RECOVERY OF REAL ESTATE TAX ARREARS IN THE SLOVAK REPUBLIC

CAKOCI, KARIN – LAZORÍKOVÁ, ELENA*

In the paper, the authors deal with selected methods of recovery of arrears of real estate tax as one of the most important local taxes in Slovakia, which municipalities, as their administrators, are authorized to impose and collect within their territory. The recovery of real estate tax arrears is an important tool for municipalities that serves to obtain missing funds that belong to these municipalities due to the collection of tax imposed by law and to cover gaps in their local budgets. In the paper, the authors give their attention specifically to two ways to recover real estate tax arrears, namely the recovery of arrears conducted by municipalities being tax administrators in tax enforcement proceedings and recovery of arrears in enforcement proceedings conducted by bailiffs.

Introduction

Constitutional Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended (hereinafter referred to as the *"Constitution of the Slovak Republic"*), in its Article 59(1), has established the classification of taxes in the Slovak Republic, according to which taxes are divided between state and local taxes. The Constitution of the Slovak Republic has set out fundamental constitutional framework for the imposition of local taxes in Article 13 in conjunction with Article 59(2), on the basis of which municipalities are empowered to impose and collect local taxes within their territory on the basis of law, being that Act No 582/2004 Coll. The Local Taxes Act, which has entered into force on 1st of November 2004, and regulates the elements of local taxes and essentially brings these taxes *"into the life"*. The Local Taxes Act regulates local taxes in terms of the municipalities' authority to impose and collect local taxes, the individual types of local taxes, the overall legal structure of the individual types of local taxes and the specificities in the administration of local taxes in comparison with Act No 563/2009 Coll. on Tax Administration, as amended (hereinafter referred to as the *"Tax Code")*.

The legal regulation of local taxes is mainly characterised by the facultative nature[1] of the imposition and collection of local taxes by municipalities, which in practice means that municipalities may impose and collect them on the basis of law, but law does not provide for the obligatory imposition of such taxes. In

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doc. JUDr. Karin Cakoci, PhD., Associate Professor, Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Financial Law, Tax Law and Economics, e-mail: karin.cakoci@upjs.sk; https://orcid.org/0000-0003-1862-8798.
Mgr. Elena Lazoríková, internal PhD student, Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Financial Law, Tax Law and Economics, e-mail: elena.lazorikova@student.upjs.sk; https://orcid.org/0009-0000-7984-0763
[1] For more on the characteristics of local taxes, see: BABČÁK, V. *Daňové právo na Slovensku a v EÚ*. Bratislava: Ing. Miroslav Mračko – EPOS, 2019. p. 376.

addition to the nonmandatory character of imposition of payments, being the most important factor in strengthening the position of local self-government bodies in relation to tax obligations, this statement also applies to the determination of certain fundamental elements of taxes, in particular the rate, the establishment of conditions for tax exemptions or reductions, etc. Local tax rates do not have an upper limit (except for the real estate tax, where the upper limit of the tax rate has been set directly by the legislator under the Local Taxes Act). For the land tax the upper limit of the tax rate is set out in § 8 (2)[2], for the tax on buildings in § 12 (2)[3] and for the tax on flats and non-residential premises in a residential building in § 16 (2) of the Local Taxes Act[4] and municipalities themselves decide on the specific tax rate applicable within their territory. The above mentioned creates room to increase and stabilise their own financial resources securing the execution of tasks performed by local self-government bodies; apart from the above-mentioned local taxes, which currently form the system of such payments, municipalities may not impose and collect other payments having local taxes nature; the tax period for most local taxes is the calendar year. This applies to property tax, dog tax, tax on vending machines, tax on non-gambling machines, tax on nuclear installations. It does not apply to the tax on the use of public spaces, the tax on accommodation and the tax on the entry and stay of a motor vehicles within the historic part of the city, for which the tax period is determined by the tax administrator.[5]

Local taxes not only increase the fiscal autonomy of municipalities[6], but also make a significant contribution to the fulfilment of their statutory functions,[7] as well as to the fulfilment of sociery-wide tasks.

[2] Pursuant to Section 8(2) of the Local Taxes Act, the tax administrator is authorised to by a *"generally binding ordinance, according to local conditions in the municipality or in an individual part thereof or in an individual cadastral area, to establish annual tax rates varying for individual groups of land pursuant to Section 6(1). "* d) - forest land, on which there are economic forests, fish ponds and other economically used water areas shall not exceed 10 times the annual land tax rate of 0.25% and the annual land tax rate for land under § 6 (1) (b) - gardens, (c) - built-up areas and courtyards and (e) - building land shall not exceed 5 times the lowest annual land tax rate established by the tax administrator for land under § 6 (1) in the generally binding ordinance.

[3] Also according to § 12 (2) of the Local Taxes Act, the tax administrator is entitled to determine different tax rates for different types of buildings according to § 10 (1). However, the annual construction tax rate so determined for the buildings referred to in Section 10(1) may not exceed 10 times the lowest annual construction tax rate determined by the tax administrator in the ordinance for the buildings referred to in Section 10(1).

