De iurisprudentia et iure publico
JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT
JOURNAL OF LEGAL AND POLITICAL SCIENCES
HU ISSN 1789-0446

Kiadja / Publishing:
Magyar Jog- és Államtudományi Társaság
Hungarian Association of Law and Political Sciences

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JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT

JOURNAL OF LEGAL AND POLITICAL SCIENCES

2023.

XIV. évfolyam / Vol. XIV

4. szám / No. 4

Kiadja a

Magyar Jog- és Államtudományi Társaság

Publishing

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XIV. évfolyam | Vol. XIV
2023/4. szám| No. 4/2023
Tanulmány | Article
www.mjat.hu

Preliminary ruling procedures in tax cases in the V4 countries

ABSTRACT

The aim of the study is to show the proportion of cases in which the courts of the V4 (Czech Republic, Poland, Hungary and Slovakia) have referred to the Court of Justice of the European Union for a preliminary ruling on financial law issues, and the type of cases in which they have sought guidance. At https://curia.europa.eu, I filtered the data and information available on the basis of requests for preliminary rulings on customs cooperation, customs valuation, common customs tariff, customs union, indirect taxation, excise duties, value added tax, internal taxation, taxation, and by tax category I compare them with each other. If, on the basis of the questions raised, there are tax issues whose interpretation has been questioned in other Member States as well, I will highlight and analyse them separately. I will then draw conclusions on the basis of the issues raised.

KEYWORDS *EU law, preliminary ruling procedure, taxation, customs law, V4 member states*

Introduction

The aim of the study is to show the proportion of cases in which the V4 Member States have referred questions of financial law to the Court of Justice of the European Union (hereinafter: Court of Justice of the EU or CJEU) for a preliminary ruling, and what conclusions can be drawn from this.

I. European tax

The EU has exclusive competence in the area of customs union, while competence in the area of the internal market and economic cohesion is shared, i.e. tax assessment falls within the scope of the fundamental financial sovereignty of states[1].

"There is no European tax as a separate category. There is no universally accepted definition of European tax law, but scientists are trying to define it."[2] The freedom of national legislators in the field of indirect taxes is greatly limited, and the approximation of legislation in the field of direct taxation is only minor. In the absence of a single European tax, Member States shape direct tax systems according to their political interests, in a narrow sense, European tax law is the set of standards in relation to direct taxation contained in primary sources of law or constituted by EU institutions, in a broad sense includes the principles defined by negative harmonisation which must apply in any Member State's tax system, and in an even broader sense, prohibited state system of subsidies.[3]

The most important tax institutions[4] in the European Union include the Council of Ministers[5], the European Commission[6] and the European Court of Justice[7].

[1] CSŰRÖS Gabriella: *Uniós pénzügyek, Az európai integráció fejlődésének pénzügyi jogi vizsgálata*, HVG-ORAC Lap- és Könyvkiadó Kft., 2015. 33. p.
[2] BÉKÉS Balázs: Köz*vetlen adózás az Európai Unióban, A tagállami jogok harmonizációja és versenye* Wolters Kluwer Hungary, Budapest, 2019. 27.p.
[3] op.cit. BÉKÉS 27-30.p.
[4] DR. HERICH György szerk. *Nemzetközi Adózás II. Átdolgozott kiadás*, Penta Unió 2020. március 145-140.p.
[5] Under Article 16, it carries out legislative and budgetary functions jointly with the European Parliament and is composed of representatives of the governments of the Member States, most of whom are ministers responsible for the subject concerned. The most important profession in the field of taxation is the Council of Ministers, ECOFIN, which is attended by the ministers of economy and finance of the Member States. Within the Council, COREPER, the committee of permanent representatives of the Member States to the EU, has an important coordinating role. Im. HERICH 145-150.p.
[6] According to Article 17, the decision-making body of the Union, which also exercises representative control and, in certain cases, executive decision-making, is the 'founding guardian of the treaties', a supranational body. The Commission's administrative structure consists of directorates-general and services and agencies subordinate to the Commissioners, of which TAXUD is responsible for taxation. As regards taxation, there are known the Legal Aid Committee for Tax Collection, the Committee on Excise Duties, the VAT Administration Committee and the Fiscalis Committee, as well as the VAT Committee of TAXUD and the Committee against Tax Fraud, as well as the Committee on Tax Cooperation. Im. HERICH 145-150.p.
[7] Based in Luxembourg, Article 19(1) ensures respect for the law in the interpretation and application of the Treaties. Im. HERICH 145-150.p.

