PUBLIC ADMINISTRATION IN THE CZECH REPUBLIC

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Soňa Skulová

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Chapter I

PUBLIC ADMINISTRATION

I.1 The term 'administration'. Private administration and public administration

To define the collocation in the heading has been a difficult task since the beginning of its use until the present time. The content of public administration alone is variable as regards time and territory, dependant on the stage of development of society (state, region) to which it refers.

The inclusion of the term "**administration**" in the collocation dealt with indicates that it is a more generic term that determines the term 'public administration' more specifically only with the respective adjective and it differs from the wider content of administration in a general context.

Generally, under the term 'administration' we can imagine an activity that is aimed to care for certain things, affairs. Thus the administering entity usually pays attention to, cares for, is involved, in a way or another, in the existence, prosperity, further development of the administered entity. In other words – it pursues an activity that is targeted, that *follows an aim*, whether its own or set by another entity, either of its own will or as a duty, and in relation to the administered entity it *disposes of the means necessary to achieve* the set aim.

The administered entity should be *protected* by such activity against adverse threats or an action taken by other sectors of society. Apart from this, the purpose of administration is also to administer a particular entity *in favour, in the interest* of a particular individual, group, community.

During this activity, what plays or can play an important role is the *question of the means of power* that the administrating entity has in its relations to other entities, or a power guarantee for the administrating entity provided for its administrative activity, as well as *cases of obligation* of performed administration which in various areas of administration are shown in various ways, or in a variety of combinations. In this view of the term 'administration', an irreplaceable role is played by the regulating system of law that provides a binding basis of solving the indicated questions.

In its widest meaning, administration is usually defined as a purposeful human activity aiming to reach particular purposes, targets.

In relation to the term 'administration', or instead of it, the term **management** is often used. From the view of their contents these terms are not identical and arbitrarily interchangeable.

Management is traditionally defined as a purposeful activity leading to influence the managed entity in conformity with the set aim, independently of the rate of institutionalisation and durability of action.

Administration then represents a specialized management consisting in functional and organizational stabilization and in providing running processes and aims being reached within the limits that are objectively set for it or that arise from its regulatory function. So administration is such a managing activity that shows sign of *stability, institutionalisation and regulation* of the functioning of these units both internally and in relation to their environment.

Administration may be explained as a managing activity concurrently supplemented with a regulatory activity carried out within limited organizational systems. Not only is important its focusing inside, but also outside the administered system, in particular if it has external functions determined.

Administration cannot be applied anywhere and towards anybody, but only can it be applied in stabilized systems and normatively determined relations. With its extent (the possibility of its application) it is a narrower term that management. However, compared to management its content includes also regulation (stabilization element).

Apart from typical managing activities, administration is performed also using activities that aim to ensure that particular processes or already achieved states are not subject to changes.

Administration is thus not only a service or auxiliary activity in relation to the regulating process.

The problem of an unambiguous determinability and sharpness of the border between **private administration** (administration of "private affairs") and **public administration** (administration of "public affairs") is shown as a certain reflection of the relationship between Public Law and Private Law.

To determine the difference between private administration and public administration, most authors use several theories or points of view. These include, in particular, an interest theory and a power theory.

Interest theory says that public administration is performed in public interest while private administration in private interest when it mostly acquires the form of administration of the economic affairs of legal entities and individuals.

Power theory is based on an opinion that public administration bodies are in a superior position to administered entities, which means for them an authority to regulate their legal positions by unilateral legal acts of a power character (in a legal state fully grounded by the legally determined authority and competence of respective administrative entities).

Private administration is thus performed by an administrative entity of its own will and doing this it is governed by its own aims, while public administration is performed by

administrating entities as their duty set to them by a legal norm and they are governed by objective aims of the state or self–governing entities.

So the difference between public administration and private administration is on the one hand in the level to which an administrative body is bound by legal norms and on the other hand in the aim followed by the performance of administration.

Another theory that we can found in some authors in distinguishing Public Law and Private Law is an *organic theory* based on pointing out if a legal entity is in a certain legal relation due to its membership in any of the public alliances (state, self–governing).

It can be added to the difference between private affairs and public affairs that administration cannot be only taken into consideration as a common operator of business affairs, because within the management of its affairs its aim is not usually a profit increment, but fulfilment of the needs and interests of society or its members, or the appropriate administration of public affairs.

As regards private administration the effort to follow private aims is considered legitimate, while public administration should serve public interest and it is considered unethical (if not illegal) if public administration uses its positions for its own profit.

The legal regulation of duties and liabilities of public administration is set by law in more details, and public administration may be subject to criticism or investigation by elected bodies (representatives).

Public administration is constitutionally and legally conditioned and bound. The legislative body has the power to form public administration bodies, to establish their legal authority, to control them, and also to lay basis for control exercised by courts over public administration, as well as to set target values for public administration which may even be in contrast to private aims.

Public administration provides representation for other interest groups and political parties. The case of public administration is to formulate and perform public policy, public interests (including their fulfilment) that are more difficult to assess than in the case of public administration entities' interests.

To summarize what has been mentioned above, public administration as the administration of public affairs is administration in public interest and the entities that exercise it realize it as a duty set by law under authority of their position as public entities. On the other hand, private administration is the administration of private affairs, performed in private interest by private persons following their particular own aims and being governed by their own will.

It must be added that as regards setting their own targets within public administration, it is applied in the sphere of self–government. On the other hand, however, there are, undoubtedly, legal limits that must be observed also in performing private administration.