[4] According to Section 16 (2) of the Local Taxes Act, *"The annual flat tax rate for a flat or non-residential space under paragraph 1 (this annual tax rate is set at EUR 0.033 per each even started m² of floor area of the flat and non-residential space - authors' note) may be reduced or increased by the tax administrator according to the local conditions in the municipality, its individual part or in the individual cadastral area, with effect from 1 January of the relevant tax period. The flat tax rate per flat so established may not exceed 10 times the lowest annual flat tax rate per flat established in the generally binding ordinance."*

[5] BABČÁK, V. *Dane a daňové právo na Slovensku (teória a legislatíva).* Ružomberok: Ing. Miroslav Mračko – EPOS, 2022. p. 393.

[6] For this see: HULKÓ, G. *Some general thoughts on the relation of public property and municipalities.* In: HULKÓ, G., PATYI, A. (eds.). Public Finances : Administrative Autonomies. Magyarország, Győr: Universitas-Győr Nonprofit Kft., 2012. pp. 151-163.

[7] The basic legal regulation governing the status and powers of municipalities, their basic tasks that municipalities are obliged to perform and much more is laid down by the Act of the National Council of the Slovak Republic No. 369/1990 Coll. on Municipal Establishment, as amended (hereinafter referred to as the *"Municipal Act"*). Pursuant to Article 1(1) of that Act, a municipality is considered to be *"an independent territorial self-government and administrative unit of the Slovak Republic; it brings together persons who have permanent residence on its territory. A municipality is a legal person which, under the conditions laid down by law, manages its own property and its own revenue independently."* According to paragraph 2 of this provision, *"The basic task of a municipality in the exercise of self-government is to take care of the all-round development of its territory and the needs of its*

Municipalities have relatively strong powers conferred on them by the legislator, which enable them to influence the level of local tax revenue and thus also the revenue of their budgets.[8] The question is whether municipalities make sufficient use of the possibilities entrusted to them in order to actually fulfil the constitutional assumption that their needs will be financed primarily from their own revenues, and only secondarily from state subsidies. The Constitutional Court of the Slovak Republic[9] has consistently stated thar in order ro ensure the basic constitutional function of local self-government (independent administration of its own affairs on the territory of a higher territorial unit[10]), it is necessary for municipalities and higher territorial units to have their own property and their own financial resources, since it would be illusory to entrust municipalities and higher territorial units (self-governing regions) with the responsibility for the all-round development of the relevant territorial unit without being able to directly - through the exercise of their powers - realistically influence the amount of their revenues.[11]

However, when collecting taxes, municipalities quite often encounter taxpayers who do not fulfil their tax obligations. The fact that there are taxpayers who refuse to pay the compulsory taxes has significant implications for the functioning of the municipality itself. First and foremost, it is linked to a shortfall in revenue in the relevant budget, i.e. fewer resources are available to ensure the tasks and functions of the municipality at that level. This can negatively affect the level of services provided. Revenue shortfalls therefore undermine the possibilities for the provision of public goods and design and implementation of public policies, but they also have an impact on equity in terms of people's contribution to the generation of public resources. Addressing this problem is also important because non-payment of taxes results in revenue shortfalls in local government budgets and has implications for the behaviour of taxpayers themselves. Taxpayers who pay their taxes may feel that they bear the tax burden, while non-payers benefit from public services in the same way as those who fulfil their obligations. This may be perceived as unfair and may negatively affects future tax-paying behaviour of taxpayers.

Methodology

As part of the methodological procedure, the authors have selected 8 regional cities of the Slovak Republic as the analysed sample, for which they have analysed and compared the total amount of property tax revenues

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inhabitants. Obligations and restrictions may be imposed on a municipality in the exercise of its self-government only by law and by international treaty."

[8] See CAKOCI, K. a K. ČERVENÁ. *Legal Concept of Local Taxes in the Slovak Legal Order.* In: MRKÝVKA, P., GLINIECKA, J., TOMÁŠKOVÁ, E. a kol. (eds.). The Challenges of Local Government Financing in the Light of European Union Regional Policy: conference proceedings. Brno: Masarykova univerzita, 2018. p. 322 and the following.

[9] Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 5/2012 of 22.01.2014.

[10] Higher territorial units are also known in Slovakia as self-governing regions.

[11] ONDROVÁ, J. a M. ÚRADNÍK. *Vybrané aspekty ukladania a vymáhania miestnych daní a poplatkov.* In: Štát a právo 2-3/2022. p. 160. DOI: https://doi.org/10.24040/sap.2022.9.2-3.156-174.

that these cities expected (and assumed) in the years 2020 to 2022 (hereinafter referred to as the "monitored period") in their budgets with the actual amount of these revenues, which became an actual part of the revenue side of the budgets of the regional cities in this monitored period. The result of the analysis and comparison carried out has been evaluated and recorded in the form of graph, using the descriptive method, with the determination of the percentage of the difference in the implementation of the revenue side of the budgets of the regional cities in the period under review, but focusing only on property tax revenue. The authors have also analysed the amount of property tax arrears for the regional cities of the Slovak Republic for each year in the period under review. Using standard scientific methods of analysis, comparison and description, the authors have evaluated the importance of the institute of recovery of real estate tax arrears in the Slovak Republic and identified possible problems faced by municipalities in the use of this instrument in practice.