II. The role of the preliminary ruling

Chapter 2 of Title VII of the Treaty on European Union, as amended by the Treaty of Lisbon, and of the Treaty on the Functioning of the European Union (TFEU) provide for common rules on taxation and approximation of laws. Tax provisions can be harmonised through the legislative procedure[8], in which the Council adopts directives[9] to approximate the laws of the Member States, or through rulings of the Court of Justice of the EU[10].

The practice allows Member States procedural autonomy to prevail under two general conditions: Chapter 2 of Title VII and Article 115 of Chapter 3 contain the basic provisions on which EU tax harmonisation is based. Articles 110 to 111 lay down non-discrimination, Article 112 states that payment obligations on export refunds and imports, other than turnover taxes, excise duties and other indirect taxes, may be applied only on a proposal from the Commission and with the prior approval of the Council, Article 113 is the basic rule for harmonisation of indirect taxes. Article 115 gives the Council a power for general approximation and provides a legal basis for harmonisation of direct taxation in the form of a directive[11].

Within the EU legal system, primary sources of law are the Treaties and general principles of law[12], secondary sources of law are acts issued by the community and their bodies, and soft law instruments can also be taken into account in tax law matters[13]. Tax law is part of EU law and thus the sources and principles of law are applied in a similar way, but positive harmonisation is narrow, therefore the case law of the Court of Justice and the negative harmonisation developed by it are of paramount importance.[14]

The Court of Justice of the EU fundamentally contributes to the interpretation of sources of law related to tax law with its law-developing case law[15], among its procedures[16] the preliminary ruling procedure has a role in developing the law[17], but it does not actually decide the case in an individual case, the conclusion is always drawn by the referring court[18]. The preliminary ruling procedure is useful when a question of interpretation arises in a case before a national court which may be of new general interest for the uniform application of EU law, or when existing case-law does not appear to provide the necessary guidance for dealing with a new legal situation[19]. Due to its judicial nature, the Court can only shape EU tax law very indirectly, since its activity covers only a specific case and a given Member State, but at the same time it

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[8] Article 115 TFEU.
[9] Positive harmonization process. In: ERDŐS Gabriella-FÖLDES Balázs-ŐRY Tamás: *Az Európai Unió adójoga,* Wolters Kluwer, Budapest 2013. 28. p.
[10] Negative harmonization process. Im. ERDŐS-FÖLDES-ŐRY 28. p.
[11] op.cit. HERICH 157.p.
[12] principles of precedence, direct effect, direct applicability, allocation of powers, proportionality, flexibility, Community fidelity, efficiency, procedural autonomy, certain administrative and procedural principles and subsidiarity.
[13] Regulations are applied narrowly in the field of direct taxation, whereas directives are the main regulatory instrument for direct taxation.
[14] op.cit. BÉKÉS 51-59.p.
[15] It interprets both primary and secondary sources of law.
[16] Proceedings for infringements, nullity, default, damages and preliminary rulings against Member States. HORVÁTH Zoltán: *Kézikönyv az Európai Unióról*, Hetedik átdolgozott, bővített kiadás, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2007. 161-164. p.
[17] In addition, the decisions taken in the course of the infringement procedure laid down in Article 259 TFEU are not negligible either: a decision concerning tax law and fundamentally affecting the practice of the tax authority – and causing further practical problems in the issue giving rise to the case – was taken against Hungary in Case C-274/10. Commission v Republic of Hungary.
[18] It concludes its decisions with the phrase 'which it is for the referring court to examine'.
[19] EUR-Lex - l14552 - EN - EUR-Lex (europa.eu) downloaded 26.04.2023.

does not take a position on several issues, yet it has nevertheless limited national legislators with its own set of instruments.[20]

Since there is an obligation to make a reference under Article 267 TFEU if there is no legal remedy under national law against the decision of the court concerned[21], in the Hungarian court system the Curia or the administrative divisions of certain tribunals initiate preliminary ruling proceedings concerning financial law. The court system and the two-instance procedure of the tax authority of the V4 Member States are similar to the Hungarian court system and the tax authority structure, but an important difference is that the Czech and Slovak Constitutional Courts also turn to the CJEU, especially if the administrative court has neglected or ignored the consideration of an essential issue that violates one of the fundamental rights of the party.

