HISTORICKÝ VÝKLAD V PRAXI EURÓPSKEHO SÚDNEHO DVORA

TOMÁŠ GÁBRIŠ

Právnická fakulta, Univerzita Komenského v Bratislave

Abstrakt

Historický výklad je jedným z druhov výkladu, ktoré sa využívajú v záujme správnej realizácie a aplikácie práva. Tento príspevok nadväzuje na podobný výskum vykonaný na vzorke (česko-)slovenskej judikatúry z 20. storočia, v ktorom sa autor pokúsil o kategorizáciu spôsobov využívania historickej a právnohistorickej argumentácie v procese súdnej aplikácie práva. Na tomto mieste ide o výskum miery a spôsobu využívania historickej argumentácie na pôde Európskeho súdneho dvora, ako aj o prezentáciu judikatúry tohto súdu, obmedzujúcej predmetný druh výkladu.

Kľúčové slová

Historický výklad, interpretácia práva, Európsky súdny dvor, právne dejiny, história

Abstract

Historical interpretation is one of the kinds of interpretation used in order to perform and apply law correctly. This short article builds upon previous similar research on historical and legal-historical argumentation used by (Czecho-)Slovak courts in the 20th century. Here, a scale and way of using historical argumentation by the European Court of Justice is being researched, as well as the decisions placing limits upon using the historical interpretation.

Key words

Historical interpretation, interpretation of law, European Court of Justice, legal history, history

1 Historický výklad a historická argumentácia v československej súdnej praxi

Ako bolo konštatované v jednom z autorových predchádzajúcich príspevkov,[1] historický výklad je v teórii práva považovaný za zameriavajúci sa na analýzu dokumentov, ktoré doprevádzali vznik relevantného právneho textu.[2] Toto príliš úzke chápanie je inokedy dopĺňané názorom, že historický výklad sa zakladá na objasňovaní zmyslu právnej normy v súvislosti s cieľom, ktorý bol sledovaný jej vydaním a v spojitosti so spoločenskými podmienkami, za ktorých normatívny akt nadobudol platnosť.[3] Toto chápanie teda kombinuje teleologický a historický výklad. Najlepšie ho vysvetľuje názor, podľa ktorého „*právny predpis vzniká v určitej historicky danej spoločenskej situácii, ktorá podmieňuje jeho vznik a určuje jeho obsah... V rámci historického výkladu má význam aj metóda porovnávania neskoršej právnej normy (lex posterior) so skoršou (lex prior)*.“[4] Podľa P. Maršálka historický výklad je „*nadstandardní metoda interpretace práva, která se pokouší z okolností provázejících vznik právního předpisu dovodit tzv. ratio legis*.“[5] V právnej praxi sa však nestretávame iba s historickou interpretáciou práva, ale tiež s rôznymi inými formami historickej argumentácie.

Podľa výsledkov výskumu národnej judikatúry možno dospieť k záveru, že historická argumentácia sa v súdnych rozhodnutiach vyskytuje ako:

- negatívna historická skúsenosť slúžiaca ako argument podčiarkujúci význam dnešnej právnej úpravy,
- objasnenie pôvodu právneho inštitútu v kontexte svetových právnych dejín,
- historický kontext slovenskej právnej úpravy a zaradenie právnej normy do súvislostí jej kreácie,
- popretie, resp. spochybnenie historického právneho inštitútu, resp. právneho výkladu v nových podmienkach,
- použitie historického práva v súčasnej právnej praxi,
- jednoduché konštatovanie historického vývoja a formálne deklarovanie využitia historického výkladu bez ďalšieho hodnotiaceho významu.[6]

---

[1] Gábriš, T.: Vzťah právnych dejín, histórie a práva a historický výklad ako ich spoločný menovateľ, in: *Acta Facultatis Iuridicae Universitatis Comenianae*, 26, 2009 (v tlači).
[2] Boguszak, J., Čapek, J., Gerloch, A.: *Teorie práva*, 2. vyd., Praha: ASPI, 2004, s. 182, ISBN 80-7357-030-0.
[3] Boguszak, J., Čapek, J., Gerloch, A.: *Teorie práva*, Praha: EUROLEX Bohemia, 2001, s. 156, ISBN 80-86432-13-0. K rôznym chápaniam historického výkladu pozri Maršálek, P.: O smyslu a limitech použití historického výkladu při aplikaci práva. In: *Problémy interpretace a argumentace v soudobé právní teorii a právní praxi*. Ed. A. Gerloch, P. Maršálek. Praha: Eurolex Bohemia, 2003, s. 121. ISBN 80-86432-12-2.
[4] Ottová, E.: *Teória práva*, Bratislava: VO PraF UK, 2005, s. 216, ISBN 80-7160-200-0.
[5] Maršálek, P.: O smyslu a limitech použití historického výkladu při aplikaci práva, s. 125.
[6] Príklady na jednotlivé druhy sú uvedené v Gábriš, T.: Vzťah právnych dejín, histórie a práva a historický výklad ako ich spoločný menovateľ.