The border between both branches of administration is not determinable clearly and sharply, if ever it is possible to speak of any border in this context. The above mentioned

may be referred particularly to self–governing bonds in which the border between private and public interest may not be quite clear.

With regard to the character of public administration in a modern state, which is the subject of our close study, it may be stated, with a certain generalization, that blurring the border between private and public administrations will be increasingly more noticeable from the institutional point of view, mostly in the case of self–government with regard to its legal position, tasks, methods and forms of its activity, but outside the sphere of administration also in the rest of public administration in performing its community care functions with a concurrent increase in the importance of public administration aspect as a service.

Public administration is on the one hand an activity governed by legal norms, as it is always embedded in the framework of a legal order, on the other hand it is a clearly purposeful activity focused on achieving the aims of public administration (which are, however, often formulated in the respective legal norms).

So two elements are contained in administration – *legal element*, given by its relation to a legal order, and *purposeful element*, following purposefully reaching a particular aim.

I.2 Public administration in a modern legal state. Public administration reforms.

A growth in public tasks provokes reform processes in public administration. This trend must necessarily face economic and financial limits which bring about tendencies to deregulate public tasks by economic measures in public administration and to modernize it.

This trend in public administration could be seen in the interwar and particularly post–war periods. Nor the public administration in the Czech Republic is spared from similar problems and trends.

Reforms and modernizations of public administration as a whole or their parts (subsystems) may and should the way or means of efforts to eliminate a lack of *quality and effectiveness of public administration* which lies in particular aspects generally forming the standard of public administration.

With regard to different situations in individual states or regions and to different political and legal bases, specific reform assignments and also reform procedures necessarily differ from one another as to the set targets, their contents, and time and formal aspects.

Establishing the necessity of public administration reforms, but also their above–mentioned dissimilarity in various environments is undoubtedly associated with increasing demands of society for the overall quality and effectiveness of particular systems of public administration.

Under the conditions of transition from a totalitarian system to the standards of a democratic legal state, one of the main content parts of reform processes in public administration is, inevitably, the *case of democracy of public administration* and a *change in the attitude towards citizens as the addressees* of public administration competence, including ensuring citizens' participation in the administration of public affairs.

This task is particularly urgent for the specific conditions of post–communist countries because it is the matter of establishment of confidence in the relationship between public administration and citizens.

The basis of this relation should be a qualitatively new, different **concept of public administration as a service**, emphasizing, compared to the previous practice, primarily the public–power concept of public administration. Public administration should act as a public service in performing its functions, aims and tasks in its everyday routine towards administered persons. The service character of state authority is actually emphasized in the Basic Provisions of the Constitution of the Czech Republic (cf. below).

Public administration certainly acts in many cases and areas of its activities as a provider or guarantor of various services at the material level. However, these are not all of its administrative activities.

Public administration provides also services in the field of administrative and organizational performances, in the form of administrative acts, measures and other performances that result from particular administrative procedures, whether or not demanded by addressees (in these cases public interest is usually prevailing).

It is not common to use the term "service" for acts of this type. Equally, the addressees of this type of public administration acting are not preferably "clients", only perhaps in a very abstract meaning.

The traditional classification of public administration by the above–mentioned aspects distinguished a so–called community care administration (connected, in particular, with organizer's function) and a power administration (applying mainly the power–protective function of administration). So the service character of public administration is usually related to the area of the so–called community care administration, to the provision of services in a general or above–indicated real concept.

In modern conditions, it is useful to relate the demand for the concept of *public administration as service* to the entire public administration, including the sphere of the so–called power administration (acting authoritatively as a power). This corresponds to the requirement for including the principle of public administration as "public service" in the group of basic principles of administrative bodies' activities in the new Administrative Procedure Code (Act No. 500/2004 Coll.).

The first reason is the fact that in a legal state founded on democratic principles, the only criterion is not a promptness and quality of a particular service, but also, of the same importance, *how* an individual will be treated, whether they will not be administered with an excessive intensity of interventions in protected private spheres, whether they will be able to affect the content of provided services and the process of providing them or

to participate in it, and whether appropriate guarantees are established in case of an incorrect procedure of public administration.

This requirement is the more important the deeper deficit in democracy and application of the legal state's principles should be eliminated.

For the conditions of public administration in the Czech Republic, the basis for the "service" character of public administration is set in the Constitution, which specifies that "State power serves all citizens" (Art. 2, paragraph 3), and also the cited provision establishes application of this power. To make it complete it is useful to add that the above–mentioned characteristics and requirements for the performance of state power also apply to other spheres of public power that is approved by the state, i.e. the sphere of self–government power.

This constitutional principle is based, in particular, on the basis of this power, which the Constitution characterizes in such a way that "People are the source of all state power, they exercise it through the bodies of legislative, executive and judicial powers". This is, among others, the basis of the democratic principle of public administration that ranks to the principles of Good Governance, and also to the values of the so–called "European legal space", as both terms will be further explained sub IV. 2.

In this respect and the above–mentioned dimensions, the initially questioned designation of the addressee of public administration competence as a "client" seems to be too narrow because it acquires a wider meaning and content.

It is actually public administration, disposing of, unlike private administration, public power that is limited (bound) by law, particularly in relation to individual persons towards whom it acts. The "client" of public administration is at the same time and always the **holder of public entitlements** (some of which are protected by the Constitution), whether as an individual or a legal entity. This is also related to the fact that these entitlements may mean, in terms of their content, not only the right for a particular performance (especially in services of economic or social–cultural characters), but also the right for non–intervention in protected private spheres and also their protection by public administration bodies, as well as in some areas also the right to participate in the administration of public affairs, thus enabling to participate in the decision–making process of public administration.