III. Methodology of the study

At https://curia.europa.eu, I examined motions for preliminary rulings filed by Hungarian, Czech, Slovak and Polish courts as of 09.12.2023. I selected the topics of customs cooperation, customs valuation, common customs tariff, customs union, indirect taxes, excise duties, value added tax, internal taxes, taxation, and then the country concerned as the search source. The Hungarian administrative courts have referred 73 times, the Czech 25 times, the Slovak 12 times and the Polish 87 times[22].

I compared the V4 Member States[23] because all four are part of the former socialist bloc in Eastern Europe and all joined the EU in 2004. In addition, it is not a negligible circumstance that the Visegrad Four countries influenced each other's economic development within their historical- geographical and cultural traditions[24] and the framework of the Visegrad cooperation[25].

For the comparison, I used a benchmark of the number of preliminary rulings per 100,000 inhabitants in each Member State, that is 0.75 in Hungary, 0.23 in the Czech Republic and 0.23 in both Poland and 0.22 in the Slovak Republic. This ratio shows the number of petitions per 100,000 inhabitants, and the conclusion can be drawn from the ratios that the Hungarian courts are the most active among the courts of the V4 Member States.

Another conclusion can be drawn from the data. If we look at the number of cases cancelled, withdrawn or dismissed for lack of competence, we can see that this number is high in Hungarian cases. While one case in the Czech cases had an inadmissible question in the petition, there was no Slovakian case, one case in the Polish cases was cancelled, one case concerned a

[20] op.cit. BÉKÉS 253.p.
[21] With the exception of KrakVet, paragraph 51.
[22] The specific problem in the two most recent preliminary ruling cases (C-726/23., C-615/23.) is not yet known, but it is already clear that the courts have asked a question about the VAT Directive in both cases.
[23] The leaders of the Czech and Slovak Federal Republic, the Republic of Poland and the Republic of Hungary signed a declaration in Visegrad on 15 February 1991, and with this act the cooperation of the Visegrad Three was established. *A Visegrádi Négyek jelentősége, struktúrája és értékei Kiadó: Külügyi és Külgazdasági Intézet, 2018* V4_konyv.pdf (kki.hu) SÁRINGER JÁNOS: *Visegrád újjászületése az államszocializmus bukása után (1991—2004)* 26. p. Downloaded 10.12.2023.
[24] In the first days of September 1335, the first meeting of the envoys of the Luxemburgs and the Anjouk took place in Visegrád. *A Visegrádi Négyek jelentősége, struktúrája és értékei Kiadó: Külügyi és Külgazdasági Intézet, 2018* V4_konyv.pdf (kki.hu) TULOK PÉTER: *A Visegrádi Együttműködés eredete, a hármas királytalálkozó jelentősége a középkorból* 14. p. Downloaded 10.12.2023.
[25] In Europe, in the early 1990s, the process of creating new organizations took place within the framework of the "new regionalism" within the framework of the Visegrad Cooperation. *A Visegrádi Négyek jelentősége, struktúrája és értékei Kiadó: Külügyi és Külgazdasági Intézet, 2018* V4_konyv.pdf (kki.hu) SÁRINGER JÁNOS: *Visegrád újjászületése az államszocializmus bukása után (1991—2004)*23. p. Downloaded 10.12.2023.

question of validity and one case was found to be without jurisdiction, the number is higher in the Hungarian cases. In four cases the petition was withdrawn, in one case the court informed the CJEU that the parties were of the same opinion and the case was therefore deleted, and in three cases the CJEU had no jurisdiction. While the conclusion can be drawn from the figures, it would appear that the Hungarian courts are not adequately prepared to answer the correct questions. But looking behind the numbers, the situation is more nuanced. Indeed, of the four cases where the court withdrew the petition, two were due to a different decision, one where the parties agreed on the merits of the case, three cases remained where the reason for the withdrawal was not stated in the order, and three where the court did indeed withdraw the case for lack of jurisdiction due to incorrect legal questions.

