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Articles

Tax Absence in Relation to Taxation of Digital Services

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Abstract: In the area of taxation of business corporations operating in several different countries, there is a problem arising with the identification of the tax residence of the liable entity. With the expansion of the so-called digital business, where entrepreneurs often do not have a physical headquarters or business units, this problem is becoming more common. Efforts to introduce a digital tax within the Member States of the Organisation for Economic Co-operation and Development and the European Union are accompanied by efforts to address this issue through various legislative acts. This article explains how the problem of identifying tax residence arises, why it is undesirable and describes possible solutions.

Keywords: tax residency, digital tax, CCCTB

1. Introduction

Taxation of digital business activities has been a topic discussed for several years both by national authorities and at the level of the European Union or Organisation for Economic Co-operation and Development (hereinafter OECD). There are many reasons why taxing services such as online advertising, digital brokerage, user data collection and more is so demanding. Probably, the most important of these is the fact that these services are usually offered by business entities, which, however, exist only in the virtual sphere. Digital technologies allow entrepreneurs to operate without the need for a physical location in a specific location. This can be problematic in determining the correct tax jurisdiction. For the purposes of this paper, this phenomenon of non-existence of real residence will be called *tax absence.*

These flexible entrepreneurs travel, work for a Hungarian client in a café in Jakarta or in an alpine chalet (provided a quality internet connection, of course). They communicate with customers via the Internet and offer their services and products to any corner of the world. This is possible because, due to the nature of such a business, there are no additional costs associated with long-distance deliveries. This is a significant advantage over the sale of "traditional" goods and services, which contributes to the growing popularity of this type of business.

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In case of employees, their movement is not a particularly problematic element. Due to the mass spread of modern technology, the ability to work remotely from home or anywhere else has become a standard rather than a bonus.[1] If an employee does his/her job well, he/she gets his/her salary and tax matters lie with the employer, who is subject to tax jurisdiction depending on his/her registered office. (Čejková, 2019, p. 39) So, we have a new way of doing business that generates more and more profit, and in contrast a relatively traditional system of taxation, which cannot comprehensively cover these activities. At first glance, a simple solution could be offered – the principle of domicile, where the tax rules of the state in which the entrepreneur has his/her registered office or permanent residence apply. However, the situation is more complicated, mainly for two reasons:

- Constant movement of the entrepreneur and the related use of his/her income in different countries. Although the entrepreneur has his/her registered office, which is usually a condition for obtaining a business license, due to the constant movement, his/her activity is affected by a number of factors. One of them is contributing to various national economies, for example through VAT, using the services of an internet provider and more. It also makes it easy for him/her to find the country with the most favourable tax regime for its official seat, which again leads to a decrease in the income of the state to which the entrepreneur has a real relationship. This problem is particularly evident in the taxation of profits.
- Concerning customers from different countries, in case of digital content, such as Internet advertising or part of application code, etc., it is very difficult to determine who the end customer is. Under current EU rules, VAT is paid to the country of final consumption of the product. However, this data is often not available or of low quality and is easily falsified.
- Both the OECD and the European Union have long been working to bring these mobile entrepreneurs under control in terms of taxation. In this paper, I will try to explain exactly what the problem of tax absence in relation to the digital taxation is and how these international organisations try to fight it. We will focus in particular on the actions of the European Union, because its regulation is closer to us by its nature and we will feel its impact rather immediately.

2. Literature overview

The research is based mainly on the analysis of prepared legal regulation both at the national and the EU level. Academic literature was used to explain important concepts and was supported by internet articles written by personalities knowledgeable in the tax environment.

[1] This article is being written at the time of the coronavirus outbreak crisis (2020). At this time, we are all best aware that the possibility of working remotely is applicable to professions for which, for example, only ten years ago, it would have been unthinkable.

3. Research

The work will be based mainly on the analysis of valid and still-being-prepared community legislation. The explanatory method will explain the essence of tax absence and will provide practical examples of situations where this causes real problems – in this part, deduction will be used. The hypothesis, which will either be confirmed or refuted in the end, is the question of whether the forthcoming rules of the European Union are sufficient to capture the problem and whether such a solution is sustainable in the future considering the issues related to globalisation.

4. Discussion

The first question we need to answer is how the subject becomes absent for tax purposes. To do this, it is first necessary to explain the essence of digital business – who is a liable entity and on what basis does tax liability arise. It is also necessary to explain the principle of tax residence. It is true that tax residence is a notorious concept not only among experts, but also among the non-professional public. However, it includes aspects that may make it impossible to classify the entity in the relevant tax jurisdiction.

The problem may be visible from the definition of the liable subject, which is not easy to grasp. This subject provides digital services. For the time being, the regulations provide for the following activities, the trading of which is to be subjected to a digital tax:

1. services consisting of the placing of targeted advertising on a digital interface aimed at users of that interface, and related ancillary services
2. services consisting of the use of multilateral digital interfaces, which allow users to conclude a transaction between users of the multilateral digital interface, or otherwise use the multilateral digital interface
3. sale of data collected about users (Explanatory Memorandum to the Digital Tax Act)

Ad 1. The person who is liable to pay the tax is in this context usually the end customer. We consider a customer to be a person who pays for a service to benefit from it. In case of advertising, such as banners, automatically triggered videos when opening an Internet article, product placement, etc. the customer is the contracting party. Significantly, this type of advertising is not universally accessible to all Internet users. Digital advertising, especially on social networks, responds to user data collected using so-called cookies.[2] These are processed in such a way as to recognise the user's preferences and show him/her only such advertising that may be potentially interesting for him/her, and ideally even at the moment when he/she may consider buying a given product or service.

[2] See, for example, Google's policy: A cookie is a short text file that a webpage you visit sends to your browser. It allows the site to record information about a user's visit, such as their preferred language and other settings. "Cookies are used for a variety of purposes. For example, we use them to store your SafeSearch preferences, to select relevant ads, to monitor the number of visitors to a page, to facilitate the registration of new services, to protect your data, or to store ad settings." Accessible at: https://policies.google.com/technologies/cookies?hl=en.

For this type of supply, we can pose a question whether we can also include the promotion of products carried out by bloggers and via social networks. Although this activity is also inherently performed in the Internet environment through the transmission of digital signals, it is not characterised by the need for active code generation. It is then not even offered to Internet users on the basis of their preferences, as explained above, but to so-called followers.[3] The advertisement itself is then more traditional in nature, when, in principle, the benefits of the product are communicated to the public orally or in writing. However, even if this type of advertising does not fall into the given category, in both cases we know how to identify the obligated subject. However, what can be confusing is that the regulations do not take into account whether the advertising service provider owns the digital interface on which the advertisement appears (the Digital Tax Directive proposal). Where an advertising service provider places advertising on an interface which has been left to him/her for use, the person who provided that part of the interface should not be liable to tax.

Ad 2. Very similar in character to digital advertising are services consisting in making multifaceted digital interfaces available to users, which in the current state of legislation can be described as "intermediary services". Basically, it is the operation of the Internet interface – the web, applications, databases, etc., and their provision to the general public. This includes e-shops, search engines, interactive and gaming websites, as well as comprehensive social networks that allow users to search for other users and interact between each other, and which may also allow related deliveries of goods or services directly between them. Here, the fact that the legislation does not take into account who owns such a platform can cause even more complications than in the advertising discussed above.

Quite specific are the Internet interfaces enabling the execution of direct transactions using a payment gateway (application) and some more advanced social networks. For a person without at least a general knowledge of the technical background of these platforms, it can be very difficult which part is subject to tax and which is no longer. The Directive on a common system of taxation for digital services as income tax on the supply of certain digital services (hereinafter "the Digital Tax Directive") seeks to provide the following explanation: "...multifaceted digital interfaces allowing users to search for and interact with other users, an aspect that allows service providers to benefit from network effects. The ability of these interfaces to establish connections between users distinguishes intermediary services from other services, which can also be considered facilitating user interaction, but through which users cannot contact each other unless they have previously made contact using other means, such as instant messaging services, messaging. Creating value for these other services, which can generally be defined as communication or payment services, consists of developing and selling supporting software that enables this interaction and is less tied to user involvement. Communication or payment services therefore do not fall within the scope of the tax." This means that, although the operation and provision of such an internet platform for use is subject to taxation, applications for the exchange of messages between users and payment gateways enabling financial transactions do not fall

[3] In the social networking environment, a "follower" is a user who subscribes to content shared by another specific user by an active action.

within the scope of the tax. The provision of digital content itself is also excluded from the scope. These services will be taxed according to a special law.

Here we are getting closer to the sense of the problem. If it does not matter which entity owns the internet platform as a whole, and at the same time its various parts are taxed separately, in addition to different tax rules, a multi-layered system is created which will be difficult for tax administrators to decipher. At the same time, it is difficult to determine what actually falls within the scope of taxation. The tax administrator, or the auditor, will most likely be required to have a relatively extensive technical knowledge. Another possibility is to involve experts, which would, however, significantly increase the cost of collecting and administering the tax, in which case we could discuss the effectiveness of its introduction and collection at all.

Ad 3. The commodity of the twenty-first century is data.[4] They are traded for a variety of purposes. They help entrepreneurs create content much better targeted to their potential customer, identify them in the crowd, but also better tailor advertising to their preferences. Various databases enable the development of applications and programs that the customer buys for his/her own use, and by using them he/she further contributes to the development of such a program. Trafficked data does not only include data enabling to identify a specific person, such as his/her name, age, approximate location, etc. Entrepreneurs are particularly interested in the data on the person's search on the Internet, what topics interest him/her, what products he/she buys, which services he/she uses. This information is then processed by data scientists, a thorough analysis is performed, and a marketing plan is built on it. And every single click of an Internet user is recorded and then processed in this way.

As described above, in the digital environment data is collected not only on the basis of direct submission by the user, but also through so-called cookies. The data is provided to the subject directly, if the user of the internet interface fills in a form, creates an account on a website, etc. These usually include personally identifiable information, and sometimes actively choosing certain preferences. In contrast, cookies contain records of how an Internet user acts, what information he/she searches for, what he/she likes, what and how he/she buys. By analysing such data, researchers can reveal unexpectedly personal information, often information that the user does not know about, and subconsciously makes the choice. European Union citizens are covered by Directive 2009/136/EC, which requires platform operators to inform users that this data is being collected and further processed, and the user must explicitly consent to this (despite the fact that many users are denied access to the web if they decide not to agree). In both cases, however, users should be explained in detail how their data will be further used and what they can expect as a result of their processing.

From the above it is clear that data trading will occur more and more often. The first problem is the question of who is the owner of the information provided about users in this way – the website operator, its owner or the author of the part of it that collects this data and passes it on for processing? This, however, falls into the category of business relations, which will be governed by a contract between the parties. However, for tax

[4] See on this topic, for example, Yuval Noah Harrari: Homo Deus.

administrations, this information can be crucial and non-transparent due to the internal organisation of the relationship. It will require considerable effort not only to identify such a person, but also to find his/her localisation. On the one hand, the fact that the sale of such data is taxed could simplify the situation. As stated in the draft of the Czech Act No. 89/2019 Coll. on Digital Tax, "therefore, a tax on selected digital services is not a tax on the collection or use of data collected by companies for their internal purposes or the sharing of data collected by companies with other parties free of charge" (the Digital Tax Directive proposal). Then we would assume that the obligated entity is the party to the contract that provides its database to another entity and accepts payment for it. The bill further stipulates that "the tax on selected digital services is focused on the transfer of data obtained from highly specific activities (user activities on the digital interface)." It also remains unclear, and this is crucial for these purposes, where the sale of data begins – i.e. how they get to the seller's possession in the first place. This brings us back to the question asked at the beginning of this paragraph: who is the owner of the user information collected in this way?

The Ministry of Finance of the Czech Republic describes the digital tax as an indirect tax (the OECD and the EU do not comment in this regard). In order for an entity to become a taxpayer, it must meet several conditions: (Ondroušek, 2019)

1. a separate legal entity or unit without legal personality, if the total revenues in the relevant period are higher than EUR 750,000,000 and at the same time the total amount for taxable services provided for the relevant period is higher than CZK 50,000,000 (EUR 1,830,600)
2. entity of a group, if the total amount for the provided taxable services for all members of the group carried out in the relevant period belonging to the Czech Republic is higher than CZK 50,000,000 (EUR 1,830,600)

The draft of the Czech Digital Tax Act characterises an entity also as 'legal persons or units without legal personality' (the Digital Tax Directive proposal). It follows from the above that a legal person will be liable only when it generates a significant profit on the basis of a taxable supply, and which has achieved a certain position in the market. However, such corporations often create value – i.e. the basis for the provision of some of the above services, in a completely different place than the taxable supply ultimately takes place.

Corporations of this size often have units in different states. Each such unit often performs different tasks. When units work together, they generate some value that they pass on to the corporation's customers, often in completely different states. However, these customers enter into a contract with units that are not those that in fact contributed to the creation of the traded value. So far, it is still relatively simple, but there are corporate schemes, which on the outside appear to be the cooperation of mutually unjustified entities. Given the fact that each state has a different legislation regarding the legal personality and the designation of company units, as well as a different tax legislation, it may be unclear when the surveyed corporation creates the value in question. Units with different job descriptions also keep different records of their activities and transactions. The combination of these facts with different tax jurisdictions makes it very difficult to determine whether an obligation to pay a tax has arisen, even for the liable entity itself.

In addition, there is room for tax optimisation and aggressive tax planning, where entities benefit from this lack of clarity. A common feature of these procedures is that corporations usually act within the legal provisions even in such actions. However, they exploit gaps in the law, where the legislator either failed to adjust some important actions or could not do so because it would disadvantage entities with a weaker economic position. In the case of tax optimisation, it is mainly the spillover of profits between individual units established in different countries, or various internal relations, such as loans, sales, etc. (here we can also talk about the use of so-called tax havens). Aggressive tax planning is the refined use of all possible benefits resulting from tax regulations and the application of the laws of different territories so that the tax liability is minimised as much as possible. One example is the so-called hybrid arrangement effect. It is about creating an artificial structure that uses different tax systems so that double deduction is possible. This may be a double deduction of the loss, once in the source country and a second time in the country in which the company has its registered office. There may be double non-taxation of interest, where in one country interest costs are deducted from the tax base and in another country interest is not included in the taxable income, but also the use of a situation where the value arises in one state in which the company operates, but in the state registration, such value is exempt from tax.

From the above it is clear that there is a certain difference between various service providers. As described in the introduction to this article, all the above implies that there is a lack of certainty as to who the taxable person is. We can call this phenomenon tax absence. However, this is not the will of the taxpayer, who, although he/she may want to take advantage of this situation, did not cause it. What makes a subject a taxable person is not the supply or performance of other conditions, but the law itself. An unequal legal relationship arises between the legislator and the tax subject. Therefore, it is the responsibility of the legislator to create laws so as to provide the liable person with sufficient certainty about his/her rights and obligations, and to cover all possible situations in which the obligation to pay tax should arise. (Drywa, 2017) Given the fact that taxes represent a government interference with a person's fundamental property rights, it is very important that the quality of tax laws be at a high level. In addition, these laws are among the most frequently amended, so the legislator must be particularly prudent and ensure that the legal certainty of entities is not compromised.

We have a relatively wide range of entities that may be liable to digital taxation. The essential problem is that if we have difficulty determining who the liable entity is, it will be all the more difficult to find the right tax jurisdiction. This obviously leads to a potentially incorrect application of the law and the impoverishment of the state where the taxation was supposed to take place. This creates legal uncertainty on both sides – both for the liable entity and the tax administrator. The situation may escalate to the above-mentioned tax evasion. This is due to the fact that, unlike the tax administrator, the liable entity has the motivation to use this gap in the law and find such a solution that would help it to reduce the tax liability to a minimum. Due to the insufficient quality of the legal regulation, he/she will be able to remain within the limits of the law during such conduct and will not be punishable.

If the introduction of the digital tax aims to, next to other issues, fill in the lack of funding in state budgets,[5] it is essential that it will be properly regulated by the laws of each jurisdiction. Furthermore, as there is often an international element which is an important factor of potential tax evasion, it is also necessary to achieve a certain standard of harmonisation at the level of international organisations. That should be a priority.

The need to introduce a digital tax is one of the consequences of the advanced phase of globalisation, which has been mainly achieved due to digital means of communication. It is therefore almost self-evident that the international element will be one of the hallmarks of a taxable transaction. The Organisation for Economic Co-operation and Development (OECD) deals with the issue in cooperation with the G20 countries. The main goal of the OECD is to solve the problem of low transparency in the taxation of digital companies and of the use of gaps in national tax systems. (OECD, 2019) The European Union is also coming up with a solution, which is currently in preparation: the above-mentioned Digital Tax Directive, which aims to harmonise the legislation of this tax in the individual Member States. Cooperation between the two organisations is rather problematic, as some Member States fear that if the digital tax is regulated only for the territory of the European Union, it will lead to the relocation of companies such as Google or Facebook, (Elčić, 2019) which would mean major economic losses. Therefore, a global solution is preferred.

However, reaching agreement at the global level is a great challenge, both in terms of discussions between states and in terms of time. While some Member States of the European Union (e.g. Austria or Spain) has been operating with the digital taxation for several years, in other countries (the Czech Republic, Slovakia) its introduction is still being prepared. In a group such as the European Union, it is, of course, undesirable for such significant differences in tax systems to arise. This was probably the main motivation for the Union to take action in this direction, despite the risks outlined above. Another attractive factor is the overall increase in the economic level of the entire group, thanks to increased transparency and improved competitiveness of smaller companies. (Vodák, 2018) In the current situation, large companies with a large number of users pay significantly lower taxes than digital companies with a user base in one or two countries. On the other hand, some states fear that this effect will not be achieved, as companies will have to charge for some of their services to the general public, which are still routinely free, in order to be able to offset the loss of funds paid to the state coffers. (Štípek, 2018) The rapid variability of business in the digital environment can also be risky. According to the Commission, a digital services tax, proposed in 2018 as a short-term solution, would generate annual revenues of around EUR 5 billion in the Union and reduce the fragmentation of the single market.[6]

A certain intersection between the OECD and the European Union approach may be projected in the Anti-Avoidance Directive (hereinafter ATAD). It was adopted on the

[5] In the Czech Republic, the annual tax revenue is estimated at CZK 2.4 to 6.6 billion. See Právní rozhledy, Vol. 27, (2019) No. 15–16, Annex Legislation p. II.

[6] COM/2018/0148 final. The Commission Communication *Time to implement a modern, fair and efficient standard for taxing the digital economy* states that "companies with digital business models pay less than half the tax rate for companies with traditional business models, with an average effective tax rate of 9.5% compared to 23.2%".

basis of long-term negotiations at OECD level and builds on them. It thus has a much wider international impact on entities operating not only inside the European Union but also outside it. (Radvan et al. 2016) The ATAD is a directive aimed at coordinating the procedures of national governments and tax administrations so that businesses operating in the territory of two or more EU Member States, or non-EU countries, do not use different tax codes for tax evasion in a country where it should be taxed, even though it may not be the most advantageous for them. (Hrubý, 2016) Two of its pillars will then be directly relevant to the effectiveness of the Digital Tax Directive:

- rules for dealing with hybrid structures (discrepancies), and
- rules for controlled foreign companies.

The so-called hybrid discrepancies occur in situations where revenues and expenditures arising from the entrepreneur's foreign activities are qualified differently by the various legal systems concerned. The functioning of the digital tax in only some countries serves as a good example. While in one of the countries concerned the revenue from the provision of digital services may be considered the item of the total revenue of the corporation for selling its services, in the other country it may be assessed, for example, as renting digital space for advertising, royalties for code creation, etc.; different rates will then be applied. In the absence of common rules determining which types of services are subject to which tax and under what conditions, and in particular the rules for determining in which place the value in question arose, the liable entity has a choice. It will thus adapt the taxable supply to the regulation which is more favourable to it, even though in fact it has a legal relationship with a country with a different regulation.

