights to any entity who downloads data online or uses any other distribution channel. They are practically based on the non-formalist approach allowing people to freely share and distribute content with certain limitations which are specified in a given licence (there are both unlimited and limited free licences). This paper is an outcome of the "Free Licenses Integration Project" – registration no. P408/12/2210 that has been financially supported by the Czech Science Foundation.

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Tax gap management by public tax authorities in the Polish tax system

The doctrine defines a tax gap as a difference between possible tax inflows to the State budget and tax amounts actually paid by taxpayers. This is the risk of incorrect events from the point of view of tax duties. It is difficult to measure the size of tax gap, whose estimation is usually burdened with an economic error. Tax gap is certainly influenced by the scale of tax frauds aiming directly at achieving material benefits by avoiding tax duties. For dozen years, public tax authorities have been looking for a so called "happy medium" to reduce tax gap. They have been successful from time to time, however consequences of their success are mixed. To improve both the identification of and response time to threats found, in 2001, so called "tightening" procedures were implemented in the Polish tax law.[1] Under the Phare 2001 project entitled "Modernisation of the Polish Tax Administration", an External Risk Management Strategy was developed. It should be perceived as a solution based on which Polish tax administration uses available resources and contributes to the growth of tax discipline.

The strategy comprises the whole and all levels of tax administration (except for customs services and tax control offices, which have not been incorporated in the strategy for organisational and competence reasons). Therefore, the strategy management organisation comprises:

- at the central (national) level: a department (unit) in charge of external risk management at the Ministry of Finance;
- at the regional (voivodeship) level: an external risk management coordinator at the tax chamber as a bridge between tax offices and the Ministry of Finance;
- at local tax offices: a person supporting a voivodeship coordinator – a contact person for external risk management and a so called external risk workforce to monitor negative phenomena that may take place and influence tax collection and tax duty fulfilment by taxpayers.

The strategy is based on the systematised and advanced methodology of acquiring knowledge about and counteracting existing and potential risks.

External risk management means handling potential threats that are likely to influence the expected future

situation. Therefore, the purpose of the strategy is to acquire knowledge about potential risks and take up relevant actions to eliminate or reduce such risks. The risk is interpreted as the function of probability (potential appearance of an undesired phenomenon in future) and negative consequences thereof.

The strategy focuses on taxpayer segments (risk areas) that may be perceived as harmful for the accurate operation of the tax system. It comprises all taxes and fees managed and charged by tax administration. The external risk management structure is a model based on a risk concept. The model consists in selecting and defining priorities of risk areas and related actions. The external risk management model comprises:

- risk identification and analysis;
- risk estimation;
- the definition of action priorities;
- the implementation and selection of actions;
- final evaluation.

Risks are identified based on observations and experience of tax office employees. The analysis includes the review of newly enforced legal regulations, as well as phenomena, trends and forecasts for the following years. It is recommended to review social, economic and demographic changes which may influence tax gap in future. Identified risk areas may have the form of specific types of tax errors (objects) or taxpayer groups (subjects) carrying out defined types of business activity. It is necessary to point out that threats are identified without personal individualisation, i.e. without indicating specific taxpayers that make the errors. Such entities are specified at a later stage.

Risks are estimated by evaluating potential direct and indirect tax losses connected with a given tax area which may take place in a short or long run if preventive actions are not taken. To make the estimation, the number of irregularities and population existing in a given area must be known.
Priorities of actions in the defined areas must be reviewed given the following three options:

- a risk may be eliminated;
- a risk may be reduced;
- at present. a risk may be accepted.

A given risk is eliminated through the system of changes, including new regulations, the improvement of applicable forms and prints which may help taxpayers to fulfil their obligations. To reduce the risk, alternative solutions may be used at the following sequence:

- changes in the system;
- widely understood information;
- control.

To select a solution, it is necessary to find out whether irregularities are intentional or not and which aspect is of key importance in this context. Selected actions must be supported, for example, by the preparation of methods, internal guidelines, training, monitoring and evaluation forms, etc.
The final risk evaluation consists in the review of quantitative information about threats.

Practices related to the implementation of the external risk management strategy show that employees of tax authorities are not sufficiently aware of the problems in question. While the accurate execution of the external risk strategy may have a very positive impact on tax law application. It may cause, in particular, that tax authorities will deal (although on an absolute and exclusive basis) with the biggest actual threats to tax income achievement. The implementation of the strategy (given its correct performance) may greatly contribute to improving discipline in the tax system. Apart from increasing the level and quality of tax duty fulfilment by taxpayers, the strategy may make methods and resources used by the tax administration more effective.
The External Risk Management Strategy is a certain type of the methodology of tax authorities' actions, which, together with the Voivodeship Action Plan (announced by the tax chamber for a given year on the basis of the National Action Plan), somehow fills the gap to the extent of the tax law application model.[2] The Voivodeship Action Plan is an element of the implementation

of the Management Strategy and provides for a kind of guidelines for tax authorities. It not only specifies the most crucial operating areas of tax authorities (tax offices), but indicates specific lawful actions and duties to be taken up by the authorities by law in particular risk areas (identified and analysed in terms of feasible actions). The Voivodeship Action Plan defines tactical and strategic actions to implement the National Action Plan, which is to ensure that taxpayers fulfil their tax duties accurately and improve tax collection by making tax administration actions, including tax controls and verification, more efficient and effective. The assumption thereof is to focus tax administration actions on those areas where the biggest risk of irregularities has been identified.

The biggest tax gap is unquestionably recorded in the area of VAT. Such a situation has not changed for years. Tax errors noticeable in this area mainly refer to:

- posting purchase evidence (invoices) that are not connected with trading;
- deducting tax on invoices that do not entail such a right (purchase is not connected with taxable sale or is a fictitious transaction);
- posting business operations made with non-existent entities for the sake of appearance;
- understating tax bases by failing to post all revenues;
- defining a wrong tax point;
- taxing sale at wrong tax rates;
- selling outside the cash register.

Tax gap is also significant in the area of income taxes, where the following tax errors may be noticed:

- failure to pay withholding tax during the tax year;
- failure to fulfil duties by income tax payers;
- posting expenses as costs of business activity although, based on legal regulations, they are not recognised as such;
- paying tax duties on an untimely basis;
- recording sale outside the cash register;
- carrying out business activity without it being registered with competent registration authorities;
- failure to post all revenues earned;
- calculating wrong depreciation.

Taking into account the outcome of control activities, 11 sensitive sectors subject to the biggest risk of irregularities have been identified. These are:

- the production of building materials and construction services; including:
  - construction works connected with the construction of residential and other buildings;
  - construction projects connected with the construction of buildings;
  - works connected with the construction of roads and motorways;
  - general construction works connected with the construction of buildings;
  - wholesale of wood, building materials and sanitary equipment;
- recycling; including:
  - wholesale of wastes and scrap;
  - disassembly of used products;
  - collection of non-hazardous wastes;
  - recovery of raw materials from segregated materials;
  - treatment and removal of non-hazardous wastes;
- fuels; including:
  - sale of fuels, metal ores and industrial chemicals;
  - wholesale of fuels and derivative products;
  - retail sale of fuels to motor vehicles at fuel stations;
  - production and processing crude oil products;
  - retail sale of fuels;
- transport and logistics; including:
  - cargo road transport;
  - warehousing and storage of other goods;
  - repair and maintenance of transport equipment;
  - cargo road transport by universal vehicles;
  - municipal and commuter land passenger transport;
- production and trading of metals and metal products; including:
  - wholesale of metals and metal ores;
  - production of noble metals;
  - metal treatment and coating;

▪ production of pig iron, ferro-alloys, cast iron, steel and metallurgical products;
▪ light metal founding;
- real property; including:
▪ rental and management of own or leased real property;
▪ rental of real property on own account;
▪ real property trading agency;
▪ real property management on a contract basis;
▪ residential building management;
- electronics trading;
- automotive industry; including:
▪ wholesale and retail sale of passenger cars and vans;
▪ rental and lease of other motor vehicles;
▪ maintenance and repair of motor vehicles;
▪ wholesale of parts and accessories to motor vehicles;
- e-trade and IT services; including:
▪ IT consultancy;
▪ mail-order activity;
▪ software-related activity;
▪ intermediation in the sale of advertising space in the Internet;
- agriculture; including:
▪ agricultural cultivation together with raising animals;
▪ support activities for crop production;
▪ growing of cereals, leguminous crops and oil plants for seeds;
▪ wholesale grain, unmanufactured tobacco, seeds and animal feeds;
▪ manufacture of prepared feeds for farm animals;
- easting and accommodation services; including:
▪ restaurants and other permanent eating places;
▪ hotels and similar places of accommodation; tourist and short-stay facilities;
▪ catering services.

