

UNIFICATION OF DECISION-MAKING FROM THE PARTIES' POINT OF VIEW – PROCEEDINGS BEFORE EXTENDED SENATE OF SUPREME ADMINISTRATIVE COURT

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The topic of this article is unification of decision-making of higher courts and the role of parties in these procedures. It is inspired by my author's experience from practice.

In the background of the goal of unification decision-making we can see three values of rule of law. There are: principle of equality, foreseeability and courts' authority.

Conception of unifying of jurisprudence in Czech Republic has been changed in last years. Abstract opinions have been replaced by unifying through decision-making in concrete cases. The interest of unified decision-making is typical of courts. Also at lowers court we can identify procedures which are used for unifying of practice. These procedures are often informal and based more on social relations between judges than on legal norms. The second possibility of harmonizing decision-making is internal procedure running within court behind closed doors. Finally third alternative is represented by open procedures within proceedings of trial. In the next part of article the procedure before extended senate of Supreme Administrative Court, as an example or possibility how to unify decision-making is analyzed.

Proceedings before extended senate is enacted in § 17 SRS (Act about judicial review of administrative acts) which says: *"If senate of Supreme Administrative Court has reached during decision-making the opinion different of another opinion which had already been formulated in former decision of Supreme Administrative Court, then senate would remit the matter to extended senate. When remitting the senate shall justify its opinion."* From quoted norm we can identify some characteristics of proceedings before extended senate. At first, unification of jurisprudence is realized via decision-making in concrete case. At second, the task of extended senate is to decide the case as such and not only to answer disputed legal question in general. At third, procedure is obligatory so there is a duty of senate to remit the

case to extended senate. At fourth, the procedure is opened for parties, Supreme Administrative Court does not decide behind closed doors.

We can see three dimension of problem:

1. right to initiate proceedings,
2. application of decision in future,
3. revision of decision of extended senate.

There is no right to make proposal to start proceedings before extended senate. On the other hand, when legal conditions fulfilled, senate has to start proceedings so we can speak about the right of individual of access to extended senate. Legal term opinion is often understood as only ratio decidendi. Obiter dictum is from this view not opinion which binds Supreme Administrative Court for future. These conclusions are incorrect in my view. Supreme Administrative Court is bounded by each opinion which has been formulated in its decisions.

In continental legal system the court judgment traditionally has no significance for future. Therefore it is not possible to apply judgment by the same way as the acts of legislator. Reference to judgment is admissible only if the judgment is published and if it provides answers on parties' arguments. If this condition is not fulfilled it is necessary to react on these arguments straight in individual judgment of this party and plain reference to the decision of extended senate is insufficient.

I thing that the decision of extended senate can theoretically be overruled because it remains to be a court decision which is not binding in the sense of formal source of law. Therefore Supreme Administrative Court is entitled to overrule its opinion if parties' arguments are so strong that they are evidence that previous opinion of Supreme Administrative Court was incorrect.

In my opinion it would be conductive to fortify the role of parties and attorney in procedure of unification decision-making. Such change would be useful both from subjective point of view (for the purpose of protection of parties' individual rights) and the objective one, because decision adopted in more open procedure should be more resistant to influence of future cases and parties' arguments used in these cases.

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