Pritom ako historický výklad v najširšom zmysle možno chápať všetky uvedené spôsoby využitia dejín s výnimkou aplikácie minulého práva a triviálnej konštatácie minulého (historického) práva.

2 Historická argumentácia v praxi Európskeho súdneho dvora

Metódou vyhľadávania v judikatúre Európskeho súdneho dvora[7] pomocou kľúčového slova „historical“, resp. jeho koreňa „histor“ možno identifikovať množstvo judikátov, resp. podaní, ktoré využívajú historickú argumentáciu.[8] Po podrobnejšom preskúmaní najnovších materiálov ich možno zatriediť do nasledujúcich kategórií:

2.1 Historický kontext právnej úpravy a zaradenie právnej normy do súvislostí jej kreácie

Rozsudok Veľkej komory Súdu z 23. októbra 2007 v prípade C-112/05, kde navrhovateľom bola Komisia a odporcom Spolková republika Nemecko, podáva výklad histórie tzv. zákona o Volkswagene.[9]

Názor generálneho advokáta Mazáka zo 16. januára 2008 v prípade C-448/06 cp-Pharma Handels GmbH v. Bundesrepublik Deutschland podáva výklad postupu prijímania nariadenia č. 1873/2003.[10] Podobne je tomu v prípade názoru vyššie menovaného

---

[7] Dostupné na internete: curia.europa.eu (navštívené 20.04.2008).

[8] Samozrejme si treba uvedomiť, že historická argumentácia môže byť prítomná aj v dokumentoch,v ktorých sa pojem „historický“ vôbec nevyskytuje. Na účely mikrosondy o akú sa tu pokúšam, sa však domnievam, že aj takáto obmedzená vzorka postačuje. V poznámkach pod čiarou citujem prípady v anglickom jazyku z dôvodu medzinárodnej povahy tejto konferencie a adresátov jej výstupu - zborníka.

[9] The Federal Republic of Germany observes that the VW Law is based on an agreement which was entered into in 1959 between individuals and groups which, during the 1950s, had claimed rights in respect of the limited company Volkswagenwerk. At that time, the trade unions and the workers, on the one hand, and the Federal State and the Land of Lower Saxony, on the other, claimed rights in respect of that company. Under that agreement, the workers and the trade unions, in return for relinquishing their claim to a right of ownership over the company, secured the assurance of protection against any large shareholder which might gain control of the company… The Commission takes the view that those historical considerations are irrelevant. Its criticism of the Federal Republic of Germany does not concern the reasons behind that Member State’s legislative activity in 1960, but rather its current failure to legislate, inasmuch as the VW Law has for a long time fallen foul of the requirements of the free movement of capital.

[10] In 1993 an application for the establishment of an MRL for progesterone in cattle and horses was submitted to the Commission. In October 1996, the Committee recommended that progesterone be included in Annex II to Regulation No 2377/90. In April 1997, the Commission sent new scientific information to the Agency and requested a re-assessment of the risks relating, inter alia, to progesterone. In April 1998, the Commission requested the Agency that the Committee should have the possibility to take account of scientific information which was to become available in the course of 1998 from a number of sources and the results of a number of

generálneho advokáta z 13. decembra 2007 vo veci C-439/06 citiworks AG v. Sächsisches Staatsministerium für Wirtschaft und Arbeit als Landesregulierungsbehörde, kde sa spomína snaha Komisie o novelizáciu smernice o elektrine 96/92/EC a následne prebratie úpravy do novej smernice 2003/54.[11]

Ďalším príkladom môže byť názor generálneho advokáta Sharpstona zo 6. marca 2008 vo veci C-173/07 Emirates Airlines Direktion für Deutschland v. Diether Schenkel, kde sa konštatuje, že montrealská zmluva a nariadenie č. 261/2004 majú svoju „legislatívnu históriu", ktorá sa v stanovisku bližšie skúma.[12]