However, tax reality differs significantly from theoretical assumptions of the External Risk Management Strategy and the National and Voivodeship Action Plan. External risk workforces established at tax offices neither play the role they have been created for nor fulfil their duties (consisting in permanent vigilance against and monitoring current negative phenomena which may occur and influence tax collection and the fulfilment of tax duties by taxpayers). Analysis and Planning Sections responsible for external risk management seem to be inefficient. Because of insufficient personnel, they are not able to operate efficiently in sensitive sectors. As found out for the purpose of this study on the basis of verbal consultations and interviews with employees of such sections, at so called small tax offices one or two persons are usually responsible for analysis and planning. They are additionally burdened with other (non-analytical) duties. The Voivodeship Action Plan is implemented selectively and partially. Admittedly, control activities are measured, however difficulties that the tax administration has to face may not be avoided. High requirements (which cause that effects come down only to financial amounts) make control work stress-inducing and frustrating. This is influenced by radical decisions of experienced lawyers to leave their work or move to other business functions. Since it is difficult to find a rational reference to an approach to the definition of the effectiveness of a control which comes down to the deduction of PLN 1000 or more (per control). The absence of such effects has an influence on the whole tax office and the head thereof. This directly translates into the system of outcome-related remuneration.

It is difficult to say what a reason for the described situation is: the lack of sufficient personnel, the lack of adequately experienced and trained tax administration staff or instilled and deeply-rooted practices, assumptions and guidelines set out in outdated administration acts which are not adjusted to current needs of the tax system, including, for example, "a decision of the Minister of Finance", or simply resistance to and disapproval of changes in requirements and needs determined by the financial condition of the State.

Tax gap management is not easy in Poland. Firstly, given different understanding of this term. Secondly, given

the specific organisational structure of tax gap management authorities which is not adjusted to actual needs. And thirdly, given visible methodological errors of the process. We may delude ourselves that the consolidation of auxiliary processes performed at tax chambers and offices, which is planned to be implemented as of 1 January 2015, will have (at least partially) a positive impact on tax gap management. Auxiliary processes will be moved to the tax chamber by transforming the chamber and tax offices reporting thereto into a single budgetary unit in the form of an office within the meaning of the civil service act. Duties of the head of the budgetary unit and the general manager of the office will be performed by the head of the tax chamber. While the employer of employees of the office will be the tax chamber. Under the reform, an external risk management department and a tax control department were established at the tax chamber. They will be in charge of evaluating and forecasting potential economic and social threats within the area of tax administration duties; analysing tax fraud risks within the area of tax administration duties; defining operating procedures for external risk management, as well as the circulation and exchange of information; acquiring, registering, processing and distributing information necessary to manage external risks, as collected at the tax chamber and tax offices reporting thereto, and national and foreign institutions; registering risks at a regional level; preparing and coordinating the implementation of action plans in cooperation with other business units of the tax chamber and tax offices reporting thereto and monitoring the implementation thereof.[3] Since substantial organisational changes have been made at the level of the tax chamber, this has not entailed changes in the organisation of tax office units in charge of analysis and planning, as well as tax control. Studies conducted for the purpose of this article[4] clearly show that the headcount of most analysis and planning units and tax control units must be commonly increased, which was not noticed or taken into account by the reform authors. Given the existing human resources, tax gap cannot be managed accurately. This causes that tax offices take up selective and ad-hoc actions without meeting expectations defined in the External Risk Management Strategy and the economic needs of Poland. Indeed, benefits obtained as a result of consolidation are estimated to strengthen the performance of statutory duties by tax administration units, eliminate threats to the coherent tax system, and ensure due inflows from tax liabilities to the State budget, but tax office employees, already now, show the irregularities of the assumptions made. If such irregularities are not noticed, it is difficult to draw a conclusion that tax gap will decrease.

Thus, in the presented situation, it seems reasonable to call for:

- external and internal training on tax gap management, which should take the form of study workshops and be held for strictly defined management staff, and not only employees directly in charge of tax gap management (in the opinion of respondents, e-learning is insufficient in this area);
- adjusting the organisational structure, including human resources, of tax offices to tax gap management needs (i.e. mainly increasing human resources at analysis and planning units and tax control units); persons involved must have analytical and creative thinking skills;
- unifying the methodology of tax gap management;
- preparing a professional manual on tax gap management, which will present specific methods for risk identification and reduction. It is necessary to unify terminology used in the tax gap management area since at present there are many terms therein which are used interchangeably in spite of their different meaning.

[1] See: PhD thesis of R. Kosińska supervised by Professor E Ruśkowski, Instancyjna kontrola stosowania prawa podatkowego przez państwowe organy podatkowe (Instance control of tax law application by public tax authorities), Białystok 2012, p. 50 et seq.

[2] R. Kosińska, P. Woltanowski, Teoretyczny model decyzyjny stosowania prawa podatkowego przez organy podatkowe, a praktyczne sposoby i etapy stosowania tego prawa (Theoretical decision-making model related to tax law application by tax authorities and practical tax law application methods and stages), in: Z. Gilowska, H. Izdebski, K. Raczkowski (ed.), Efektywna administracja skarbowa (Effective tax administration), Warsaw 2007, p. 271 et seq.

[3] Regulation No. 5 of 27 January 2014 of the Minister of Finance on the organisation and statues of tax offices and chambers (Official Journal of the Ministry of Finance No. 2014.10.45).

[4] Interviews with employees of tax authorities; the analysis of employees' responses is available in the forum of www.skarbowcy.pl.

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Introduction of a new trust-like institute in the Czech Republic

The first part of this paper generally describes Czech trust-like institution. Trusts are unique especially because of two uncommon concepts, the concept of partial legal personality and the concept of ownership without any owner. The second part of this paper points out the fact that the directive-based professionalization of a trustee ensures sufficient guarantee against the abuse of this institution. The possibility of choosing the tax domicile of trust fund administration, i.e. the place where economic activities are to be carried out extra sensu, gives space to considerations as to whether the discussions on the possible abuse of Czech trust funds were actually needed because the neutrality of the Czech tax environment does not offer any special advantages to these funds. It may thus be concluded that the regulation of trust funds in the Czech Republic is not at such a low level as it might be occasionally claimed.

Keywords:
Trust, Anti-Money Laundering, Freedom of Establishment
Słowa kluczowe:
Powiernictwo, Przeciwdziałanie Praniu Pieniędzy, Swoboda przedsiębiorczości.

1. Introduction

The concept of private ownership law in the Czech Republic was significantly skewed as a result of the totalitarian Communist regime that was in power from 1948 until November 1989. Shortly after the Velvet Revolution, the most glaring inadequacies of legal regulations were rectified, but some partial traces of the formerly twisted nature of the legal order have remained evident even after that. The main reason is that while many laws were substantially altered, the changes merely involved amendments of legal regulations that had originally been passed during the previous period. Thus, it was as late as in 2012 that a series of acts was adopted that emphasized legal traditions of democracy and the standards of European private ownership law. The most significant of those laws is Act No. 89/2012 Sb., the Civil Code (hereinafter referred to as the "New Civil Code" or "NCC").