Legal basis for the imposition and collection of property tax

In the Slovak Republic, the real estate tax is within the tax system classified as a local tax. The real estate tax is imposed by municipalities within their territory by a sub-legislative legal regulation, which is a general binding ordinance (hereinafter referred to as the *"GBO"*).[12] The real estate tax is characterised by the fact that, according to Section 4 of the Local Taxes Act, it is divided into:

- land tax,
- tax on buildings and
- tax on flats and non-residential premises in a residential building (hereinafter referred to as *"flat tax"*).[13]

[12] According to the current legal order of the Slovak Republic, the GBOs as sub-legislative legal regulations must be in accordance with legal regulations of higher legal force, namely with the Constitution of the Slovak Republic, constitutional laws, international treaties (which take priority over the laws) and with the laws.

[13] In the legal system of the Czech Republic, the real estate tax is regulated in a separate legal regulation, namely Act No. 338/1992 Coll. on the tax on immovable property as amended by later regulations (hereinafter referred to as the *"Act of the Czech Republic on the tax on immovable property"*). In contrast to the Slovak legislation, the real estate tax under Section 1(1) of the Czech Act on the tax on immovable property consists only of the tax on land and the tax on buildings and units. In connection with the above, Radvan points out that Slovakia is the only EU country where the tax on flats is regulated separately under the real estate tax, which means easier orientation in the law for the taxpayer, in contrast to the Czech legislation, where the tax on flats is regulated under the tax on buildings and units. In: RADVAN, M. *Zdanění majetku v Evropě*. 1. vydání. Praha: C. H. Beck, 2007. p. 87.

The property tax is undoubtedly the most important local tax, especially in terms of budgetary importance,[14] although this tax, or local taxes in general, are not among the most important sources of municipal revenue.[15] This is also apparent from the document entitled *"Final accounts of the municipality"*, the draft of which municipalities are obliged to draw up, submit to the municipal council for approval and publish on their website.[16] In the Annual Accounts, the municipalities indicate the total amount of tax revenue and the amount of tax revenue broken down by type of tax which, in a particular calendar year. In this document, municipalities also assess the current state of the amount of tax revenue achieved in a particular calendar year with that of previous calendar years.

Tab. 1: Overview of properry tax revenues in regional cities of the Slovak Republic for the years 2020 to 2022

Regional cities in the Slovak Republic		2020 (€)		2021 (€)		2022 (€)	
		Budgeted	Actual	Budgeted	Actual	Budgeted	Actual
1.	Bratislava	47.000.000	**46.417.624**	47.653.437	**46.774.037**	48.750.000	**47.562.530**
2.	Trnava	11.000.000	11.177.733	11.000.000	11.800.710	11.000.000	12.253.830
3.	Trenčín	7.300.000	7.798.112	7.600.000	8.422.257	7.995.230	8.365.654
4.	Nitra	11.421.000	11.793.964	11.505.000	12.474.727	12.446.000	13.101.690
5.	Žilina	11.371.000	11.589.178	11.890.000	**11.475.953**	11.890.000	12.045.840
6.	Banská Bystrica	9.323.195	9.323.226	8.859.500	9.375.845	9.042.078	9.762.662
7.	Košice	25.750.000	26.556.596	38.226.000	**38.189.014**	33.000.000	33.399.315
8.	Prešov	7.405.000	**7.283.256**	7.600.000	8.006.971	7.480.000	7.870.266

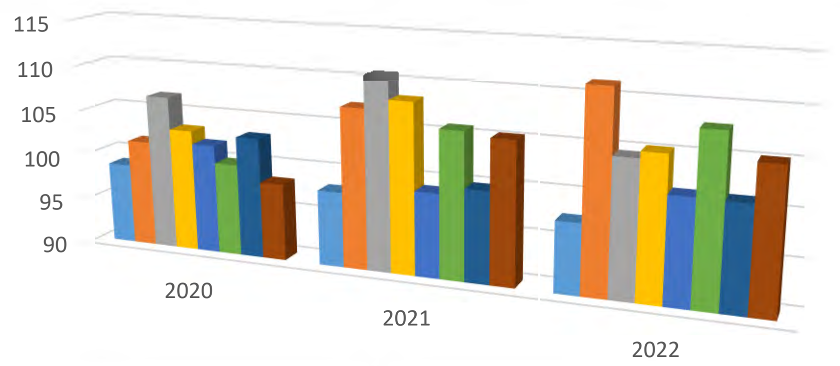
Source: Final accounts of regional cities

[14] A similar view is also held by VARTAŠOVÁ, A. and ČERVENÁm K. in their paper: *Real Property Tax in the Countries of Visegrad Group – Comparative View*. In: Studia Iuridica Lublinensia, 31(1). Poland, Lublin: Wydawnictwo UMCS, 2022. p. 191-211. DOI: https://doi.org/10.17951/sil.2022.31.1.191-211.
See also: BALÁŽOVÁ, E., PAPCUNOVÁ, V. a J. TEJ, 2016. Dopad fiškálnej decentralizácie na výnos z dane z nehnuteľností na úrovni miestnej samosprávy SR. In: KLÍMOVÁ, V. a V. ŽÍTEK, (eds.), XIX. Mezinárodní kolokvium o regionálních vědách. Brno: Masaryk University, p. 891-898.