In case of companies where there is a subsidiary hierarchy between units located in different states, there is a different kind of tax optimisation. This usually includes the relationship between the controlling company and the controlled one, and it does not appear to be a single company. As a result of the subsidiary relationship, they should be considered a single corporation. Values move between these units in such a way that they appear to be transactions between completely different entities. This again is an easement to the search for such tax rules that are most advantageous for the entity, and thus to an outflow of funds that would belong to the budget of the state in whose territory the value in question actually arose. This happens most often via intra-company loans, investments of the controlling company in the controlled company, handling of receivables, etc.

The re-launched Common Consolidated Corporate Tax Base Directive (hereinafter CCCTB) is expected to address both issues. Although it has been introduced in the past, neither the business environment in the European Union nor national regulations were ready for it at the time. Following the adoption of the ATAD Directive, there was scope for its recast and adaptation to current market conditions. The CCCTB aims to consolidate the tax base of corporations which have branches located in two or more Member States. It intends to achieve this by several methods depending on the nature of the relationships between these units:

- full consolidation method:
  - the consolidating entity exercises a decisive influence in the consolidated entity
  - the consolidating entity excludes financial investments in the consolidated one

    - intra-company receivables and other property liabilities are excluded
- proportional consolidation method:
    - the consolidated unit is controlled by two or more consolidating units together
    - consolidating entities report a proportionate share of assets and liabilities
    - intra-company receivables and other property liabilities are excluded
- equity method of consolidation:
    - the consolidating entity does not control the consolidated entity, but has a significant influence in it
    - the consolidating entity recognises, against securities, the following items:
        - profit or loss in equivalence representing the share of profit or loss of the consolidated unit
        - consolidation reserve fund representing the share of retained earnings of previous years of the consolidated unit
        - intra-company receivables and other property liabilities are not excluded

The consolidated tax base is shared only if the result is positive, negative consolidated tax base is included in future consolidated profits. Finally, a relatively complex computational formula is applied.

However, sufficient prior tax harmonisation is a precondition for these procedures. In view of the fact that the calculations for the sharing of the consolidated tax base are carried out at the end of the accounting year of the whole group, it will be necessary for these periods to overlap for different countries. The European Commission intends to implement this directive in two steps. In the first phase, the calculation of the tax base will be harmonised so that it is approached in approximately the same way in all countries and thus undesirable differences do not arise. Important criteria are neutrality, equity, simplicity, enforceability, scope, income stability, public policy and the costs associated with reform. In the second phase, the consolidation itself is to be performed using the above methods.

5. Conclusion

At the beginning of this article, we introduced and explained the core of the problem and described it as a tax absence in relation to the digital tax. This phenomenon is mainly due to the fragmentation of tax regulation in different countries, and in today's globalised world it is not possible to expect companies not to expand abroad. This is all the more true for entities doing business in the digital environment, which often do not even have a physical base and branches. In such situations, it is easy to find the most advantageous tax regime or even avoid taxation altogether. A high-quality taxation system needs to be created for the activities of this type of business. The introduction of a digital tax, at least in the European Union, despite the above explained risks, seems to be a desirable solution that will bring the missing funds to state budgets and at the same time implement a greater

degree of control over the activities and expansion of these entities. The previous paragraphs attempted to analyse the proposed legislative texts and to map the process according to which the person liable to pay the digital tax is to be determined. Based on the interpretation of some terms and by deduction, we found that there is a relatively vague spectrum of entities that can be designated as a mandatory entity. These can then be difficult to trace, especially when it is possible that they will often not even have a legal personality. Here then the question arises – is it possible to enforce the fulfilment of any financial obligations by an entity without legal personality? Who does bear the responsibility for it?

An ambitious goal – to solve the problem of tax absence – is set by the re-launch of the CCCTB Directive. If the essence is to calculate the tax base (in general) for the whole group together, and then to divide the tax liability proportionally between the individual units on the basis of a proportional formula, this could have the desired effect. As follows from the above, for digital tax, the subordination of the liable entity and the obligation itself under the tax jurisdiction will be a major problem. An entity without a legal personality can also be a subject to tax. At the same time, the nature of the performance allows for a high degree of localisation flexibility. The CCCTB Directive introduces a rule whereby the taxable values of all units in a group are added together, especially those located abroad. Ideally, the value should be taxed at the place where it was created. This is often not possible in case of digital services provided abroad, or it is not possible to determine such a place. If the tax calculated on the basis of the consolidated basis is distributed through the allocation formula, the funds collected will be fairly distributed among the states without the need for excessive administrative effort in order to apply the law of the administrative state to taxable transactions. However, problems may still arise here because some states lack legislation to consolidate entities located abroad. For example, in the case of the Czech Republic, this is addressed by the international accounting standards IAS 21. The somewhat legal philosophical question remains whether the accounting standards have sufficient legal force to be used in the field of international taxation. According to the Association of Industry and Transport of the Czech Republic, a long-term solution to the tax absence of modern digital companies linked to the CCCTB Directive could be to create a rule where the company will have to establish a so-called permanent virtual establishment, provided that at least one of the following criteria is met: annual revenues in a Member State exceed EUR 7 million; it has more than 100,000 users in one tax period; during the tax period, it concluded more than 3,000 business contracts for the provision of digital services with business users. However, in order for the problem to be truly solved, it is necessary to approach the solution with the knowledge that the development of digitisation is very dynamic and we can expect its expansion into traditional economic sectors in a very short time. In this context, it is necessary to focus on long-term solutions and cooperation of as many countries as possible, not only within the European Union and/or the OECD, but also, if possible, outside of these organisations. Although the CCCTB Directive offers a good solution to the problem of the indeterminacy of tax residence in relation to digital tax, I do not believe that this is a sufficiently effective and final solution. The hypothesis thus remains unconfirmed.

References

Čejková, T. (2019). Život a daně digitálního nomáda [Life and Taxes of Digital Nomad]. In J. Schweigl, E. Tomášková, & M. Janovec (Eds.), Cofola 2019 (pp. 38–47). Masaryk University.

Drywa, A. (2017). The quality of the law as a factor shaping the taxpayer's legal position. In M. Radvan, J. Gliniecka, T. Sowiński, & P. Mrkývka (Eds.), The Financial Law towards Challenges of the XXI Century (pp. 366–378). Masaryk University. https://doi.org/10.5817/cz.muni.p210-8516-2017

Elčić S. (2019). Česko chystá vlastní zdanění Facebooku a Googlu. Evropská dohoda skončila fiaskem [The Czech Republic is Preparing its Own Taxation on Facebook and Google. The European Agreement Ended in a Fiasco]. https://bit.ly/2zG3Wli

Hrubý, Š. (2016). Nové směrnice EU proti vyhýbání se daňovým povinnostem [New EU Directive against Tax Avoidance]. https://bit.ly/2ZOp83b

OECD (2019). Tax and Digitalisation. Policy Note. https://bit.ly/2XbWPKw

Ondroušek, M. (2019). Overview of the Impacts of the Introduction of the Digital Tax. Institute for Politics and Society, Policy Paper. https://bit.ly/2ZQfJrR

Radvan, M., Mrkývka, P., Kappel, J., Schweigl, J., Liška, M., Neckář, J., Snopková, P., Šefčík, M., Pařízková, I., & Kouba, S. (2016). Důchodové daně [Income taxes]. Masaryk University.

Štípek, V. (2018). Rizika digitálních daní a možná řešení [Risks of Digital Taxes and Possible Solutions]. Svaz průmyslu a dopravy České republiky [Confederation of Industry and Transport of the Czech Republic]. https://bit.ly/2zyq1CA

Vodák, P. (2018). Výzvy spojené se zavedením digitální daně v EU [Challenges Associated with the Introduction of a Digital Tax in the EU]. https://bit.ly/2AnWTO5

Legal references

2009/136/EC Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws. https://bit.ly/2XcaTDC

COM/2016/0683. Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), EurLEX. https://bit.ly/3cfLzAQ

COM/2018/0148. Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, EurLEX. https://bit.ly/3deAOQV

Council Directive (EU) 2016/116 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. https://bit.ly/2zG10Fi

Explanatory Memorandum to Act Nr. 89/2019 Coll. – Czech Tax on Digital Services Proposal (2019). https://bit.ly/2Xh9g7X

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Governments' Measures to Govern the Coronavirus Crisis and the Lessons Learned

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Abstract: Since its appearance in late 2019 in China, the Coronavirus pandemic has posed a real challenge to humanity and governments. No country was safe from the effects of the virus, whether from a medical, economic, or social point of view. In the absence of international coordination, countries began to rely on their own capabilities to curb the pandemic and mitigate its negative effects. To achieve these goals, different strategies and measures have been adopted. Despite the challenges governments faced, these measures definitely helped alleviate the severity of the epidemic and slowed its spread. These measures include, but are not limited to, lockdown, border restrictions, home quarantine, the imposition of wearing masks and social distancing. This crisis stresses the importance of a country's financial, technical and human capabilities in governing crises. Moreover, it revealed that the absence of international cooperation in managing international crises has dire consequences for the international community.

Keywords: Coronavirus pandemic, Covid-19, economic implication, governmental measures, crisis

1. Introduction

Coronavirus first appeared "on December 31, 2019, when China reported to the World Health Organization (WHO) cases of pneumonia in Wuhan, Hubei Province, China, caused by a novel coronavirus, currently designated 2019-nCoV". (Phelan et al., 2020, p. 709) "The clinical spectrum of coronavirus infections ranges from mild to critically ill cases". (Yang et al., 2020: 275) The behaviour of the virus was characterised by its rapid spread from one region to another, and its ease of transmission from one person to another, which makes the virus more severe and difficult to control. Thus, the total number of patients has been on a continuous and steep rise since the outbreak of the pandemic. Up to date (November 6, 2020), the total number of confirmed cases worldwide is 49,587,145; the total number of deaths is 1,246,985; the total number of those recovered is 35,208,404. (Worldometer, 2020) The Corona pandemic has affected all aspects of people's lives, and its negative effects not only represented a health crisis, but also extended to the economic-social, educational and political aspects. There is no doubt that the Coronavirus pandemic has affected the global economy significantly, as global trade rates have decreased as a result of the impact of the Coronavirus pandemic on the economies of many developed countries like the USA, China, Japan, Germany, Italy and thereby. Global growth is projected at 4.9% in 2020, 1.9 percentage points below the April 2020 World Economic Outlook update. (International Monetary Fund, 2020, p. 1) Along the same

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vein, growth in the group of emerging market and developing economies is forecast at –3.0% in 2020, 2 percentage points below the April 2020 WEO[1] forecast. Growth among low-income developing countries is projected at –1.0% in 2020, some 1.4 percentage points below the April 2020 WEO forecast 2020. (Ibid, p. 6) Moreover, this epidemic has pushed more people to sink below the extreme poverty line. According to the World Bank, "COVID-19 could push 71 million people into extreme poverty in 2020 under the baseline scenario and 100 million under the downside scenario. As a result, the global extreme poverty rate would increase from 8.23% in 2019 to 8.82% under the baseline scenario or 9.18% under the downside scenario". (World Bank, 2020, p. 1)

Education is no exception, the lockdowns and other measures have interrupted conventional education in most countries. Students have had to depend more on their own resources to continue learning online. Furthermore, schools, universities and teachers have had to adapt to new ways of delivering teaching, which they may not have been trained for before. Spending on education is still one of the challenges for families and governments as "the public funds are directed towards health and social welfare. Indeed, long-term public spending on education is at risk despite short-term stimulus packages in some countries". (Schleicher, 2020, p. 5) It is also equally important to mention that the Coronavirus crisis has affected international student mobility. "The crisis has affected the continuity of learning and the delivery of course material, the safety and legal status of international students in their host countries, and students' perception of the value of their degree". (Ibid, p. 9) School closures are also likely to affect the increase in the gender gap in education. It is important to mention that some estimates pointed out the relationship "between the pandemic and the existing gender gap in MENA region in several areas including education, employment, social protection, care work, and gender-based violence". (OECD, 2020, p. 3)

To restrict the spread of the pandemic and mitigate its negative effects, countries have taken certain measures to protect their citizens and their economies. By reviewing the international reactions that accompanied the outbreak of this epidemic in the first weeks and months, one can distinguish different approaches implemented by governments. However, it is important to mention that some countries have been relatively successful in achieving this goal, while others stumble and incurred heavy human and economic losses. In this article, I will try to address this thorny topic and review the countries' responses to the Coronavirus pandemic, taking into account the challenges these countries face in their difficult task to mitigate the effects of this pandemic. I will also try to study the Palestinian case and how the Palestinian Government has dealt with the effects of this pandemic that is still ravaging the world now. Therefore, this article addresses four main questions: What are the strategies used to limit the spread of the pandemic and mitigate its impacts? What are the challenges faced by countries and governments in governing the Coronavirus crisis? How was the crisis managed in Palestine? What are the lessons learned from governing this crisis?

[1] World Economic Outlook update.

2. Strategies used to limit the spread and effects of the pandemic

There are two types of crises; the first type is the expected crises, where the government or organisation prepares plans and interventions in advance to face them in case they occur. The second type is the unforeseen and often confusing crises and has a profound effect on people and institutions. This type is characterised by being sudden and hazy due to the lack of prior information about it, which leads to a loss of control, especially at the beginning of the crisis. The main goal of crisis management is to control the adverse impact of crises and achieving desirable results. "There are four ways through which the organizations can deal with risks: avoidance, transfer, mitigation, and assumption". (Sulaiman, 2019b, p. 204) The severity of the crisis determines the level and speed of the response. Nevertheless, the degree of severity of the crisis depends on the speed of its spread and the depth of its impact. Coronavirus has had these two features, and this is among the reasons why the World Health Organization considered it a pandemic. Shortly before that, the World Health Organization had declared Coronavirus disease 2019 a public health emergency of international concern. (Sohrabi et al., 2020, p. 4) To control the spread of the virus, countries closed their borders and took measures in the absence of any international coordination to collectively manage the pandemic. Some of these countries succeeded in managing the crisis while others failed. Nevertheless, it must be emphasised that the success or failure in managing the Coronavirus crisis was uneven and relative, so it is not possible to talk about complete success or complete failure. Crisis management methodologies depend on a set of options that must be followed in order to reduce the effects of the pandemic. Although the countries of the world were exposed to the same virus, there was a variation in the response and measures taken by governments around the world. Nevertheless, one can summarise four main schools or approaches that appeared in managing and dealing with this exceptional circumstance that surprised the world. The first approach is confusion and indecision as we saw countries like the USA and the U.K. that received the crisis with hesitation and confusion in decisions. However, later they changed to an approach completely different from what was the case at the beginning of the crisis. The reactions of the people of these countries were a mixture of frustration and loss of confidence in their governments and leaders. However, the second approach is helplessness and panic. People over the world observed countries declaring their internal helplessness and disappointment in their partners and allies who had abandoned them. The citizens of these countries were evident in their criticising of their allies' regional political groupings such as the European Union. As for the third approach, it relied mainly on closures and restrictions. Some countries have adopted a comprehensive closure policy, especially countries suffering from a shortage of medical resources. This approach has been adopted in many Arab countries, such as Jordan and Palestine. The fourth approach in dealing with the Coronavirus crisis is entitled firmness and efficiency through a policy of initiative and transparency where the precautionary measures were gradually developing according to the developments in the epidemiological situation. This approach was adopted by many European countries and some Arab countries, such as Saudi Arabia and the United Arab Emirates. Furthermore,

with the spread of the Coronavirus in different countries of the world, the most prominent measures taken by countries were as follows:

- Declare a state of emergency in the country.
- Some countries imposed bans on the export of protective equipment and tools to ensure that their domestic needs are covered.
- Many countries imposed travel restrictions on affected countries.
- Some countries banned large gatherings, while only allowed gatherings in very limited numbers.
- Closing schools, universities, sports clubs, restaurants, places of worship and other gathering places. Online learning was also used in schools and universities.
- Opening new hospital departments for Covid-19, as well as establishing field hospitals to accommodate more people infected with the Coronavirus.
- In many countries, hotels and public facilities were used for quarantine purposes.
- Increasing the manufacture of medical equipment, especially masks, sterilisers and ventilators.
- Educating people about the seriousness of the epidemiological situation and the virus and urging them to social distancing as an effective way to limit the spread of the virus.
- Working from home becomes one of the popular methods in many companies and institutions.
- However, the following is a summary of the experiences of some countries to reduce the spread of the Coronavirus pandemic and mitigate its negative impacts.

2.1 China

The Chinese experience in confronting the Coronavirus is considered one of the experiences worth studying, especially as it is the first country in which the virus appeared. However, the Chinese performed remarkably compared to other countries. Since the beginning of the outbreak in Wuhan Province, China has begun its plan to confront the spread of the epidemic with a large-scale campaign aimed at isolating the entire region and placing it under quarantine, conducting large-scale Coronavirus tests, and establishing new hospitals to treat and take care of infected people. China has used robots to provide services to people quarantined in hotels and quarantine centres. It has also used technology and smart applications to track down infected and suspected people. The quality of these measures and the speed of decision-making called many to praise the Chinese experience, especially the World Health Organization, which considered the Chinese experience in dealing with the pandemic a role model. Nonetheless, China was criticised by a number of countries, led by the United States, for initially concealing the existence of the virus, and its statistics on the number of victims were in doubt.

2.2 Germany

From the beginning, Germany appears to be in an exceptional condition in response to the Coronavirus epidemic outbreak. During the first few months, the number of people infected with Coronavirus in Germany was the lowest in Europe compared to the number of infected cases. So far (November 6, 2020), the total number of people infected with Coronavirus in Germany has reached 641,362. As for those who fully recovered: 273,500, while the total deaths reached 11,364. (Worldometer, 2020) Without adopting a comprehensive closure strategy, Germany imposed some restrictions on all its lands to limit the spread of the epidemic, such as closing schools and cultural places, as well as preventing gatherings of more than a specified number of people. What distinguishes the German experience is that it focused on intensifying the examination of the Coronavirus in order to detect the largest possible number of infected persons. Indeed, this strategy has been effective in curbing the epidemic and flattening its curve. There is no doubt that the quality of health services and the availability of the basic requirements of the health system in Germany were crucial to the ability of health authorities to manage the Corona pandemic with minimal losses. Besides, the country's absorptive capacity has contributed to the implementation of social protection programs for the vulnerable groups and those affected by the pandemic.

2.3 The United Arab Emirates

The governance of the Coronavirus crisis in the UAE is a distinguished case, as the comparative advantages of the UAE have been employed in curbing the Coronavirus epidemic. According to the adopted strategy, more emphasis was placed on the dynamics and effectiveness of government administration, which enabled the government to efficiently manage the crisis and take the necessary decisions urgently. It is also equally important to mention that the financial capabilities of the country were critical in managing the crisis and taking precautionary measures regardless of the financial cost. The UAE strategy to confront the epidemic is based on the following elements:

- It did not implement complete lockdown, but gradual steps to reduce the spread of the epidemic.
- For detecting cases, it established the largest modern laboratory outside China, to conduct tens of thousands of tests.
- Harnessing technology in restricting the epidemic and managing the crisis such as the use of drones to sterilise cities and mobile pharmacy services to deliver medicines to homes.
- Finally, one of the elements of the UAE strategy was to reduce the economic effects of the crisis on the business sector, as an economic support package was presented to banks and M&S enterprises operating in the UAE in order to enhance their ability to deal with the negative economic impacts resulting from the Coronavirus crisis.