While providing a link to legal regulations valid before the onset of the totalitarian regime, the New Civil Code also confronts the regulations with modern European codes, such as the German code and the Swiss code.[1] One of the aims of NCC's drafters was to provide a broad range of legal instruments for dealing with property.[2] In

addition to the attempt to make the Czech Republic accessible to foreign capital, the Czech lawmakers felt the *intense need for general regulations on the administration of other persons' property*.[3] As a result of a recommendation by the Legislative Council of the government, the NCC includes general regulations on the administration of other persons' property and a new regulation on Czech trust funds, implemented by means of adopting relevant content from the civil code of Quebec (Articles 1260 to 1370).

Thus, starting from 1 January 2014, the Czech Republic is only the second European country to include the institution of trust in its legal system in almost pure form.[4] While many European countries recognize trusts on the basis of The Hague Convention on the Law Applicable to Trusts and on Their Recognition, their legal systems do not provide for actual legal regulations on trusts.[5] The first European country to have carried out a legal transplantation of this, somewhat foreign, feature was Liechtenstein which did so as early as in 1926 in order to make itself more attractive to investors from countries of the Anglo-American legal tradition.[6]

However, this institution is certainly not to be equated with the trusts as it is commonly perceived by the Anglo-American legal tradition. Even though the Czech trust fund contains many elements that define a trust, we need to bear in mind the fact that the legal regulations were taken over in a narrow sense only, while the broader context is missing. Moreover, the Czech Republic is a country with a continental legal system, where ownership is understood differently from equity and common law. In this paper, we will refer to the trust fund ("svěřenský fond" in Czech) as a Czech version of a trust fund, but we cannot put an equality sign between the traditional concept of a trust and the Czech trust. The latter is a trust-like institution only and needs to be viewed as an independent institution that, while evidently inspired by trusts, cannot be equated with a trust in the proper sense of the word.[7]

This article aims to analyse the new trust-like institution introduced by the New Civil Code, pointing out its specific features and discussing it from the point of view of financial law. Ever since the introduction of the Czech trust fund into the Czech legal system, there have been debates about the possible abuse of trust funds, particularly for tax purposes. The article will thus consider the Czech trust fund particularly with a view to these problematic issues.

2. Characteristics of the Czech trust fund

The Czech trust fund is an instrument for the administration of property of other persons, where the property is detached from the settlor's ownership and entrusted in a trustee who agrees to hold and administer the property for the beneficiaries. The trustee has relatively extensive discretionary powers concerning ways to dispose of the property: he is entitled to do whatever he deems necessary and useful with the property, being limited only by the legal obligation to administer the property with all due diligence. The supervision over the trustee's acts is carried out by the settlor, the beneficiary and, in some cases, also the court. Because of the relationship of obligation existing between the persons involved in the Czech trust fund (settlor, trustee, beneficiaries) and the dispositive nature of legal regulations pertaining to the arrangement of the internal parameters of the fund, it is up to the settlor to decide whether to entrust the supervision of the fund's administration to some other person as well.

From a functional point of view, the Czech trust fund may be compared to an endowment fund. However, there is a major difference: the former is not a legal person – it does not have any legal personality.[8] Because endowment funds are limited solely to socially or economically beneficial purposes, they may not be used for purposes that are private or mixed.[9] The Czech trust fund could offer a functional solution to this drawback.[10] Because the Czech trust fund has an obligatory nature, as far as its material and legal qualifications are concerned, it is not limited by status issues to such an extent as legal persons. It offers a flexible solution to diverse life situa-

tions, ranging from the preservation of the unity of property, its protection and administration, to various forms of securing the property. Thanks to the dispositive regulation of the relations between the settlor, the trustee and the beneficiary, the applicability of the Czech trust fund is really broad – it is limited only by some general principles of the NCC.[11]

3. Formation, term and termination of the Czech trust fund

The Czech trust fund is formed by the assignment of property in the settlor's ownership by entrusting it for a particular purpose to the trustee on the basis of an agreement or a testamentary disposition, with the trustee assuming the obligation to hold and administer the property.[12] An exception to this rule consists in the formation of the Czech trust fund as *mortis causa*, where the formation coincides with the settlor's death. In order to set up a Czech trust fund *inter vivos*, not only it is necessary for the fund to have a statute but also for the trustee to accept the fund's administration. The role of the trustee may be performed by the settlor as well, although this practice is not particularly common in the case of trusts because it is in conflict with one of the three certainties, namely the certainty of subject matter. However, where the settlor acts as a trustee, the Czech trust fund must have another trustee – a third party – and the trustees are obliged to act jointly.

Regardless of the type of its formation, the Czech trust fund requires a manifestation of the settlor's will. This is expressed in the fund's statute and is done in the form of a notarial deed. The statute must include at least:

a) the identification of the Czech trust fund;
b) the identification of the property set aside for the Czech trust fund at the time of its formation;
c) the delimitation of the purpose of the Czech trust fund;
d) the conditions for performance from the Czech trust fund;
e) information about the term of the Czech trust fund; where no period of time is stated, the fund is deemed to establish for an indefinite period of time; and,
f) where a specific beneficiary is to obtain some performance from the Czech trust fund, the statute must specify either such a person or the manner in which the beneficiary is to be specified.

Upon assuming the administration of property in the Czech trust fund, the trustee becomes vested with full administration of the property and the power to exercise all property rights in his name and at the fund's account. The trustee is entered as the owner into public registries (e.g. the land registry). However, the entry is made with a note that the owner is a trustee so that it is immediately obvious to third parties that the property forms a part of the Czech trust fund.

Nevertheless, it is impossible to determine the owner of the property in the sense in which the owner has traditionally been understood in European Continental law. The law clearly states that the property in the Czech trust fund does not belong to the ownership of the trustee, the settlor, or even the potential beneficiary. Therefore, the ownership of property in the Czech trust fund may be described as ownership without an owner. However, this situation does not concern the "thing of nobody" that may be appropriated – this is so because the ownership rights are exercised by the trustee in the Czech trust fund's account.

As it has been stated above, the trustee is appointed and dismissed by the settlor. The settlor may specify a different form of appointing and dismissing the trustee in the statute. Whenever should the beneficiary fail to appoint a trustee within a reasonable period of time, a person having legal interest[13] may ask a court to appoint a trustee. Any person with a full capacity for acts in law can become a trustee. A legal person may become a trustee only where specified by the law. The only legal person that may, at the present time, perform the role of the trust fund is an investment company.[14]

Legal relations during the term of the Czech trust fund

are significantly regulated by its statute. The law gives the right to a specific person to refer to a court whenever the trustee fails to act in accordance with the statute. The settlor, the beneficiary or some other person having legal interest may ask a court to issue an injunction against the trustee to make them act or refrain from acting in a certain way, or to repeal the trustee and appoint a new one. By principle, the termination of the Czech trust fund occurs once all property is distributed from the Czech trust fund or when there is no property in the Czech trust fund. This situation most frequently takes place upon the termination of administration, i.e. at the expiration of the period of time for which the Czech trust fund has been set, or upon a court's decision, or – in the case of Czech trust funds formed for private purposes – also when all beneficiaries waive their right to perform within the Czech trust fund. Upon the termination of the administration of the Czech trust fund, the trustee shall surrender the property to whoever is entitled to it. It is presumed that the right to the property belongs to the beneficiary. Wherever that is not the case, this right belongs to the settlor. Where there is neither a beneficiary nor a settlor, the property passes into the ownership of the state. The Czech trust fund terminates its existence once the property is distributed at the moment of the termination of the fund's administration.

4. (Non)acceptance of the trust-like institution?

The transplantation of the trust-like institution, which is an alien element in the Czech legal system, encountered mixed reactions from legal scholars. While some authors welcome this flexible instrument for the administration of the property of another person as an intellectual challenge that can enrich the Czech legal system,[15] others perceive it as a threat that is bound to give rise to many complications, arguing that the Czech trust fund should have been abolished even before the effective date of the NCC.[16] However, many of the critical opinions were raised, rather, as a result of a lack of knowledge of the relevant consequences and the unwillingness to adopt a new concept. This concerns mainly the idea of the "ownership without an owner" because it breaches the general principle that the owner could (and essentially can) always be determined in some way.[17]

Thanks to the support given to it mostly by academics, the Czech trust fund was not abolished and many seemingly problematic issues were either clarified to legal professionals or were dealt with by the legal system in some way. Thus, for instance, some branches of law place the Czech trust fund on the level of the subjects of law, assigning it a partial legal personality.