[15] Currently, the most significant source of revenue for municipal budgets in the Slovak Republic is the personal income tax, also referred to as the share tax. Section 2 of Act No. 564/2004 Coll. on the budgetary determination of income tax revenue for local self-government and on amendments and supplements to certain acts, as amended, stipulates that *"The tax revenue in the relevant budget year is the revenue of municipal budgets in the amount of 70.0%, unless Section 7c provides otherwise."*
This is also pointed out by VARTAŠOVÁ, A. in her paper: *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky*. In: LIPTÁKOVÁ, K. (ed.). Miestne dane v krajinách Vyšehradskej štvorky. Zborník vedeckých prác. Praha: Leges, 2021. p. 127-186.

[16] The obligation of the municipality to process the data on budgetary management in aggregate in the final account of the municipality after the end of the financial year results from Section 16 of Act No. 583/2004 Coll. on budgetary rules of local self-government and on amendments and supplements to certain acts, as amended by later regulations.
Municipalities are obliged to publish data on the approved budget for the current financial year, data on the expected reality of the current financial year and data on the actual implementation of the budget for the previous two financial years within 30 days after the approval of the budget and within 60 days after the end of the financial year. This obligation is imposed on municipalities by Article 9 of Constitutional Act No 493/2011 Coll. on Budgetary Responsibility, as amended.

Graph 1: Overview of property tax revenues in the regional cities of the Slovak Republic for the years 2020 to 2022 - implementation in %



	2020	2021	2022
Bratislava	98,8	98,15	97,6
Trnava	101,6	107,3	111,4
Trenčín	106,8	110,8	104,6
Nitra	103,3	108,4	105,3
Žilina	101,9	99,1	101,3
Banská Bystrica	100	105,83	107,97
Košice	103,1	99,9	101,2
Prešov	98,36	105,35	105,22

Source: Final accounts of regional cities

Assessing comprehensively the situation in the regional cities of the Slovak Republic as a selected sample of cities from the data published in their Annual Accounts, we could concluded that half (50%) of these cities had a higher property tax revenue in the period under review than they had originally budgeted.

For the year 2020, we found that two regional cities (Bratislava and Prešov) had a higher expected revenue than the actual one, and for the year 2021, three regional cities (Bratislava, Žilina and Košice) had a higher expected revenue. The lower actual property tax revenue for these regional cities in 2020 and 2021 could also be due to the adverse consequences related to the outbreak of the Covid-19 pandemic (e.g. related to the closure of various establishments, loss of employment of taxpayers due to their insolvency, etc.). A surprising result was observed for the regional City of Bratislava, capital of the Slovak Republic, which did not achieve a higher actual property tax revenue in 2022 than originally projected. The actual property tax revenue for the City of Bratislava was on average 0.5% lower each year.

Determination of tax arrears or arrears of real estate tax

The concept of tax arrears is not defined by the Local Taxes Act, but by a basic procedural rule of tax law, namely the Tax Code in Section 2(f), according to which, for the purposes of this Act, a tax arrears means *"the amount of tax payable after the due date for payment of the tax"*. A tax arrears or real estate tax arrears arise if the taxpayer, as the person liable to pay real estate tax, fails to voluntarily and fully fulfil the tax obligation within the due date, i.e. within 15 days from the date of the final decision on the real estate tax assessment.[17] The tax administrator is entitled to additionally call upon the taxpayer to pay the real estate tax arrears within a period not shorter than 15 days, while in the call he is obliged to inform the taxpayer of the consequences of non-payment of the arrears.[18] It follows from the foregoing that a prerequisite for the successful recovery of real estare rax arrears is the existence of an eligible enforcemenr order, which, pursuanr to Article 89(1)(a) and (b) of the Tax Code, is an enforceable decision imposing a monetary payment or an enforceable tax arrears statement.[19] The Constitutinal Court of the Slovak Republic on the nature of the statement of tax arrears has stated as follows[20]: *"The statement of tax arrears cannot be considered as a decision imposing a new tax obligation on the taxpayer and, although it is an enforcement title, the statement of tax arrears has a declaratory character reflecting data from the tax records."* The Constitutional Court of the Slovak Republic has further emphasised in its reasoning that *"the statement of arrears does not affect in any way the fact that the tax liability has already arisen and the tax has become payable directly on the basis of the law by fulfilling the conditions set out therein. Thus, neither the creation of the tax liability nor the payment of the levy was a prerequisite for the issue of a decision by the tax authorities."*

Disclosure of the list of tax debtors on the official board or on the website of the municipality, being tax administrator, pursuant to Section 52(2) of the Tax Code can be considered as a certain instrument of forcing taxpayers to fulfil their tax obligations and at the same time a specific supplementary instrument of the tax administrator in the recovery of arrears of real estate tax. The Tax Code gives municipalities as tax administrators the possibility to *"publish a list of tax debtors whose aggregate amount of tax arrears at 31st December of the preceding year exceeded EUR 160 for a natural person and EUR 1 600 for a legal person."*[21]

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[17] The decision on the assessment of the real estate tax pursuant to Section 72(3) of the Tax Code shall become final upon the expiry of 30 days from the date of its proper delivery to the particular taxpayer.