3. The Palestinian experience in governing the Coronavirus crisis

Like other countries, Palestine has not been spared from this virus and its health, economic and social repercussions. The first six cases of the new Coronavirus epidemic appeared in Palestine on March 5, 2020. The virus was transmitted to them through a group of tourists who visited Bethlehem from Greece. Like other countries, the rate of infection with the Coronavirus is constantly increasing. According to the Palestinian Health Ministry, since the beginning of the outbreak on March 5, 2020, the number of confirmed people infected with the Coronavirus in Palestine stands at 69,181 on November 6, 2020, while the recovered cases are 61,033 and those who deceased is 583. Since the emergence of the epidemic, the Palestinian Government responded quickly and strictly in order to limit the spread of the virus to protect the life of its people. A state of emergency was declared in Palestine on March 5, and after several days, the borders and land crossings were closed. Furthermore, a set of measures have been applied including restricting people's mobility, closing down cities and preventing movement between provinces. It also includes suspending official departments, government offices, companies and banks for specific periods. Schools, universities, and Kindergarten were closed. In fact, these institutions put more reliance on online learning. Despite the measures taken by the Palestinian government, "the number of infected people started to rise after the accelerated outbreak of the Coronavirus in Israel and the successive transmission of infected cases to the West Bank". (MAS, 2020, p. 3) Actually, Israel became the main source for the spread of the virus in the West Bank through Palestinian workers. In general, the governmental measures to mitigate the effects of the pandemic were based on three tracks: health protection measures, social protection measures and measures to mitigate the economic effects of the pandemic.

3.1 Health protection measures

The response of the responsible authorities in the health sector, headed by the Ministry of Health, was characterised by the following:

- Adhere to the instructions of the World Health Organization and the health protocol approved by it regarding the diagnosis, quarantine, treatment and case recovery.
- The diagnosis was carried out using devices and materials that were received from the World Health Organization and under its direct supervision and follow-up. According to the Gazette of Medical Sciences, "laboratory investigation included genomic sequencing, RT-PCR, and serological methods (such as Enzyme-linked immunoassay, ELISA". (Shalalfa et al., 2020, p. 15). As for quarantine for patients and suspects, it was previously done in hotels and certain centres equipped by the Ministry of Health, but due to the increase in cases in the recent period, the shift has been made to the application of home quarantine. As for the period of quarantine, it was initially 14 days, and then it was reduced to 10 days, based on the recommendation of the World Health Organization. A person is considered

infected if they are tested positive for Covid-19 and if the result is negative, they repeat this to ensure he or she is clear of the virus.
- Certain hospitals have been identified and new hospitals opened to receive and treat Covid-19 patients, and they have also been provided with the necessary equipment and supplies to enhance their ability to provide services to patients.
- Data sharing was one of the main policies of the Ministry of Interior, to achieve this purpose, a website was launched to inform the public about the development of the epidemiological situation in the country and to provide them with data on an on-going basis. Furthermore, sharing information and data with the WHO and other countries was crucial in this regard.

3.2 Social and economic protection measures

In order to effectively manage the crisis, the government has taken measures to mitigate the social and economic impacts of the epidemic, especially on the most vulnerable groups, which are more likely to be negatively affected than others, including those in the tourism sector, S&M companies and irregular employment. Social protection measures: protecting employees by reducing their numbers in their workplaces, whether in the government or private sector, as well as expanding the social protection network to include more beneficiaries, especially those who have lost their jobs due to the epidemic. Additionally, one of the main interventions of the Palestinian Government is community participation in efforts to curb the epidemic. They engaged through the formation of emergency committees to assist the security services and medical staff in carrying out their tasks or by launching community initiatives to raise awareness of preventive measures such as social distancing. Solidarity initiatives have also been launched among members of the Palestinian community, such as the establishment of the "Waqft Ezz" virus relief fund. This fund was established by the government, in cooperation with the private sector to receive donations from individuals, and institutions to help the poor and most affected groups from the pandemic.

As for the macroeconomic level, the Palestinian Government has taken several measures to mitigate the economic effects of the Coronavirus pandemic. In this regard, the Palestinian Government has succeeded, through its successful economic measure, in mitigating the shock of the emerging Coronavirus pandemic, as the negative impact of the epidemic would have been more serious had these measures not been taken. In the first weeks of the pandemic, there was a preference to preserve human life by imposing a comprehensive closure, which greatly harmed the Palestinian economy, but then the government realised the need to restart the economic facilities to alleviate the economic deterioration that began to afflict the local economy.

However, the government's ability to allocate financial and material resources remains the main factor in facing disasters and crises such as the Coronavirus pandemic. When comparing the financial and economic capabilities of the State of Palestine with other neighbouring countries, we notice the difficulty of the situation. The Palestinian Government is already suffering from a financial crisis because Israel has stopped

transferring clearance revenues, and this leaves it in an unenviable position. It was not able to compensate the workers who were affected by the closure. Likewise, social protection programs did not cover all families affected by the pandemic, and even the "Waqft Ezz", which was established at the beginning of the pandemic, could not collect more than $17 million. It was spent on workers and needy families who have been affected as a result of the outbreak of Coronavirus in the Palestinian territories.

3.3 Challenges faced by the Palestinian Government in governing the Coronavirus crisis

Despite the efforts made by the Palestinian Health Authority to flatten the curve of the disease in order to reduce the number of cases that need intensive care and thus relieve the pressure on hospitals and health services, achieving this goal is not an easy task and it is actually under threat due to many challenges. These challenges include, but are not limited to, the shortage in financial resources, and shortage in some specialised professions especially in the field of nursing and highly skilled physicians, social culture, in addition to the Israeli occupation obstacles.

- *Shortage of resources:* The Ministry of Health's expenditures on primary and secondary health care have increased over the years. Financing of the health sector is derived from taxes, health insurance premiums, co-payments, out-of-pocket payments, international aid, and grants as well as nongovernmental resources. The shortage of financial resources is an obvious obstacle to the possible development of the health sector. Indeed, "spending by government, NGOs, UNRWA clinics, and the private sector has increased from $397.2 million in 2000 to about $1,347.4 million in 2013". (Fanack Newsletter, 2016) Compared to its neighbours, such as Israel, funds are not sufficient to provide real development and stimulation to healthcare in Palestine. In general, the Palestinian health sector is burdened with the volume of services it provides to people, and the Covid-19 pandemic came to increase this suffering, especially in certain areas such as the shortage of doctors and hospital beds. "The total number of doctors working in Palestinian hospitals in 2018 was 5,536, of which 52.3% work in public hospitals. As for the number of beds per 100,000 populations, the ratio in the West Bank was 158.8 beds compared to 168.2 beds in the Gaza Strip". (Falah et al., 2020, p. 31) Although the Palestinian Government recruited new doctors at the start of the epidemic, this number is less than required, as is the case with nursing. This indicates that the Palestinian Ministry of Health faces real challenges in providing appropriate medical service to patients, and in the event that the situation worsens and the number of infected cases increases, the ability of the Palestinian health sector to withstand and continue to provide the service will be in doubt.
- *Israeli obstacles:* The occupation remains the main factor that restricts all areas of Palestinians' lives, physically and/or mentally. This was evident from the arbitrary measures taken by the Israeli authorities against Palestinians before and after the epidemic. The on-going Israeli occupation and violations of Palestinian health

rights are likely the most important reasons behind the weaknesses in the Palestinian health sector and its inability to improve. (Fanack Newsletter, 2016) The main challenge faced by Palestinians is that Israeli authorities have control over all international borders. This creates a situation in which all goods and machines are subject to inspection by the Israeli army, which tighten the hand of the Palestinian Government to bring machines and medical materials needed to curb the disease. Meanwhile, the time required at the border because of Israeli procedures is the biggest obstacle to bring materials into Palestine. In some cases, as a result of the delay in their delivery to the Palestinian territories due to the obstacles of the occupation, the Coronavirus test kits have expired and were destroyed before reaching Palestinian hospitals. Moreover, the Israeli occupation forces prevent Palestinian security services from applying the law and implementing lockdown measures in Palestinian rural areas that are still under their control. Along the same vein, "Israeli authorities did not commit to its announcement regarding preventing Palestinian workers who decide to stay inside Israel from returning to the occupied Palestinian territories". (MAS, 2020, p. 3)

– *Economic challenge:* The biggest challenge facing the Palestinian Government is its ability to bear the economic repercussions of the Coronavirus epidemic and mitigate it as much as possible. The economic challenge is significant and as important as the health challenge. Undoubtedly, the pandemic affected many aspects of Palestinian life, on top of which the tourism sector and the small and medium-sized companies had to lay off a number of their workers due to the closure and the decline in production and marketing. Indeed, the most important implications of the Coronavirus crisis were the economic recession that accompanied the health crisis, lockdown measures, and the closure of companies and shops, which led to many employees losing their jobs. Consequently, the unemployment rate increased to unprecedented rates. Additionally, the impact of the Coronavirus pandemic on the labour market shows that "the number of employed persons decreased from 1,009,900 in the 1st quarter of 2020 to 888,700 in the 2nd quarter of 2020, by 12% compared to the 1st quarter of 2020. Meanwhile, the unemployment rate for males in Palestine reached 23% compared to 41% for females". (Palestinian Central Bureau of Statistics, 2020) This data shows that the labour market is the most affected sector during the Coronavirus pandemic. Clearly, the impact of the Coronavirus pandemic will be more severe on the Palestinian economy, as it will add additional economic burdens to the Palestinian economy in the future, especially in light of the modest capabilities of this economy. The precautionary measures taken by the Palestinian Government to combat Coronavirus will lead to an increase in public expenditures as a result of the increase in government spending for the healthcare sector. Health expenditures include purchasing medical equipment, expanding health services, and operating new hospitals and thereof. Furthermore, spending on security services, which is responsible for implementing lockdown and preventive measures, is another burden on the government's budget. As a result of declaring a state of emergency in the Palestinian territories and closing Palestinian crossings and borders with the outside world, the public treasury was

affected. The suspension of foreign trade has led to a decrease in clearance revenues, which are tax revenues that Israel collects on behalf of the Palestinian National Authority according to the Paris Economic Protocol. "In many cases, Israeli authorities hold over these revenues for political reasons". (Al-Razeq, 2016, p. 6) Undoubtedly, these changes exacerbated the Palestinian economic situation, increased economic stagnation, and reduced the government's ability to fulfil its obligations, especially concerning paying employees' salaries. The Palestinian public debt is also likely to increase, especially, "the Palestinian Ministry of Finance data show that the public debt ratio started from zero, then gradually increased and wobbled according to general economic conditions and international aid". (Sulaiman, 2019a, p. 134) It is worth mentioning that "by the end of 2019, public debt rose to USD 2.8 billion (NIS 9.7 billion), constituting 16.4% of GDP. This is ascribed to clearance revenues withheld during the year, which has led the government to borrow from banks to meet part of its commitments". (MAS, PCBS, PMA, PCMA, 2019, p. 14) Accordingly, the estimates of economic experts in the first months of the pandemic showed that the loss of the Palestinian economy is expected to be great. "The Palestinian economy expected losses about NIS 33.7 million (USD 9.8 million) per day, which was pumped into the Palestinian economy". (Helles, 2020, p. 4) Despite the negative impact of the Coronavirus pandemic on the Palestinian economy, some have benefited from the spread of this disease. Indeed, some companies have started manufacturing different types of virus prevention tools. For example, the Zaatari factory in the city of Hebron produced masks and marketed them to the local market. Furthermore, the hygiene and sterilisation materials industry has boomed. (Ibid, p. 7)

- Last but not least, and despite the success of the Palestinian Government in managing the Coronavirus crisis so far, it still faces one of the most important challenges, which is to keep the curve of infected cases flattening and stopping the spread of the disease. This requires expanding the virus tracking map and increasing the number of Coronavirus tests. Citizens' commitment to following preventive and public safety measures is another challenge to the success of the flattening strategy.

4. Lessons learned from the Coronavirus crisis

Lessons learned are an important tool that must be used continuously to benefit from past experiences. According to Rowe and Sikes (2006), lessons learned are the documented information that reflects both the positive and negative experiences of a project. It is important to note that it is not possible to prevent such epidemics from occurring in the future, but we must learn from our current experience to be more prepared if they arise again. However, the following is a summary of the most important lessons learned from the Coronavirus pandemic crisis.

In the absence of common international mechanisms to confront this crisis, there was reliance on national and local capabilities, and citizens became dependent in the first place

on the actions of their governments. It seems that Covid-19 has converted regional and international relations. After such a crisis, the tendency to national hard power is now the most dominant approach. It is important to mention that in the absence of external support as the Allies' preoccupation with their problems, reliance on self-capabilities remains the basis for facing crises. Obviously, the success in crisis management depends primarily on national capabilities and the existence of a survival strategy. Most importantly, providing such capabilities and strategy is the task of the government. There is no doubt that surviving the epidemic depends on the single national solid power of the country and the efficiency of its medical system. In developing countries, one of the most important lessons learned is that the security of any country is not only achieved through the accumulation of weapons, but also by strengthening its economic and health capabilities. Thus, one of the lessons learned from this epidemic is to give more attention to scientific research and to harness it to serve people, solve problems and create solutions.

The Coronavirus crisis was a real challenge to the principle of solidarity on which regional and international alliances and partnerships are based, which means that international relations may be undergoing profound transformations in the aftermath of this crisis. However, and regardless of the nature of the international system that will emerge from the Coronavirus crisis, there is no doubt that the winners in managing this crisis are the ones who will shape the world's future. Undoubtedly, the exchange of health information and data between countries facilitated the process of curbing the virus. The Coronavirus crisis showed that there is a state of interdependence between the countries of the world. Moreover, and regardless of the diverse interests and values, the world continues to share the same fate, which creates the need to activate common frameworks that can be relied upon in such crises. Despite the failure of the international community to collectively confront this crisis, regional and international cooperation remains the best and safe option to manage and curb such crises and disasters.

The experiences of countries varied in their management of the Coronavirus crisis. This crisis demonstrated the role of effective management in limiting the spread of the crisis and mitigating its effects. Moreover, countries' experience shows that the speed of response and developing a clear-cut strategy on how to professionally manage the crisis was crucial. For example, some East Asian countries (Japan and Singapore) analysed the situation and responded quickly and were able to limit the spread of the virus, save the lives of their citizens as well as reduce their economic losses. Meanwhile, countries like the United States, Italy and Spain underestimated the crisis and responded too late. Even though these countries possess highly efficient healthcare systems, they were not able to curb the pandemic and incurred huge human and economic losses. "The American case represents a special experience in managing the crisis, despite all the measures that were taken at the federal and local levels, these efforts were described by some experts as the most dangerous crisis facing President Trump". (Sudairy, 2020) It is important to emphasise that effective crisis management must have the following characteristics: the existence of a clear vision and specific goals; the existence of coordination and integration between the various institutions; an efficient crisis management team; the existence of a professional operating system that improves the optimisation of resources and applies best practices.

The Coronavirus crisis has highlighted the danger of weapons of mass destruction, including biological weapons, as a threat to human civilisation. Besides, the danger of epidemics is increasing in light of globalisation and the ease of movement from one place to another around the world, which facilitates the spread of the virus. There is no doubt that this represents a challenge to the human being that did not exist in the past. The Coronavirus that began in China at the end of 2019 spread over the world within a short period.

As for the overlap between crises and politics, this crisis shows the extent to which a politician can use the crisis for political reasons. It also affected international relations, especially between major countries such as the United States and China. This tension was evidenced through China's announcement that Americans had transferred the disease to the Chinese city of Wuhan, which is an accusation that the United States had exported the disease to China. On the other hand, the U.S. President called the virus "the Chinese virus". Moreover, the U.S. President accused China of concealing the spread of the virus and did not inform international organisations and other countries in time to take preventive measures.

This crisis sheds more light on the role of civil society organisations, the private sector and volunteer work during crises, which greatly supports the role of government agencies, and this has been demonstrated through donation campaigns to help those affected by the pandemic and volunteer work to educate people and help patients in many countries.

The Coronavirus crisis demonstrated the importance of the role of the media and social media in managing crises. Such epidemics existed in the past and were more dangerous than they are today, as there were no laboratories, technology, or media to guide and educate people to avoid their risks. In the Coronavirus pandemic, there was a heavy reliance on social media platforms to reach as many people as possible to send messages related to the developments of the pandemic and to educate them about prevention measures. Although these means are distinguished by their ability to reach large numbers of people, they are also effective and inexpensive tools, given the scarcity of resources and the weak capacities of developing countries. Another advantage is the speed in publishing and mobilising public opinion.

The Covid-19 virus has exposed inequalities that were already present in our societies which were exacerbated by lockdowns or other changing aspects of our daily life during the pandemic. This crisis sheds light on the most vulnerable and disadvantaged groups. Income inequality causes inequality in the standard of living. The spread of Covid-19 in slums is much faster than in other parts of cities because these slums are built in a way that makes it impossible for social distancing and other precautionary measures. Certainly, it is the responsibility of governments and NGOs to address these grievances and support vulnerable groups.

The Coronavirus Pandemic crisis emphasised the importance of assessing risks, using scientific data in creating evidence-based policies, and making appropriate preparations and responses based on this assessment. Despite the growing awareness of the importance of data in policy-making and the preparation of evidence-based interventions, providing this data remains a major challenge for many countries, especially developing countries, as these countries are unable to allocate sufficient resources to collect data on various human

phenomena. The Coronavirus pandemic has added more difficulties in terms of surveys and data collection in these countries. According to a survey conducted in May 2020, 96% of national statistical offices partially or completely stopped collecting face-to-face data at the height of the epidemic. (United Nations Statistics Division, 2020) The lack of realistic and sound data on many marginalised groups such as persons with disabilities and the elderly, as well as gender-based marginalisation, lead to the further deterioration of their cases as a result of the lack of data clarifying their status.

5. Conclusion

The adverse event may have one of the following negative effects: health crisis, financial losses, disruption to work, difficulties in education and mobility barriers thereof. However, all these effects accompanied the Coronavirus pandemic simultaneously. Undoubtedly, the rapid and widespread spread of the virus in various countries of the world has resulted in human and economic losses. Indeed, tens of millions of workers around the world have lost their jobs and become unemployed. The response of governments to the epidemic varied between a rapid response, where strict measures were imposed to preserve people's lives, and others that were characterised by the gradual application of measures to achieve harmony between preserving people's lives and preventing the collapse of the economy. Obviously, the Coronavirus pandemic has led to an increase in unemployment rates, as well as a significant increase in the number of people below the poverty line. This undoubtedly increases the challenges facing countries, especially developing countries that are already suffering from limited resources.

The experiences of countries indicated that there are countries that succeeded in managing the Coronavirus pandemic through the application of rapid measures and innovative policies that were based on an increase in the number of Coronavirus tests and follow-up procedures for infected cases, as is the case in Japan, Singapore and Germany, while there are countries that failed, such as the United States. However, the safest measure to mitigate the impact of this virus is to take preventive measures until the vaccine or appropriate treatment is discovered. The epidemic has also shown the weakness of the health system, whether at the global or national level, in curbing the epidemic. In addition, the response in some countries was slow, which facilitated the spread of the virus. One of the conclusions that can be drawn from the Coronavirus pandemic is the importance of social media and data management in controlling the pandemic and thus reducing its negative impacts. It is also worth mentioning that the Coronavirus pandemic has revealed that national hard powers and self-reliance are key factors in countries' ability to endure and overcome difficulties and crises. Finally, the measures taken by countries to deal with such crises must be transparent and must depend on sharing information with local society and international institutions, as well as possessing trained competencies capable of dealing with extraordinary situations.