IV. The issues referred to the CJEU by Member State

Since several different interpretations of the law[26] can arise in relation to a single motion, I have grouped the preliminary rulings by topic for ease of comparison. There are various ways

[26] The Community legislation whose interpretation was needed: 1. EU Treaties, 2. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (previously the Sixth Directive), 3. Council Directive 2008/9/EC laying down detailed rules for tax refunds, 4. Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, 5. Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, 6. Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, 7. Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, 8. Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, 9. Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital and, prior to that, 10. Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, 11. Explanatory Notes to the Combined Nomenclature of the European Union, 12. Commission Regulation (EC) No 718/2009 of 4 August 2009 concerning the classification of certain goods in the Combined Nomenclature, 13. Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, 14. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, 15. Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, 16. Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, 17. Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, 18. Consolidated Versions of the Treaty on European Union and the Treaty on the functioning of the European Union, 19. Charter of Fundamental Right of the European Union, 20. Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, 21. Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, 22. Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, 23. First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, 24. Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, 25. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, 26. Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, 27. Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

of typifying the subjects on which the courts of some Member States have referred questions to the CJEU. In my study, I have grouped the petitions according to broad themes.

V. Customs and excise matters and others

At customs and excise matters Hungary has eight times[27], the Czech Republic eight times[28], Slovakia once[29] and Poland ten times[30] referred questions for preliminary ruling to ECJ.

At other, not elsewhere classified, financial law concerning matters of Community law Hungary has five times[31], the Czech Republic twice [32], Slovakia three times[33] and Poland four times[34] referred questions.

VI. VAT Directive

The interpretation of the VAT Directive raised the most questions, so I have divided the motions on the Directive into several topics for ease of comparison and interpretation of interrelated issues.

VI.1. The basic concepts

At the basic concepts of the VAT Directive (be it the scope of the Directive, the concept of services, the concept of supply of goods, the concept of the liable for payment of tax, the calculation of time limits) Hungary has nine times referred questions to CJEU. There were two

[27] In the field of customs law, questions of interpretation have arisen before the Court of Justice of the EU concerning transaction value, customs valuation and certain concepts. Case C-290/05 Nádasdi concerned the registration tax on second-hand cars.

[28] The Court asked questions in six customs cases and two in excise cases. In case C-711/20, TanQuid Polska Sp. z o.o. v Generální ředitelství cel, the CJEU also required an investigation into a possible irregularity or infringement.

[29] The interpretation of tariff determination.

[30] One of the proposals concerned tariff classification and eight cases concerned excise duties. Two excise cases concerned excise duty not declared and paid on the sale of a motor vehicle in Poland before its first registration in Poland.

[31] The cases concerned the progressive special tax on certain sectors, the maintenance of local business tax, tax refunds, failure to notify the tax rate and failure to control cash entering and leaving the Community, as formulated in the framework of Community taxation of energy products and electricity.

[32] The case concerning late payments in commercial transactions is particularly interesting because the Czech Constitutional Court held that the referring court had not examined the need to refer a question for a preliminary ruling, although the applicant had claimed that this was necessary, in breach of the company's right to a fair hearing. In the other case, C., the Czech version of the provisions of Community law applied by the customs authorities at the time when the acts at issue were committed had not yet been published, but was available by other means eg. on websites, an argument which the CJEU did not accept.

[33] One case concerned certain provisions on administrative cooperation in the field of value added tax and the fight against fraud, while the other case concerned the taxation applicable to parent companies and subsidiaries of different Member States and one case concerned the interpretation of the TFEU.

[34] All four concerned the interpretation of the law on indirect taxes on capital increases.

questions, that dealt with the definition of economic activity[35], and with the obligation of taxable persons to notify, one was dealing with the person liable to pay fees, the concept of public authority, the definition of a single service, the place of performance. The concept of supply of goods was addressed in one case, KrakVet Marek Batko Case C-276/18, which is also significant because paragraph 51 of the judgment also set out an exception to the obligation to refer rule in Article 267 TFEU[36].

On this issue the Czech Republic has five times referred questions to CJEU. Two were dealing with the material scope of the directive, one with the concept of a single unitary service and with specific rules. Several provisions, on the one hand the material scope, on the other hand the reduced rate and the concept of a complex service were affected by the decision in Case C-432/15 Baštová.

In Slovakia there was only one case dealing with this basic issue (the definition of the sale of goods). This case was interesting not because of its subject, but because the Constitutional Court of the Slovak Republic ruled that the constitutional rights to judicial protection and the human rights and fundamental freedoms of due process and the rights of the defence were violated when the court did not examine the applicability of Article 12 of the VAT Act.

At the basic issues Poland has thirty-one times referred questions to CJEU. This is a very huge amount of cases. One of the cases dealt with the countervalue concept, the courts have referred two each questions concerning with the themes of definition of establishment, definition of a single unit service. There were three questions dealing with the definition of the taxable person liable to pay VAT.