[18] The institute of a call for payment of tax arrears is regulated by the Tax Code in § 80. The Tax Code leaves it to the discretion of the tax administrator whether or not to make use of this institute. That is to say, it is an authorisation, not an obligation, of the tax administrator to send calls for payment to tax debtors.

[19] Pursuant to Section 89(3) of the Tax Code, the statement of tax arrears is enforceable on the date of its preparation, while the municipality as the tax administrator does not notify the tax debtor of its preparation or of its enforceability.

[20] Ruling of the Constitutional Court of the Slovak Republic Case No. PL. ÚS 18/2018-40 of 08.09.2021.

[21] For the content of the list of tax debtors, see Section 52(3) of the Tax Code.

If real estate tax arrears are incurred, the municipality being tax administrator can initiate the so-called forced payment of the real estate tax arrears in two alternative ways under two separate legal regulations. The municipality being tax administrator may in the Slovak Republic:

1. to carry out in its own jurisdiction tax execution proceedings under Title IV of the Tax Code;[22] or
2. to bring an action before competent court[23] for execution pursuant to Act No. 233/1995 Coll. on Bailiffs and Enforcement Activities (the Enforcement Code) and on Amendments and Supplements to Other Acts, as further amended (hereinafter referred to as the *"Enforcement Code"*).

The execution shall be carried out by a bailiff who is authorised by the court to carry out such execution.[24]

It is important to note that municipalities, being tax administrators, can recover real estate tax arrears within the time limit. Tax Code sets out under Section 85 two different time limits within of which tax administrator may rightfully recover the tax arrears, namely the statute of limitations and the expiry of the right to recover the tax arrears.[25]

Tab. 2: Amount of property tax arrears in regional cities of the Slovak Republic in 2020-2022

Regional cities in the Slovak Republic		Amount as at 31.12.2020 (€)		Amount as at 31.12.2021 (€)		Amount as at 31.12.2022 (€)	
		Extinct/ Forgiven	Recorded excluding valuation allowances	Extinct/ Forgiven	Recorded excluding valuation allowances	Extinct/ Forgiven	Recorded excluding valuation allowances
1.	Bratislava	-	2.541.251,2	-	2.364.672	-	-

[22] Section 88(1) of the Tax Code defines tax enforcement proceedings as *"proceedings in which the tax administrator ex officio recovers tax arrears, other pecuniary charges imposed by a decision, enforcement costs and out-of-pocket expenses pursuant to Section 149".*

[23] According to § 49 of the Enforcement Code, only the Banská Bystrica District Court is causally competent for enforcement proceedings.

[24] The Tax Code directly in the provisions of § 88 (2) gives the municipality as a tax administrator, unlike the tax office or customs office, the possibility to ensure the recovery of tax arrears also according to a special regulation, which in this case is the Enforcement Code.

[25] In the case of limitation of the right to recover the arrears of real estate tax under Section 85(1) and (3) of the Tax Code, the following shall apply: *"(1) The right to recover the tax arrears shall be time-barred after six years after the end of the calendar year in which the tax arrears arose, unless a special regulation* (Authors' note: the specific regulation referred to in the Tax Code is the Act No 7/2005 Coll. on Bankruptcy and Restructuring and on Amendments and Additions to Certain Acts, as amended) *does not provide otherwise. If the tax administrator delivers a summons to the tax subject within the period under the first sentence pursuant to Section 80, a new limitation period shall begin to run after the end of the calendar year in which the summons was delivered. ... (3) The tax administrator shall only take into account the statute of limitations if the tax debtor raises an objection to the statute of limitations, and only to the extent of the objection raised. The lodging of an objection shall have suspensive effect. The decision on the objection may not be appealed by the tax debtor."*

The extinction of the right to enforce the real estate tax arrears is subject to the provision of Article 85(3) of the Tax Code, according to which: *"The right to recover a tax arrearage shall expire 20 years after the end of the calendar year in which the tax arrearage was incurred."*

2.	Trnava	-	2.564.177,52	-	2.615.093,55	-	2.464.184,87
3.	Trenčín	-	1.286.937,64	-	1 210 449,84	-	1.187.382,71
4.	Nitra	-	3.705.455,52	-	3.681.656,50	-	3.437.552,87
5.	Žilina	3.293,35	2.304.237,76	440.712,81	2.171.439,11	54.226,11	1.742.062,80
6.	Banská Bystrica	-	1.694.067,43	-	1.756.811,16	-	1.462.287,12
7.	Košice	-	-	-	-	-	-
8.	Prešov	-	1.215.067,55	-	863.326,36	-	727.391,04

Source: Final accounts of regional cities

As regards to the status of the amount of real estate tax arrears in the individual years of the period under review, all regional cities, but one (the City of Košice), have made reports in their Annual accounts in accordance with Section 16(5) of Act No 583/2004 Coll. on the Financial Rules of Local Self-Government and on Amendments and Additions to Certain Acts, as amended by later regulations. The City of Košice hasn´t disclosed the specific amount or status of its real estate tax arrears for any year in the period under review, and the City of Bratislava hasn´t disclosed the amount of these arrears in its Annual accounts for 2022. The City of Žilina, on the other hand, was the only one in the group of analysed that have regularly published the amount of extinguished and forgiven real estate tax arrears during the period under review.[26] For half of the regional cities (Trenčín, Nitra, Žilina and partly for 2020 and 2021 also the city of Bratislava), the balance of real estate tax arrears has been decreasing each year, which is most likely due to the effective use of the instrument of recovery of real estate tax arrears.