The origin of the second reason for a wider concept of the service character of public administration then may be found at the level of constitutional regulations, where the *service character of state power* (and derived public power) is established. Out of this it may be construed, and some specific legal regulations further develop this principle, that also if public administration acts in a power and authoritative manner, it actually serves too.

It always protects and follows *public interest* and by limiting an addressee or a group of addressees or by acting against them, it also protects public interests, i.e. interests of other persons, whether individuals or parts of a wider community, concentrated and incorporated in laws.

In such a wide context, that is for all types of public services that public administration provides, the concept of public administration as service must be understood. In this wide context it is appropriate to apply the term or requirements of *Good Governance*, as it has appeared in literature, political documents and more frequently in legal regulations in recent years.

Modern public administration not only cares for, but also guarantees, protects and enables citizens to participate in administration. It is really a considerable but necessary (self–)limitation on the side of public administration system that provides public services. This particular limitation differentiates public administration from private administration, but it also means a fundamental limit for applying common managerial methods in public administration which cannot be used as such against the mentioned limits, but only, if ever, in their services.

The above–mentioned reasons have probably brought, after the period of an initial enthusiasm, a more commonsensible view of the wide application of methods of the so–called "New Public Management" bringing new managerial procedures and methods in the sphere of public administration.

Chapter II

PUBLIC ADMINISTRATION ORGANIZATION

II.1 Organizational principles of public administration

The entities that perform public administration are conferred, by law (in fact it is a large number of various laws from the sphere of administrative law), necessary *powers* (competences and duties) that they may use within their *competence* (the sphere of social relations conferred to them by law), and it is typical of administrative law as a branch of public law that most of these powers are exercised by administrative bodies as their duties.

The specific organizational structure of public administration systems is unique in each state, it is a result of the historical development, traditions, effects of political factors, etc.

However, some **organizational principles** that determine the composition of individual public administration systems may be found, and perhaps preferred and enforced.

First, it is necessary to mention the principle of **decentralisation** that generally means delegating the decision–making authority to entities different from the state – basically to self–governing parts of public administration. They are derived from the state and the range of their powers and competences is determined by the state in the form of laws. Naturally, the specific degree of decentralisation may be different.

Unlike the above–mentioned decentralisation of power (authority) it is possible to differentiate decentralisation of activities where the decision–making authority remains on the central body. In administrative systems such a solution is usually called (the principle of) **deconcentration** which is shown in practice in the field of a stepwise, hierarchically structured state administration among whose single steps the decentralised activities are distributed.

In a particular composition of public administration, these principles are projected into *territorial and departmental* **organizational and technical systems or principles.**

The territorial principle means determining the territorial competence of individual administrative bodies (we distinguish national, regional and local competences). **The departmental principle** determines the material content of administrative bodies' competence (it may be general or, more frequently, materially specialized in a particular sphere, branch of public administration). Territorial and departmental aspects may appear in various combinations and differently for the sphere of public administration and for (particularly territorial) self–government.

Other principles – systems determine the method of administrative bodies' decision–making (it is either a **monocratic principle** – a single person makes a decision, or a **collegial principle** – a board of persons makes a decision by voting), or the method of formation – establishment of administrative bodies (an **appointing** system, more typical of state administration, or an **electoral** system, applied primarily in the sphere of self–government).

II.2 Public administration organization in the Czech Republic

The organizational structure of the public administration system in the Czech Republic is based on the constitutional regulation supplemented with a number of legal regulations.

We distinguish several groups – subsystems of public administration. These include central public administration bodies, specialized territorially deconcentrated public administration bodies as a lower level of state administration, territorial administration (currently only self–government) with a general competence, and the sphere of interest and professional self–government.

– Central state administration bodies.

The organization of *ministries and other central state administration bodies* is determined in the Competency Act (Act No. 2/1969 Coll., as amended), in which, apart from a full list of all above–mentioned bodies, the material competence of individual ministries is specified. As regards determining the competence of the other central bodies (e.g. Czech Statistical Office, Czech Office for Surveying, Mapping and Cadastre, National Security Authority, and others), it can be found in special laws regulating the performance of state administration in individual sectors.

The task of these central bodies is processing the development conceptions of particular sectors, acting as coordinators, preparing bills, negotiating with EU authorities, and other activities. Along with other activities, the ministerial offices control methodically subordinate entities performing state administration in the given sectors.

The management, control and unification of the central administrative bodies' activities is the task of the **Czech Republic Government**. Its activity is executed by the *Office of the Czech Republic Government*. The government establishes a *legislative board* as its advisory body, which is chaired by Deputy Prime Minister.

Some *special offices*, usually subordinate to a central office, have been constituted within the competence of some central administrative bodies (e.g. Czech School Inspection subordinate to the Ministry of Education, Youth and Sport, or Czech Energy Inspection,

Czech Trade Inspection, Assay Office and Licence Office subordinate to the Ministry of Industry and Trade).

– **Territorially deconcentrated – specialized state administration bodies.**

As mentioned above, this is a lower, deconcentrated (derived from a central office) level of state administration performed by administrative bodies with a materially determined competence. The basis of their competence may be always found in respective special laws.