---

specific studies commissioned by the Commission. In April 1999, the Commission asked the Agency to update the evaluation the former had requested in 1997 of progesterone. On 30 April 1999, the Scientific Committee on Veterinary Measures Relating to Public Health ('the SCVPH') issued a report which concluded, inter alia, that no acceptable daily intake could be established for the hormone progesterone. In December 1999, the Committee confirmed its earlier opinion recommending that progesterone be included in Annex II to Regulation No 2377/90. On 3 May 2000, the SCVPH adopted a re-evaluation of its opinion of April 1999. In its re-evaluation the SCVPH concluded that recent scientific information did not provide convincing data or arguments making a revision of its previous conclusions necessary. On 25 July 2001, the Commission adopted a proposal for a Council Regulation amending Annex I to Regulation No 2377/90 classifying progesterone in that annex. That proposal was rejected by the Standing Committee which assists the Commission in accordance with Article 8 of Regulation No 2377/90. The Commission, pursuant to Article 8 of Regulation No 2377/90 submitted the proposal to the Council which was rejected in January 2002. In December 2002, the Commission submitted to the Standing Committee a second proposal classifying progesterone in Annex III to Regulation No 2377/90. That proposal did not obtain the favourable opinion of the Standing Committee. On 24 October 2003, the Commission adopted Regulation No 1873/2003 which lists progesterone in Annex II to Regulation No 2377/90, subject however to certain limitations. According to the 11th recital in the preamble to Regulation No 1873/2003, the measures provided for in that regulation are in accordance with the opinion of the Standing Committee.

[11] Directive 2003/54 marks the second phase of the liberalisation of the market in electricity within the European Community. Its objective is to complete the internal market in electricity launched by Directive 96/92/EC (the 'first electricity directive')… The importance of the principle of third party access is also apparent from the legislative history of the directive. The provision requiring Member States to ensure third party access was an essential element of the Commission's proposal to amend the first electricity directive and was adopted, essentially unchanged, in Article 20 of the Directive.

[12] The travaux *préparatoires* show that the proper scope of the proposed new regulation in relation to flights from third country airports to the Community was the subject of specific consideration. Under Article 3(1) of the Commission's original Proposal, passengers departing from a third country to a Member State were to be covered if they had a contract with a Community carrier or with a tour operator for a package offered for sale in the territory of the Community. A subsequent Council document issued following discussions both in COREPER and by the relevant Council Working Party, presenting the revised draft of the regulation, indicates that one of the two 'major outstanding issues' concerned, precisely, the scope of the regulation in relation to flights from third countries, as now defined by Article 3(1)(b). A lengthy footnote to the text of that subparagraph (by then identical to the text finally adopted) shows that certain Member States favoured extending further the protection offered to passengers boarding a flight to a destination within the Community at an airport in a third country, whilst others opposed it; and that possible problems of extra-territoriality, unenforceability and discrimination between passengers were (variously) canvassed. The following week, the Presidency presented an unchanged text for, inter alia, Article 3(1)(b). However, it asked delegations to reflect on the possibility of entering into the Council minutes a statement by Member States related to what was at that stage Article 19 (entitled 'Report'), inviting the Commission, when drafting the report envisaged in that article, to focus in particular on the possibility of enlarging the scope of the regulation in respect of flights from third country airports to the Community. In December 2002 the Council reached political agreement on its common position on the draft regulation; and the suggestion for an entry in the Council minutes was elevated into a drafting amendment to the text of Article 19. The regulation as promulgated duly requires the Commission to report 'in particular regarding … the possible extension of the scope of this Regulation to passengers having a

V stanovisku generálneho advokáta Poiares Maduro-a z 29. novembra 2007 v spojených prípadoch C-39/05 P a C-52/05 P Švédske kráľovstvo a Maurizio Turco v. Rada Európskej únie a iní sa tiež venuje pozornosť dejinám prijatia obsahu právneho predpisu – konkrétne nariadenia č. 1049/2001.[13]

Generálny advokát Kokott v stanovisku z 20. septembra 2007 v prípade C-435/06 „C" pomocou historického výkladu skúma význam pojmu civilné záležitosti,[14] generálny advokát Ruiz-Jarabo Colomer v názore zo 6. septembra 2007 vo veci C-337/06 Bayerischer Rundfunk v. GEWA - Gesellschaft für Gebäudereinigung und Wartung mbH zasa skúmal vzájomný vzťah úprav smernice 92/50 a 2004/18.[15] Podobný bol postup aj v mnohých iných prípadoch.