The opponents quickly came up with the suggestion that legal personality may be deduced and, thus, the Czech trust fund should be considered as a legal person.[18] In the Czech trust fund, many substantive features of legal persons may be identified. Functionally, the Czech trust fund is far too similar to the endowment fund, which does have a legal personality (it constitutes a legal person).[19] However, the concept of the Czech trust fund as a legal person was rejected because it would have significantly reduced its flexibility and its obligatory nature, as far as the material legal character of the Czech trust fund is concerned.

Currently, there is a trend to argue for the introduction of a publicly accessible registry of Czech trust funds. There are some attempts to change the rules for the formation of the Czech trust fund by allowing it to be formed only upon its entry into the registry. That, however, would again significantly reduce the flexibility of this institution. Another problematic issue concerns the extent of information required for the entry: as long as the Czech trust fund is an instrument for the administration of property based on the trust between parties, is it actually desirable that the general public should become aware of the parties' property relations? One of the reasons in support of the introduction of a public registry is increased transparency, prevention of money laundering and tax evasion. The aspects related to financial law are going to be discussed in more detail in the next section of the article.

It may, however, be stated with certainty that the Czech

legal order is coming to terms with the Czech trust fund. At the same time, the actual usage of this institution by people is minimal – mostly as a result of the initial negative media image of Czech trust funds that was caused, to a significant extent, by the unwillingness of the critics to think slightly outside the box.

5. Financial and tax aspects of Czech trust funds

Within the framework of financial law, the Czech trust fund is identifiable as a legal person[20] *sui generis*. Financial law approaches the Czech trust fund as a legal person mainly because of the way some of its legal acts may be identified in its actual legal life.[21] The Czech trust fund is, for the purpose of tax administration, endowed with subjectivity under tax law. The Czech trust fund must register with the tax authorities[22], which significantly limits the space for the formation of informal trusts.[23]

Czech trust funds, as an innovation introduced by the New Civil Code, have also caused substantial concerns. In France, legislators faced difficulties arising from the possibility of debts being transferred between trust funds, i.e. the possibility that company liabilities may be hidden in trust funds.[24] The current legal regulations of Czech trust funds allows for the transfer of only that part of the property that constitutes assets into a trust fund. This concerns, under Section 1448, subsection 1 of the NCC, the property that – given the formulation of Section 495 of the NCC – supplements the liability part of everything that belongs to a person. The exclusion of debt transfer thus directly follows from the language construction of the provision on Czech trust funds.

6. Trusts and AML legislation

In its reports and conclusions, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, a monitoring body of the Council of Europe (abbreviated as "MONEYVAL") focused, as early as at the beginning of the millennium, on the issue of trusts and persons in charge of their operation, i.e. their trustees.[25] In the conclusions of the third typologies meeting of the PC-R-EV Andorra, the first work group focused on the issue of specific problems with the application of due diligence principles.[26] The participants discussed, above all, issues concerning the problematic nature of property transfer between several trusts, e.g. where trusts are made for trusts, which is a practice that obscures the traceability of financial flows. In MONEYVAL's opinion, the best solution appeared to be, and it still appears so today, to identify the beneficiary/beneficiaries and the settlor. The conclusions from MONEYVAL's meeting also point to the proposal of creating a registry of trusts.

As regards the idea of a registry recording the formation of trust funds, as proposed by MONEYVAL in its conclusions referred to above, the Czech legislators have dealt with it by the requirement to attest the formation of the Czech trust fund by means of a public need, i.e. mainly the notarial deed. This act is recorded in files and, in the event of a possible investigation, there is clear evidence held by a body of public power that attests to the formation of the Czech trust fund. It is thus impossible to backdate the foundation of the Czech trust fund.

As regards the transfer of financial means into and out of the Czech trust fund, the trustee is obliged to keep accounting records, as follows from the formulation of Section 1, subsection 2(i) of Act No. 563/1991 Sb. on Accounting, as subsequently amended. If there is an incentive to hide the property in collusion with the trustee, i.e. by means of altering the date of placing the property in the fund with respect to, e.g., periods of time for the filing of an action to declare some legal act void, and given the non-existence of "tracing" in the Czech legal code, the only possibility consists in identifying unlawful behaviour in earlier accounting records, as long as they are available to the tax administrator. This situation, however, takes into account transfer of property by some other means than through banks and the accounting cooperation with the trustee. This problem also follows from the absence of professionalization[27] of the institution of the trustee; thus, special demands are placed on the appointment of the trustee where an investment fund is

identified as a trust fund and the authorization is issued by the Czech National Bank. In this case, the permission is issued, under Section 531 of Act No. 240/2013 on Investment Companies and Investment Funds, as subsequently amended (hereinafter referred to as ISIF), to a person who is, among other things, trustworthy, who has a transparent and lawful source of financing, whose structure of consolidation unit does not block efficient supervision and exchange of information, and where no doubts arise, in connection with the issuance of the permission, whether there might be a violation of law providing for a measure against the legalization of the proceeds of crime and terrorism financing, or where such a breach has already occurred. Another control mechanism consists in the verification of account closures of the Czech trust fund by an auditor. The duty to have the closed accounts audited is provided for under Section 20, subsection 1(e), which lays down the conditions for the obligatory audit regime of joint stock companies.[28] In theory, thus, the formation of a Czech trust fund may – while breaking the principles and provisions of legal regulations – serve as a "safety guard" against bankruptcy.

Another important control function is performed by anti-money laundering legislation (hereinafter referred to as "AML"). While the current Czech legal regulations still lack any regulation of the trustee as an obliged person, this is already anticipated to appear in the new regulation. The current legal AML regulations are provided for in the Czech legal order by means of Act No. 253/2008 Sb. on Some Measures against the Legalization of Proceeds of Crime and the Financing of Terrorism (hereinafter "AML Act"). Section 7 subsection 1 of the AML Act provides: *Where the obliged person participates in a business deal exceeding the amount of 1,000 EUR, it must always, prior to making such a deal, identify the client, unless provided for otherwise by this Act.* Where a business deal involves the amount exceeding 15,000 EUR, then a check of the client is usually carried out, as provided for by Section 15 of the AML Act. Thus, where payments from and into the fund are made by means of obliged persons (mainly banks), they are recorded. Under the Methodological Instruction No. 3, issued by the Financial Analytical Section of the Ministry of Finance on 29 October 2013 for the benefit of obliged persons, the Czech Republic[29] *fails to regulate the record-keeping of Czech trust funds; and, thus, it is necessary for the obliged person, when engaging in business deals or related business relations, to always identify as the real owners not only the administrator(s) but also all specific beneficiaries, at least where they are individually to obtain more than 25 per cent of the property of the trust fund, as well as the settlor and any other natural person who ultimately controls the trust.*[30] The draft of the 4th directive on AML[31] already operates with the trustee as the obliged person under Article 2, subsection (c), as specified in Article 3, section 6 (d). The existing legal regulations did mention trust fund relations, but those were the relations of obligation.[32] This directive will shift the role of the trustee towards the professionalization of the entire institution. Directives become binding upon the member states within two years of their adoption; after this, however, the effect of the directive should trickle down. Thus, it is up to each individual state when it meets the duties arising from the 4th directive, i.e. when the obligations are imposed upon the trustees.