One of the cases is interesting in that its subject matter is linked to VAT fraud, as the tax authority found that the plaintiff - or its employee, without the plaintiff's knowledge - had issued blank invoices to entities which had paid the VAT indicated on the invoices, but the plaintiff had not paid and declared them.

In another case, where spouses are nevertheless acting as separate taxable persons in the same activity, the CJEU held that the risk of abuse and fraud must also be examined.

There were four questions each dealing with the concept of supply of services and specific rules, three preliminary rulings were referred to the ECJEU dealing with concept of material scope and the time limit for payment, and the subject of the sale.

One of these latter interpretative issues concerned the award of a public law body and the other concerned the award of a bailiff, the latter of which may be required to assess, collect and pay the VAT due on the proceeds of the transaction within the prescribed time limit. The concept of economic activity concerned a case in which the CJEU ruled that municipal transactions may be subject to VAT if they constitute an economic activity and are not carried out by the municipality as a public authority, unless the activity results in a distortion of competition.

There were five questions dealing with the product sales concept, in one case, the applicant carries out his economic activity as a VAT payer in the field of real estate. In order to settle his tax debts, he proposed to the municipality to conclude a contract for the transfer of the ownership of the undeveloped land he owned to the municipality. The transaction does not constitute a supply of goods for consideration subject to VAT.

[35] One case was concerned, namely Case C-276/18 KrakVet Marek Batko, which is also significant because paragraph 51 of the judgment also defined an exception to the obligation to refer rule in Article 267 TFEU.

[36] Where the courts of a Member State, in proceedings before them concerning the interpretation of a provision of Union law which require a ruling by the Court of Justice, find that in another Member State the same economic transaction is treated differently for tax purposes, they are entitled and, depending on whether or not there is a judicial remedy under national law against their decisions, must: to make a reference for a preliminary ruling to the Court of Justice of the EU.

VI.2. Deduction, refund and VAT fraud

I evaluated as a further delimitation aspect of the VAT Directive the interpretation of deduction, refund and VAT fraud. It was necessary to consider these issues from an analytical point of view because VAT fraud is most closely related to the right of deduction and the right of refund.

Hungary has referred 26 questions to the CJEU on this issue, including twelve on VAT fraud, nine on the right of deduction, in one of the most recent cases, the court has formulated interpretative questions in relation to the right of deduction in what is colloquially known as the pharmaceutical tax, and five on tax refunds.

On the same subject, the Czech Republic has referred to the CJEU twice for VAT fraud and twice for restrictions on the right to deduct, making a total of four referrals.
One of the cases is noteworthy because the Court also ruled that it is contrary to EU law for a national court to adopt an interpretation more favourable to the taxpayer on the basis of the national constitutional principle in dubio mitius, even after the CJEU has ruled that such an interpretation is incompatible with EU law.

Slovakia has referred five questions to CJEU, of which one was dealing with VAT fraud, one with restrictions on the right to deduct, three with refund. In another case, also where the court rejected the plaintiff's request to refer the case to the Court of Justice, the Constitutional Court of the Slovak Republic found that the plaintiff's fundamental right to an effective and unchanging judicial defence had been violated.

Poland has referred eighteen questions to CJEU, four questions dealt with VAT fraud, eleven questions with the restriction on the right to deduct and one with the refund. In one case, the CJEU ruled that the right to deduct input VAT on imports of services paid directly or indirectly to a person established in a territory or country that is a "tax haven" under this legislation cannot be excluded as a general rule.

In two cases, the CJEU has ruled in principle that, in transposing the Directive into national law, it is not possible to repeal in their entirety national provisions restricting the right to deduct VAT and replace them by provisions laying down new conditions in that respect when the Directive enters into force in the territory of the Member State concerned, where the effect of the latter provisions is to extend the scope of that restriction. It is also contrary to Community law for a Member State subsequently to amend legislation which entered into force on that date so as to extend the scope of that restriction in relation to the situation which existed previously. It is, however, possible for the Member State concerned to provide for an exclusion introduced before its accession to the Union and maintained in force after that accession.

VI.3. Tax reduction

Although VAT fraud is also linked to factors that reduce the tax base and the tax, a more accurate and nuanced picture required separate consideration of the proposals to reduce the tax.

