

## WILL THERE BE A SEPARATE BRANCH OF THE LEGAL CODE ALSO FOR SLOVAK BANKING LAW?

JUDr. Soňa Kubincová, Matej Bel University, Banská Bystrica

*For a long time now a discussion has been underway among theoreticians of financial law, and other parties, as to the current understanding of financial law. One of the current questions is whether some of its subsystems should not be set apart to form a separate branch of law.*

At the same time we are posed with the question as to whether the historically-accepted and strict classification of some branches of law (this concerns also financial law and its sub-systems) can now be classified exclusively under public or private law. It is indisputable that during the socialist times of Czechoslovakia there was no need to resolve this issue, for the simple reason that the state's influence was most apparent in financial law. Therefore, it is financial law in particular that has since then been subject to incessant change.

Financial law is an independent, uncodified and dynamically developing branch of law, representing a body of financial-legal standards governing socio-economic relations arising in connection with the systematically planned collection of financial resources to state and other public financial funds, their distribution and use in financial provision for public needs and functions of the state, local authorities and other public-legal subjects<sup>1</sup>. Internally in several, mainly older, publications it is broken down into the following sub-branches: budgetary law, tax law, customs law, banking law, monetary law, foreign exchange law, fees law and insurance law.

In general it may be said that for a branch of law to be independent it requires firstly competence for its independent life, existence, operation, realisation and application, and secondly also public opinion and the classification of this part of law into legal awareness and the legal sentiment of society. Furthermore, it must not be forgotten that the atomisation

of the legal code also has its natural limits, which need to be respected and it is not advisable to exceed them<sup>2</sup>.

Another issue coming to the forefront, indeed publicly, is the question of whether tax law should actually be classified in the legal code of the Slovak Republic as an independent branch of law. Theoreticians of financial law, who from the aspect of examining financial law as well as science know best the current state of affairs, are most in favour of this classification of tax law<sup>3</sup>.

The justification for having tax law as an independent branch of law is well founded and the reasons, or arguments of opponents from practice do not stand. The fact itself that tax law governs relations of a substantive-legal nature, but at the same time has specific procedural standards, is a serious legal argument that must be taken into account in the case of forming an independent branch of law.

In accordance with the above I believe that tax law has all preconditions, now already accepted by the public, for it to be perceived as an independent branch of law in the legal code of the Slovak Republic.

What though is the situation in banking law?

The continuity of development of banking law was interrupted in Slovakia at the start of the Fifties and this state persisted through till the end of the Eighties.

<sup>1</sup> Svoboda, J. et al.: Slovník slovenského práva [Dictionary of Slovak law]. Poradca podnikateľa, spol. s r. o., 2000, pg. 199.

<sup>2</sup> Babčák, V.: Daňové právo procesné [Procedural tax law]. ATOM computers, Košice 2000, pg. 9.

<sup>3</sup> Bujňáková, M.: Postavenie daňového práva v systéme práva [Standing of tax law in the system of law]. Contributions from the international conference "Current issues of financial and tax law in the Czech and Slovak republics", pg. 50.

It is true that sporadically opinions appeared expressing the vitality of and need for banking law. We can here mention B. Spáčil, whose work "Teorie finančného práva" [Theory of Financial Law], published in 1970, was for its time a unique attempt at restoring banking law. It is worthy to note that in these years it was only in Poland from among all the Comecon countries that the development of banking law was not interrupted and banking law was taken to be a separate branch of the legal code<sup>4</sup>.

We are now seeing some authors classifying the legal regulation of money and capital market instruments, including the legal regulation of financial market subjects under the field of financial law<sup>5</sup>. Some authors<sup>6</sup> claim that the classification of banking law under financial law is now obsolete, since it was possible to define banking in this way in the period of a centrally-managed economy, where the bank and the system of its macro- or microeconomic instruments were a component of the state economic relations and a bank's remit was actually merely to gather money into the hands of a socialist state.

It is indisputable that the importance of banking law is growing. Everyone is coming to view and accept commercial banks as businesses. On the other hand a strong socialist tradition that banks are "a part of state management" persists, particularly in the minds of older persons.

Also at university faculties teaching of banking law encompasses the issue of central banking, which is connected with the status and tasks of the National Bank of Slovakia, as well as the issue of commercial banks. In this context there also arises the question of where banking law should belong, whether among public law or private law.

On 12 May 2004 the Bank Board of the National Bank of Slovakia approved the draft Act on Supervision over the Financial Market. The draft act is in accordance with the White Paper on the Integrated Supervision over the Financial Market, approved by the Government of the SR through Resolution No 302 of 27 March 2002. Under the draft act integrated supervision over the financial market shall be performed by the National Bank of Slovakia, whereby its nature to date is changed. Integrated supervision over the financial market shall comprise:

(a) banking supervision, which the National Bank of Slovakia currently performs,

(b) supervision over the capital market and insurance industry, which at present is performed by the Financial Market Authority,

(c) supervision over subjects of the capitalisation pillar of compulsory pension insurance and over subjects established through the transformation of the present pension companies; supervision over these subjects shall, in the period up until the integration of supervision over the financial market, be performed by the Financial Market Authority.

(d) regulation of the financial market.

The Act shall enter into force on 1 January 2006.<sup>7</sup>

From the above we can see that sooner or later banking law shall become a separate branch of law, where we will not be able to definitively classify it under either public or private law. The scope of banking law is extending ever further. The basic role of the central bank – to maintain price stability – remains unchanged. Other tasks, primarily those in the framework of supervision will be expanded to include subjects in the capital and money market.

In connection to this, I will cite an opinion presented at a scientific conference held on 23 April 2004: "Based on the considerations stated I come to the conclusion that the development of law in the Slovak Republic over the past years provides sufficient proof that the traditional criteria on the basis of which the system of law (and its theory) was created, including the formation and fixation of branches of law, and possibly sub-branches, is obsolete. If today legislative corpuses, such as banking law, securities law, etc. are created, it is worth considering whether it will here for the future not be necessary to create new branches of law containing elements of several traditional branches of law, i.e. of both public and private law."<sup>8</sup>

This opinion also gives a green light to the emergence of banking law as an independent branch of Slovak law. I presume that with regard to the future supervision to be performed by the National Bank of Slovakia, banking law would, in addition to those fields mentioned above, include also the legal regulation of securities.

<sup>4</sup> Grúň, L.: Menové, bankové a devízové právo [Monetary, banking and foreign exchange law]. *Studia iuridica Bratislavensia*, Publishing Department of the Faculty of Law, Comenius University, Bratislava 1996, pg. 80.

<sup>5</sup> Králik, J., Jakubovič, D.: *Finančné právo* [Financial law]. VEDA, Slovak Academy of Sciences publishing house, Bratislava 2004.

<sup>6</sup> Balko, L.: *Bankové právo* [Banking law]. ELITA, 2000, pg. 82.

<sup>7</sup> BIATEC, banking journal, June 2004, vol. 12, pg. 29.

<sup>8</sup> Suchoža, J.: *Hraničné problémy finančného práva a práva hospodárskeho* [Border problems of financial and economic law]. Contributions from the international conference "Current issues of financial and tax law in the Czech Republic and the Slovak Republic", pg. 12.