7. CEFTA trusts

As regards the area of controlled foreign corporation tax legislation (abbreviated as "CFC rules") and the issue of misusing low-tax states, national legal regulations usually introduce conditions for the use of national tax laws in the cases of tax inspections of companies or other legal entities (in this case, the trust funds) which reside in low-tax states and are governed by residents. In the summer of 2014, the 2014 EFTA Court issued a decision on the freedom of establishment and the freedom of movement of capital, which were balanced out with the public interest of states.[33] This concerned tax collection from trust funds. As early as in 2002, the Norwegian Supreme Court issued a decision imposing the duty upon the beneficiaries to pay taxes on income under Norwegian CFC rules. The court dealt with seven pre-judiciary questions. The first of these was concerned with whether trust funds fall within the scope of the freedom of establishment at all,

as provided for in Article 31 of the European Economic Area (abbreviated as "EEA") Agreement.[34] The court's answer was as follows:
The right of establishment, provided for in Articles 31 to 34 EEA, is granted both to natural persons who are nationals of an EEA State and to legal entities ("companies or firms"), no matter whether they have legal personality or not, provided they have been formed in accordance with the law of an EU State or an EFTA State and have their registered office, central administration or principal place of business within the territory of the Contracting Parties.[35]

Moreover, all interested parties, i.e. the settlor, the beneficiaries and the trustees, are protected by the provisions of Articles 31 and 34 of the Agreement. Another issue considered by the court was the discriminatory nature of the CFC rules. The court gave the following opinion on the discrimination of incomes from low-tax countries under the CFC rules:
It is not contested that a rule such as that specified in section 10-61 of the Tax Act, which provides that those who hold an interest in a legal entity, such as the beneficiaries of Ptarmigan Trust, are made liable to tax whether or not any funds have been distributed to them, does not have an equivalent in any domestic situation where the beneficiary is a separate taxable individual or legal person from the party which holds the profits and both parties are resident in Norway. Thus, it follows from section 10-60 of the same Act that this rule only applies to taxpayers who benefit from independent undertakings or capital assets domiciled in low-tax countries in the manner described in the provision.[36]

Thus, the EEA directly created another possibility of optimizing taxes in a supranational way. In the last question addressed by the court, which is particularly important for this article, the court dealt with the clash between the freedom of establishment and free movement of capital on the one hand and, on the other, the state's interest in preserving the CFC rules that provide protection from tax avoidance and secure capital export neutrality:
As regards the tax avoidance argument, the Court notes that an EEA State is entitled to take measures designed to prevent certain companies established in that State from attempting, under cover of the rights created by the EEA Agreement, from improperly circumventing their national legislation, or to prevent these companies from improperly or fraudulently taking advantage of provisions of EEA law.[37]

When selecting the criteria to justify an infringement in the right of establishment and the free movement of capital, the court chose conditions that are applied during a violation of rights and wich are also used by Court of Justice of the European Union.[38] Overriding public interest is perceived here as the public interest of not abusing the above-mentioned rights, i.e. as a boundary line between permitted tax optimization and unpermitted abuse of the right. The ban on the abuse of a right is what the EU considers as a general principle of the community.[39] Perhaps the "artificiality" of the transfer of one's registered office for tax optimization is justified precisely by the operation of the right of establishment, i.e. the incentive is penetrating into the European space of the four rights for the states to start a race to the bottom, or for the community (or the EU or EFTA) to form a "minimax" directives/orders in the tax area, where we encounter the material base for the operation of the state per se.[40] By subsuming trust funds under the protection of the EEA Agreement, the space within the EEA opens for the unification of tax advantages with respect to the purpose and sense of a certain advantage, where even the court provides the following specification: *it is for the national court to determine whether the plaintiffs as beneficiaries of Ptarmigan Trust are in a comparable situation to beneficiaries of family foundations or asset funds that are not subject to wealth taxation*. It is thus evident that what will matter is the meaning of the existence of some entity or legal institute rather than the national designation for a foreign entity.

8. Czech tax regime for trusts

In the tax regime that the Czech legal order sets for Czech trust funds, the principle of tax neutrality is crucial. Under this principle, the investment within the Czech trust fund is to correspond to the investment made in some other institution with a similar reason for existence.

Thus, where gratuitous, "mortis causa" or "inter vivos" transfers actually replace inheritance their "main" tax regime will be independent of the fact that they are being "mediated" through the Czech trust fund.

The degree of the tax charge on publicly beneficial entities may appear to be a problem because there is still no definition of the status of "public benefit". Thus, according to transitory provisions, we still have to take into consideration publicly beneficial companies. Another possible form of establishment for the fund is the commercial trust fund ("obchodní svěřenský fond" in Czech). Its advantage is not primarily in the area of taxation – with a view to the strict observation of the principle of tax neutrality – but, above all, in the fact that the trust fund is not entered into the Commercial Registry and is not obliged to hold general meetings and keep other "corporate administration". Commercial trust funds thus resemble investment units that can conduct independent business. The last possible form of establishment is the investment company, which is subject to the same regime as other investment companies in the Czech Republic, namely income tax in the amount of 5 per cent. The establishment and management of trust funds in the Czech Republic appears to be more suitable particularly with a view to the reduced administrative burden and the usage of general incentives offered to international investors rather than with respect to an advantageous tax regime.[41]

By means of comparison with the common law system and the public benefit, it is useful to state that trust funds are established in Great Britain mainly for the following reasons:

a) To hold property for minors.
b) To enable a beneficiary to enjoy the income but to have no recourse to the capital.
c) To preserve capital for the next generation.
d) To provide flexibility regarding future needs or contingencies.
e) To protect capital in the event of the beneficiary's financial difficulty or bankruptcy.
f) To hold funds for a (mentally) disabled person.
g) To hold shares for employees.
h) To hold funds for charitable purposes, or for pensions, or for historic buildings.[42]

The legal system of Great Britain assigns special tax advantages to the purposes stated under (e) to (h) above. In other contexts, subjective or objective criteria for tax benefits are directly stated, such as: agricultural relief[43], favourite nephew relief, small gifts exemption, etc.

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[1] Cf. the Explanatory Note to the New Civil Code.

[2] Many scholars consider trusts to be the most flexible instruments for the administration of property of other persons, cf. L.A. Wright, Trusts and the Civil Law – A Comparative Study, 6 W. Ontario L. Rev. 114, 1967.

[3] Cf. the Explanatory Note to Act No. 89/2012 Sb., the Civil Code.

[4] Section 1448 and subsequent sections of Act No. 89/2012 Sb., the Civil Code, as subsequently amended.

[5] Even though we may come across various trust-like institutions, which, however, are mostly based on continental law.

[6] RONOVSKÁ, K. Nadace (a trusty) v kontinentální Evropě: Pohled funkcionální. Obchodněprávní revue, Praha, C. H. Beck., vol. 4, no. 7 -8/2012. pp. 202 -206.

[7] For more details on the convergence of legal cultures concerning trusts, cf. HAVEL, B., PIHERA, V.: Národní zpráva v TICHÝ, RONOVSKÁ, K., KOCÍ, M.: Trust a srovnatelné instituty v Evropě. Praha : Univerzita Karlova, 2014, 53 an.

[8] Cf. also SPÁČIL, J. et al.: Občanský zákoník III. Věcná práva (§ 976–1474). Komentář. 1. vydání. Praha : C. H. Beck, 2013, s. 1153 či RONOVSKÁ, K. Nadace (a trusty) v kontinentální Evropě: Pohled funkcionální. Obchodněprávní revue, Praha, C. H. Beck., vol. 4, no. 7 -8/2012. pp. 202 -206.

[9] Cf. Section 394, subsection 1 of the Civil Code.

[10] RONOVSKÁ, K. Nadace (a trusty) v kontinentální Evropě: Pohled funkcionální. Obchodněprávní revue, Praha, C. H. Beck., vol. 4, no. 7 -8/2012. pp. 202 -206.

[11] These include, above all, the ban on the abuse of a right, the protection of third party rights, etc.

[12] Cf. also Section 1448 NCC.

[13] This will most typically be the beneficiary. However, it may also include, for instance, a person who exercises usage rights to the property in the Czech trust fund, such as a tenant of an apartment where the apartment is placed into the Czech trust fund.

[14] Cf. Section 11, subsection 6(a) of Act No. 240/2013 Sb. on Investment Companies and Investment Funds, as subsequently amended.