---

contract with a Community carrier or holding a flight reservation which forms part of a "package tour" … and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community … carriers'. Against that background, I find it impossible to accept that Article 3(1) should be read as covering a passenger on a return flight operated by a non-Community carrier from a third country to a Member State.

[13] Mr Turco however submits that the insertion of 'legal advice' in Regulation No 1049/2001 is designed solely to clarify the scope of the exception relating to the protection of court proceedings as interpreted in *Interporc* v *Commission*. However, if that were the case, another formulation of the kind already mentioned above would undoubtedly have been used by the drafters of that regulation, such as 'court proceedings and in particular legal advice'. Furthermore, the applicant's assertion is disproved by the drafting history of Regulation No 1049/2001. That history clearly indicates that there was no intention at all to establish a link between 'court proceedings' and 'legal advice', but that the purpose of inserting 'legal advice' was to enshrine in legislation the judicial approach which, in order to protect the confidentiality of the opinions of the legal services of the institutions relating to draft legislation, had added to the categories of public interest expressly referred to by the legislative instruments then in force governing the right of access to documents those of 'the stability of the Community legal order' and the 'proper functioning of the institutions'. As the Council has pointed out, the initial Commission proposal for a regulation provided for two separate exceptions, relating to the stability of the Community's legal order and 'court proceedings'. The first exception was subsequently reworded to include 'the ability of the institutions to seek the advice of their legal services' and, following legislative discussion, the wording was finally abridged and clarified to become that in Regulation No 1049/2001.

[14] That cannot be accepted. In its judgments on the Brussels Convention, the Court has always emphasised that the autonomous interpretation of the term 'civil and commercial matters' takes into account the objectives and scheme of *the Brussels Convention* and the general principles which stem from the corpus of the national legal systems. However, its objectives and scheme and – I would add – its history are not necessarily the same as the objectives, scheme and history of Regulation No 2201/2003. In the sphere of parental responsibility it is also possible that different general principles exist from those applicable in the national legal systems in relation to disputes within the scope of application of the Brussels Convention. Instead, the term 'civil matters' in Regulation No 2201/2003 must be interpreted independently within the legislative context of this Regulation… Consideration of the legislative history confirms this interpretation of the term 'civil matters'. Regulation No 1347/2000, the predecessor to Regulation No 2201/2003, concerned only civil proceedings relating to parental responsibility for the children of both spouses on the occasion of matrimonial proceedings (Article 1(1)(b) of Regulation No 1347/2000). The connection this required between the decision concerning parental responsibility and matrimonial proceedings meant that protective measures taken by the State were not within the scope of application of Regulation No 1347/2000… A further aspect of the regulation's legislative history is the close substantive connection between Regulation No 2201/2003 and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ('Child Protection Convention').

[15] That conclusion appears to be supported by the history of the Community legislation, as emerges from comparison of the respective recitals of the grounds of Directives 92/50 and 2004/18. Thus, the 25th recital in the preamble to Directive 2004/18 has added detail to the succinct 11th recital in the preamble to Directive

2.2 Vedomé opustenie predchádzajúcej právnej úpravy

Príkladom môže byť rozsudok Tretej komory zo 14.júna 2007 v prípade C-127/05 Komisia v. Spojené kráľovstvo, kde sa argumentuje úmyselným opustením dovtedajšej právnej úpravy.[16]

Evolučné prekonanie dobového výkladu obsahuje názor generálneho advokáta Kokotta zo 7. septembra 2006 v prípade C-284/04 T-Mobile Austria GmbH a iní v. Rakúska republika, kde T-Mobile Austria navrhoval evolutívny výklad, podľa ktorého sa má prihliadať na to, ako by asi dobový zákonodarca reagoval na zmenené pomery, vládnuce v súčasnosti.[17]

2.3 Jednoduché konštatovanie historického vývoja a formálne deklarovanie využitia historického výkladu bez ďalšieho hodnotiaceho významu

Príkladom je Rozsudok Tretej komory z 11. októbra 2007 vo veci C-460/06 Nadine Paquay v. Société d'architectes Hoet + Minne SPRL, kde sa spomína, že miestny národný súd použil pri výklade domáceho právneho predpisu aj historický výklad, ale tento sa na európskej úrovni bližšie neskúma.[18] Podobne názor generálneho advokáta Sharpstona nezachytáva historický výklad jednotlivých strán v prípade C-5/06 Zuckerfabrik Jülich AG v Hauptzollamt Aachen, kde sa len konštatuje, že strany podporovali svoje tvrdenia aj historickou argumentáciou.[19]

92/50, including 'other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme'. On the other hand, it does not extend to 'supply of technical equipment necessary' to the production of those programmes.