The response of the Palestinian Government to the Coronavirus epidemic was very fast, which contributed to reducing the number of infected cases, especially in the first wave of the epidemic. However, the government measure and lockdown adversely affected

the Palestinian economy and increased the rate of unemployment and poverty among Palestinians. Palestine is an unstable country that has suffered from crises for a long time, yet the implications of the Coronavirus pandemic have made matters worse. Sectors such as health, the economy and tourism were among the sectors most affected by the pandemic.

References

Al-Razeq, A. O. (2016). Assessing Fiscal Policies of the Palestinian National Authority. Palestine Economic Policy Research Institute (MAS).

Falah, B., Meshal, J., & Betawi, W. (2020). Palestinian Health Sector Assessment: Macro-Analytical Study. Palestine Economic Research Institute. www.mas.ps/files/server/2020/healthsectorstudyEnglish.pdf

Fanack Newsletter (2016). The health sector in Palestine. https://fanack.com/palestine/governance-and-politics-of-palestine/the-health-sector-in-palestine/

Helles, R. (2020). The Economic Repercussions of the Coronavirus on the Palestinian Economy. Democratic Arabic Centre for Strategic, Political and Economic Studies. (Translated from Arabic.) https://democraticac.de/?p=69086

International Monetary Fund (2020). World Economic Outlook update, June 2020. www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020

OECD (2020). COVID-19 crisis in the MENA region: impact on gender equality and policy responses. https://read.oecd-ilibrary.org/view/?ref=134_134470-w95kmv8khl&title=COVID-19-crisis-in-the-MENA-region-impact-on-gender-equality-and-policy-responses

Palestine Economic Policy Research Institute (MAS), Palestinian Central Bureau of Statistics (PCBS), Palestine Monetary Authority (PMA), & Palestine Capital Market Authority (PCMA) (2019). Economic Monitor 60. www.mas.ps/files/server/20200209151855-1.pdf

Palestine Economic Policy Research Institute (MAS) (2020). Economic Monitor, Special Supplement 2020, Preliminary Assessment of the Possible Impacts of COVID-19 Health Crisis on the Palestinian Economy. www.mas.ps/files/server/2020/monitorSupplement%20En%20d1%20RK%20clean.pdf

Palestinian Central Bureau of Statistics (PCBS) (2020). Press Release on the Results of the Labour Force Survey Second Quarter (April–June, 2020) Round. www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3809

Phelan, A. L., Katz, R., & Gostin, L. O. (2020). The Novel Coronavirus Originating in Wuhan, China: Challenges for Global Health Governance. Jama, 323(8), 709–710. https://doi.org/10.1001/jama.2020.1097

Rowe, S. F. & Sikes, S. (2006). Lessons learned: taking it to the next level. Paper presented at PMI Global Congress 2006. Seattle (WA), Project Management Institute.

Schleicher, A. (2020). The Impact of COVID-19 on Education: Insights from Education at Glance 2020. OECD. www.oecd.org/education/the-impact-of-covid-19-on-education-insights-education-at-a-glance-2020.pdf

Shalalfa, N., Kaila, M., Shakhra, K., Odah, A., Heeh, I. A., & Amro, W. (2020). Novel Corona Virus Outbreak in Palestine. The Gazette of Medical Sciences, 1(3), 13–17. https://doi.org/10.46766/thegms.virology.20072407

Sohrabi, C., Alsafi, Z., O'Neill, N., Khan, M., Kerwan, A., Al-Jabir, A., & Agha, R. (2020). World Health Organization declares global emergency: A review of the 2019 novel coronavirus (COVID-19). International Journal of Surgery, 76, 71–76. https://doi.org/10.1016/j.ijsu.2020.02.034

Sudairy, N. (2020, April 20). International relations at the time of Corona challenges and strategies. Journal of Law and International Business. (Translated from Arabic.) www.droitetentreprise.com/?p=18983

Sulaiman, S. (2019a). Public Administration in Palestine. AARMS–Academic and Applied Research in Military Science, 18(1), 129–136. https://doi.org/10.32565/aarms.2019.1.8

Sulaiman, S. (2019b). Risk Management in Palestinian Institutions. Repüléstudományi Közlemények, 31(2), 203–210. https://doi.org/10.32560/rk.2019.2.15

United Nations Statistics Division (2020). COVID-19 widens gulf of global data inequality, while national statistical offices step up to meet new data demands. http://covid%2019%20response.unstatshub.org/statistical-programmes/COVID19-nso-survey/

Worldometer (2020). COVID-19 Coronavirus Pandemic. www.worldometers.info/coronavirus/

World Bank (2020). Projected poverty impacts of COVID-19 (Coronavirus). www.worldbank.org/en/topic/poverty/brief/projected-poverty-impacts-of-COVID-19

Yang, X., Yu, Y., Xu, J., Shu, H., Liu, H., Wu, Y., & Wang, Y. (2020). Clinical course and outcomes of critically ill patients with SARS-CoV-2 pneumonia in Wuhan, China: a single-centered, retrospective, observational study. The Lancet Respiratory Medicine, 8(5), 475–481. https://doi.org/10.1016/S2213-2600(20)30079-5

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The Rules of Medical Experimentation on People in the Light of the Polish Law and Administrative Solutions

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Abstract: In the history of mankind there are known cases of conducting experiments with a goal against people. After all, there has been eugenic research, or research leading to the creation of biological weapons. Such experiments are usually hidden from the public and governed by the internal and classified regulations of particular states. That is why it is important for the domestic legal orders world-wide to establish not only research methods and ways of conducting experiments (from the point of view of medical art and effectiveness of research) but also – and perhaps even more importantly – legal principles and rules limiting the conduct of medical experiments, and to establish rules of conduct with the effect of saving and prolonging the life and health of the patient. This article will analyse the Polish legal regulations and Polish doctrine in the field as a case study, describing an example of the national measures implemented to provide control of the research and medical experiment procedures.

Keywords: medical experiments, administrative procedure, decision, opinion, administrative court

1. Introduction

It is evident that in practice, a medical experiment is associated with a potential benefit for a specific patient (because it consists in the application of a new method of treatment when the existing ones are unreliable or do not exist at all), while a research experiment is not necessarily the same, because its aim is to gain knowledge about the processes and phenomena taking place in the human body, and a person subjected to such an experiment is often healthy and – through the experiment – exposed to the danger of losing this health. The benefit of a research experiment is only indirect, because it allows to improve the healing process in the future.

In the history of mankind, however, there are known cases of conducting experiments with a goal against people. After all, there has been eugenic research, or research leading to the creation of biological weapons. Such experiments are usually hidden from the public and governed by the internal and classified regulations of particular states.

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That is why it is important for the domestic legal orders worldwide to establish not only research methods and ways of conducting experiments (from the point of view of medical art and effectiveness of research) but also – and perhaps even more importantly – legal principles and rules limiting the conduct of medical experiments and to establish rules of conduct with the effect of saving and prolonging the life and health of the patient.

This article will analyse the Polish legal regulations and the Polish doctrine in the field as a case study, describing an example of the national measures implemented to provide control of the research and medical experiment procedures.

2. Literature overview

Polish law does not contain a legal definition of a medical experiment, but only introduces a division into therapeutic and research experiments, setting out general premises for the admissibility of experiments and specifying the procedure for obtaining permission to conduct them.

Therefore, it is worth answering the question whether the current provisions of the Polish law concerning the conduct of medical experiments are consistent and unambiguous enough to ensure that it is the patient's life and health that is the overriding value, and the observance of his/her health is guaranteed by law. In order to answer this question, it will be necessary, firstly, to define the notion of "medical experiment", secondly, to assess the premises of admissibility of conducting the experiment (including subjective limitations), and thirdly, to identify "procedural" principles and guarantees (understood as standards of conduct) leading to consent to the experiment.

3. The term "medical experiment"

As indicated in the introduction, the provisions of Polish law, namely Article 21(1) of the Law of 5 December 1996 on the professions of doctors and dentists (Official Journal of Laws 2018, item 617 with amendments, hereinafter referred to as PDD), do not contain a direct definition of a medical experiment, but only indicate that a medical experiment carried out on people may be a therapeutic or research experiment.

Therefore, in order to propose such a definition, attention should be paid to the notions of therapeutic and research experiment functioning in administrative law, as well as to the notion of medical experiment in criminal law.

A therapeutic experiment, in accordance with Article 21(2) of the PDD, is the introduction by a doctor of new or only partially tried-and-tested diagnostic, therapeutic or prophylactic methods with the aim of directly benefiting the health of the person treated. It may be carried out if the medical methods used so far are not effective or if their effectiveness is insufficient.

On the other hand, the research experiment, in accordance with Article 21 (2 and 3) of the PDD, is primarily aimed at broadening medical knowledge, but can be carried out

on both sick and healthy individuals if participation is not associated with risk or if the risk is small and not disproportionate to the possible positive results of such an experiment.

In the criminal law there is a concept of the so-called innovative risk, which is stipulated in Article 27 of the Penal Code, which specifies that a person does not commit a crime, if he or she acts, among other things, in order to conduct a medical experiment, if the expected benefit is of significant cognitive and medical importance and the expectation of its achievement, the advisability and manner of conducting the experiment are justified in the light of the current state of knowledge. Requirements of a medical experiment, in accordance with the regulations of criminal law, are the consent of the participant on whom it is conducted and proper information about the expected benefits, the impeding negative effects and the likelihood of their occurrence, as well as the possibility to withdraw from participation in the experiment at any stage.

At the same time, it is claimed in the literature that the therapeutic experiment is mainly aimed at achieving a goal, which – as P. Daniluk writes – must be not any, but a direct benefit of the treated person, related to the improvement of his health. (Daniluk, 2005, p. 37)

B. Iwańska specifies that the connection with the so-called "direct benefit for health" is that the therapeutic experiment can be carried out only in circumstances when the medical methods used so far are not effective, or if the effectiveness of these methods is not sufficient. (Iwańska, 2000, p. 73)

In a lexicon article, Filar et alii also write about the healing purpose of this kind of experiment. In their opinion, the key is therapeutics, which involves the use of new or previously unused methods, techniques and procedures that have not been tested or have been examined "poorly", and as such, are not routinely applied. Above all, however, according to Filar et alii, the essential feature of a therapeutic experiment is that the experimenter intends "to treat, not to investigate". (Filar et al., 2004)

The therapeutic experiment also involves the introduction of new prophylactic methods. This is pointed out by O. Nawrot and A. Wnukiewicz-Kozłowska, who write that the legislator predicted that this experiment is not only the introduction of new or only partially tested prophylactic methods by a doctor. (Nawrot & Wnukiewicz-Kozłowska, 2015) These authors present an opinion that since prophylaxis is often carried out on people who are not currently ill (because the prophylaxis is supposed to serve prevention, not treatment), the experiment can also be carried out on healthy people. The authors claim that the potential health benefit could then consist in examining such a person (before administering e.g. a new vaccine) and possibly detecting the disease, which could then be treated.

Slightly different features characterise the research experiment. First of all, it is aimed at "improving", "gaining" medical knowledge. There is no key "direct benefit to health" as in the case of a medical experiment. The doctrine indicates that although the research experiment can be conducted with the participation not only of healthy people, but also of patients, in relation to whom the cognitive goal is to be achieved; the activities undertaken during this experiment are not, by definition, directly aimed at improving the health of the participant, but at the same time do not exclude such a therapeutic benefit. (Iwańska, 2000, p. 71)

The literature also expresses ethical doubts related to this type of medical experiment. K. Sakowski points out that the basic aim of "cognition" is to expand empirical knowledge, to gain knowledge about certain processes and phenomena taking place in the human body. It is difficult to talk here about benefits for a particular patient. If any, it "consists in a possible progress in medicine, enriching the skills of doctors, and thus improving the healing process. The person subjected to the experience has no personal benefit for his or her health; on the contrary, his or her most precious goods are put at risk". The same author argues that the cognitive goal involves exposing the research subject to risk, and even sacrificing the interest of the participant in the research process for the benefit of higher goods, such as science, humanity, civilisation. (Sakowski, 2014)

To sum up the above, the main elements of therapeutic and research experiments appear to be the following: introduction by the doctor of new or only partially tested diagnostic, therapeutic or prophylactic methods; medical methods used so far are not effective or their effectiveness is not sufficient; broadening of medical knowledge; conducting on both sick and healthy persons; consent of the participant on whom the experiment is conducted and proper information about expected benefits and possible negative effects; direct health benefit; introduction of new prophylactic methods; broadening of empirical knowledge; gaining knowledge about certain processes and phenomena occurring in the human body; development of medicine without reference to the benefit of a specific patient.

It therefore seems justified to assume that a medical experiment is an empirical action carried out on a person who is duly informed of the expected benefits and risks of adverse effects, and consisting in expanding knowledge of the processes and phenomena taking place in the human body, followed by the possible implementation of new diagnostic, therapeutic or prophylactic methods, aimed at the direct or indirect benefit of the health of the researched subject or other people.

4. Conditions for the admissibility of a medical experiment

The doctrine concretises the prerequisites for the admissibility of a medical experiment, pointing to a number of limitations in their conduct. For example, M. Kopeć argues that the conduct of a research experiment is allowed only when participation in it is not associated with any risk or when the risk is small and not disproportionate to the possible positive results of such an experiment. (Kopeć, 2016)

Assessing the admissibility of an experiment, the premise of a significant therapeutic or cognitive benefit is highlighted by K. Buchała and A. Zoll who point out that the assessment of the significance of this benefit should be based on the current state of knowledge, and thus on data objectively available to specialists in a given field, concerning recognised theoretical rights, research conducted so far and their results, including information concerning similar experiments and their results. (Buchała & Zoll, 1998, p. 259)

M. Nesterowicz writes that the admissibility of a therapeutic experiment depends on the existence of two conditions. Firstly, the so-called incurable state, which is connected with the fact that commonly used therapeutic means are not sufficient to cure the patient.

On the other hand, it is necessary to establish that the risk of the experiment is proportionate to the expected benefits. This means that the experiment should not be carried out when the intended benefits are disproportionate to the risk of deterioration of the patient's health, in particular when the development of the disease is not life-threatening. (Nesterowicz, 2013, pp. 240–241)

E. Zielińska allows conducting a medical experiment in connection with the "risk of novelty", adding that the expected result of the experiment is to have a significant cognitive value from the point of view of the current state of knowledge, and the way it is conducted is to be justified and cannot be carried out without the patient's consent. (Zielińska, 2014)

In addition, the provisions of the generally applicable law in Poland contain a number of restrictions on the free conduct of medical experiments.

First of all, in accordance with the regulation of Article 22 of the PDD, an experiment may be conducted if the expected therapeutic or cognitive benefit is significant and the expected achievement of this benefit as well as the purposefulness and manner of conducting the experiment are justified in the light of the current state of knowledge and consistent with the principles of medical ethics. This means that the performance of the therapeutic experiment is closely related to the patient's ill health and the research experiment is associated with significant scientific and cognitive importance.

The Penal Code also applies to medical experimentation. From the wording of Article 27 of this act, we derive that a person does not commit a crime when he/she acts in order to conduct a medical experiment, if the expected benefit is of significant cognitive and medical significance, and the expectation of its achievement, the purposefulness and manner of conducting the experiment are justified in the light of the current state of knowledge; furthermore, that the experiment is inadmissible without the consent of the participant on whom it is conducted, who is duly informed about the expected benefits and the possible negative effects and the probability of their occurrence, as well as about the possibility to withdraw from participation in the experiment at each stage.

"Expected benefit" means that this provision does not justify crimes which have inadvertently (without the intention to achieve the expected results of the experiment) led to benefits for the patient's health or medical development. This is confirmed by the case law of the Polish Supreme Court from the 1960s. The Court wrote: "For a risk to be considered as a basis for the exculpation of an accused person, it must be the result of a conscious decision on the undertakings which may be taken in various alternative forms" (the Supreme Court judgment of October 31, 1968, I KR 130/68, publ. OSNKW 1969, No 6, item 69).

The literature notes that Article 22 of the PDD does not explicitly mention the condition of "proportionality" between expected and adverse effects, but accepts that "the likelihood of the expected benefits exceeds (not necessarily seriously) the likelihood of injury resulting from the failure of the experiment". (Kędziora, 2016, p. 298)

Undoubtedly, one of the most important conditions for the admissibility of conducting an experiment on a human being must be his/her explicit consent. This premise is contained in Article 25 of the PDD, which, in paragraph 1, requires the written consent of the person examined to participate in the experiment, whereas in the case of impossibility of giving written consent, the oral consent given in the presence of two witnesses is

considered equivalent. Of course, even if a minor (a person between the ages of 13 and 18) is to take part in the experiment, the written consent of his legal representative is required. If the minor is able to give an informed opinion on his/her participation in the experiment, his/her written consent is also required. An additional condition for the admissibility of the experiment on a minor is that the expected benefits are of direct relevance to the minor's health and that the risk is low and not disproportionate to possible positive results. At the same time, a research experiment involving a person under 16 years of age is not admissible if it is possible to conduct such an experiment of comparable effectiveness with the participation of a person with full legal capacity [Article 25 (2) and (3) of the PDD].

Similar restrictions are contained in the PDD for a person who is incapacitated or does not have the ability to properly discern his or her participation in the experience. Paragraphs 4 and 5 of the above mentioned provision contain that in the case of a person fully incapacitated, the consent to participate in the therapeutic experiment is given by the person's legal representative, and if such person is able to express an opinion on his/her participation in the experiment, it is also necessary to obtain his/her written consent. On the other hand, in the case of a person who has full legal capacity but is not able to give an opinion on his/her participation in the experiment, his/her participation shall be authorised by the guardianship court having jurisdiction competent for the seat of the subject participating in the experiment.

The condition for consent shall be restricted in cases of urgency and imminent danger to life, as set out in Article 35(8) of the PDD. In such circumstances it is not necessary to obtain consent. At the same time, one should agree with the statement of D. Karkowska, who writes that "the patient has obviously the right not to be willing to be kept alive in a condition which he does not accept. On the other hand, the doctor has the right to save the patient's life, even if he does so against patient's will. At the same time, the doctor has the right and duty to use common sense to respect the patient's previously expressed will, primarily because of the asymmetry of information and the patient's incompetence in medical matters, which is generally an undeniable fact that strengthens the doctor's decision-making power. [...] However, when a patient is in a critical condition with no chance of avoiding death, the cessation of treatment is a duty, whether or not the patient has previously expressed a wish or not. It is required to respect the patient's right to a dignified and peaceful death". (Karkowska, 2009)

Subjective restrictions – resulting from the provisions of the law (Article 27 of the PDD) – have also been introduced for other persons who, by definition, are disabled or unable to defend their rights on their own. The Polish legislator has assumed that the participation of pregnant women in therapeutic experiment requires a particularly thorough assessment of the associated risks for the mother and the conceived child, and their participation in research experiments is only possible when the experience is not risky or the risk is low. On the other hand, it is excluded that conceived children, incapacitated persons, soldiers of the primary service and prisoners (deprived of liberty) take part in the research experiment.

An experiment shall be allowed only if the obligation to provide information referred to in Article 24 of the PDD is fulfilled. In accordance with that provision, the person to be subjected to the experiment shall be informed in advance of the aims, modalities and

conditions of the experiment, the expected therapeutic or cognitive benefits, the risks and the possibility of withdrawing from the experiment at any stage. The obligation to provide information also applies to the experimenter during the execution of the experiment. If the immediate interruption of the experiment could cause a threat to life or health of the participant, the doctor is obliged to inform him/her about it.

It is worth emphasising, as R. Kubiak does, that such information should be simple and understandable even for a person with no life experience. He writes that "the experimenter should take into account the level of intelligence of the person being examined, the level of education, [...] his physical and mental state, and perceptual capabilities". (Kubiak, 2000, p. 50) At the same time, one should agree with the opinion of this author that the experimenter himself is not fully aware of the possible effects of the undertaken actions, and most often can only guess the effects of the conducted experiments. Therefore, it is not "possible for him to present to the participant of the experiment any information concerning the expected course of the experiment". (Kubiak, 2000, p. 433) At the same time, it is impossible not to notice that the legislator introduced a specific condition for the admissibility of a medical experiment of an administrative and legal nature. The possibility of implementing such an undertaking is subject to the consent of the relevant bioethics committee.