[15] Cf.. PIHERA, V. Nejpodivnější zvíře v lese - poznámky ke svěřenskému fondu. Obchodněpravni revue. 2012, č. 10. p. 278., and HAVEL, B., Ronovská, K.: Nové instituty fiduciární správy majetku po rekodifikaci soukromého práva v České republice v TICHÝ, RONOVSKÁ, K., KOCÍ, M.: Trust a srovnatelné instituty v Evropě. Praha : Univerzita Karlova, 2014, 141 an.

[16] Cf. ČELADNÍK, M. Svěřenský fond jako výsledek českého pokudu o právní transplantaci trustu: Zaklmání jako dítě očekávání? Vybraná zákonná ustanovení z pohledu zahraničního právníka. epravo.cz, 2014. Accessed at 10. 12. 2014. Available online at: http://tnij.org/xvxtu1g and GLATZOVÁ, V. Transparence neformálně, po chlapsku. 2012. Accessed on 10. 12. 2014. Available online at http://tnij.org/wws6xr9

[17] For the same conclusion, see SPÁČIL, J. a kol.: Občanský zákoník III. Věcná práva (§ 976–1474). Komentář. 1. vydání. Praha : C. H. Beck, 2013, p. 1193.

[18] Cf. PELIKÁN, R., Právní subjektivita. Praha: Wolters Kluwer, 2012, footnote No. 60.

[19] The similarities between Czech trust funds and endowment funds are described by Ronovská, who rejects the understanding of the Czech trust fund as a legal person. Cf. RONOVSKÁ, K. Nadace (a trusty) v kontinentální Evropě: Pohled funkcionální. Obchodněprávní revue, Praha, C. H. Beck., vol. 4, no. 7 -8/2012. pp. 202 -206.

[20] The will may be formed even despite the disagreement of at least one natural person, e.g. where there are several trustees.

[21] Although the New Civil Code is based on the acceptation of the theory of reality, the theory of fiction plays the primary role when determining legal personality. For more details, see Eliáš K. et al., Občanský zákoník. Důvodová zpráva. Ostrava. Sagit, 2012, 77

[22] Cf. the formulation of Section 125 of Act No. 280/2009 Sb., the Tax Code, as subsequently amended.

[23] This possibility is basically prevented in the phase of the formation of the Czech trust fund since the NCC requires the formation to be in the form of a public deed.

[24] For more details, see Barrière F., The French experience with trusts in TICHÝ, RONOVSKÁ, K., KOCÍ, M.: Trust a srovnatelné instituty v Evropě. Praha : Univerzita Karlova, 2014, p. 82

[25] With respect to the nature of trust funds, this mainly concerns the fact that they have legal personality.

[26] Cf. Conclusions of the third typologies meeting of the PC-R-EV Andorra (5-7 June 2001), available online at: http://tnij.org/56otcd2 The institution of the trustee is professionalized in Liechtenstein, for example.

[27] Section 20 subsection 1 (a) sets the criteria, which may be summarized as follows: assets exceeding 40,000,000 CZK, net annual turnover exceeding 80,000,000 CZK, or the average number of employees exceeding 50.

[28] Authors' note.

[29] The Methodological Instruction No. 3 of the Financial Analytical Section of the Ministry of Finance of 29 October 2013, p. 5. Available online at: http://tnij.org/gswluac

[30] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. (hereinafter referred to as "The 4th directive"), available online at: http://tnij.org/yin9yhk

[31] Cf. the wording of Section 2 subsection 1 (i) of the AML Act.

[32] This was mainly tax avoidance and capital export neutrality.

[33] The Agreement on the European Economic Area

[34] Decision of the EFTA Court in joined cases No. 3/13 and No. 20/13 (Olsen and Olsen), p. 20 (point 93), available online at: http://www.eftacourt.int/uploads/tx_nvcases/3_13_20_13_Judgment_EN.pdf

[35] Decision of the EFTA Court in joined cases No. 3/13 and No. 20/13 (Olsen and Olsen), pp. 28-29 (point 140), available online at: http://www.eftacourt.int/uploads/tx_nvcases/3_13_20_13_Judgment_EN.pdf

[36] Decision of the EFTA Court No. 15/11 (Arcade Drilling), p. 19 (bod 87), available online at: http://www.eftacourt.int/fileadmin/user_upload/Files/News/2012/15_11_Judgment_EN.pdf

[37] For instance in the well-known Halifax decision.

[38] Decision of the Court of Justice of the European Communities in case C-255/02 (Halifax and others), p. 13, (point 37), available online at: http://xurl.pl/6buy

[39] This may even include an intervention in the material core of the constitutional order. As Molek P. from Masaryk University during his consultation classes said: The European unification on the basis of a Union of sovereign states, established by agreement, may not be reached in a way that would not preserve sufficient space for the states' political formation of economic, cultural and social living conditions. […] Relevant areas for democratic activities include, among other things, the issues of citizenship, civil and military monopoly on the use of power, incomes and expenses including external financing and all features of possible interference in the area of fundamental rights, mainly material interference in such rights as the deprivation of liberty in the exercise of criminal law or the apprehension of an individual in a relevant institution. These fundamental areas also include such cultural matters as the regulation of language, the formation of conditions for family life and upbringing, the formation of freedom of opinion, press and assembly and the exercise of faith or political ideology.

[40] In spite of that, one may consider the different taxation rates and the amount of the usual remuneration of the trustee in comparison with Western European countries.

[41] COURTNEY, B., Butterworths Trust Taxation Manual, 2nd edition, Butterworths: London, 1990, p. 3

[42] As a condition for obtaining relief, the criteria of the so-called farmer test must be met, where the beneficiary is a "farmer", he is domiciled in United Kingdom and his total assets consists of not less than 80% agricultural property. Taken over from KEOGAN A., MEE J., WYLIE, J., The Law & Taxation of Trusts, Tottels, 2007.

Professor ***Marina Karaseva****, Voronezh State University, Russian Federation*

Review on the monograph ***E. Ruśkowski, J. Stankiewicz, M. Tyniewicki, U. Zawadzka-Pąk*** *(eds.)*

ANNUAL AND LONG TERM PUBLIC FINANCES IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

Publisher: Temida 2, Białystok 2013 (pp. 708)

The collective monograph "Annual and Long Term Public Finance in Central and Eastern European Countries" prepared with the participation of academics from Belarus, Czech, Hungary, Lithuania, Poland, Russia, Slovakia and Ukraine, was published in Bialystok in 2013. The book addresses in depth the problems associated with public finance and budget law and their relation to fiscal governance in the era of uncertainty and financial instability. The book also serves to demonstrate, from a practical viewpoint, the value of comparative legal research in scientific investigation and its role in revealing the underlying problems that result in budgetary mismanagement.

The first chapter, "Proposition of basic notions and direction of research in the area of multi-year planning in public finances", introduces the reader to the mechanics of long-term fiscal frameworks and the problems associated with their development and application. From an academic point of view, the authors of the chapter (Prof. E. Ruśkowski, J. Stankiewicz, M. Tyniewicki and U. Zawadzka-Pąk) provide valuable insight into the concept of annual and long-term budgetary planning, the reasoning behind its development, its range which covers every aspect of monetary policy and finance, and its functionality. Moreover, this chapter defines, by a practical example, the approach to the research that has been conducted, expressed in terms of its application and scope.

The main body of the publication covers a wide range of issues at the core of which are the legal regulations regarding and governing the long-

term budgetary planning of public finances sector. It discusses the legal instruments that have evolved over time and the solutions that have been found to ensure that long-term budgetary planning functions effectively, efficiently and transparently as well as in the best interest of the state and the citizenry. It also illustrates the way in which governments progressively moved from annual to long-term budgetary planning and the degree to which the European Union has influenced this transition, not just within its own member states, but also amongst non-member states who adopted a similar multiannual framework model.

Furthermore, it examines the way in which those frameworks have been applied in the countries studied - their effect, and how problems related to making them work efficiently are often closely connected with other budgetary factors. In Poland and Hungary, for example, this relates to public debt and instability in revenue income. In Belarus and Ukraine, it is connected with legislative regulations of long-term planning that remain unresolved. In Lithuania, there is a problem with the management of budgetary appropriations, while in the Czech Republic and Slovakia there are difficulties arising from the application of budgetary principles and fiscal accountability.