[16] The Commission maintains that an interpretation of Article 5 to that effect is confirmed by the legislative history of Directive 89/391 and by the fact that, while certain early directives on the safety and health of workers, which preceded the insertion into the EC Treaty of Article 118a, now Article 138 EC (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), did incorporate a 'reasonably practicable' qualification in defining the obligations imposed on the employer, subsequent directives, including Directive 89/391, adopted on the basis of Article 118a, have permanently abandoned it.

[17] Taking a historical approach, it could conceivably be argued that the award of mobile communications frequencies to private undertakings could not be covered by the term 'telecommunications' because on the date that the Directive was adopted in 1977 the State administrative postal authorities were providing all telecommunications services under their own direct management. The Community legislature probably did not therefore originally intend to adopt legislation in relation to the allocation of radio frequencies to private suppliers.

[18] The referring court also held that Article 40 of the law of 16 March 1971, interpreted in light of its legislative history, does not prohibit the decision to dismiss being taken during the protection period, as long as the notification to the worker comes more than one month after the end of the maternity leave.

[19] The applicants and the French, Greek and Italian Governments submit, in essence, that in accordance with Article 15 of the basic regulation account should be taken, when determining the exportable surplus, only of

2.4 Konštatovanie chýbajúcich historických argumentov

V názore generálneho advokáta Sharpstona z 8. marca 2007 v prípade C-434/05 Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College) v. Staatssecretaris van Financiën sa vyskytuje ojedinelý doklad o snahe využiť historický výklad, ale kvôli nedostatku akýchkoľvek sprievodných materiálov a dôvodovej správy k príslušnému ustanoveniu uvedená snaha zlyhala.[20]

2.5 Historický pôvod právneho inštitútu

Pôvod legislatívy upravujúcej problematiku pasov a cestovných dokumentov vo svojom názore z 10. júla 2007 vyslovil vo veci C-137/05 Spojené kráľovstvo v. Rada Európskej únie generálny advokát Trstenjak.[21]

Vývoj právnej úpravy insolvencie a konkurzu zasa obsahuje názor generálneho advokáta Ruiz-Jarabo Colomer-a vo veci C-1/04 Susanne Staubitz-Schreiber.[22]

---

those exports of sugar in respect of which export refunds have actually been paid. Those parties variously invoke in support of their view, first, the wording, scheme, history, objective, and interpretation by the Court of the basic regulation and, second, the principle of proportionality.

[20] There was in the original proposal no precursor to the present subparagraph (j). The latter was inserted into the Directive at a relatively late stage, without any (registered) previous commentaries, and is thus 'not burdened by a demonstrable legislative history'.

[21] Article 1(3) of Regulation No 2252/2004 provides that '[t]his Regulation applies to passports and travel documents issued by Member States'. Historically, the legislation concerning passports and travel documents began with the primary purpose of checking a state's own nationals when they went abroad. Secondly, even today it represents a means of checking the entry of foreigners into the state. Passports are internationally recognised legal instruments essential, according to legal writing, in order to allow freedom of movement for persons between States. Because of the particular rules of the Schengen *acquis* which abolished checks on persons at internal borders, the international movement of persons in respect of whom passport checks are required takes place at the external borders of the Schengen States.