The territorial competence of these offices is neither unified nor does it follow the territorial division of the state (regions, districts), and not all levels are applied in individual sectors. In some sectors they are only at a single level of territorial competence (e.g. labour offices or district social security offices, or district mining offices with a quite specifically established territorial competence), in others they are at two levels (e.g. land–registry offices for districts and surveying and cadastral inspectorates on the territory of regions, or a similar structure of territorial competence at the Police of the Czech Republic, in which a third level can be found as district departments).

– **Territorial administration with general competence.**

Until recently it was represented by both state administration bodies and territorial self–government entities. However, after the district offices were cancelled by the end of 2002, it is only formed by **regions** and **communities**, that is by upper (regions) and basic (communities) territorial self–governing units.

Territorially self–governing units are established in Chapter VII. of the Constitution, and the regulation of their organization and activity is contained in the law on communities and in the law on regions. After many years' interruption, the existence of communities was restored in 1990 by the first law on communities, or specifically by the first municipal elections in the autumn of that year. In 2000, a new law on communities was adopted, already within the territorial administration reform that brought the fulfilment of the second level of territorial self–government – regions – by adopting the law on regions. The first regional elections took place in the autumn of 2000.

As their names indicate, regions and communities as territorial self–governing units are primarily a sign of the decentralisation principle and enforcement of territorial self–government as an important element of territorial administration. In this way, among others, the Czech Republic responded to the requirements of the Local Self–Government Charter (a treaty based on the European Council), to which it acceded, and indirectly to the regional policy of the European Union, where the existence of this element of territorial self–government is presumed.

Both communities and regions are administered independently by their boards of representatives that are elected by the citizens of a community or region. The board of representatives is the supreme body in the field of the so–called *independent competence* of communities and regions (with its content and character it is the performance of territorial self–government). The board of representatives elects the municipal or regional council as the executive body for the sphere of independent competence, and also the mayor (lord mayor) of a community or the president of a region who represent their territorial self–governing unit outwards. Another body of the board of representatives is boards as its initiative and control bodies. (Financial boards and control boards, and at the level of regions also education and employment boards are always established. In areas with a higher percentage of national minorities, boards for national minorities are established.).

The content of independent competence is the development of territorial self–governing units and satisfaction of their citizens' needs.

Self–government is based on a *personal basis*, represented by the work of a community's or region's citizens, on an *economic basis*, since territorial self–governing units manage their property independently (they are legal entities – public corporations), and also on a *territorial basis* which is shown by their self–governing authority over the territory of a community or region.

In their independent competence, territorial self–governing units (boards of representatives) may issue legal regulations – *generally binding bylaws*, by which they regulate, in conformity with a law, municipal or regional self–governing matters.

To secure the local affairs of public order, municipal councils may establish *municipal police.*

The relations between communities and regions in the field of independent competence are based on the principle of cooperation. Regions are obligated to inform communities on their intentions prepared within the region that may affect the community.

In the Czech Republic, a specific (for Central European countries) method of solving the performance of territorial state administration has its tradition, which is fully applied in communities and regions, and a transfer of the performance of part of state administration routine work to territorial self–governing units to their so–called *delegated competence.*

Apart from their self–governing activities, communities and regions thus become also the executors of state administration in the extent specified by special laws. In this activity communities and regions are bound not only by laws and other legal regulations, but also by internal acts of public administration – governmental resolutions and directives of central administrative offices to which they are subordinate within the performance of their delegated competence.

Within their delegated competence, communities and regions (or municipal councils and regional councils) issue another type of legal regulations – bylaws, but always based on a specific legal authorization. It is a typical implementing bylaw.

Within the organizational structure of the community, the performance of delegated competence is assigned, in particular, to the municipal office and the municipal office's departments and sections, and special municipal bodies (established according to special laws, for example misdemeanour commissions). Council's commissions may be authorized for a certain activity (the council may establish them as its initiative and advisory bodies). However, these bodies also function as executive bodies for the field of independent competence.

As regards communities, they are not assigned with the same extent of delegated competence. The basic extent of delegated competence is assigned to all communities (e.g. in the field of proceedings of particular types of offences). Such communities are called type I communities. Since the beginning of the restored existence of communities, communities with a delegated municipal office have been established to provide some state administration routines (e.g. regarding the building law) for several communities in their administrative district. These are called type II communities.

After the district offices were cancelled, most of routine work (e.g. the administration of identity cards and travel documents, driving offence proceedings) have been transferred to selected communities of type III – with an extended competence ("small districts"), the number of which is more than 200.

The appeal authority for decision–making in administrative proceedings (whether within independent or delegated competence) for communities is the regional office. The regional office controls communities methodically in the matters of performing delegated competence. It also performs a supervisory function over the legality of communities' activities as regards both independent and delegated competences. A similar task towards regions is fulfilled by the materially competent departmental central offices. The methodical competence of individual ministries towards regions is coordinated by the Ministry of the Interior (it also issues "Governmental Bulletin for Regional and Municipal Authorities"), which has important tasks in the field of supervision over legality of the legal regulations of communities and regions (after a specified preceding procedure it files a proposal for cancellation to the Constitutional Court).

– Interest and professional self–government.

It was restored after 1990 and regulated by individual laws regulating various public corporations (primarily the professional chambers of bars, physicians, dentists, veterinarians, tax advisors, etc.) of an interest character with their own self–governing bodies.

A future development in the sphere of, for example, tradesmen's associations may be expected. The authority of chambers is applied solely towards their members or membership applicants (if membership is obligatory, which usually is a rule), but always and strictly in conformity with a law or adopted professional regulations – statutes adopted on its basis.

A similar character and basis is in the case of the self–government of universities, established by the law on universities.