5. Consent to the experiment as a result of the Polish administrative proceedings

The content of Article 29 of the PDD indicates that a medical experiment may be carried out only after a positive opinion has been expressed on the project by an independent bioethics committee, adjudicating in a panel of persons of high moral authority and highly specialised qualifications. The committee's consent takes the form of a resolution, taking into account ethical criteria as well as the advisability and feasibility of the project.

Therefore, it should first of all be determined whether the committee's resolution (called an opinion) enabling the implementation of the experiment may be qualified as an administrative act, determining an individual case as referred to in the Polish Code of Administrative Procedure (hereinafter referred to as CAP), or whether it is only a consultative act, not of an administrative nature.

In order to do so, it is worth noting first of all that an "administrative matter" involves proceedings before public administrative authorities in individual cases falling within their jurisdiction, adjudicated by administrative decisions [Article 1(1)(1) of the CAP]. Thus, in a nutshell, if we are dealing with an "authority" (i.e. an entity whose competence lies in deciding on the rights or obligations of others), an "individual case" (concerning a specific natural or legal person, or even an organisational unit without legal personality), and an "administrative decision" (understood as a sovereign, unilateral decision on rights or obligations), these are the elements determining the existence of an administrative case.

It should be noted here that the jurisprudence of the Polish Supreme Administrative Court concludes that any case in which a public administration body is deciding on obligation of an entity concrete, is resolved by an administrative decision. This is "a situation in

which three conditions are met. First, the public administration body applies a norm of substantive law based on generally applicable law. Secondly, that norm does not directly shape the substantive legal relationship in a way that does not require authoritative concretisation. Thirdly, finally, the standard does not indicate a form of administration other than a legal decision as being appropriate to be applied in this case". (See NSA, II GSK 1702/18, similarly Adamiak, 2005, pp. 17–18)

However, referring to the above mentioned medical experiment, it should be noted that it can be conducted only when an appointed entity (bioethics committee) gives a positive opinion on the application submitted by the doctor (researcher), based on sources of universally applicable law (e.g. DPP). Therefore, there should be no doubt that we are dealing with the above mentioned elements of an administrative case.

Such reasoning is confirmed by the Supreme Administrative Court's ruling (II OSK 1112/06), often quoted in the literature, according to which the opinion issued by the bioethics commissions is an act constituting an independent resolution of an administrative case, containing consent or stating lack of consent to conduct a medical experiment. According to this court, the committee's position is an expression of knowledge and experience aimed at resolving the case, and thus the opinion is subject to appeal to the administrative court.

At the same time, it is impossible to disagree with the argument (from the same judgment) that "the statutory regulation of the issue of appointing bioethical committees, both at first and second instance, and entrusting bioethical committees with the task of deciding whether a medical experiment (an experiment project) proposed by a physician can be positively assessed, whether or not it meets the conditions for obtaining a positive opinion, and as a result, the decision on the admissibility of a medical experiment (since a positive opinion of the bioethics committee is a necessary condition for carrying out the experiment), which belongs to the forms of medical practice [Art. 2(3) od the PDD], places the said committee within the sphere of public administration, and its opinion is an act which is an independent resolution of an administrative matter initiated at the request of a doctor, considered according to the procedure defined by the legislator".

The scholarly supporters of this doctrine also intend to demonstrate that the commission's opinion is an expression of administrative authority, characteristic of public administration bodies. For example, P. Brzezicki claims that the commission "through its resolutions, opinions, decisions enter the scope of the constitutionally guaranteed freedom of scientific research, being able to limit or even exclude this freedom", and thus "it is undisputable that these entities [i.e. commissions – explanation added by the authors], within the scope of their authority, should be treated as part of the executive power as a structure performing functions in the field of public administration". (Brzezicki, 2012, pp. 9–10)

O. Nawrot and A. Wnukiewicz-Kozłowska also consider bioethics committees entities characterised by administrative power. They come to the conclusion that the committee is a control body of biotechnological development, understood as an institutionalised instrument of verification of medical experiments. In their opinion, these entities are equipped with the competence to legitimise experimental biomedical research involving humans. (Nawrot & Wnukiewicz-Kozłowska, 2015)

It is worth noting, in orderly fashion, that we have a completely exceptional situation in the case of the committee's judgments on clinical trials of a medicinal product (often also classified as medical experiments). In such experiments, the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products (formerly the Minister of Health) is the decision maker regarding the permission to start studies, and the opinion of the bioethics committee is only a part of the documentation attached to the application to start studies.

The Regional Administrative Court in Warsaw spoke in the case concerning this type of experiment, pointing out that "resolutions adopted by both the bioethics committees and the Bioethics Appeals Committee are opinions on the conduct of clinical trials" because "only the content of the opinion of the Bioethics Appeals Committee contained in the resolution after considering the appeal against the resolution of the bioethics committee is the basis for issuing an administrative decision of the Minister of Health [the Minister issued decisions in the previous legal status – explanation added by the authors], which constitutes a ruling on the merits of the case initiated by the motion of a person who has a legal interest in issuing this decision. In the case under consideration, such a decision was made by the Minister of Health" (Judgment of the Regional Administrative Court in Warsaw, VII SAB/Wa 15/14, publ. ONSA). Since clinical trials of a medicinal product are connected with a special procedure (conducted by the organ issuing the decision as indicated by the law), which has not been established in relation to other types of medical experiments, it is logical that the above statement of the court cannot be attributed to other resolutions of the committee, only for clinical trials of a medicinal product.

In our opinion, the opinion of the bioethics committee on the project of a medical experiment (not regulated by other provisions, such as those concerning research on medicinal products), expressed in the form of a resolution, constitutes the ruling administrative act (decision) referred to in CAP. Therefore, it is worthwhile to briefly draw attention to the basic procedural rules aimed at protecting procedural rights of a party to administrative proceedings, which should be applied in cases of issuing an opinion on a medical experiment. These principles are intended not only to ensure the formal correctness of the process leading to the issuance of an opinion, but also to protect the rights of the applicant and participants in the experiment.

First of all, the committee should have regard to the principle of legality, which states that administrative authorities only act on the basis of and within the scope of generally applicable law. It should therefore not, when preparing an opinion, justify a refusal (i.e. an unfavourable opinion) on the basis of reasons arising from sources of law of an internal nature (regulations, statutes, guidelines, etc.).

The principle of information as defined in Article 9 of the CAP should also be applied in the proceedings before the committee. That provision stipulates that public administration bodies are obliged to duly and exhaustively inform the parties of factual and legal circumstances that may affect the determination of their rights and obligations which are the subject of administrative proceedings, and that those bodies ensure that the parties and other persons participating in the proceedings are not harmed by ignorance of the law and, to that end, provide them with the necessary explanations and guidance. Therefore, it is worth noting that the committee should inform extensively – even before issuing an

opinion – the entity submitting the experiment, not only about the applicable law, but also about other circumstances influencing the content of the decision. The bioethics committee should also pay attention to whether the experimenter will provide adequate information and whether he/she intends to inform the participants of the experiment about all aspects of the experiment that may affect their life or health.

Undoubtedly, the process before the bioethics committee should take into account the application of the principle set out in Article 11 of the CAP, i.e. active participation of the parties. The said provision stipulates that public administration bodies are obliged to ensure active participation of the parties at every stage of the proceedings and, before a decision is issued, to give them an opportunity to comment on the evidence, materials collected and demands made. This means that before the committee adopts a resolution, it should consider whether it bases it only on the documentation submitted by the applicant, or whether it has collected other evidence (documents, opinions, etc.) and, in such a case, it should give the entity intending to conduct an experiment the opportunity to inspect the entire documentation and then to comment on the evidence collected. This principle will not only protect the applicant, but will potentially lead to a fair explanation of the case, and thus may reveal possible irregularities and attempts to act contrary to medical ethics.

The correct procedure before the committee should also be characterised by compliance with the provisions on formal correctness of the application. It follows from Article 63 § 2 of the CAP that an application should include at least an indication of the person from whom it comes, his/her address and request, and should satisfy other requirements set out in special provisions. Such a "special" provision is § 4(2) of the Regulation of the Minister of Health and Social Welfare of 11 May 1999 on detailed rules for appointing and financing as well as the procedures for the operation of bioethics committees (Official Journal of Laws 1999 nr 47, item 480 as amended), from which we derive that the application should contain: designation of the person or other entity intending to conduct the medical experiment, and in the case of a multi-centre experiment, also the names of all the centres in the country where the experiment is to be conducted; the title of the project, its detailed description and justification as to the advisability and feasibility of the project; name, surname, address and professional and scientific qualifications of the person in charge of the medical experiment; information about the insurance conditions of persons intending to participate in the medical experiment; data about the expected medical and cognitive benefits and, possibly, other anticipated benefits for persons subjected to the medical experiment.

In addition to the above elements, the following should be attached to the application [as indicated in § 4 (3) of the Regulation on detailed rules for appointing and financing as well as the procedures for the operation of bioethics committees]: a draft of the medical experiment; information intended for persons subjected to the medical experiment containing detailed data on the aims and principles of conducting the medical experiment; expected therapeutic and other benefits for these persons, and the risk associated with participation in the experiment; a form of consent of the patient subjected to the medical experiment; a declaration of acceptance of insurance conditions; a declaration submitted by the person subjected to the medical experiment, in which he/she agrees to the processing

of data related to his/her participation in the experiment by the person or another entity conducting the medical experiment.

Such a detailed scope of the application undoubtedly affects the protection of the interest of the participants in the experiment, and this protection is strengthened by the disposition of Article 64 § 2 of the CAP, according to which, if the application does not meet other requirements set out in the provisions of law [including the PDD and the Regulation – underlining added by the authors], the applicant should be summoned to remove the deficiencies within a specified period, not shorter than seven days, with the information that failure to remove these deficiencies will leave the application without consideration. It would therefore be illegal to consider an application for an experiment, despite its incompleteness (e.g. omitting any of the above mentioned elements).

The protection of the interests of the participants in the experiment is strengthened by the application of the CAP provisions and exceptions from the Regulation concerning the formal correctness of taking and preparing a decision (i.e. a committee's resolution). According to Article 107 of the CAP, the decision should contain: designation of the public administration body; date of issue; designation of the party or parties; indication of the legal basis; ruling; factual and legal justification; instruction on how to appeal against it, on the right to renounce the appeal, and on the consequences of renouncing the appeal; signature with the name, surname and official position of the employee of the body authorised to issue the decision, and – if the decision was issued in the form of an electronic document – a qualified electronic signature.

In order for the opinion to be legally adopted, the committee "decides" by secret ballot, with the participation of more than half of the committee's members, including the chairman or deputy chairman and at least two members of the committee who are not doctors. Only votes for or against the opinion may be cast in a vote. It should also be noted that the resolution is signed by the members participating in its adoption.

At the same time, it is clear that some of the general principles of administrative procedure are restricted in cases before committees. This is because the principle of speed of proceedings adopted in administrative proceedings (which implies that matters should be dealt with immediately, and sometimes within a month or two months) is limited. However, it follows from § 6 (8) of the Regulation of the Minister of Health and Social Welfare of 11 May 1999 on detailed rules for appointing and financing as well as the procedures for the operation of bioethics committees (Official Journal of Laws 1999 nr 47, item 480 as amended), that the committee expresses its opinion no later than within three months of receiving complete documentation of the experiment. This limitation appears to be justified. The extended period of investigation may lead to a reliable clarification of the case and a thorough examination of all aspects of the planned experiment. Similarly, it should be argued that it is appropriate to extend (beyond the standard month specified in the CAP) the time limit for the Board of Appeal to two months [§8 (3) of the Regulation].

Similarly, the principle of resolving the doubts in favour of a party (applicant, experimenter) should be subject to such restriction. The specific nature of an experiment requires the protection of essential goods (health and life) as a priority superior to the "development of medicine" and the "achievements of civilization". It is therefore justified – in proceedings concerning the issue of an opinion – to apply the exception specified in Article

7a (2) (1) of the CAP, that this principle does not apply if an important public interest requires it. After all, it is primarily public (and also individual) interest to protect the life and health of people.

6. Conclusions

The analysis of the PDD regulations, in conjunction with the CAP, Penal Code and the interpretation of these regulations in the existing literature on the subject, allow to conclude that a medical experiment can be defined as such an empirical action – carried out on a person duly informed about the expected benefits and threatening adverse effects – which consists in expanding the knowledge of processes and phenomena occurring in the human body, and then the possible implementation of new diagnostic, therapeutic or prophylactic methods, aimed at the direct or indirect benefit for the health of the research subject or other people.

What is more, it is reasonable to conclude that the current legal regulations in Poland regulate the process of permitting medical experiments in such detail that no consent is likely to be given for unethical experiments which contradict to the idea of protecting life and health of every human being.

Not only the existence of a whole range of subjective and objective restrictions on conducting experiments on people is clear, but it is also possible to demonstrate the existence of procedural restrictions resulting from the law and administrative proceedings.

References

Adamiak, Barbara (2005). Zagadnienie domniemania decyzji administracyjnej [The issue of presumption of an administrative decision]. In Jan Boć & Piotr Lisowski (Eds.), Podmioty administracji i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego [Administrative entities and legal forms of operation. Studies and materials from Professor Eugeniusz Ochendowski's jubilee conference]. TNOiK, Toruń.

Brzezicki, Paweł (2012). Zasady wnoszenia opłat na rzecz komisji bioetycznych w wieloośrodkowych badaniach klinicznych produktów leczniczych [Rules on the payment of fees to bioethics committees in multi-centre clinical trials of medicinal products]. Kwartalnik Prawa Publicznego XII, 3/2012. UKSW – TNOiK, Warszawa – Toruń. 9–17.

Buchała, Kazimierz & Zoll, Andrzej (1998). Kodeks Karny, cz. ogólna, Komentarz [Penal Code, general part, Commentary]. Wydawnictwo Pravnicze, Kraków.

Daniluk, Paweł (2005). Cel leczniczy w świetle poglądów doktryny prawa [Therapeutic purpose in light of the legal doctrine]. Prawo i Medycyna, 6(2), 46–58.

Filar, Marian, Krześ, Sławomir, Marszałkowska-Krześ, Elwira & Zaborowski, Piotr (2004). Odpowiedzialność lekarzy i zakładów opieki zdrowotnej [The responsibility of doctors and health care institutions]. Lex On-line. https://bit.ly/3diPizg

Iwańska, Barbara (2000). Warunki prawne dopuszczalności przeprowadzania eksperymentów medycznych [Legal conditions for the admissibility of medical experiments]. Państwo i Prawo, 70(2), 56–70. http://czytelniaonline.pl/magazine/16777547/2000/2/toc

Karkowska, Dorota (2009). Prawa pacjenta [Patient rights]. Oficyna, Lex On-line. https://bit.ly/2XVQ8vp

Kędziora, Renata (2016). Odpowiedzialność karna lekarza w związku z wykonywaniem czynności medycznych [Criminal liability of the doctor in connection with the performance of medical acts]. Wolters Kluwer, Warszawa.
Kopeć, Marcin (Ed.) (2016). Ustawa o zawodach lekarza i lekarza dentysty. Komentarz [Act on the professions of physician and dentist. Commentary]. Wolters Kluwer, Warszawa.
Kubiak, Rafał (2000). Zgoda uczestnika eksperymentu, cz. 1 [The consent of the participant in the experiment, part 1]. Prawo i Medycyna, 2(8).
Nawrot, Oktawian & Wnukiewicz-Kozłowska, Agata (Eds.) (2015). Temida w dobie rewolucji biotechnologicznej – wybrane problem [Temida in times of biotechnological revolution – selected problems]. Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk.
Nesterowicz, Mirosław (2013). Prawo medyczne [Medical law]. TNOiK, Toruń.
Zielińska, Eleonora (Eds.) (2014). Ustawa o zawodach lekarza i lekarza dentysty. Komentarz [Act on the professions of physician and dentist. Commentary]. LEX On-line. https://bit.ly/2BgaIyP

Legal references

Judgment of the Polish Supreme Court of October 31, 1968, I KR 130/68, publ. OSNKW 1969, nr 6, item. 69.
Judgement of the VAC in Warsaw, June 25, 2014, VII SAB/Wa 15/14 (orzeczenia.nsa.gov.pl).
Order of the SAC, April 18, 2007, Ref. No. II OSK 1112/06 (orzeczenia.nsa.gov.pl).

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Abolition of Tax on Acquisition of Immovable Property: A Tool to Suppress the Negative Consequences of Covid-19 or a Politicum?

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Abstract: The tax on acquisition of immovable property was abolished on September 26, 2020 in the Czech Republic. One of the reasons mentioned in the explanatory report to the Act was the statement that the abolition deals with the effects of this virus on society. The main aim of the article is to answer the question of whether the abolition of the tax on acquisition of immovable property is a tool to suppress the negative consequences of Covid-19 or a *politicum.* To get the answer, it is necessary to shortly describe the tax on acquisition of immovable property and its structural components and make a basic comparison with the other EU Member States. We also summarise the pros and cons of the tax and related findings of the Constitutional Court. As the property transfer tax is connected with the income tax and there were several amendments in the proposal, it is needed to analyse these changes. Based on the research, it is possible to conclude that the abolition of the tax on acquisition of immovable property is definitely not a tool to suppress the negative consequences of Covid-19; it is just a *politicum:* political parties believe that the abolition of the transfer tax brings them more voices in the elections.

Keywords: tax on acquisition of immovable property, transfer tax, tax, Covid-19, personal income tax

1. Introduction, literature overview and research

Property transfer tax is a traditional direct tax. It is a part of many tax systems worldwide; however, the national legislators use different titles: transfer tax, acquisition tax, registration tax, transaction tax, tax on sale, etc. In several countries, the stamp duty is being collected. (Radvan, 2017) According to Bahl (2004, p. 1), the stamp duty is a charge for certifying documents but also has taken on the role of a sales tax on certain transactions. The property transfer tax is levied on the disposal of properties, i.e. on the passing of ownership or title to property from one person to another, no matter if these persons are natural persons or legal entities. The disposal usually means the sale of the property; however, free of charge transfers (donations, inheritance) might be the object of taxation, too. These taxes are usually called inheritance tax and gift tax. The property is mostly immovable property (real estate); however, shares or bonds are to be taxed, too.

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In Central and Eastern European countries, there is a visible trend to abolish property transfer taxes, especially inheritance tax (estate tax, death tax, succession tax) and gift tax (donations tax) (e.g. Slovakia in 2004, the Czech Republic in 2014). Property transfer taxes were also cancelled, e.g. in Estonia, Lithuania, Romania and Slovakia. (Radvan, 2017) In the Czech Republic, the tax on acquisition of immovable property was abolished on September 26, 2020. One of the reasons mentioned in the explanatory report to the Act was the statement that the abolition deals with the effects of the virus SARS-CoV-2 on society. (Chamber of Deputies, 2020, p. 9) As more tax law bills are dealing (according to the government) with the harmful effects of the virus (e.g. the abolition of the super gross wage), the primary research question is whether the proposed amendments are tools to suppress the negative consequences of Covid-19 or a *politicum*.

