

INSTITUTIONAL PRE-UNDERSTANDING IN THE ADMINISTRATIVE DECISION-MAKING PROCESS

LUKÁŠ HLOUCH

Katedra právní teorie

Právnická fakulta Masarykovy univerzity v Brně

Recenzentka: Tatiana Machalová

Key words

administrative body, pre-understanding, decision-making process, preknowledge, directive idea, interpretation, official interpretation, instructions, hard cases, legal hermeneutics.

Resumé

This article deals with a theoretical analysis of the subjective structures of legal understanding in the administrative decision making process. Ideas forming the grounds of this article are also the essential premises of author's doctoral thesis, the topic of which has been "Theory and Reality of Legal Interpretation".

The article intends to introduce a close connection between legal hermeneutic and neo-institutional theories and administrative theory of limits of administration in legal decision making process. Preunderstanding, pre-knowledge and above all dependence of an administrative body are presented as the crucial characteristics of administrative decision-making. Ideas and conceptions of individual theoreticians are presented and creatively analysed in the text. After a theoretical analysis, some practical examples of consequences of these constructions working in interpret's mind are mentioned.

As a result, the ability of solving legal "hard cases" by administrative bodies is critically considered. As another conclusion, the possibility of spreading an incorrect legal conclusion throughout the system of administration in a certain resort is mentioned. The main conclusion of the whole article is that the quality and characteristic features of administrative decision making depends on the hermeneutic structures of pre-understanding and directive ideas of administrative bodies.

Contact e-mail:

luke.hlouch@centrum.cz