In the sphere of public administration, we can encounter *other types of entities* that perform it. These may be some public institutions established by law that are not a direct part of public administration although they belong to the sphere of executive power (e.g. the Council for Radio and Television Broadcasting), always based on a law with strictly specified authorities.

The sphere of public administration also includes armed (security) forces, usually subordinate to the respective ministry (e.g. Police of the Czech Republic related to the Ministry of the Interior).

Also individuals or legal entities may be assigned to perform public administration, always based on and in the extent of the respective special law (e.g. wildlife guard, school headmaster or General Health Insurance Company, National Gallery, etc.).

Chapter III

ADMINISTRATIVE LAW

III.1 Explanation and development of Administrative Law as a branch of law

In the Czech system of law (which is part of the so–called continental type of legal culture), Administrative Law is an independent **branch of law**.

With its content, regulation method and material orientation it ranks to the branches of public law. This is given, among others, by the fact that it regulates the sphere of the so–called executive power as part of public power in the state.

In the conditions of the so–called liberal legal state (in the Czech lands since about the 19th century) Administrative Law began to develop as a branch regulating the organization and activity of public administration. So it is a relatively young branch of law.

The origin and development of Administrative Law, with regard to the basis and postulates of a legal state, has been conditioned and is still subjected to the fundamental requirement of a **legal basis** for the existence and performance of public administration.

This principle is shown in such a way that without the appropriate legal regulation an administrative body cannot be established, or another entity cannot be authorized to perform exactly specified activities within public administration. The legal basis is necessary for all forms of activities by which public administration acts outwards in a binding manner on other entities, or applies its public power.

Due to a plurality of activities that have been and are performed within public administration, and also due to a multiplicity of entities that have provided and provide the performance of public administration, Administrative Law is characterized by a **multiplicity and plurality of legal regulations**. As it will be dealt with in detail in the section devoted to the sources of Administrative Law, norms of administrative law may be found in the legal regulations of the supreme legal power (constitution, constitutional laws) and in many laws, as well as, which is typical of Administrative Law, in a number of bylaws (governmental orders, ministerial orders of central administrative offices, bylaws of communities and regions) that serve for the execution of legal regulations. A relatively independent category includes legal regulations issued within the performance of territorial self–government (generally binding bylaws of communities and regions).

Similar reasons, that is the multiplicity and variety of regulated issues, along with relatively frequent changes in individual legal regulations, makes it difficult to codify Administrative Law.

At this point it is useful to point out that there are no acts applied within internal control relations in public administration by legal regulations (these include various instructions, directives, methodical instructions, and also governmental resolutions).

Subject of the regulation of Administrative Law is relations that are established within the performance of public administration (the administration of public affairs) as a part of executive power in the state. These relations are usually established between entities which, on the one hand, are those that perform public administration, and on the other hand the addressees of their acts (administered entities) towards whom public administration is performed. Administrative Law regulates the position and conduct of these entities in the above–mentioned relations.

However, *administrative–law relations* may also be established between entities from both mentioned groups mutually (for example, in the form of cooperation or coordination of their activities that may find a legal expression in so–called public–law agreements).

Regulation method, that is the method of regulation that is used in Administrative Law is called *„administrative–law"*. In general, it is characterized by the fact that it establishes power of administrative bodies and other entities performing public administration, focused on providing tasks and aims of public administration and on fulfilling so–called public interests. This competence of public administration is established in legal regulations by imperative legal norms. These norms regulate the performance of public administration as the duty of administrative bodies, often accompanied by power to apply specifically set means of public power, or coertion to ensure public administration tasks. These regulations are a sign of the *power aspect of public administration*, or power superiority to administered entities which means an unequal position of administrative bodies on the one hand and the addressees of public administration on the other hand.

However, in modern public administration systems the traditional accent on classical administrative–law methods of regulation is replaced or supplemented, to a certain extent, with *contractual forms* (i.e. to certain extent governed by private law) and the performance of some activities is assigned to entities of private law (but always on a legal basis).

Administrative Law, particularly some of its parts concerning the formation of a uniform European administrative space, have been and still are affected by the EU Law. However, "Europeisation" affects also the areas of legal requirements for the content aspect of public administration that is influenced by some generally recognized requirements or standards. For more details see Section IV.2. dealing with the principles of Good Administration.

III.2 Administrative Law as a branch of Public Law, relation to Constitutional Law

The mere substance and specialization of public law is given by its relatedness to the sphere of public law, although the latest development of legal regulations in the

branch of Administrative Law has recorded a penetration of some private–law elements, as indicated above.

As a **branch of Public Law**, also Administrative Law is characterized by the fact that, generally speaking, it regulates the performance of the respective part of *public power* (state of self–governing), administrative–law regulations follow fulfilment of *public interest* and they establish the *performance of public administration as a duty* of respective entities authorized by law.

These signs of Administrative Law also help understand a different nature of public administration as opposed to private administration.

However, it is a matter of political priority what group or extent of affairs will be assigned to the regulation by administrative–law regulations or what will be left outside the framework of this public–law regulation.

The "public–lawfulness" of Administrative Law is also associated with a *close relation to Constitutional Law* that generally represents the basis of administrative–law regulations. This is the case of regulations of individual material matters included in the sphere of Administrative Law, by the basic determination of conditions and methods of public power execution, as well as by setting a circle of constitutionally protected human rights and freedoms.