Tab. 3: Overview of the methods of recovery of real estate tax arrears in the regional cities of the Slovak Republic

	Regional cities in the Slovak Republic	Tax enforcement proceedings (claims recovered by municipalities as tax administrators)	Enforcement proceedings (arrears recovered by bailiffs)	Generally mentioned *"enforcement proceedings"*
1.	Bratislava	-	-	✓
2.	Trnava	-	✓	-
3.	Trenčín	-	✓	-

[26] The institute of remission of tax arrears is regulated in Section 70 of the Tax Code. The essence of this institute lies in the fact that the tax administrator may, at the request of the tax debtor, who is a natural person, forgive the tax arrears if their recovery would seriously endanger the maintenance of the tax debtor or persons dependent on his/her maintenance.
The facts causing the extinction of a tax arrear (in our case a real estate tax arrear) ex lege or on the basis of a decision of the competent tax administrator are regulated by Section 84 of the Tax Code.

	Regional cities in the Slovak Republic	Tax enforcement proceedings (claims recovered by municipalities as tax administrators)	Enforcement proceedings (arrears recovered by bailiffs)	Generally mentioned "*enforcement proceedings*"
4.	Nitra	-	-	✓
5.	Žilina	-	-	✓
6.	Banská Bystrica	✓	-	-
7.	Košice	-	-	✓
8.	Prešov	✓	-	-

Source: Final accounts of regional cities

An interesting finding is that not all regional cities have reported in their Annual Accounts the specific methods of recovering property tax arrears. The Annual accounts of individual regional cities have showed that only 2 regional cities (Banská Bystrica and Prešov) have recovered real estate tax arrears directly in tax execution proceedings. The other 2 regional cities (Trnava and Trenčín) have stated in their Annual accounts that they have referred to bailiffs for recovery. The remaining four regional cities (Bratislava, Nitra, Žilina, Košice) have mentioned the recovery of the arrears in their Annual Accounts only in general terms with no specific reference whether tax enforcement proceedings or enforcement proceedings under the Enforcement Code have been taken to collect such arrears.

Tax enforcement proceedings under the Tax Code

The municipality as a tax administrator may also recover the real estate tax arrears itself in the so-called tax execution proceedings. The municipality doesn´t proceed conventionally in tax execution proceedings under the Enforcement Code, but under the Tax Code, which regulates the execution proceedings in the fourth title, namely in §§ 88 to 153. In general, the importance of the recovery of arrears of local taxes in tax execution proceedings executed directly by municipalities lies in the fact that municipalities, as tax administrators, have direct control and supervision over the recovery of their own claims arising from non-payment of local taxes. However, not all municipalities recover the arrears themselves, but rather entrust recovery to the bailiff, who follows the procedure under the Execution Code. According to Ulaher, one of the main reasons why municipalities do not make use of this instrument is the fact that "*municipalities usually do not have the necessary professional capacities to conduct such a relatively difficult procedure, so* *they prefer to entrust the whole agenda to a bailiff."*[27] A similar opinion follows from the statement of the expert team[28] that prepared a document published on the website of the Association of Towns and Municipalities of Slovakia (hereinafter referred to as *"ATMS"*)[29] under the title *"Local taxes and fees as a tool to improve the quality of life of residents of towns and municipalities"*[30] for 2022 (hereinafter referred to as *"ATMS document for 2022"*), with the following additional reasons, for which in particular the smaller municipalities[31] prefer to recover arrears through the bailiff, they also cite *"the reluctance of the city/municipality's statutory body to instruct the responsible official to initiate tax enforcement proceedings due to the unpopularity of this step or the close connection to the debtor (especially in smaller municipalities)."*

In our opinion, another reason why municipalities do not provide for the recovery of arrears in tax enforcement proceedings is the desire to avoid further "unnecessary" administrative burden, possible ignorance of the use or uncertainty of the proper execution of procedure.

It cannot be ruled out that in order to avoid the execution of procedure aimed at the recovery of tax arrears by the municipality, the employees of the municipal offices in charge of the tax agenda and the recovery of tax arrears perform only formal acts, such as sending reminders for unpaid tax or calling for additional payment of property tax[32] or writing off overdue debts from the accounts without the consent of the competent municipal authorities.

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[27] ULAHER, J. *Vymáhanie daňových nedoplatkov na miestnych daniach.* 2020. Available at: https://www.vssr.sk/clanok-z-titulky/vymahanie-danovych-nedoplatkov-na-miestnych-daniach-2020.htm. (cit. 15.01.2024).

[28] The members of the expert team of the social partner ATMS, which developed the above mentioned document are Ing. M. Kulka as an expert guarantor, Ing. L. Adamovič as the ZMOS coordinator, Ing. I. Ištoková, PhDr. S. Karabinoš and Ing. J. Marušinec.