[22] The development of the rules of insolvency proceedings in community law has Kafkaesque overtones, due not to the length of time it has taken but rather to the fact that the proposed convention underwent a mutation, similar to the transformation of Gregor Samsa, which had a significant impact on the development of those provisions. The idea of regulating insolvency proceedings within the Community has its origins in Article 220 of the EC Treaty (now Article 293 EC), which calls upon the Member States, so far as is necessary, to enter into negotiations with each other with a view to securing for the benefit of their nationals, *inter alia*, the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards. That provision gave rise, first of all, to the well-known 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters ('the Brussels Convention')... The Istanbul Convention left its mark on the subsequent process of drafting the Regulation, because, with a view to avoiding the complexities of the 1985 draft convention, an ad hoc group of national experts finalised the text of the Convention on Insolvency Proceedings, done at Brussels on 23 November 1995, which has a less rigid approach and simpler solutions… Since not all 15 Member States acceded to it, the 1995 convention collapsed irrevocably. However, as a result, the convention underwent a transformation, rather like a

3 Postoj Európskeho súdneho dvora k historickému výkladu

Podľa judikatúry ESD majú okolnosti prijatia právnej úpravy len malý význam pre účely interpretácie normy. Vyslovil sa tak generálny advokát Kokott v názore z 13. júla 2006 v prípade C-278/05 Carol Marilyn Robins, John Burnett a iní v. štátny tajomník pre prácu a penzie.[23] Odvoláva sa pritom na prípad C-310/90 Egle [1992] ECR I-177, odsek 12, v ktorom sa právne dejiny, resp. historický výklad používajú iba na potvrdenie výkladu dosiahnutého inými prostriedkami.[24]

Podobný postoj súd zaujal v prípade C-292/89 Antonissen [1991] ECR I-745, ods. 18, podľa ktorého sa nemožno odvolávať na vyjadrenia, ktoré odzneli počas rokovania Rady, ak sa nijak na ne dotknuté ustanovenie neodvoláva.[25] Potvrdzuje to aj prípad C-402/03 Skov a iní [2006] ECR I-0000, ods. 42,[26] ktorý odkazuje na ďalší podobný prípad - C-375/98 Epson Europe [2000] ECR I-4243, ods. 26,[27] odkazujúci zasa na iný veľmi podobný prípad – konkrétne dva spojené prípady C-197/94 a C-252/94 Bautiaa a Société Française Maritime

---

chrysalis: its content was unaltered but its legal status changed so that it ceased to be an international treaty and became a regulation pursuant to the second paragraph of Article 249 EC.

[23] In any event, elements from the legislative history of measures are of lower-ranking importance for purposes of interpretation. According to the Court's case-law, even formal declarations concerning the adoption of the legal measure in question cannot be used for the purpose of interpreting a provision of secondary legislation where no reference is made to the content of the declaration in the wording of the provision in question. The true meaning of a provision of Community law can be derived only from that provision itself, having regard to its context. This finding of the Court must apply *a fortiori* in regard to statements which a Commission representative makes before a Council working party. In view of the fact that, as indicated above, there is nothing in the wording of Article 8 to suggest that separation of funds is adequate for the purpose of its implementation, factors relating to the legislative history of the Directive also cannot lead to any different interpretation.

[24] That interpretation is confirmed by a joint declaration of the Commission and the Council, contained in the minutes of the session at which the directive was adopted, which states "periods of practical training incorporated into the course culminating in an examination do not affect the full-time nature of such training".

[25] However, such a declaration cannot be used for the purpose of interpreting a provision of secondary legislation where, as in this case, no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance.

[26] On this point, first, it must be recalled that, where a statement recorded in Council minutes is not referred to in the wording of a provision of secondary legislation, it cannot be used for the purpose of interpreting that provision (see, in particular, Case C-292/89 Antonissen [1991] ECR I-745, paragraph 18, and Case C-375/98 Epson Europe [2000] ECR I-4243, paragraph 26).

[27] As regards the Portuguese Government's argument that it is clear from various documents and, in particular, from a declaration of the Council that ISD was excluded from the scope of Article 5(1) of the Directive, there is no basis for that contention in the wording of the Directive. Moreover, according to settled case-law, declarations recorded in Council minutes in the course of preparatory work leading to the adoption of a directive cannot be used for the purpose of interpreting that directive where no reference is made to the content of the declaration in the wording of the provision in question, and, moreover, such declarations have no legal significance (see Case C-292/89 Antonissen [1991] ECR I-745, paragraph 18, and Joined Cases C-197/94 and C-252/94 Bautiaa and Société Française Maritime [1996] ECR I-505, paragraph 51).