Taxation, banking and currency policy, and the legal instruments that accompany their planning and governance, are discussed in the context of long-term frameworks, in general terms in relation to Central and Eastern European states, but with specific reference being made to Russia and Ukraine as individual case studies. Reference is also made to research on the issue of planning in relation to bank legislation, a hot topic that is bound to awake interest and, as recent events have demonstrated, equally bound to expand the scope of the problem.

The monograph is a mine of information that extends well beyond the space available in this brief review. It is a sounding board for academics and a source of inspiration for researchers, who will rapidly come to appreciate the scope available for further investigation in this field, as well as the value of comparative analysis. Above all, it emphasizes the importance of the role that long-term planning plays in achieving budgetary discipline, a tenet enshrined in the principles of the European Union.

As a whole, the monograph is an absorbing read and a 'must-have' publication for those tackling the problems associated with finance and financial law, not just academics and researchers but also those engaged on a day-to-day basis with the practical aspects of effective lawmaking. With that said, and to further whet the appetite, I will leave you with a rather appropriate and thought-provoking quotation from professor Ruśkowski's preface to the monograph,

"... today it is rather important to establish, whether the long-term budgetary planning is a stable tendency of time, or its prospects are uncertain."

mgr ***Ewa Lotko****, Postgraduate student, Faculty of Law, University of Białystok*

REPORT ON THE XIII INTERNATIONAL CONFERENCE „SYSTEM OF FINANCIAL LAW"

(28.09-01.10.2014 Mikulov, Czech Republic)

The XIII International Academic Conference on the topic of the *System of Financial Law* took place between 28 September and 1 October 2014 in Mikulov, Czech Republic. The conference was organized by the Faculty of Law of the Masaryk University in Brno and the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries. The previous annual conferences which gathered the representatives of the study and practice of public finance from Central and Eastern Europe took place in Białystok, Brno, Vilnius, Košice, Grodno, Voronezh, Paris, Lviv, Prague and Győr, Białystok and Omsk. Over 100 representatives of research and academic centers from Belarus, Croatia, Kazakhstan, Poland, Czech Republic, Russia, Serbia, Slovakia, Ukraine and Hungary participated in this year's conference.

The aim of the meeting was to review the thoughts and experiences of individual Central and Eastern European countries, as well as Croatia and Kazakhstan, in terms of the definition, methodology, the system of designing financial law, and the connection of financial law with other legal branches.

The opening ceremony of the XIII Plenary Sessions was conducted by Vice Dean of Masaryk University's Faculty of Law, Professor Petr Mrkývka, and the President of the Center, Professor Eugeniusz Ruśkowski.

The sessions were held for two days and were divided into five panels. The proceedings of the first panel were moderated by Professor E. Ruśkowski, Professor P. Mrkývka, and Professor H. Arbutina. The first lecture, on the methodological concept of designing the system of financial law in Russia, was delivered by Professor M. Sentsova. The second lecture in this section was co-authored by Professor M. Karfikova and Professor R. Boháč and touched upon thoughts on the system of financial law and the study of finance. After the presentations, there was a discussion with the participation of the speakers and panel moderators.

The second panel was moderated by Professor B. Brzeziński, Professpr Králik and Professor M. Radvan. In this section, the lectures were given by Professor K. Piotrowska-Marczak who analyzed the economic effects of the Polish Public Finance Law; Professor M. Bujňáková who touched upon issues connected with the legal perspective of current problems of public finance; Professor P. Patsurkivskyy who analyzed the post-Soviet concepts of the financial law system from the philosophical and methodological point of view; whereas Professor I. Tsindeliani drew the audience's attention to the disputable points in the Russian financial law.

The third panel was moderated by Professor V. Babčák, Professor L. Etel and Professor H. Marková. This section of the session was focused mainly on the aspects connect-

ed with fiscal rules in the Polish and EU laws, which were discussed by Professor J. Ciak; on the issues of the financial law system's permanent character in a state, which were presented by Professor R. Havrylyuk. Also Professor A. Kostukov, who analyzed the relations between financial law and constitutional law; G. Hulkó, PhD, who presented the constitutional limitations with regard to property and financial management in Hungarian communes; and O. Schlossberger, PhD, who drew the audience's attention to the legal aspects of electronic money; spoke in the course of this section.

Lively discussions, during which the speakers had the chance to take their stance in reference to the enquiries and remarks made, took place after each panel.

In the first part on the second day of the session, Professor V. Babčák was the first one to deliver his speech on the topic of "The origin of tax law as a result of the division in financial law in Slovakia". The session continued with the speech by J. Bogovac, PhD, who drew the audience's attention to the paradox of tax incentives in developing countries. Next, Professor T. Famulska, still remaining in the field of tax law, delivered a lecture entitled "Legal system of the Value Added Tax in relation to taxation strategies of companies in Poland". This part also included lectures by Professor H. Arbutina who focused on answering the question if the changes in the Croatian tax law head towards the rule of law; Professor V. Nazarov who spoke about the function- and goal-oriented approach to designing a financial law system; and Professor L. Abramchik who analyzed the stages of tax procedure in terms of tax regulation violations in the financial law system in Belarus. The panel was concluded by the moderators, Professor M. M. Bujňáková, Professor J. Głuchowski and D. Šramková, PhD.

The last panel on the second day was moderated by Professor R. Boháč, dr G. Hulkó and Professor A. Kostukov. The session began with a lecture by Professor W. Miemiec who drew the audience's attention to the issue of managers' and employees' responsibility for violations of public finance discipline in terms of awarding public procurement contracts. Next, Professor A. Jurkowska-Zeidler gave a speech entitled, "Banking union: the influence of the European Union on the financial law system". Professor B. Kołosowska analyzed the legal conditions for preparing financial statements by small and medium enterprises in Poland, and Professor E. Chernikova discussed the selected aspects of financial law in Russia.

The XIII International Academic Conference on the topic of the *System of Financial Law* was concluded by Vice Dean of Masaryk University's Faculty of Law, Professor Petr Mrkývka, who thanked the speakers for their effort to prepare their speeches, everyone for their participation in the sessions, and for lively discussions in relation to the material presented which proved that the matter of approaching the financial law system is a highly significant element of public finance and financial law.

The President of the Center, Professor Eugeniusz Ruśkowski, thanked the organizers, presented plans related to the Center's activity and announced that the topic of the XIV International Academic Conference will be "Violations in tax law", and the University in Košice will organize the event. The conference was accompanied by numerous attractions, e.g. the possibility to visit the town of Mikulov, located at the edge of a hilly area and by the large lakes of the South Moravian Region; Mikulov Castle, which is currently the seat of the Regional Museum; and one of the former properties of the Prices of Liechtenstein, the Lednice Castle, which was entered on the UNESCO World Heritage List.

This year's conference was accompanied by one more important academic event, namely defenses of two double, Polish-Czech, PhD theses. Damian Czudek, M.A., presented his PhD dissertation entitled "Tax procedure" whose advisor was Professor Leonard Etel. Michał Kozieł, M.A., prepared a PhD thesis entitled "The constitutional aspects of limiting public debt in European Union countries" whose advisor was Professor Eugeniusz Ruśkowski. The co-advisor of both theses was Professor Petr Mrkývka.

The PhD theses are the aftermath of over 10 years of cooperation between the Faculty of Law at the University of Białystok and the Faculty of Law at the Masaryk University in Brno in the field of conducting international law comparison studies. The joint academic work was possible owing to the international activity of the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries which brings together eminent specialists from 13 countries. It needs to be stressed that these PhDs are the first international degrees of the University of Białystok.

***Alicja Zinówko**, student, Faculty of Law, University of Bialystok*

Report on the VIII International Academic Financial Conference

MODERN PROBLEMS OF FINANCIAL LAW

Grodno, 13-14 November 2014

The VIII International Academic Financial Conference took place on 13-14 November in Grodno, the Republic of Belarus. The conference was organized by Yanka Kupala State University of Grodno. The conference was devoted to "Modern problems of financial law".