Administrative Law is characterized by *a close relation* (or somewhere by direct interconnection) *to other public administration disciplines.* This includes, in particular, Financial Law (e.g. administration of taxes and charges, administrative and local charges, regulation of public budgets, financial control, etc.), then Criminal Law (particularly in the field of administrative–law liability for offences, but also liability for so–called other administrative offences, where the border between the legal regulation of crimes on the one hand and administrative offences on the other hand is represented by the most accurately set lower rate of danger for society as regards administrative offences).

However, within administrative–law regulations we can find some fields or issues *relating to private–law regulations* (e.g. liability for damage, although in Administrative Law it is set as liability for illegal performance of public power, or for example, the sphere of register offices connected with regulations of Family Law, etc.).

III.3 Administrative Law system

Despite of the above–mentioned plurality and multiplicity of legal regulations filling the branches of Administrative Law, individual norms (code of conduct) contained in these regulations may be divided in certain groups (within the entire system of Administrative Law we call them "s **ubsystems**") by their contents or types of relations that are regulated by them.

Administrative Law as a whole (system) is thus divided to three, or four subsystems, as the case may be.

It is **Competence and Organizational Administrative Law**, the norms of which regulate the method of organization of individual administrative bodies or entities performing public administration and mutual relations of these entities. Also, it specifies the sphere of their competence (material, territorial).

Another subsystem is **Substantial Administrative Law** regulating the competences and duties of individual entities of Administrative Law for both public administration executors and administered entities.

This part of norms (along with competence norms) in particular serves for constituting or identifying individual *public administration sectors (branches)* (such as police administration, internal affairs administration, education administration, transport administration, etc.). This "departmental" division actually goes across the structure of Administrative Law subsystems we deal with.

The third subsystem of Administrative Law is **Administrative Procedural Law** as a collection of norms regulating individual decision–making processes realized within the performance of public administration. We will deal with individual forms of public administration activities regulated by Administrative Law norms later in the text. However, it is now necessary to point out that the process aspects of public administration performance are also very important and they are also controlled by the principle of legality as a constitutional requirement for a legal regulation of the "method of public power execution" (Art. 2, paragraph 2 of the Constitution).

A special segment or subsystem of Administrative Law that is not "aside", but goes across the above–described three subsystems of Administrative Law is **Administrative Criminal Law** which regulates the bases, conditions and methods of application of the so–called *administrative–law liability* (liability for administrative offences). This includes such cases when the liability for a breach of legal norms (not only of the branch of Administrative Law, but also Civil Law – see, for example, the regulation of property offences or civic coexistence offences) are applied by administrative bodies authorized by law. *Administrative offences* (as a collective name for the entire group of type different illegal acts) are mostly characterized by breaching duties connected with an undisturbed performance of public administration.

To correctly *understand the Administrative Law system* as a whole including its individual subsystems it is necessary to realize that this division is not a mirror reflection of legal regulations regulating the performance of public administration.

In fact, these subsystems are formed by groups of content–congenial or related *legal norms* that are included in individual *legal regulations* relating to the organization and activity of public administration, specifically the regulations of various legal forces. This situation is the reason and also proof, among others, that it is difficult to codify Administrative Law as a whole.

The described classification of Administrative Law lying in the division to individual subsystems should help orientate in both individual norms of Administrative Law and individual regulations, and interpret and apply them appropriately.

At the level of individual norms of Administrative Law, the legal regulations of Administrative Law (in particular some of them that are extensive and structured) represent a certain conglomerate of legal norms, containing competence norms, material, process and penalty norms without individual norms being always designated or arranged in this manner.

As regards the regulation integrity of individual subsystems, it could be recently observed that the law–giver has been trying to clearly arrange and connect the regulation of (nearly all) main formalized activities of public administration into a sort of "code of public administration activities" in the form of a new Administrative Procedure Code (Act No. 500/2004 Coll.).

III.4 Sources of Administrative Law

In the meaning of the sources of law as a certain external form in which the generally binding code of conduct is contained, and as such recognizable and applicable, Administrative Law is characterized by many forms (types) of these sources and by their large number.

The term 'source of law' (in the above–indicated formal meaning), in the conditions of the Czech Republic's law, is usually (and traditionally) understood as a normative legal act, a legal regulation that is formed by individual legal norms (code of conduct).

There are, however, *other sources of law* represented in particular by acts of other public bodies (cf. the role of the Constitutional Court of the Czech Republic and also the role of the jurisdiction of courts relating to the performance of public administration – Chapter V.2.).

When issuing normative legal acts (from the view of public administration activity this is a normative *administrative* act), some *conditions* must always be followed:

- Competence of the administrative body to issue them,
- the form of issuing such acts, particularly the process of issuing (including publishing that is the condition for the validity of acts), and also
- a correct incorporation of normative acts in the system of law, particularly with regard to the legal force of a particular type of normative act.

Validity determines that a legal regulation has become a part of the valid *legal order.* This happens on the day of publishing the legal regulation in the prescribed manner (in the Collection of Laws, in the Bulletin of a region's legal regulations, by posting it on the official notice board of a municipal office; valid international treaties are announced in the Collection of International Treaties). If a legal regulation is valid, it is binding for the case of issuing legal regulations of a lower legal force, and the body that has issued it, may only cancel or change it by issuing a legal regulation of the same legal force.

After the set period has elapsed since the date of publication (either by the directly affected legal regulation or, in other cases, generally set by law, which means the 15th day of publication) the legal regulation *becomes effective*, which means that it becomes *legally binding* for its addressees and it is necessary to follow its procedure in the matters regulated by it. Exceptionally (due to an urgent public interest), it may become effective earlier, however, on the day of publication at the earliest.