The main aim of the contribution is to answer this question concerning abolishing the tax on acquisition of immovable property. Historically, before the virus SARS-CoV-2, many political parties in the Czech Republic aimed to abolish both super gross wage and the tax on acquisition of immovable property. That is why the main hypothesis of this article is that the abolition of tax on acquisition of immovable property is not a tool to suppress the negative consequences of Covid-19 but a politicum. In the following text, we bring arguments to confirm or disprove this hypothesis. To achieve the aim of the article and confirm or disprove the hypothesis, we briefly introduce the tax on acquisition of immovable property in the Czech Republic. In this part, we present the list of transfer taxes collected in the EU Member States and we compare the structural components of these taxes, namely subject of the tax, object of taxation, tax base and tax rate, correction components, etc. Later, we critically analyse the legal regulation and bring the pros and cons of the property transfer tax generally and the tax on acquisition of immovable property in the Czech Republic concretely. We also analyse the related findings of the Constitutional Court. As the original bill of the act abolishing the tax on acquisition of immovable property in the Czech Republic was different from the final version of the act, we critically analyse the history of parliamentary proceedings and we compare the final act abolishing the tax on acquisition of immovable property and related amendments of the personal income taxation with the original bill. At the end of the article, using the synthesis method, we summarise our findings, answer the research question and deal with the hypothesis.

2. Property transfer tax

In many EU Member States, property transfer taxes are currently the subject of economic and political discussions. Especially inheritance tax and gift tax were abolished in several countries in the last two decades.

Table 1.
Typical transfer taxes in the EU Member States

Country	Inheritance tax	Gift tax	Property transfer tax
Belgium	yes	yes	yes
Bulgaria	yes	yes	yes
The Czech Republic	no	no	no
Denmark	yes	yes	yes
Estonia	no	no	no
Finland	yes	yes	yes
France	yes	yes	yes
Croatia	yes	yes	yes
Ireland	yes	yes	yes
Italy	yes	yes	yes
Cyprus	no	no	yes
Lithuania	no	no	no
Latvia	no	no	yes
Luxembourg	yes	yes	yes
Hungary	yes	yes	yes
Malta	no	no	yes
Germany	yes	yes	yes
The Netherlands	yes	yes	yes
Poland	yes	yes	yes
Portugal	no	no	yes
Austria	no	no	yes
Romania	yes	no	no
Greece	yes	yes	yes
Slovakia	no	no	no
Slovenia	yes	yes	yes
Sweden	no	no	yes
Spain	yes	yes	yes

Source: Compiled by the author based on European Commission (2020).

Both inheritance tax and gift tax in the Czech Republic have been abolished in connection with the recodification of private law since 2014. As inheritance and gifts are incomes at the same time, it was necessary to amend the income taxation rules. As a result, inheritance is exempt from both personal and corporate income taxes. In case of gifts, only natural persons are exempted if they are relatives or living in the same household with the donor. Other gifts up to 15,000 CZK per year are also exempted. In countries where inheritance tax and gift taxes still exist, the rates may be extremely high. For example, in Slovenia, the inheritance of property applicable to the first class of recipients is exempted from taxation, while in case of the other categories, the applicable legislation stipulates an inheritance tax varying from 5% to 39%. (Lowtax, 2020) The inheritance and gift tax in Hungary used to

have a maximum rate of 40%. They are now levied at a flat rate of 18%, with a reduced rate of 9% applying to acquisitions of residential property. (Bencze, 2020)

As stated in the introduction, there are many titles used for property transfer taxes: transfer tax, acquisition tax, registration tax, transaction tax, tax on sale, stamp duty, etc. Property transfer taxes are closely connected with other taxes, such as primarily inheritance tax and gift tax, secondarily recurrent property tax, value added tax, or income taxes. There might be additional taxes sensu lato on property transfers, e.g. property value increasement tax and registration taxes.

Table 2.
Property transfer taxes in the EU Member States

Title of the tax	**Country**
Transfer tax	AUS, CRO, GER, FIN, GRE, HUN, NETH, POL, PORT, SLO
Registration tax	BEL, FRA, ITA, LUX
Acquisition tax	BUL
Capital Tax	CYP (capital gains), SPA (capital transfers)
Stamp duty	GB (land tax), IRL, SWE
Tax on sale	DEN
Duty	LAT (for consolidation of ownership), MAL (property transfers)
No transfer taxation	CZK, EST, LIT, ROM, SVK

Source: Compiled by the author based on European Commission (2020), Radvan (2017).

Like any legal relationship, tax (tax relationship) is made up of structural components: taxpayer, object of taxation, tax base, tax rate, correction components, payment conditions, tax administration and budget destination. (Radvan, 2020, pp. 25–26)

There are two kinds of entities in tax relations, one in the position of the entitled entity, that is, the state or municipality which are represented by the relevant tax authority, and the other in the position of the obligated entity to which the tax liability is attached – the taxpayer. The property transfer tax is mostly paid by the acquirer (usually the buyer). The same is true for all EU Member States, except for states mentioned below. The seller pays the tax in Denmark, Cyprus, or Slovenia. In Austria, Germany and Italy, the tax is paid by both seller and buyer at the same time. However, in Germany as well as in Bulgaria, the contract parties are free to set the taxpayer in the contract. Bulgarian regulation ensures payment of the tax by the buyer being the surety. In the Czech Republic, the tax on acquisition of immovable property is a kind of transformation of an earlier tax on transfer of immovable property. This tax was paid by the seller, while the buyer was the surety. Adopting the tax on acquisition of immovable property effective since January 1, 2014, the taxpayer was (surprisingly and contrary to the government's bill) still the seller, even if the title of the tax was including the word "acquisition" and the object was defined as the acquisition of immovable property. It was confusing for the contract parties and on 1 November 2016, the buyer became the taxpayer.

The object of taxation generally copies the official title of the property transfer tax. Therefore, generally, it is the transfer or the acquisition of the property. In the Czech

Republic, the tax on acquisition of immovable property was a one-off tax paid after the real estate had been acquired, i.e. after the real estate title had been acquired. The object of taxation was an acquisition of property right on immovable property (land, structure/building, unit – flat, non-residential premise, the right of construction burdening the land, and shares on the immovable property) located in the territory of the Czech Republic for consideration. Unfortunately, the transfers of company shares (including the immovable property) did not fall within this definition and very often, this rule was used for tax avoidance.

For the property transfer tax, an ad valorem tax base is being used. It might be set by the contract parties, by the state, by an independent expert, or as a comparison of several approaches. Mostly, it is possible to deduct expenses connected with the acquisition of the property.

Table 3.
Property transfer tax base in the EU Member States

Tax base	**Country**
Contract price	AUS, BEL, DEN, GB, GER, IRL, LAT, MAL, SLO, SPA, SWE
Price vs. taxable value	PORT
Assessed value	BUL
Market value	CRO, ITA, LUX, POL

Source: Compiled by the author based on European Commission (2020), Radvan (2017).

In the Czech Republic, there were several possibilities of setting the tax base, depending on the type of transfer. Generally, the tax base was the acquisition value reduced by the eligible expenses (costs of the expert's report). To get the acquisition value, it was necessary to compare the contract price and 75% of the comparative tax value. The comparative tax value might have been the indicative value self-assessed by the taxpayer using the bylaw or the price determined by an expert.

The property transfer tax rates might be linear or progressive. There might be one rate for all types of transfers, or different rates depending on the type of property, relations between the contract parties, or legal status of the taxpayer. In the Czech Republic, the tax rate was linear of 4%.

Table 4.
Property transfer tax rates in the EU Member States

Country	**Tax rate**	**Note**
Austria	3.5%	2% for relatives
Belgium	5–12.5%	depends on region
Bulgaria	0.1–3%	
Croatia	5%	
Cyprus	20%	income tax
The Czech Republic	N/A	

Country	Tax rate	Note
Denmark		taxed by income taxes
Estonia	N/A	N/A
Finland	4%	
France	3.8–4.5%	depends on departments + 1.2% additional local tax
Germany	3.5%	
Greece	3%	
Hungary	2–4%	degressive
Ireland	1–2%	
Italy	3%	
Latvia	2–6%	depends on type of property, discounts for relatives
Lithuania	N/A	
Luxembourg	6%	
Malta	3–5%	degressive
The Netherlands	6%	2% for dwellings
Poland	2%	
Portugal	0–8%	depends on type of property and location
Romania	N/A	
Slovakia	N/A	
Slovenia	2%	
Spain	6–7%	depends on location
Sweden	1.5% 4.25%	for natural persons for legal persons

Source: Compiled by the author based on European Commission (2020), Radvan (2017).

The property transfer tax rate is mostly set by the central authority; in Belgium, Spain and Portugal it is set by the central and regional authorities, in Germany by the regional authority, in Bulgaria by the local authority, and in France by the central, regional and local authorities.

The correction components are set mainly for relatives. Very often, they respect public interest (exemptions for public institutions, charities, public benefits associations, churches, Red Cross, etc.) and protection of the environment. In several countries, there are tax minimums for the low-value properties, primarily used as permanent residences. The correction components are mostly set in the act. Some are also defined by the regional authorities (Belgium, Spain) or local and regional authorities (France, Portugal). In the Czech Republic, there was a special exemption for newly constructed family houses and units in the apartment buildings (in case of the first acquisition of title for consideration if it occurred within five years of the date of their completion or commencement of use).

The state tax offices generally administrate property transfer taxes. However, in France and Germany, the tax is administered at the regional level, in Bulgaria and Spain by the local authorities. Belgian property transfer tax is administered by professional intermediaries like notaries. In Latvia, it is the land register responsible for the tax administration.

The property transfer tax revenue usually goes to the central budget. However, there are several exceptions:

Table 5.
Property transfer tax budget destination in the EU Member States

Country	**Tax rate**
Austria	State and municipality
Belgium	State and region
Bulgaria	Municipality
Croatia	State and municipality
Cyprus	State
The Czech Republic	N/A
Denmark	State
Estonia	N/A
Finland	State
France	Municipality
Germany	Region
Greece	State and municipality
Hungary	State
Ireland	State
Italy	State and region
Latvia	State
Lithuania	N/A
Luxembourg	State
Malta	State
The Netherlands	State
Poland	Municipality
Portugal	Municipality
Romania	N/A
Slovakia	N/A
Slovenia	Municipality
Spain	Region
Sweden	State

Source: Compiled by the author based on European Commission (2020), Radvan (2017).

3. Pros and cons of property transfer taxation

Transfers of immovable property might be expensive. The OECD has constructed indicators of transaction costs based on property transfer taxes, registration fees (registration of property title and details of the owner of the property in the land registry), notary or other legal fees (in some countries, a notary must verify the signatories), and real estate agent

fees. Gayer and Mourre (2012, p. 33) state that transaction costs are comparatively high in Belgium, France and Greece (14% or more) and significantly lower in some Nordic countries and the United Kingdom. High transaction costs also reduce labour market mobility.

There are several other disadvantages of property transfer tax. (Bahl, 2004, p. 39–40; Radvan, 2017; Franzsen & McCluskey, 2017, p. 45; Bahl, 2009, p. 22) Taxpayers argue that there are multiple taxations of property transfers. From any income, including the bank interests and incomes from the sale of the property (if the time tests are not fulfilled), the (personal or corporate) income tax should be paid. There is a value added tax increasing the price of the property. The property transfer has to be paid when buying the property. Even if this tax is paid by the seller, it is taken into account and the selling price is higher as it includes the transfer tax. Finally, every year the recurrent property tax is collected.

As the tax base is usually the market value or at least the market value is usually considered when setting the tax base, some taxpayers are trying to minimise the transfer tax undervaluing the property in the contracts. Undervaluation of property might be dangerous for the seller if the buyer is willing to pay the price in the contract and not the actual, verbally agreed price. Undervalued price also deforms the property market.

Another way to avoid taxation is the usage of other legal acts which are not the object of taxation. Typically, inheritance or gifts are to be mentioned here. In the Czech Republic, very often higher value assets are invested in the special-purpose business corporations (becoming commercial assets) and the company or the share on that is being sold. Such a procedure is legal and there is no property transfer tax on such a sale. Moreover, transfers of the shares of housing cooperatives are not liable to tax, even the share is connected with the flat.

One might argue why the transfers of immovable property are taxed, while transactions with a movable property are tax free. In our opinion, the answer is in the tax administration effectiveness: it would be difficult to find transfers of many movable assets and it would be difficult to set the value (i.e. the tax base). In the case of movables, it would be easy to avoid taxation and the administrative costs would be too high.

As evident from the text mentioned above, the property transfer tax is not a perfect tax and many taxpayers find this tax unfair. Some may find it even unconstitutional, e.g. the Supreme Administrative Court (2009). This Court submitted a petition to declare the unconstitutionality of the property transfer tax to the Constitutional Court. In the opinion of the Supreme Administrative Court, the tax does not pass the minimum rational basis test, as the chosen solution does not lead to the objective pursued. The Court sees the reasons for illegitimacy and irrationality in several ways. Above all, this is a discriminatory tax, as only one of the cases of property transfers is subject to this property type tax. The Court completely lacks knowledge why the legislator chose to tax the transfer of this single type of property. In the spirit of the rule of law, the legislator cannot act arbitrarily but must have a strong and rational reason for its activity. The Court states that the regulatory function is precluded by the fact that the property transfer tax causes the price of this real estate to increase by the amount of this tax. Nor can the property transfer tax have a redistributive function, the essence of which lies in the establishment of social peace, as this tax does not only burden luxury property. Nor can a rational and legitimate reason for the existence of this tax be inferred from the fiscal policy of the state. The relevant reason is not

even the easy way of controlling property transfers and payment enforcing. There is no reason why the state should impose public payments on the immovable property transfers twice: using the property transfer tax and the fee for deposit in the real estate cadastre. The Court brings several other arguments, including multiple taxations of property transfers. The Supreme Administrative Court concludes that the property transfer tax is "an anti-social, demotivating tax, unequal in terms of ownership of various types of property, limiting flexibility in the immovable property market and, as a result, hampering the flexibility of the labor market, and in its consequences negatively affecting family life". (Constitutional Court, 2009, Article 4–12)

The Constitutional Court generally stated that the power of the state to tax under certain, precisely defined conditions is institutionalised precisely to raise funds for the security of public goods and services. The legitimacy of taxation follows, among other things, from the fact that the results of taxation are also used to protect and create conditions for the development of the property. Such protection and creation of conditions must, of course, be paid for something. But this purpose of taxation is not the only one; tax interference in the property and legal sphere of an individual acquires justification precisely by the even distribution of these burdens. Dealing with the principle of equality, the Constitutional Court took into account the accessory principle prohibiting discrimination against persons in the exercise of their fundamental rights and the non-accessory principle consisting of excluding the legislature's discretion in distinguishing between specific groups (i.e. the principle of equality before the law). Assessing the unconstitutionality of taxes in terms of the three basic functions of taxes (allocation, distribution and stabilisation functions) falls within the competence of the democratically elected legislator. The Constitutional Court cannot assess the unconstitutionality of taxes in terms of basic functions of taxes, as it would enter the field of individual policies. The rationality of individual policies cannot be assessed well enough from the point of view of constitutionality. The Constitutional Court also generally does not review the effectiveness of taxes (except for cases where the inefficiency of a certain tax would establish an obvious inequality in the tax burden of taxpayers). The Constitutional Court may only examine whether the given tax measures do not interfere with the constitutionally guaranteed ownership, respectively, whether the given tax measures cannot be considered unreasonable contrary to the principle of equality, i.e. arbitrary. In its judgment on the appropriateness of public policies, the Constitutional Court will not replace the judgment of a democratically elected legislator, who has broad discretion in the field of public policies, and also bears political responsibility for the possible failure of the chosen solution. In other words, the legislator can also take irrational steps in the field of taxation, which, however, is not yet a reason for the intervention of the Constitutional Court. The Constitutional Court will only intervene if the right of ownership is limited in the intensity of the so-called suffocating effect, or if the principle of equality is violated, both in its accessory or non-accessory form. (Constitutional Court, 2009)

To summarise the explanation of the Constitutional Court, it is up to the state to define the tax policies and adopt tax law regulation, i.e. it is a politicum. The role of the Constitutional Court in tax issues is only to protect the right of ownership and intervene if

the principle of equality is violated. There is no place at the constitutional level to answer whether the property transfer tax is a good or bad, fair or unfair tax.

As the cons were discussed earlier, what might be the pros of the property transfer tax? Primarily it is an easy tax in the perspectives of tax administration and administration costs. The immovable property is fixed in location and it is not possible to move it from one country to another to avoid the tax or optimise the tax duty. As in many countries, there are real estate cadastres. Then the property is registered and it is impossible to hide the immovable property; transfers of property are public and registered; it is easy to identify the taxpayer. The registration protects the owner and the owner's property rights. In several, especially the developing countries, the property is transferred only if the property transfer tax is paid (emphasis on taxation), while in developed countries, the tax is to be paid only after the transfer is registered in the cadastre (emphasis on registration). Contrary to movable property, immovable property has definitely certain positive value: it is relatively easy to set the tax base and applying the tax rate to collect the tax. The value is mostly registered (or at least the contracts are registered) what might be a tool for an effective administration of other taxes: if the recurrent property tax is assessed according to the value, the value might be used to set the recurrent property tax base. The value might be useful for income taxes administration, too, mainly when taxing the income from sold property or the profit from real estate trading. (Radvan, 2017; Almy, 2001, p. 1; Franzsen & McCluskey, 2017, p. 44)

4. Parliamentary proceedings to abolish property transfer tax in the Czech Republic

It was not only in the context of the coronavirus (SARS-CoV-2) crisis and its impact on society that, the government proposed the bill abolishing the tax on acquisition of immovable property as the only surviving transfer tax. The other reasons for cancelling the property transfer tax were the simplification and clarification of the tax system, lowering the motivation to establish special-purpose business corporations owning real estate and transfer shares in them, which is not the object of taxation. Still another objective was to grow investment in immovable property (lower initial costs) and ease the administrative burden of the cessation of the obligation to file a tax return on the acquisition of immovable property. (Chamber of Deputies, 2020, pp. 9–10) The government bill abolishes the tax on acquisition of immovable property with a retroactive effect: the decisive date is March 31, 2020. It means that the tax will no longer be paid by anyone to whom a cadastre deposit has been made in December 2019 and later, as the deadline for filing a tax return has expired on March 31, 2020 and later.

In the area of personal income tax, the proposal further governs the extension of the time test for income from the sale of immovable property not intended for own housing from 5 to 10 years. The extension of the time test will be effective for the immovable property acquired after January 1, 2021.

In connection with the proposal to abolish the tax on acquisition of immovable property, the government proposed to cancel the tax allowance on mortgage interests. This

personal income tax correction component allows deducting from the tax base the amount equal to the interest paid on a loan provided from a housing saving scheme or the amount equal to the interest on a mortgage loan or the amount equal to the interest on a loan provided by a housing savings bank (300,000 CZK at maximum per household per year). The proposed changes intend that taxpayers keep the amount originally earmarked for property transfer tax immediately, and not as a result of partial tax allowances for several decades. This amendment should only be applied to taxpayers who acquire housing needs on credit from January 1, 2022.

The Chamber of Deputies accepted the government's proposals to abolish the tax on acquisition of immovable property and to extend the time test. However, it did not accept the proposal to cancel the tax allowance on mortgage interests; it only lowered the yearly limit to 150,000 CZK. The proposal, as prepared by the Chamber of Deputies, had a lot of legislative-technical mistakes. The Senate made technical corrections and set a new date when the maximum tax allowance on mortgage interests is to be changed; the maximum of 150,000 CZK shall be applied to taxpayers who acquire housing needs on credit from January 1, 2021. This version of the bill was adopted by the Chamber of Deputies and signed by the President. The tax on acquisition of immovable property in the Czech Republic was officially abolished on September 26, 2020.