The tax base reduction and correction are the next larger unit that the CJEU had to deal with, Hungary four times, as well as Poland does, the Czech Republic twice has applied for a preliminary ruling, interesting however there is no such case in Slovakia.

The tax reduction and tax exemption is the next major unit, which also requires a more extensive explanation. On this topic of interpretation Hungary had three preliminary rulings, the cases concerned the interpretation of certain exemption rules for public benefit activities and exports. The Czech two cases concerned the examination of the tax exemption for exports

and certain public benefit activities. In Slovakia only one case raised a question of interpretation of the exemption for the exercise of judicial executive functions by a private individual.

Most cases, thirteen times, were referred to the CJEU by Poland. Five questions have been raised concerning the provision of services in connection with insurance activities, the provision of services in connection with the granting of credit and the interpretation of the exemption for certain charitable activities and chain transactions.

In one case, the question raised was whether or not the preparation and serving to the customer of a hot chocolate drink called Klasszik hot chocolate with milk and chocolate sauce for direct consumption constituted an ancillary supply of services, since it resulted in two different reduced VAT rates being applied to products with the same objective characteristics and properties.

In the other case, the applicant uses different sales methods within its fast-food chain. Where the final customer chooses not to use the material and human resources provided by the taxable person to ensure the consumption of the food supplied, the supply of that food must be regarded as not involving any related supply.

VI.4. Other VAT matters

And the last bigger topic are the other matters concerning VAT. Hungary applied twice preliminary rulings at precautionary measure, once at collection of classified information and twice at principles.

One of the cases is also interesting because the petition dealt with the issue of the retroactivity of the transitional provisions applicable in the repeated proceedings in relation to the limitation period, which is also of particular importance because the Hungarian Constitutional Court in its Decision 2/2022 (II. 10.) AB - on the initiative of the same judge - annulled the wording of the law "and repeated". In its judgment, the CJEU ruled only on the fact of the statute of limitations, without disputing its raison d'être, and thus it can be said that the decision of the Hungarian Constitutional Court has more of an impact on Hungarian practice.

Slovakia has referred only one question in the case concerned the provision of security. In the Czech Republic there were no other issues of this nature. Two each of the four Polish questions dealt with the principles and tax penalty. One case is interesting because the authority prevented the liquidator from transferring the funds accumulated in the taxpayer's VAT account for the purpose of paying property tax, thus putting the Treasury as a creditor in a more favourable position to the detriment of all creditors.

Conclusions

More than 19 years have passed since the Visegrad countries were admitted to the European Union, all four countries have stood their ground in Europe, adapted the EU legal order and participated in the work of the EU institutional system, and their courts correctly use the possibility to turn to the CJEU regarding the interpretation of EU law. The aim of my study is to show how the courts of the V4 member states used their opportunities, what development curve can be seen when analysing their questions, or what conclusions can be drawn from the individual data.

It can be reasonably concluded from the data that a smaller country with a smaller judiciary system is obviously mathematically less likely to be referred to the CJEU, Poland is the exception, although it is a large country, it is ahead of the smaller Hungary in proportion to the number of questions asked.

The reason for which the courts are called upon to act depends a lot on the degree of activism expected from the judicial system, whether they are more relaxed in their application of Community law, or whether they are judges who apply the text of the law faithfully in their decisions, textualists, or judges who have a position but are not sure, who prefer to decide on the basis of the principle of perconcentration, depends on their knowledge of Community law, but also on their level of linguistic knowledge.

In addition, the extent to which some judges approach the CJEU voluntarily or at the request of a legal representative, the extent to which judges develop themselves, follow case law, develop themselves through self-development or in an organised way, even in the framework of a network of advisers, as in Hungary, Poland or the Czech Republic as opposed to Slovakia, is also a factor that cannot be neglected[37].

On the other hand, the statistics also show that the Czech Republic has referred most cases to the CJEU on customs or excise issues in relative terms. For Member States, it is the tariff classification that causes problems in relation to customs matters, and not without reason, as each product is different, it is difficult to follow the tariff classifications of new products in Community law, the definition of which may also be a matter for experts, and therefore this high rate is not by chance. It is also interesting to note that in Poland, although the interpretation of the VAT Directive caused the most problems, it was not the deduction of tax or VAT fraud that raised the question before the court (the question is whether the control by the tax authorities is more effective, whether the judicial practice is clearer, or simply that this form of tax evasion does not arise as often as in Hungarian practice), but in relation to the basic concepts of the VAT Directive, the question of tax liability, the scope or the obligation to pay, presumably in interpreting the concepts, the court would rather refer the responsibility to the CJEU if it cannot clearly identify the basic concepts for the given case. This may also be related to the fact that Polish courts always expect the CJEU to interpret the law of a specific case, which cannot be derived from general case-law but requires a specific interpretation of the law, such as the issue of tax exemptions and tax reliefs, which also occurs in Poland at a particularly high rate.