As it has been indicated, the sources of Administrative Law may be classified by the *legal force* that determines the rank of type of the source of law in the hierarchy of legal regulations where the regulations at a lower level must be in conformity with the regulations at the upper levels of hierarchy.

Other classification aspects of the sources of law include their primary sign. The authority to issue primary normative acts arises directly from the Constitution. Such regulations are laws, legislative provisions of the Senate, generally binding bylaws of regions and communities issued within their independent competence. The authority to issue a *secondary, derived* regulation is given by a different legal regulation of an upper legal force. Derived regulations are governmental orders, generally binding regulations of ministries and other central administrative bodies and bylaws of regions and communities.

With regard to the fact that a large number of legal regulations from the sphere of Administrative Law are formed by normative acts issued by administrative bodies, we speak of the source of law of a *law character* and a *bylaw character*, which are normative administrative acts issued by public administration bodies.

Furthermore, the sources of law are classified *by the type of body that issued them.*

As it is clear from what has been mentioned above, it is typical of Administrative Law that in some cases the competence of public administration or some types of administrative bodies is established to issue legal regulations. Public administration is thus, to a certain extent determined by law, also a norm–maker.

Now **to individual types of the sources of Administrative Law** (or forms in which norms or also rules and principles controlling the activity of public administration may be found), of which some are not only the source of Administrative Law, but in particular of Constitutional Law (that is the basis for many branches of law).

- **Constitution, constitutional laws, Charter of Fundamental Rights and Freedoms.** These represent the basis of regulation of the organization and activity of executive power and the sphere of public administration, including determination of its relation to the other public power units and the basic determination of this power to individual persons.
  In relation to public administration, this group of sources contains and establishes general (constitutional) principles for the activity of administrative bodies and among them particularly limitation of the performance of public administration by law, respect to fundamental rights and freedoms, and also a certain group of principles that should guarantee a proper, non–discriminatory, adequate and pre-

dictable performance of public administration towards individuals and their rights and freedoms (see also Chapter II.3.3 – Principles of Good Governance).
These sources lay the constitutional bases of specific legal regulations in individual branches of public administration, primarily a certain basic setting of relations to individuals (regarding, for example, the freedom of domicile and movement, right of association, right of assembly, right to information, protection of privacy including personal data, etc.).

- **International treaties acc. to Article 10 of the Constitution.**
  The pronounced international treaties the ratification of which the Parliament has approved and by which the Czech Republic is bound are part of the legal order (if an international treaty sets anything different from a law, the international treaty is applied (which means a so–called application preference of such treaty).
  International treaties as the source of Administrative Law thus stand above laws but at the lower hierarchy level of legal force than constitutional regulations (which arises from the so–called preventive control of constitutionality of these treaties by the Constitutional Court in the wording of the so–called "European amendment" to the Constitution).
  To be able to speak of the source of Administrative Law, the treaties dealt with will have to be treaties regulating rights and duties of individuals. This group includes treaties on human rights and fundamental freedoms that were adopted according to the regulation preceding the so–called "European amendment" to the Constitution (Constitutional Act No. 395/2001 Coll.). What should be mentioned for example and in particular is the European "Convention on Protection of Human Rights and Freedoms" (No. 209/1992 Coll.) adopted on the basis of the Council of Europe.
- **Laws and legislative provisions of the Senate.**
  Law is the main source of Administrative Law, not only by its frequency that is established in this sphere of legal regulations, but in particular due to the fact that the form of law is the basic required form and at the same time a level of legal force for determining the organization and regulation of the activity of public administration (cf. the principle of legality – Article 2, paragraph 3 of the Constitution), where it represents the binding basis for application of other forms of activity, whether norm–making, law–applying, or for the direct realization of public administration powers.
  Laws determine both the framework and forms of authorities of the entities performing public administration and the sphere of their competence.
  Particularly some formulations embodied in constitutional regulations show a so–called statutory exception, which means that particular matters (for example and in particular limitation of fundamental rights and freedoms, or determination of limits for the execution of public power) may only be regulated by law, not by a regulation of a lower legal force.
  The form of legislative provision has not been applied yet.

- **Governmental orders, ministerial orders and orders of other central administrative offices.**
  This is a category of "orders" typically represented by bylaws serving for specification of legal acts (derivation from law) being of a so–called implementing character. Another sign is the condition of legal authority to issue them. The exception in this respect is governmental orders when the relevant authority to issue them is established for the government directly in the Constitution.
  In the case of orders these are normative (general) acts, unilateral (unilaterally binding) acts, norm–making act that at the same time implement the norm (law). They are given as a typical sign of public administration.
- **Bylaws of regions and bylaws of communities**
  In general, they belong to the above–described category with a difference that they have a territorially limited competence for the territory of the respective region or community.
  Authorities to issue them is generally established in the Constitution, the specific form is set by the law on regions or communities. A specific legal authority is always required to issue them.
- **Generally binding bylaws of regions, generally binding bylaws of communities.**
  These are a sign of the constitutionally guaranteed right for territorial self–government. Authority to issue them is established directly in the Constitution (Art. 104, paragraph 3), according to which the councils of territorially self–governing units may issue, within their independent competence, generally binding bylaws.
  These generally binding bylaws must be in conformity with the law.