As the abolition of the tax on acquisition of immovable property is retroactive (if the cadastre deposit has been made in December 2019 and later), the taxpayers who have already filed their tax returns and paid the tax have to ask the tax office to send the paid tax back. If the taxpayer did not file the tax return and did not pay the tax, there is no penalty or other sanctions. (Financial Administration, 2020a)

5. Conclusions

In the many EU Member States, property transfer taxes are currently the subject of economic and political discussions. Especially inheritance tax and gift tax were abolished in several countries in the last two decades. The abolition of the property transfer tax is currently a discussed topic in several other countries. In the Czech Republic, the tax on acquisition of immovable property was abolished, i.a. in the context of the virus SARS-CoV-2 crisis. One may argue that the real estate market has slowed dramatically due to the pandemic and the abolition of the tax on acquisition of immovable property can undoubtedly have a positive effect on its relaunch. However, there is no research confirming these expectations, answering how immediate and significant the overall effect might be.

Several other tax law measures were adopted in the Czech Republic to eliminate the negative consequences of the virus SARS-CoV-2 crisis. The most important in the substantive tax law are:

- a reduction in the VAT rate from 15% to 10% for accommodation services, admission to cultural and sports events, sports grounds, saunas and other similar facilities
- measures allowing resident personal and corporate income taxpayers to use estimated 2020 losses to offset income declared in 2018 and 2019

- an expansion of the scope of the recurrent property tax exemption for municipalities that might be applied retrospectively
- a 25% reduction in the road tax for vehicles weighing more than 3.5 tones;
- exemption from customs duties and VAT on imports of goods necessary to combat the consequences of the virus SARS-CoV-2 (CCH Global Content Assets Team, 2020; Financial Administration, 2020b)

In the procedural tax law, some measures were adopted by the Parliament, some by the Ministry of Finance. The most important are:

- extension of the deadlines for filing a tax return and tax payments (personal and corporate income tax, VAT, social and health contributions, etc.)
- waiver of advance payments
- waiver of tax accessories and certain administrative fees
- waiver of fines for late submission of inspection report
- deferment or instalment payment of taxes and tax advance payments (Financial Administration, 2020b)

Historically, before the virus SARS-CoV-2, many political parties in the Czech Republic aimed to abolish the tax on acquisition of immovable property. Finally, it was abolished on September 26, 2020 by all political parties in the Parliament, who mostly argued with the negatives of the property transfer taxation. Based on all the arguments mentioned above, we believe that the statement that the abolition deals with the effects of this virus SARS-CoV-2 on society was only a pretext. The main hypothesis, that the abolition of tax on acquisition of immovable property is not a tool to suppress the negative consequences of Covid-19 but a politicum, is confirmed. The politicians are just trying to exploit this crisis for their own benefits, to please voters, to be re-elected.

The negative consequences of this virus SARS-CoV-2 force the governments to adopt measures to eliminate these consequences; however, at the same time, they offer to approve legislative changes to make the tax system more manageable, more transparent and more effective. The property transfer tax is definitely not an ideal tax. Nevertheless, cancelling this tax and losing 14 billion CZK for public budgets (Žurovec, 2020) was an excellent chance to accept other proposals and ideas closely connected with property taxation. E.g. the cancelation of the tax allowance on mortgage interests would keep the budget revenues from the long-term perspective on the same level. The taxpayers would get the cashflow necessary at the time of crisis. The abolition of the tax on acquisition of immovable property might have meant the increase of the recurrent property tax rates (as the Czech tax on immovable property is one of the lowest in OECD countries) so that the municipal budgets would get missing sources of their revenues caused by the crisis. Even if there is a crisis, we should be aware of public finance and extremely deficit public budgets.

References

Almy, R. (2001). A Survey of Property Tax Systems in Europe. Ministry of Finance of Slovenia. www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiUsM2RiqfsAhUoQhUIHfWyCCsQFjAAegQIBRAC&url=http%3A%2F%2Fagjd.com%2FEuropeanPropertyTaxSystems.pdf&usg=AOvVaw2Cz8NJIwJGjzGaI32DpmL2

Bahl, R. (2004). Property Transfer Tax and Stamp Duty (ISP Working Paper 04–27). Georgia State University. https://icepp.gsu.edu/files/2015/03/ispwp0427.pdf

Bahl, R. (2009). Property Tax Reform in Developing and Transition Countries [Working Paper]. USAID. https://pdf.usaid.gov/pdf_docs/Pnadw480.pdf

Bencze, R. (2020). Hungary: Individual – other taxes. PricewaterhouseCoopers. https://taxsummaries.pwc.com/hungary/individual/other-taxes

CCH Global Content Assets Team (2020). Czech Republic: Other taxes: Miscellaneous taxes. Wolters Kluwer. www.wkcheetah.com/?cpid=WKUS-Legal-Cheetah#/topics/kluwertaxlaw/82ef9d7c7c921000bc5490b11c2ac4f10e

Chamber of Deputies (2020, May 13). Parliamentary print 866/0: Bill including Explanatory Report. Chamber of Deputies, Parliament of the Czech Republic. www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=866&CT1=0

Constitutional Court (2009, April 21). Pl. US 29/08.

European Commission (2020). Taxes in Europe Database. European Commission. https://ec.europa.eu/taxation_customs/tedb/taxSearch.html

Financial Administration (2020a, September 25). The Abolition of the Tax on Acquisition of Immovable Property. Financial Administration. www.financnisprava.cz/cs/dane/dane/dan-z-nabyti-nemovitych-veci/informace-stanoviska-sdeleni/zruseni-dane-z-nabyti-nemovitych-veci-10927

Financial Administration (2020b). Information for the Public. Financial Administration. www.financnisprava.cz/cs/financni-sprava/media-a-verejnost/nouzovy-stav/danove-informace/info-pro-verejnost

Franzsen, R., & McCluskey, W. (2017). Property Tax in Africa – Status, Challenges, and Prospects. Lincoln Institute of Land Policy. www.lincolninst.edu/sites/default/files/pubfiles/property-tax-in-africa-full_0.pdf

Gayer, C., & Mourre, G. (2012). Property Taxation and Enhanced Tax Administration in Challenging Times (Economic Papers 463). European Commission. https://doi.org/10.2765/27310

Lowtax (2020). Slovenia: Personal Taxation. Wolters Kluwer. www.lowtax.net/information/slovenia/slovenia-inheritance-and-gift-taxes.html

Radvan, M. (2017, March 9). Transfer Taxes and Municipal User Fees/Charges [Workshop presentation]. Market Value-Based Taxation of Real Property: Lessons from International Experience, Ljubljana, Slovenia.

Radvan, M. (2020). Czech Tax Law (4th ed.). Masaryk University. https://science.law.muni.cz/knihy/monografie/Radvan_Czech_Tax_Law.pdf

Supreme Administrative Court (2009, May 26). 2 Afs 178/2006 – 87.

Žurovec, M. (2020, April 14). Tax on acquisition of immovable property repealed retroactively to December 2019. Ministry of Finance. www.mfcr.cz/cs/aktualne/tiskove-zpravy/2020/zruseni-dane-z-nabyti-nemovitych-veci-se-38157

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Prolonging Payment Deadlines of Real Estate Tax Instalments to Entrepreneurs in Connection with Covid-19 in Poland: Basic Rules, Consequences of the Application of the Mechanism and Selected Disadvantages of Tax Resolutions

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Abstract: The primary aim of this article is to present fundamental principles resulting from Article 15q of the Covid Act – which contains the legal basis for passing tax resolutions – according to which the municipality councils may prolong to entrepreneurs payment deadlines of certain instalments in real estate tax. This paper discusses the consequences of introducing these preferences, as well as certain flaws of the tax resolutions adopted on the basis of the aforementioned regulation of the Act on Covid. The flaws were detected on the basis of the analysis of the resolutions adopted by regional accounting chambers finding shortcomings in the resolutions of municipality councils adopted on the basis of the aforementioned provision of the Act on Covid.

Keywords: tax law, real estate tax, tax resolutions, prolonging payment deadlines, regional accounting chambers, Covid

1. Introduction

As a result of the coronavirus epidemics the authorities introduced, among other things, a possibility of tax resolutions aimed at introducing tax exemptions and prolonging deadlines for instalments in the real estate tax for entrepreneurs whose financial liquidity worsened in connection with negative economic consequences caused by the Covid. The preferences result from Articles 15p and 15q of the Act of March 31, 2020 on amending the Act on Covid.

The primary aim of this article is to present fundamental principles resulting from Article 15q of the Covid Act, which contains the legal basis for prolonging payment deadlines in real estate tax, which was mentioned above. Article 15q of the Act on Covid includes the legal basis for passing tax resolutions according to which the municipality councils may prolong to entrepreneurs payment deadlines of certain instalments in real estate tax. This paper will also discuss consequences of introducing these preferences, as well as certain flaws of the tax resolutions adopted on the basis of the aforementioned

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regulation of the Act on Covid. The flaws were detected on the basis of the analysis of the resolutions adopted by regional accounting chambers finding shortcomings in the resolutions of municipality councils adopted on the basis of the aforementioned provision of the Act on Covid. The work on those faults was written on the basis of another article by Popławski & Charkiewicz (2020b).

2. Literature overview

The discussed preference is analysed in several papers. In some of them, we deal with the presentation of this preference in relation to other allowances introduced in connection with the Covid pandemic. (Dowgier, 2020a; Etel, 2020a) In others, the subject of analysis is the problems that this preference may cause in practice. (Dowgier, 2020b; Popławski & Charkiewicz, 2020a; Popławski & Charkiewicz, 2020b; Kamiński, 2020) In other studies, the problem of prolonging payment deadlines of real estate tax instalments is presented in a broader perspective as tax reliefs (Etel, 2020b) and in the perspective of other tax resolutions in which specific tax preferences are introduced. (Popławski, 2011)

3. Research

The study uses primarily the dogmatic-analytical method. It is related to the verification and analysis of the regulations concerning the described institution as well as the literature concerning the issue of prolonging payment deadlines of real estate tax instalments. As part of this study, the following research hypotheses will be verified: commune councils have the right and not the obligation to introduce prolonging payment deadlines of real estate tax instalments; commune councils are obliged to comply with certain limitations resulting from the act; the introduction of the tax relief will trigger consequences, especially regarding public aid; and the introduced tax resolutions probably contain certain shortcomings identified by the supervisory authority, i.e. the regional accounting chambers.

4. Discussion

4.1. The essence and character of prolonging the deadline of paying instalments in real estate tax for entrepreneurs introduced on the basis of the provisions of the Act on Covid

In compliance with Article 15q Paragraph 1 of the Act on Covid, a municipal council may prolong, through a resolution, payment deadlines of real estate tax instalments, due in April, May and January 2020 for no longer than by September 30, 2020 (Act on Covid, Article 1 item 14) for selected groups of entrepreneurs, whose financial liquidity deteriorated in connection with the negative economic consequences caused by

Covid-19. Moreover, Paragraph 2 of the regulation points out that in the resolution discussed in Paragraph 1, a municipal council may prolong the deadline for instalments mentioned in Paragraph 1, also for other entities whose financial liquidity worsened because of the negative economic consequences caused by Covid-19, namely non-government organisations mentioned in Article 3 Paragraph 2 of the Act of April 24, 2003 on the activity of public good and volunteering, as well as the entities named in Article 3 Paragraph 3 of the aforementioned Act.[1]

The regulation refers to an institution which has not so far operated in the regulations referring to real estate tax. (Etel, 2020a, p. 10) Preferences which could be introduced on the basis of the Act on local taxes by municipal councils through tax resolutions were differentiation of tax rates (Article 5 Paragraph 2–4), as well as tax exemptions (Article 7 Paragraph 3). An institution similar to that in Article 15q of the Act on Covid finds its place in Article 37 Paragraph 4a of the Act on Tax Ordinance. In accordance with this regulation, the payment deadline for collectors is the day following the last day, when, according to the provisions of tax law, the payment should be done, unless the deciding authority of a competent unit of local government scheduled a later deadline. Thus the provision regulates the institution of prolonging the payment deadline for collectors, which also may be used by the municipal council, and which was also realised in the form of a tax resolution. However, literature also contains a statement that this provision regulates "prolonging the deadline" since it points out that the deadline for collectors may be extended in a resolution of the municipal council. (Etel, 2020b)

The institution of prolonging payment deadlines lies also in the competence of the Minister of Finance and is applied through a regulation issued on the basis of the provisions of the Act on Tax Ordinance. In accordance with Article 50 of the Act on Tax Ordinance, the minister competent in public finance may, by regulation, extend the deadlines provided for in the provision of tax law except the deadlines determined in Articles 68–71, Article 77 Paragraph 1, Article 79 Paragraph 2, Article 80 Paragraph 1, Article 87 Paragraph 3 and 4, Article 88 Paragraph 1 and Article 118, defining groups of taxpayers for whom the deadlines were prolonged, types of activities the deadline of implementation of which was extended, as well as the day of expiry of the prolonged deadline.

In terms of the results of the institution of prolonging payment deadline, the mechanism of deferment of deadline is similar. In compliance with Article 48 Paragraph 1 of the Act on Tax Ordinance, in cases justified by an important interest of the taxpayer or a public interest, on the taxpayer's request a tax authority may defer the deadlines provided for in the provisions of the tax law, except for the deadlines determined in Article 68–71, Article 77 Paragraph 1–3, Article 79 Paragraph 2, Article 80 Paragraph 1, Article 87 Paragraph 3 and 4, Article 88 Paragraph 1 and Article 118. However, in this case the action may be individual and applied, in the context of real estate tax, by a wójt or mayor (city president).

[1] Whereas the scope of this paper concerns entrepreneurs being payers of the real estate tax, the subject of the further analysis will be only the regulation resulting from Article 15q para 1 of the Act on Covid.

It is important to underscore that the mechanism regulated in Article 15q of the Act on Covid, like that included in Article 15p of the aforesaid Act, is a special regulation, which authorises but does not oblige municipality councils to introduce a particular preference. (Dowgier, 2020a, p. 7) Prolonging the deadline, which is based on Article 15q of the Act on Covid, may be applied in particular legal and time frames, which constitute limits for municipal councils. One of the limits concerns the possibility of applying the institution in reference to real estate tax only. For comparison, the institutions in Article 47 Paragraph 4a, Article 48 and Article 50 of the Act on Tax Ordinance have a much wider application, for they may be applied for all taxes, but also for other due payments to which the Act on Tax Ordinance is not applicable.

Moreover, the instrument may be applied exclusively in reference to particular payment deadlines of real estate tax instalments for 2020, i.e. those due to be paid in April, May and June 2020. In case of taxpayers who are legal persons, the regulation is applicable in reference to three instalments of real estate tax, which were due by April 15, May 15 and June 15, 2020. In accordance with Article 6 Paragraph 9 Point 3 of the Act on local taxes and fees, legal persons, organisational units, as well as companies without legal personality, organisational units of the Agricultural Property Agency, as well as organisational units of the National Forest Holding "The State Forests", are obliged to pay the real estate tax calculated in the declaration, without a request, to the account of an appropriate municipality, in instalments proportional to the duration of the tax obligation, within the period before the 15th of each month, but for January before January 31. In case of taxpayers being natural persons, the regulation only refers to the instalment of the real estate tax which was due by May 15, 2020. For in accordance with Article 6 Paragraph 7 of the Act on local taxes and fees, the real estate tax is payable in instalments proportional to the duration of the tax obligation, by March 15, May 15, September 15 and November 15 of the tax year. Moreover, the instrument may be applied only in reference to particular payment deadlines of real estate tax instalments for 2020, i. e. payable in April, May and June 2020.

Thus, in Article 15q of the Act on Covid, the legislator did not provide a basis to prolong estate tax payment deadlines due in, for example, the remaining months July–December 2020 and in subsequent years. There is no basis either for prolonging deadlines of the instalments which had been already payable in the period January–March 2020. There are also no grounds to prolong the deadline of real estate tax instalment due in the period April–June 2020, which at the moment of the publication of the resolution had expired. In this case we would deal with the prolonging of the deadline of tax arrears, which should be distinguished from the payment deadline of the instalments which have not expired. Obviously, the legislator could introduce in Article 15q of the Act on Covid a basis for prolonging payment deadlines of tax arrears, which, however, they did not. For if the legislator's will was also enabling a municipality council to apply this application in reference to tax arrears, they should record it explicitly. On the grounds of Article 67a Paragraph 1 Points 1 and 2 of the Act on Tax Ordinance, the legislator applied a similar mechanism, i.e. deferment of the tax payment deadline as well as tax arrears, explicitly and separately commenting on each of these due sums, for which the deferment of payment

deadline is applicable.[2] Literature also suggests that what can be prolonged on the basis of Article 15q of the Act on Covid is only the deadline which has not expired yet, since reaching for the institutions regulated in the Tax Ordinance, it is worth noting that along with the date of the payment deadline expiry, tax arrears emerge which cannot have any payment deadline. (Dowgier, 2020a, p. 13)

Another restriction introduced in Article 15q of the Act on Covid determines the final deadline where the real estate tax instalments which have been prolonged should be paid. The deadline cannot be later than September 30, 2020. Thus, the resolutions which prolong the deadline of payment of the instalments of the tax due in the months April–June, for example, until October 31, 2020, will be against the law.

The wording of the adopted resolution including extending the payment deadline of the tax instalments on the basis of Article 15q of the Act on Covid must be of an object–subject nature and should be automatic, like in the case of tax resolutions introducing tax exemptions adopted on the basis of Article 15p of the Act on Covid.

4.2. Consequences of prolonging payment deadlines of real estate tax instalments in connection with the provisions of the Act on Covid

Introducing a resolution adopted on the basis of Article 15q of the Act on Covid triggers certain consequences, in particular on the part of the municipality, although on the part of the taxpayer there will also be certain obligations.

In the context under scrutiny it is important to pose a question if a municipality introducing the prolongation of payment deadline will bear negative effects thereof, in connection with the fact that this reduces the resources acquired from the state as a general subvention. It seems that this issue should be referred to negatively, even though it is not an obvious question. In accordance with the modified provisions of Article 32 Paragraph 3 of the Act of November 13, 2003 on the incomes of local government units, in order to determine the compensatory part of the general subsidy and payments, as well as the sum mentioned in Article 21a Paragraph 1 Point 3, we should assume the incomes which a local government unit may gain from the agricultural tax, using the average purchase price of rye to calculate it, and from the forest tax the average sale price of wood, announced by the President of the Statistics Poland, and in case of other taxes calculating them with the upper limits of tax rates in force in a particular year. The income which a local government unit may obtain also includes the financial consequences resulting from the application of tax reliefs and relieves in paying off tax obligations in the form of cancelling the whole or

[2] In accordance with Article 67a Paragraph 1, a tax authority, on request of the taxpayer, subject to Article 67b, in cases justified by an important interest of the taxpayer or public interest may:
1. defer the tax payment deadline or spread the tax payment in instalments
2. defer or spread in instalments tax arrears together with interest for delay or interest for tax prepayment not paid in due time

part of tax arrears, which are provided for in the provisions of the tax law. Thus, the regulation shows directly that the consequences do not include reliefs in tax obligation payments in the form of deferment of payment deadlines and spreading the payment out in instalments. The justification for the amendment proposal of the aforementioned provision of the Act on income of local government units shows that the change consists in not including at calculating subsidies and payments financial consequences resulting from applying the reliefs, provided for in the provisions of the tax law, in paying off the tax obligations in the form of deferment of tax payment and spreading the payment out in instalments. It is important from the point of view of tax reliefs granted by the authorities of local government units. This solution is connected with counteracting the effects of the Covid-19 epidemics, because within their tax competences, municipalities grant taxpayers reliefs in paying off their tax obligations. It is important to underscore that prolonging the payment deadline resulting from tax resolutions adopted on the basis of Article 15q of the Act on Covid results in a consequence practically identical to that resulting from the deferment of payment deadline constituting a relief in paying off tax obligations. Thus, if in the light of Article 32 Paragraph 3 of the Act on incomes of local government units there are no reliefs in payment involving deferring payment deadlines, there should not be situations either where the prolongation of payment deadlines of real estate tax instalments mentioned above occurs.