[29] The Association of Towns and Municipalities of Slovakia is the largest non-governmental organization uniting, representing and representing towns, municipalities and urban districts in the Slovak Republic as legal entities. ATMS was founded to defend common legitimate interests and promote the needs of its members, which are the cities, municipalities and urban districts of Bratislava and Košice, which also means that its role is not to intervene in the solution of individual problems of individual member cities and municipalities. Available at: https://www.zmos.sk/zmos.html.

[30] The above document has been prepared within the framework of the main activity *"Strengthening the professional and analytical capacities of social partners, building infrastructure and communication platform for social dialogue and development of social partnership at national and international level"* part of the National Project entitled *"Supporting the quality of social dialogue"*, ITMS project: 312031V749, and specifically under activity No.1.1 Strengthening the capacities of social partners through analytical activities. The document was developed through the analytical work of the expert team of the social partner ATMS in 2022.
Hereinafter, the reference to that document will be in the form: KUĽKA, M. a kol. *Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí.* 2022. [online]. p. 134. Dostupné na: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 20.01.2024).

[31] According to the Municipal Act, the status of a town is granted to a municipality that meets several conditions set out in Section 22(1) of the Act. Such a municipality should have the character of an *"urban"* development and should provide various services within its territory, e.g. transport, cultural, social, etc., for other municipalities and should have at least 5 000 inhabitants. However, Section 22(2) of the Act allows for a municipality that does not meet the population requirement to be declared a town if this is justified by the fulfilment of the other conditions set out in paragraph 1.

[32] The aforementioned finding is also evident from the document prepared by the Supreme Audit Office of the Slovak Republic (hereinafter referred to as *"SAO"*) entitled *"Report on the result of the audit 2022 - Recovery of arrears in local government"*, in which the SAO stated that *"municipalities in the recovery of receivables and arrears mainly apply the sending of summonses, while other acts - the establishment of a lien, the use of execution - were applied to a much lesser extent. One of the reasons for this is the structure of tax arrears in terms of amount, as 81 % of the number of tax arrears is in the low amount of up to EUR 20 or up to EUR 160"*.

If the municipality as a tax administrator chooses to carry out tax enforcement proceedings independently, it is obliged to proceed and carry out actions exclusively in accordance with the Tax Code during the entire course of the proceedings. According to Babčák, the Tax Code does not directly define the principles according to which tax enforcement proceedings should be conducted, but its wording nevertheless indirectly defines the existence of a number of principles which can be considered as principles of tax enforcement proceedings. Among these principles we can identified e.g. the exclusive authority of the tax administrator to recover tax arrears by one of the methods of tax execution according to the Tax Code, the initiation of tax execution proceedings by the tax administrator exclusively ex officio, or the obligation of the tax administrator to investigate, whether it is locally competent for tax execution proceedings and whether all conditions for the execution of tax execution are met, such as the jurisdiction of the tax administrator, the legitimacy of tax execution, verification of the existence of an execution title, the unalterability of the person of the tax debtor, etc.[33]

According to the Tax Code, the municipality as a tax administrator has the possibility to execute a tax execution[34] for the purpose of recovery of arrears of real estate tax in 9 ways in total, namely:

a) deduction from wages and other income,
b) garnishee order,
c) sale of movable property,
d) taking of cash and other non-saleable items,
e) sale of securities,
f) sale of immovable property,
g) sale of a business or part of a business,
h) disposal of property rights attached to a shareholder's interest in a company; and
i) the seizure of a driving licence.[35]

However, the Tax Code allows the tax administrator to execute a tax execution in the manner it determines, and it may execute a tax execution on one tax debtor in several ways at the same time, provided that this Act does not provide otherwise.[36]

[33] For more on the principles of tax enforcement proceedings, see: BABČÁK, V. *Dane a daňové právo na Slovensku (teória a legislatíva)*. Ružomberok: Ing. Miroslav Mračko – EPOS, 2022. p. 748 and the following.
[34] Section 94 of the Tax Code defines tax enforcement as *"compulsory execution to enforce payment of tax arrears or reduction of tax arrears, payment of other pecuniary benefits imposed by a decision and payment of enforcement costs and out-of-pocket expenses in the manner provided for in Section 98."*
[35] Section 98(1) of the Tax Code.
[36] Section 98(2) of the Tax Code.

It follows from the above that the actual method of recovery of real estate tax arrears is fully within the competence of municipalities as tax administrators, which, however, must be locally competent to carry out the tax execution, while it is up to the decision of municipal self-government bodies (the mayor of the municipality and the municipal council), to what extent they will be dedicated to the recovery of arrears and whether they will use all the tools that the Local Tax Act and the Tax Code allow in the case of initiation of a tax execution procedure. However, the 2022 Local Tax Code document shows that municipalities do not use all the tools offered by the Tax Code and most municipalities use only one of them, namely tax execution by deduction from wages pursuant to Section 100 et seq. of the Tax Code.[37]

Enforcement proceedings under the Enforcement Code

If the municipality as administrator for various reasons refuses to carry out a tax execution in its own jurisdiction under the Tax Code, it is entitled to file a petition for execution at the District Court in Banská Bystrica and the execution will subsequently be carried out by a court-appointed bailiff in accordance with the Enforcement Code.