[1996] ECR I-505, odsek 51.[28] V prípade 429/85 Komisia v. Taliansko [1988] ECR 843, ods. 9 súd vyhlásil, že výklad vychádzajúci z deklarácie Rady nemôže dospieť k inému výsledku ako výklad opierajúci sa o doslovné znenie dotknutej smernice.[29] Napokon aj v prípade 237/84 Komisia v. Belgicko [1986] ECR 1247, ods. 17 súd konštatoval, že skutočný zmysel právnych noriem spoločenstva sa dá vyvodiť iba z ich znenia.[30]

Podobne sa v rozsudku súdu prvej inštancie (piatej komory) z 29. novembra 2006 vo veci T 33/02 Britannia Alloys & Chemicals Ltd. v. Komisia konštatuje prednosť doslovného gramatického výkladu.[31] Potvrdzujú to aj rozhodnutia ako C-245/97 Nemecko v. Komisia [2000] ECR I-11261, odsek 72[32] (odkazuje na C-233/96 Dánsko v. Komisia [1988] ECR I-5759, ods. 38),[33] či C-133/00 Bowden a ostatní [2001] ECR I-7031, odseky 38-44.[34]

---

[28] It should be noted in that regard, first, that the French Government was unable to provide any information on the question whether the declaration relied on by it was ever recorded in the minutes of the Council meeting. Moreover, it is settled case-law that declarations recorded in Council minutes in the course of preparatory work leading to the adoption of a directive cannot be used for the purpose of interpreting that directive where no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance (see the judgment in Case C-292/89 Antonissen [1991] ECR I-745, paragraph 18).

[29] It must be observed in this regard that an interpretation based on a declaration by the Council cannot give rise to an interpretation different from that resulting from the actual wording of the fourth indent of article 8 (1) of the Directive.

[30] That argument is irrelevant. The Court has consistently held that the true meaning of rules of community law can be derived only from those rules themselves, having regard to their context. That meaning cannot therefore be affected by such a statement.

[31] It is settled case-law that the literal interpretation method should be used where the text of a provision is clear and unambiguous and clearly covers the situation in question (Case C-245/97 *Germany* v *Commission* [2000] ECR I-11261, paragraph 72, Case C-133/00 *Bowden and Others* [2001] ECR I-7031, paragraphs 38 to 44; Opinion of Advocate General Mayras in Case 67/79 *Fellinger* [1980] ECR 535, at 547).

[32] Nevertheless, it is important to bear in mind that the need to ensure legal certainty means that rules must enable those concerned to know precisely the extent of the obligations which they impose on them. The Commission thus cannot choose, at the time of the clearance of EAGGF accounts, an interpretation which departs from and consequently is not dictated by the normal meaning of the words used (see, to that effect, Case C-233/96 Denmark v Commission [1988] ECR I-5759, paragraph 38).

[33] he first point to be borne in mind here is the need to ensure legal certainty, which means that rules must enable those concerned to know precisely the extent of the obligations which they impose on them (see, to that effect, Case 348/85 Denmark v Commission [1987] ECR 5225, paragraph 19). The Commission thus cannot choose, at the time of the clearance of EAGGF accounts, an interpretation which departs from and is not dictated by the normal meaning of the words used (see, to that effect, Case 349/85 Denmark v Commission [1988] ECR 169, paragraphs 15 and 16).

[34] Pursuant to Article 1(3), the Directive shall apply to all sectors of activity ... with the exception of air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and the activities of doctors in training. It is clear that, by referring to air, rail, road, sea, inland waterway and lake transport, the Community legislature indicated that it was taking account of those sectors of activity as a whole, whereas in the case of other work at sea and the activities of doctors in training it chose to refer precisely to those specific activities as such. Thus, the exclusion of the road transport sector in particular extends to all workers in that sector. Contrary to the appellants' contention, there is nothing in Article 17(2.1)(c)(ii) of the Directive to detract from that interpretation. As the Advocate General observes in point 38 of his Opinion, that provision, whose purpose is not to widen the scope of the Directive as defined by Article 1(3), is specifically concerned with workers who, although employed in ports or airports, do not fall within the sea or air transport sectors in the strict sense, such as catering workers, shop assistants, porters or dockers. Furthermore, the Community legislature was aware of

Zhrnutie

Z viacerých spôsobov využívania historickej argumentácie v praxi slovenských súdov v prípade preskúmania judikatúry Európskeho súdneho dvora nachádzame iba obmedzený počet možností využívania právnej histórie.