The introduction of the aforementioned prolongation of payment deadlines, which will be used by entrepreneurs, will result in the necessity of the municipality to show the aid it was granted. For there is no doubt that the prolongation will be public aid. In accordance with Article 15 zzzh Paragraph 1 Point 1 of the Act on Covid, the aid mentioned in Article 15m, Article 15p, Article 15q, Article 15za Paragraph 2, Article 15zzb–15zze, Article 15zze, Article 31zo and Article 31zy, according to the conditions included in the Communication of the Commission, the temporary framework of public aid resources in order to support economy in the context of the ongoing Covid-19 epidemic (2020/C91I/01) (Dz. Urz. UE C 91I of 20.03.2020, p. 1) constitutes public aid aiming at remedying serious disturbances in economy as well as the applied resolutions (Regulation of 2008 on reports). In this matter we should apply the Regulation of 2008 on reports as well as the Regulation of 2020 on reports. The discussed support, however, is not aid de minimis, the granting of which obligates the authority to document it with a certificate. (Kamiński, 2020) Thus, the authority has no obligation to issue certificates of granting the aid, either in case of natural persons or in case of legal persons and organisational units without legal personality, in case of applying the analysed preference. (Kamiński, 2020)

Proving the granted aid will also occur through placing it in report RB-27S column 13 "Consequences of municipality-granted reliefs", cancellations and exemptions in taxes and fees making the municipality's budget income (without statutory reliefs and exemptions), being Appendix 8 to the Regulation on budget reporting.

The entrepreneur benefitting from the prolongation under scrutiny should submit an appropriate form referring to public aid. The preference resulting from a resolution adopted on the basis of Article 15q of the Act on Covid is a form of granting public aid other than de minimis aid. (Dowgier, 2020b, p. 8)

The taxpayer who meets the conditions for benefitting from prolonging tax payment instalments defined in the resolution under scrutiny has no obligation to submit a correcting declaration or tax information referring to the real estate tax. The obligation is in force if there are circumstances affecting the tax amount (Article 6 Paragraph 6 Act on local taxes[3]). In this case the tax authority is not obliged either to issue any tax decisions, where it would confirm the right to prolong the deadline of instalment payments. For there are no legal grounds in the Act on Tax Ordinance for issuing such a decision. The grounds cannot be introduced in the resolution adopted on the basis of Article 15q of the Act on Covid either. This would be against the automatic character of the payment deadline prolongation, which should refer to resolutions adopted on the basis of the aforementioned provision. This statement does not mean that the tax authority will have no instruments enabling it to verify if the taxpayer had the right to pay in the instalment within the deadline prolonged in a relevant resolution. The authority will be entitled to this possibility within the framework of proceedings carried out in order to issue a decision of proportional counting of the payment (Article 55 item 2 and Article 62 Paragraph 4 of the Act on Tax Ordinance) or a decision of counting the payment or overpayment as a sum towards the arrears and interests on late payment (Article 62 Paragraph 4 and Article 76a of the Act on Tax Ordinance). In these cases the tax authority is obliged to issue a decision, which can be subject to complaint. In the event where the tax authority decides that the taxpayer will make the payment after the primary payment deadline and simultaneously decides that no conditions of the taxpayer benefitting from the prolongation of the payment deadline resulting from a resolution adopted on the basis of Article 15q of the Act on Covid are met, the questioning of the legitimacy of benefitting from the prolonged deadline will involve issuing a relevant decision, which was mentioned above. On the other hand, in the case of undertaking a tax execution, the tax payer may put forward an argument that they meet the conditions for prolonging the payment deadline through raising an objection against the execution, i.e. the lack of obligation in Article 33 Paragraph 1 Point 1 of the Act on executive procedures in administration.

4.3. Disadvantages resulting from tax resolutions adopted on prolonging payment deadlines of real estate tax instalments introduced on the grounds of the provisions of the Act on Covid

Analysing the resolutions adopted by Regional Accounting Chambers referring to tax resolutions adopted by municipality councils, several irregularities in the resolutions of municipality councils were detected.

[3] According to this Article natural persons are obliged to submit to a competent tax authority information about immovables and construction objects prepared on a specific form within 14 days of the occurrence of the circumstances justifying the emergence or expiration of a tax obligation referring to the real estate tax or from the day of the event mentioned in Paragraph 3. Furthermore, in accordance with Article 6 Paragraph 9 Point 2 of the Act on local taxes, legal persons, organisational units and companies without legal personality are obliged to relevantly correct declarations in the event mentioned in Paragraph 3, within 14 days of the day of its occurrence.

First, it was found that the competence norm was infringed by an inappropriate prolonging of the payment deadline and determining the deadline for the day after September 30, 2020. Regional Accounting Chambers pointed out that the only competence norm allowing for prolonging payment deadlines in the real estate tax on the basis of a tax resolution is included in Article 15q of the Act on Covid, wherein this provision introduces its temporal limitation, i.e. no longer than September 30, 2020. Regional Accounting Chambers noted that the only competence norm enabling to prolong payment deadlines of the real estate tax on the basis of tax resolution is in Article 15q of the Act on Covid, but the provision introduces its temporal limitation, i.e. not later than September 30, 2020. The Act also underscores that in its resolution, the legislative body of the municipality deferred the deadlines of instalment payments for the months of April, May and June until October 31, 2021. It was pointed out that in the current legal order and taking into consideration the obligation of legislative bodies of local governments to act exclusively "on the basis and within the limits of statutory authorisations" – it is not possible to defer the payment deadline of real estate tax instalments by the legislative body of the municipality until the day later than September 30, 2020, because this limitation on local government legislative bodies' actions were imposed by the legislator in Article 15q Paragraph 1 of the Act on Covid. It was also noted that local law acts cannot be automatically issued without an explicit statutory authorisation, which is reflected in judicial decisions. It was also pointed out that the basis for making acts of local law is authorisation included in the law, which determines the dependent position in the hierarchy of law sources, as well as the fact that an act of a statutory status must always include authorisation (delegation) for a council to make an act of local law. Assessing it, one should bear in mind that the act cannot infringe either the regulation of the law including delegation for its establishing or the provisions of the Constitution of the Republic of Poland, as well as other laws remaining in an indirect or direct connection with the regulated matter (judgement of the SAC of July 11, 2018, judgement of the SAC of May 18, 2020, judgement of the PAC of February 6, 2019).

Secondly, there occurred situations where municipality councils introduced deadline prolongations of arrears instalments, or tax due sums the deadlines of which have expired at the moment of adopting the resolution. Certain municipality councils introduced records according to which the payment deadlines of real estate tax due in April, May and June 2020 were prolonged until September 30 to the entrepreneurs whose financial fluidity had deteriorated. Regional Accounting Chambers decided that the municipality councils had no grounds for adopting the resolution on April 29, 2020, on the basis of which it prolonged the payment deadline of real estate tax to the entrepreneurs, which was on April 15, 2020, so before the resolution.

Thirdly, Regional Accounting Chambers decided that certain municipality councils adopted faulty penal regulations in their resolutions. In general, as faulty were assumed cases when in the appendixes to the resolution, where the application forms were listed, these forms contained official statements of the applicant which were contra legem. For example, at the end of the application municipality councils introduced the following text: "Those who, making a statement intended to be evidence in judicial proceedings or other proceedings conducted on the basis of the Act, testify untruthfully or conceal the truth,

shall be liable to imprisonment from 6 months to 8 years" (Article 233 of the Act on Penal Code). Regional Accounting Chambers observed that an entrepreneur's request (in fact being his statement) submitted on the basis of the resolution under scrutiny is not submitted in judicial proceedings or other proceedings conducted on the basis of the Act, and also, that no provision of law, especially the Act on Covid, gives the authority to impose upon the entrepreneur the obligation of submitting a statement including an instruction of penal liability defined in Article 233 of the Act on Penal Code.

In another resolution, Regional Accounting Chambers decided that, among other things, Article 15q of the Act on Covid was infringed in terms of Appendix 1 to the aforementioned Act, called "Application for extension of the deadline for the payment of real estate tax instalments of land, buildings and structures related to running a business", where the instruction contains the following clause: "I confirm this data with my own signature, warned of penal liability." Regional Accounting Chambers demonstrated that the aforementioned provision of the Act on Covid does not give any grounds for including the clause where the signatory of the application must declare that he/she was warned of penal liability in the application for using a certain tax preference submitted by a taxpayer. Moreover, it was underscored that the condition of liability for testifying untruthfully indicates a statutory regulation which provides for a possibility of receiving a declaration under the pain of penal liability.

Fourthly, certain municipality councils included in tax resolutions records that the prolongation of a payment deadline only occurs on the taxpayer's request, which should be submitted on the form determined by the mayor. Also, such resolutions were found in which municipality councils introduced conditions of the deferment of payment deadlines of a discriminatory character, furthermore, situations occurred where municipality councils did not have the resolutions they adopted published in the Official Journal of the province. Also, those records in the resolutions were recognised as faulty where only those entrepreneurs are entitled to the prolongation of the aforementioned payment deadline who run their businesses on the territory of the town and the municipality of Środa Śląska, as well as those employing/self-employing natural persons who work in the town and the municipality of Środa Śląska. It was observed that the introduction of the aforementioned condition is an infringement of the rule of free movement of workers referred to in Article 45 Paragraph 2 of the Treaty on the Functioning of the European Union. In accordance with the position of the European Commission, placing in aid programmes decisions reducing aid in connection with employing persons registered only in a particular area is an infringement of the rule of free movement of workers, referred to in the Treaty on the Functioning of the European Union. It was underscored that this one of the fundamental principles of the European Union means, most generally, the unfettered right of the European Union citizens to freely move within the whole territory of the European Union in order to start work as well as in search thereof. It was also noted that in the light of Article 45 Paragraph 2 of the Treaty on the Functioning of the European Union, the freedom of workers' movement means removal from the member states' legislature any forms of discrimination in terms of employment, remuneration and other working

conditions of workers coming from other Member States, regardless of their citizenship. (Popławski, 2011, p. 95[4])

Regional Accounting Chambers also found unacceptable a situation where a record was introduced according to which a resolution enters into effect on the day of its passing without a simultaneous publication of this act.

5. Conclusions

The findings in this paper result in the following observations.

First, the instrument included in Article 15q of the Act on Covid authorises, but does not oblige, municipality councils to introduce a resolution on the basis of which the prolongation of the payment deadline of particular real estate tax instalments in 2020 occurs.

Second, the aforementioned competence rule could be applied in the following legal and temporal frames:

- the right referred exclusively to the real estate tax
- the mechanism could be applied exclusively in reference to payment deadlines of the instalments of the tax in 2020 for April, May and June 2020; thus, there were no grounds for prolonging payment deadlines of real estate tax due in other periods of 2020, as well as in subsequent years
- it was not allowed to prolong the payment deadline of the aforementioned instalments for a period later than September 30, 2020

Third, adopting a resolution on the basis of Article 15q of the Act on Covid on the part of the municipality resulted in consequences connected with the municipality declaring the granted public aid, as well as the obligation of reporting thereof within the framework of budget reporting in RB-27S report. It is simultaneously important to note that the municipality introducing the prolongation of a payment deadline shall not bear any negative consequences therefor in the context of general subsidy. There are no grounds to assume that in this situation a real reduction of public resources occurs as a result of the application of the resolution under scrutiny.

Fourth, on the part of the taxpayer benefitting from the prolongation of the payment deadline of the real estate tax decided on the basis of Article 15q of the Act on Covid, there are also obligations to declare the public aid granted. The entity should submit a relevant form concerning public aid, which is a form of public aid other than de minimis aid. On the other hand, the taxpayer who meets the conditions of using the prolongation of tax instalment payment defined in the resolution under analysis has no obligation to submit a correction of the tax declaration or information referring to the real estate tax.

[4] The author points out the defectiveness of certain discriminatory exemptions introduced by municipality councils in connection with, for instance, exempting entrepreneurs with businesses based on the territory of the municipality granting the exemption, or building owners registered as permanent residents in a particular municipality.

Fifth, the analysis of resolutions adopted by regional accounting chambers, which referred to the verification of tax resolutions adopted by municipality councils on the basis of Article 15q of the Act on Covid, shows the following flaws, which resulted in the necessity of recognising the municipality councils' resolutions applied in part or in full as invalid:

- extending the payment deadline of real estate tax instalments on the day after September 30, 2020
- prolonging payment deadlines of the instalments of due sums being tax arrears at the moment of adopting the tax resolution
- prolonging faulty penal regulations involving, for instance, obliging the taxpayer to submit declarations on, among other things, his financial situation under pain of penal liability for false testimony
- prolonging a payment deadline on request of the taxpayer
- authorising a wójt (head of a municipality), a mayor (or a president of the city) to determine a model application form to be submitted by the taxpayer
- introducing conditions of discriminatory exemptions, for example exemption of taxpayers employing workers residing in a particular municipality
- failure to publish tax resolutions in the Official Journal of the province

References

Dowgier, R. (2020a). Nowe uprawnienia podatkowe rad gmin związane z pandemią COVID-19 [New tax powers of municipal councils related to the Covid-19 pandemic]. Przegląd Podatków Lokalnych i Finansów Samorządowych, 5.

Dowgier, R. (2020b). Weryfikacja prawa do zwolnienia oraz przedłużenia terminu płatności na podstawie uchwały rady gminy podjętej w związku z epidemią Covid-19 [Verification of the right to dismissal and extend the payment deadline based on a resolution of the commune council adopted in connection with the Covid-19 epidemic]. Przegląd Podatków Lokalnych i Finansów Samorządowych, 7.

Etel, L. (2020a). Pomoc podatkowa udzielana przez władzę lokalną przedsiębiorcom w czasach zarazy – co dały nowe regulacje? [Tax assistance provided by local authorities to entrepreneurs in times of plague – thanks to new regulations?] Przegląd Podatków Lokalnych i Finansów Samorządowych, 8.

Etel, L. (Ed.) (2020b). Ordynacja podatkowa. Komentarz aktualizowany [Tax Ordinance. Comment updated]. LEX/el.

Kamiński, K. (2020). Czy udzielając ulgi podatkowej w związku z Covid-19 organ podatkowy powinien wydać podatnikowi decyzję oraz zaświadczenie o udzieleniu pomocy? [Should the tax authority provide the taxpayer with a decision and a certificate of assistance when providing a tax relief in connection with Covid-19?] QA 1461821, question answered on 31 May 2020 r., LEX. https://sip.lex.pl/#/question-and-answer/622218813/czy-udzielajac-ulgi-podatkowej-w-zwiazku-z-covid-19-organ-podatkowy-powinien-wydac-podatnikowi...?cm=URELATIONS

Popławski, M. (2011). Uchwały podatkowe w nadzorze regionalnych izb obrachunkowych [Tax resolutions under the supervision of regional accounting chambers]. Wolters Kluwer, Warszawa.

Popławski, M. & Charkiewicz, M. (2020a). Uprawnienia przedsiębiorcy będącego podatnikiem podatku od nieruchomości wynikające z przepisów tzw. tarczy antykryzysowej – wybrane kwestie [The rights of an entrepreneur who is a taxpayer of real estate tax resulting from the provisions of the so-called anti-crisis shield – selected issues]. In J. Salachna (Ed.), Konsument na rynku usług finansowych w okresie kryzysu [Consumer in the financial services market during the crisis]. Under publication.

Popławski, M. & Charkiewicz, M. (2020b). Wady uchwał podatkowych dotyczących przedłużania terminów płatności rat podatku od nieruchomości wprowadzanych w związku z Covid [Disadvantages of tax resolutions regarding the extension of terms of payment of real estate tax instalments introduced in connection with Covid]. Przegląd Podatków Lokalnych i Finansów Samorządowych, 10.

Legal references

EU: Treaty on the Functioning of the European Union – Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union – Protocols – Annexes – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 – Tables of equivalences *(Official Journal C 326, 26/10/2012 P. 0001 – 0390).*

PL: 2020. Ustawy z dnia 31 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem Covid-19, innych chorób zakaźnych, a także wynikających z nich sytuacji kryzysowych oraz niektórych innych przepisów (Dz.U. of 2020, poz. 568 z poźn. zm.) [Act of March 31, 2020 on special solutions connected with preventing, counteracting and combatting Covid-19, other infectious diseases, as well as the crisis situation resulting therefrom, and certain other laws]. (Journal of Laws 2020, item 568 as amended) – referred to in this text as the Act on Covid.

PL: 1997. Ustawa z 29 sierpnia 1997 r. Ordynacja podatkowa (Dz.U. z 2017 r., poz. 201 as amended) [Act of August 29, 1997 on Tax Ordinance]. (Journal of Laws 2017, item 201 as amended] – referred to in this text as the Act on Tax Ordinance.

PL: Ustawa z 6 czerwca 1997 r. Kodeks Karny (Dz.U. of 2020 item 1444 as amended) [Act of June 6, 1997 on the Penal Code]. (Journal of Laws 2020, item 1444 as amended) – referred to in this text as the Act on Penal Code.

PL: 1991. Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych (Dz. U. z 2019 poz. 1170) [Act of January 12, 1991 on local taxes and fees]. (Journal of Laws 2019, item 170 as amended) – referred to in this text as the Act on local taxes.

PL: 1966. Ustawa z dnia 17 czerwca 1966 r. o procedurach administracji w egzekucji administracyjnej (Dz.U. of 2019 item 1438 as amended) [Act of June 17, 1966 on executive procedures in administration]. (Journal of Laws 2019, item 1438) – referred to in this text as the Act on executive procedures in administration.

PL: 2020. Rozporządzenie Rady Ministrów z dnia 4 czerwca 2020 r. zmieniające rozporządzenie w sprawie sprawozdań o udzielonej pomocy publicznej, informacji o nieudzieleniu takich dokumentów oraz o zaległościach przedsiębiorców w regulowaniu należności sektora finansów publicznych (Dz. U. z 2020, poz 1023) [The Regulation of the Council of Ministers of June 4, 2020 amending the Regulation on reports on provided public aid, information about failure to provide such aid as well as reports on entrepreneurs' arrears in paying sums due to the public finance sector]. (Journal of Laws 2016, item 1023) – referred to in this text as the Regulation of 2020 on reports.

PL: 2008. Rozporządzenie Rady Ministrów z dnia 7 sierpnia 2008 r. w sprawie sprawozdań z udzielonej pomocy publicznej, informacji o ich nieudzieleniu oraz raportów o zaległościach przedsiębiorców w regulowaniu należności sektora finansów publicznych (Dz. U. of 2016 poz. 1871) [The Regulation of the Council of Ministers of August 7, 2008 on reports on provided public aid, information about failure to provide such aid as well as reports on entrepreneurs' arrears in paying sums due to the public finance sector]. (Journal of Laws 2016, item 1871) – referred to in this text as the Regulation of 2008 on reports.

PL: Rozporządzenie Ministra Rozwoju z dnia 9 stycznia 2018 r. w sprawie sprawozdań budżetowych (Dz. U. item 1393) [Regulation of the Minister of Development of January 9, 2018, on budget reporting]. (Journal of Laws 2016, item 1393) – referred to in this text as the Regulation on budget reporting 2020.

PL: Naczelny Sąd administracyjny [Supreme Administrative Court] judgement of July 11, 2018, II OSK 675/18; Judgement of the SAC of May 18, 2020, I OSK 430/19 (not published).

PL: Wojewódzki Sąd Administraycjny [Provincial Administrative Court in Gdańsk] judgement of February 6, 2019, II SA/Gd 704/18 (not published).