In their opinions, the courts refer to the interpretation of specific Community rules, the principle[38] of fiscal neutrality, which precludes economic operators from being placed at a competitive disadvantage, the prohibition of tax discrimination[39], and effectiveness, which requires that the procedural rules of the Member States do not render practically impossible or excessively difficult the enforcement of claims based on EU law, equivalence[40], according to which the procedural rules governing the enforcement of EU law are equivalent to the internal rules governing the Member States, i.e. they must not be less favourable, direct effect and the principle of proportionality[41] are regularly invoked, and the Charter of Fundamental Rights, including the rights of defence and redress, is also invoked.

Although the VAT Directive is "only" a directive, it is still very detailed. Despite this, the courts have most often referred to the CJEU on the interpretation of the VAT Directive. The

[37] (Microsoft Word - \366sszefoglal\363 v\351lem\351ny.doc) (kuria-birosag.hu) downloaded 25.p. 12.12.2023.
[38] op.cit. HERICH 155.p.
[39] Article 110 TFEU.
[40] Az EU-jog hatása a polgári eljárásjogra - VI. Az egyenértékűség elve - MeRSZ MUZSALYI Róbert: Az EU-jog hatása a polgári eljárásjogra downloaded 10.12.2023.
[41] Article 5 TFEU.

reason is that the VAT Directive allows Member States to apply derogations from VAT rules, for example to prevent certain types of tax evasion, which leads to problems of interpretation.

The CJEU has identified a number of important concepts relevant to practice and provided guidance for the future. For example, the CJEU has stated in principle that neither the right to correct invoices nor the right to deduct can be limited. The exception to this is where the right of deduction has become a central element of tax evasion. The right of deduction is the possibility of reducing input tax, but that right cannot, in principle, be restricted, but, since it has become a central element of tax fraud throughout the European Union, its exercise must be restricted in view of the fight against tax fraud. In cases of VAT fraud, the tax authority must prove that the taxpayer has abused the right of deduction. A tax advantage or tax evasion is the failure to pay to the state budget, in respect of transactions in the supply chain of goods, the amount that would otherwise be paid in the context of the legitimate discharge of the tax obligations of the operators in the supply chain. Part of the VAT operating mechanism is tax neutrality, which, according to the consistent practice of the CJEU, aims to relieve the trader of the full burden of all VAT due or paid in the context of his economic activity. The common VAT system thus ensures neutrality as regards the tax burden of all economic activities, irrespective of their purpose or result, provided that those activities are in principle themselves taxable.

While harmonisation needs to be further developed, as does the development of the single European market, the CJEU still has more work to do in view of the requirements of the currency union. In addition, it will be important to harmonise corporate tax rules, as the interpretation has already been raised, as the Hungarian court has already asked questions regarding corporate tax.[42]

However, during harmonization, attention must also be paid to ensuring that states with differentiated circumstances are placed on an equal footing and that differences between countries do not increase, and it is clear from the questions asked what problems the courts of Eastern European Member States and, through them, the given country have to deal with between the harmonisation of tax law and the sovereignty of the Member States.[43]

The fight against tax fraud and tax evasion will remain a crucial issue going forward, and this will require improving the professional knowledge of judges and expanding professional consultations in order to be able to ask more precise and clear questions, but this also requires courts to regularly interpret previous decisions and not to ask more questions on the same price-decided question. In doing so, questions may have been asked by other Member States and presented in order to standardise tax practice.

Overall, it can be concluded that, as in the financial field, beyond the tariff classification of products, the most interpretation problems for the courts of the Member States have been related to the VAT Directive, and as economic activities are diverse and constantly evolving, the interpretation of direct taxation linked to economic activity will always be a problem, I do not expect the number of petitions to decrease in the future.

[42] op.cit. HERICH 776.p.
[43] op.cit. HERICH 780.p.

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