Univesity of Białystok, Faculty of Law was represented by:

- Ewa Lotko: postgraduate student at the Departement of Public Finanace and Financial Law
- Rafał Jurowiec: postgraduate student at the Department of Tax Law
- Natalia Pawluczuk: fifth-year Law student
- Yana Muliarchyk: fifth-year Administration student
- Alicja Zinówko: third-year Law student

The aim of the conference was to pay special attention to the subject of current problems in the field of financial law and to compare the systems in the Republic of Belarus and in Poland. The seminar was divided into 6 matching panels. The leading languages were Russian, Polish and English.

The meeting began with acknowledgements to all the participants by Associate Professor Cheburanova Svetlana Egorovna, Dean of the Faculty of Law, and then by Associate Professor Lilia Abramchik, Head of the Department of Constitutional Law. Subsequently, Rafał Jurowiec, M.A., extended greetings to all of the hosts and guests on behalf of the Department of Public Finance and Financial Law and the whole Faculty of Law at University of Bialystok.

Thereafter, a short introduction concerning current aspects of financial law was made by Associate Professor Lilia Abramchik. The first section was devoted to "Current problems of forming systems of financial law". The first speech was delivered by Yana Muliarchyk. The issue of "Micro, small and medium-sized enterprises in Poland" was raised.

At this juncture, the authoress emphasized the importance and influence this sector has on the economy of our country. Moreover, the aspect of the European Union's activities aiming at the development and support of small and medium-sized enterprises was pointed out.

Afterwards, there were sections focused on mechanisms of supervision over state facilities under regularity of financial legislation and present problems of the budgeting process. Ewa Lotko, M.A., and Natalia Pawluczuk gave a speech about the latter subject related to public credit and debt in the context of this panel. The first topic concerned "Area of public debt in Poland in the long-term state financial plan". The paper touched upon the issues connected with prolongation of the financial planning period at the central level, which facilitates the implementation of the transparency principle in public finance, emphasises the most significant government programs or projects, demonstrates the allocation of public funds related to public debt management and reveals the financial consequences of the implementation of political commitments, which, as a result, favors the rationality of the budgetary policy of the state. The changes introduced into the Polish legal system are, on the one hand, the effect of the implementation of the European Union provisions, on the other hand, they are an instrument that is to have a positive impact on the scope of the Polish public debt.

The subsequent lecture was connected with "Public debt as one of the main elements of contemporary issues of the public finance sector". The lecture included elucidation of the term "public debt" and all of the terms related to the topic. The causes and consequences of this phenomenon, as well as the instruments connected with the debt were mentioned. A significant part of these themes was dedicated to the impact of the economic situation of a country on the size of debt.

The last panel was entitled "The legal grounds for the circulation of money". In this section, Alicja Zinówko gave a lecture on "The prospect of adopting Euro in Poland as one of the current aspects of financial law". The whole process and all of the formal requirements were described. Furthermore, the speaker presented profit and loss account in connection with the implementation of a new currency.

To sum up, with reference to the fourth panel, Rafał Jurowiec, M.A., gave a short lecture about the current structure of the tax law in the Polish legal system. Particular attention was devoted to the problem in terms of general codification of the tax law. Owing to the speech, the participants could hear about the process of codification, its characteristics and main rules that should be followed. Moreover, the procedure of establishing Taxation Law Codification Committee in Poland was recounted.

A short summary was made. There was time for discussion and presentation of different approaches. Next, the students from Yanka Kupala State University gave a performance comprising of role-plays, songs and dance acts, which appealed to all of the guests.

On the next day, 14 November, the event concluded with the official summary of the conference. All of the representatives received certificates confirming their active participation. After the conference the guests had some spare time, which was intended for sightseeing in the city of Grodno to enjoy its monuments.

The whole conference was a great opportunity to broaden the minds with regard to the current problems of financial law. Every lecture gave a new, different perspective on many issues. It was also a wonderful chance to exchange views and opinions.

The scientific activity of the Faculty of Law at the University of Bialystok associated with the countries of Central and Eastern Europe

Project "Ten Years of the Visegrad Group Member States in the European Union"

The project was prepared by Iwona Wrońska and Agnieszka Piekutowska.
In June, 2014. Project received funding from the International Visegrad Fund in the competition of small grants (Small Grants). The proceeds support made it possible to finance the costs of organizing an international scientific conference and the issue of the international publication in English.

The project was entirely devoted to mutual cooperation of the Visegrad Group within the European Union, from the perspective of ten years of membership in the Union. This cooperation has been the subject of research and scientific discussion during the international scientific conference.

The main activity of the project was the international conference "Ten Years of the Visegrad Group Member States in the European Union", held on 27-28 October 2014. At the Faculty of Law, University of Bialystok. The result of the project is also published "Ten Years of the Visegrad Group Member States in the European Union", edited by A. Piekutowska and I. Wronska.

The project partners were:
Masaryk University in Brno (Czech Republic).
Eötvös Loránd University in Egyetem (Hungary)
Bratisławie Comenius University (Slovakia).

The project was implemented in October 2014. - February 2015. The project was favorably settled and terminated. Coordinators of the project were: Agnieszka Piekutowska PhD and Iwona Wrońska PhD

Visit of the representatives of Russian Academy of National Economy and Civil Service

On 6 May 2014. Faculty of Law, University of Bialystok hosted academics and students of the Russian Academy of National Economy and Civil Service from Smolensk headed by prof. Another Timofiejewną director of the Academy. Guests were given a lecture on. "Russia's political system," which met with great interest the students. There was a meeting of representatives of student governments. They discussed min. student exchange issues, issues of internships and co-operation between libraries outlets.

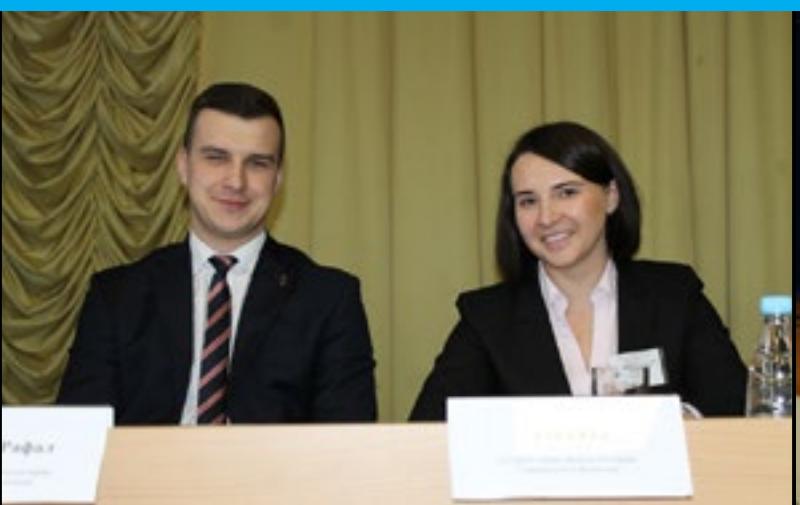
The coordinator of the visit was Jaroslaw Matwiejuk PhD, Rector's Plenipotentiary for the co-operation with the Universities of Eastern Europe.

Third Scientific Conference of PhD students at the University of Bialystok "International cooperation and regional development-challenges, perspectives - 13-14 November 2014"

The conference was addressed to students, graduate students and young workers scientific Polish and foreign universities. The main objective was to enable presentation of their research, the first time she had an international character. This stemmed from a desire to strengthen cooperation young scientists conducting research in their respective fields.

Polish-Czech double doctorates by Michał Kozieł and Damian Czudek

VIII International Academic Financial Conference "Modern Problems of Financial Law", Hrodna 2014

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CENTRUM INFORMACJI I ORGANIZACJI
BADAŃ FINANSÓW PUBLICZNYCH
I PRAWA PODATKOWEGO KRAJÓW
EUROPY ŚRODKOWEJ I WSCHODNIEJ