Since municipalities as public authorities are obliged under Section 11 of Act No.305/2013 Coll. on the electronic form of exercising the powers of public authorities and on amendments and supplements to certain acts (the e-Government Act), as amended (hereinafter referred to as the *"e-Government Act"*), to have established and activated electronic mailboxes, they can also file such a motion themselves by electronic means to the electronic mailbox of the Banská Bystrica District Court (hereinafter referred to as the *"Execution Court"*), through an electronic form.[38] Despite the above, the municipality has the possibility to file a motion for execution also through an attorney as its legal representative or, for example, through any bailiff.[39]

It is necessary that the application for execution is authorised by a qualified electronic signature pursuant to Section 23 of the e-Government Act. A copy of the writ of execution together with a confirmation of its enforceability pursuant to Section 48(4)(a) of the Enforcement code must be attached to the application for execution and filed together with the application for execution by electronic means in the court's electronic repository. The instrument permitting enforcement shall be attached to the application for enforcement as an original electronic document which has been authorised.[40]

[37] KUĽKA, M. a kol. Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí. 2022. [online]. p. 134. Abailable at: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 25.01.2024).

[38] Pursuant to Section 48(7) of the Enforcement Code, the electronic form for filing a petition for execution is published on the website of the Ministry of Justice of the Slovak Republic.

[39] Section 48(3)(c) and (d) in conjunction with paragraph 8 of the Enforcement Code.

[40] Section 48(6) of the Enforcement Code.

After the petition for execution has been filed, the Execution Court shall assign the case to a bailiff, which it shall select at random.[41] The court-appointed bailiff shall, after the commencement of the execution, proceed exclusively in accordance with the Enforcement Code and may execute the enforcement only by one of the methods of execution provided for in Part Four of the Enforcement Code.[42]

Conclusion

In terms of the stated research objective (to evaluate the importance of the institute of recovery of real estate tax arrears in the Slovak Republic and to identify possible problems that municipalities in the Slovak Republic encounter when using this institute in practice, or problems discouraging them to use this institute and thus recover arrears on their own account), we have concluded that the selected group of cities does not attach much importance to the recovery of real estate tax arrears on their own account in tax enforcement proceedings. Considering the reasons outlined in subsection 3 of this paper that discourage municipalities as tax administrators from initiating tax enforcement proceedings, it is evident that municipalities prefer to choose a less complicated but more costly method of recovering their arrears, namely recovery in enforcement proceedings under the Enforcement Code. In general, it can be concluded that the amount of arrears for the selected sample of municipalities, compared to the amount of actual property tax revenue in each year of the period under review, represents a significant component of the revenue shortfall in the budgets of these municipalities.

At the same time, it can be stated that the volume of tax arrears has been increasing or, if there has been a decrease, it has been mainly related to the write-off of tax arrears due to the fact that they have become irrecoverable directly by law. In addition to using the institute of recovery of real estate tax arrears in the form of tax enforcement proceedings under the Tax Code or enforcement proceedings under the Enforcement Code, municipalities may also recover real estate tax arrears in other (milder or less invasive) ways. In particular, if the tax debtor is an insolvent natural person, or if several earlier enforcement

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[41] Section 55(1) of the Enforcement Code.

[42] The specific methods of execution are listed in Section 63(1) of the Enforcement Code, according to which: *"If the basis for the execution is an enforcement order imposing an obligation to pay a sum of money, the execution may be carried out*

a) deductions from wages and other income,

b) garnishee order,

c) sale of movable property,

d) sale of securities,

e) sale of immovable property,

f) sale of a business. "

At the same time, Section 63(3) of the Enforcement Code provides for a restriction in relation to the execution by sale of the real estate in which the debtor has a declared permanent residence or temporary residence. According to that provision, if the execution is for the recovery of a monetary claim, which, excluding accessories, does not exceed EUR 2 000 as of the date of delivery of the petition for execution (so-called petty executions), the court-appointed bailiff may not execute the execution by sale of that real estate.

proceedings are conducted on the property of this person, the municipality as a tax administrator may enter into an employment relationship with this debtor, whereby this debtor will gain the ability to pay his/her arrears. This procedure enables municipalities to reduce their real estate tax arrears.

Another of our recommendations for the successful recovery of property tax arrears is the development of an internal regulation of the municipality, in order to ensure a uniform procedure for the recovery of arrears of local taxes, to increase the efficiency of the collection of local taxes and fees, to reduce the costs of tax debtors to settle their arrears and to reduce the total arrears of local taxes. The above recommendation also follows from the 2022 ATMS document, which also mentions as a recommendation for the successful recovery of local tax arrears the provision of increasing the expertise of municipal staff in the field of local taxes and fees and encouraging them to improve the quality of their work, which could also lead to an increase in revenue for municipal budgets.[43]

It is important for municipalities to be aware of one fundamental fact that the costs of enforcement proceedings conducted by a bailiff under the Enforcement Code are much higher than the costs they would incur if they conducted tax enforcement proceedings on their own.

[43] KUĽKA, M. a kol. Miestne dane a poplatky ako nástroj na skvalitnenie života obyvateľov miest a obcí. 2022. [online]. p. 155. Available at: https://www.zmos.sk/miestne-dane-a-poplatky-ako-nastroj-na-skvalitnenie-zivota-obyvatelov-miest-a-obci-oznam/mid/419520/.html. (cit. 26.01.2024)