Zo spôsobov využívaných v československých podmienkach nachádzame v praxi ESD iba

- objasnenie pôvodu právneho inštitútu v kontexte svetových právnych dejín
- historický kontext právnej úpravy a zaradenie právnej normy do súvislostí jej kreácie
- popretie, resp. spochybnenie historického právneho inštitútu, resp. právneho výkladu v nových podmienkach a
- jednoduché konštatovanie historického vývoja a formálne deklarovanie využitia historického výkladu bez ďalšieho hodnotiaceho významu.

Historické právo sa tu nevyužíva, rovnako ako ani negatívna historická skúsenosť podčiarkujúca význam dotknutého právneho inštitútu. Reštitučné spory a náprava minulých krívd sú skôr doménou Európskeho súdu pre ľudské práva, ktorému sa v tomto príspevku kvôli obmedzenému rozsahu nevenuje pozornosť. Spôsob argumentácie negatívnou historickou skúsenosťou je zrejme príznačnejší pre špecifické národné skúsenosti štátov strednej a východnej Európy. Zato však v praxi ESD nachádzame navyše ešte inú formu historickej argumentácie, konkrétne vo forme konštatovania nedostatočných informácií k procesu tvorby právnej normy. V zmienenom prípade ide o špecifikum tvorby európskeho práva ako kombinácie národných prvkov a nových úprav.

---

the limits of the protection provided for in 1993, since it considered it appropriate to make clear, in the 16th recital in the preamble to the Directive, that given the specific nature of the work concerned, it may be necessary to adopt separate measures with regard to the organisation of working time in certain sectors or activities which are excluded from the scope of this Directive. The travaux préparatoires for the Directive, to which reference is made in paragraph 35 of this judgment, confirm that, in departing from the Commission's alternative proposals, the Council chose intentionally to exclude from the scope of the Directive all workers in the sectors concerned. Consequently, as indeed is clear from the third recital in the preamble to Directive 2000/34, the amendments made by it to the Directive, in particular as to the scope of the Directive, are not, contrary to the appellants' contention, purely declaratory. It follows that the answer to the questions submitted must be that, on a proper construction of Article 1(3) of the Directive, all workers employed in the road transport sector, including office staff, are excluded from the scope of the Directive.

Vo všeobecnosti sa však judikatúra Európskeho súdneho dvora stavia k historickému výkladu (ale nie k historickej argumentácii) odmietavo, uprednostňujúc doslovný gramatický výklad. Skúmanie okolností prijatia právnej úpravy povoľuje len v prípade, že text právnej normy výslovne odkazuje na niektoré okolnosti alebo materiály z procesu prípravy. Je to v súlade s prevládajúcim názorom, považujúcim historický výklad za nadštandardnú metódu výkladu, ktorá by sa mala používať len keď iné metódy nevedú k žiadnemu jednoznačnému riešeniu, pričom však závery, ku ktorým sa za použitia predmetnej metódy dospeje, by nemali odporovať výsledkom použitia štandardných výkladových metód.[35]

Literatúra:

[1] Boguszak, J., Čapek, J., Gerloch, A.: *Teorie práva*, Praha: EUROLEX Bohemia, 2001, ISBN 80-86432-13-0.

[2] Boguszak, J., Čapek, J., Gerloch, A.: *Teorie práva*, 2. vyd., Praha: ASPI, 2004, ISBN 80-7357-030-0.

[3] Gábriš, T.: Vzťah právnych dejín, histórie a práva a historický výklad ako ich spoločný menovateľ, in: *Acta Facultatis Iuridicae Universitatis Comenianae*, 26, 2009 (v tlači).

[4] Maršálek, P.: O smyslu a limitech použití historického výkladu při aplikaci práva. In: *Problémy interpretace a argumentace v soudobé právní teorii a právní praxi*. Praha: Eurolex Bohemia, 2003, s. 121-139, ISBN 80-86432-12-2.

[5] Ottová, E.: *Teória práva*, Bratislava: VO PraF UK, 2005, s.216, ISBN 80-7160-200-0.

[6] http://curia.europa.eu/

[7] http://eur-lex.europa.eu/sk/index.htm

Kontaktné údaje na autora – email:

Tomáš Gábriš
Katedra právnych dejín
Právnická fakulta
Univerzita Komenského v Bratislave
Šafárikovo nám. 6, 818 05 Bratislava
Slovenská republika
tomas.gabris@flaw.uniba.sk

[35] Maršálek, P.: O smyslu a limitech použití historického výkladu při aplikaci práva, s. 131.