Other sources of Administrative Law:

- **Legal acts of the bodies of the European Communities (European Union).**
  These have become the source of law for the Czech Republic after joining the EU.
- **Constitutional Court's jurisdiction.**
  It acts as the source of Administrative Law in such cases when the Constitutional Court acts as the so–called negative law–giver (cancellations of legal regulations or their parts).
- **General legal principles (rules).**
  Multiple times in its jurisdiction the Constitutional Court has recognized the nature of sources of law to some general legal principles, including unwritten principles (unless otherwise specified by the written law).
  It is also necessary to point out that within the EC/EU law there are immediately applicable general legal principles found by the European Court of Justice. For more details on general principles or legal principles of Good Governance see Chapter IV.2.

In conclusion it should only be mentioned that the so–called *internal normative acts* are not sources of law and thus nor legal regulations since they are not generally binding. They only bind entities being inside the public administration system. They are a sign of the controlling authority within this system.

Chapter IV

PUBLIC ADMINISTRATION FUNCTIONING

IV.1 Public administration tasks and aims

Public administration is a purposeful human activity characterized by a high level of institutional structuring and a multiplicity of its forms as described sub II.

These signs of public administration are an expression of the fact that public administration has a certain mission or **aim** in society (state) that may be generally called as the administration of public affairs.

With regard to the structure of the material aspect of public administration (cf. sub II.2) it is evident that this most general aim actually means a **conglomerate of various individual aims** which are set in individual spheres of public administration. The common sign of public administration aims that comes forward is the *provision of continuous and proper administration of public affairs.*

The multiplicity and diversification of administered affairs results from the needs and requirements of society (state) that are unchangeable. In the basic focus the aims of public administration are determined by particular political decisions that are subsequently, to the necessary extent, *projected into appropriate legal regulations.*

The above–mentioned aims of public administration may be identified in individual legal regulations regulating the performance of public administration and they are usually projected into so–called *purposes of authority conferred by law.* The set aims of public administration usually outline the content of a particular *public interest* that should be observed in a particular branch of public administration.

Legal regulations thus do not only contain establishment of corresponding legal regulations (authority – a summary of competences and duties) for public administration, but they also determine the fundamental aims of public administration in individual branches of administration.

In modern public administration systems a continuous trend can be seen to extend the assignments (aims) of public administration and, at the same time, to higher demands for the quality and standard of performance of public tasks.

These demands are shown, among others, at the legal level, so they are contained in the respective legal regulations. The question of penetration of new tasks and requirements for the quality of public administration performance into legal regulations is relatively complicated and it is affected by multiple factors.

The first group of these factors is represented by the development of needs and requirements placed on public administration at the level of factual (material) services, and it relates to the requirement for the effectiveness of public administration.

Another group of factors is based on the requirements and standards of a legal state, in particular towards a higher level of protection of individual persons' rights against public authority.

IV.2 Principles of Good Governance

The conditions or standards of the "European" environment, into which the Czech Republic is integrated more intensively (membership in the Council of Europe originally since 1992, as the Czech Republic since 1993, membership in the European Union since 2004), means increasing demands for the quality of public administration activities and its outputs.

Some of the so–called "new" criteria relate to the mentioned process of "Europeism". Some of them, however, have its support or origin in the constitutional regulations of the Czech Republic (Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, Charter of Fundamental Rights and Freedoms).

Within the European administrative context, the overall and general requirements are contained in the terms **Good Governance** or **Principles of Governance Principles**.

The term **Good Governance** ranks to those terms or criteria structures that penetrate into the modern systems of public administration and with which some literary sources, and sometimes legal regulations, operate.

These requirements are expressed by the value pillars or principles of the *European administrative space*. These include reliability and predictability, openness and transparency, responsibility, and effectiveness. This framework may be supplemented with more general or substantial fundaments such as democracy (including subsidiarity and participation) and the principles of legal state, in particular the respect to the rights and freedoms of individuals.

The term "public service" or the understanding of public administration as a service relates not only to the content and extent of provided public services, but also it significantly determines which way public administration acts outwards, towards its addressees, within the performance of its tasks and the fulfilment of its aims.

Since the early 1990s, public administration in the Czech Republic has been undergoing a reform or modernization process. Some fundamental changes in this respect have been expressed in legislation in the form of laws. They aim to improve the functioning of public administration, to reach a more responsible, more open and more democratic relationship of public administration to society and citizens.

This group includes, for example, the law on civil service (on civil servants – Act No. 218/2002 Coll.), law on territorial self–governing units' servants (Act No. 312/2002

Coll.), law on right to information on the condition of the environment (Act No. 123/1998 Coll.), law on free access to information (Act No. 106/1999 Coll.), law on personal data protection (Act No. 101/2000 Coll.), law on liability for damage caused by a decision or an incorrect official procedure (Act No. 82/1998 Coll.), and also law on the public rights defender (Czech "ombudsman" – Act No. 349/1999 Coll.), Code of Administrative Justice (Act No. 150/2002 Coll.), the new Code of Administrative Procedure (Act No. 500/2004 Coll.), or a financial control regulation concerning the specific sphere of relations such as invitations to public tenders, and conflict of interests.

Many of these regulations aim to enforce the principles of Good Governance, including that group which improves the relation of public administration to individuals.

However, as regards the functioning of public administration towards the legal spheres of individuals, the legal basis of these principles has to be looked for.

If we look for the origin and methods of formulation and enforcement of general principles for public administration, i.e. the general principles of Administrative Law, in the Czech legal context this task is performed, in particular, by courts, primarily by the Constitutional Court (and recently also by the Supreme Administrative Court), then by the European Court for Human Rights, and also by the European Court of Justice, which decide on the basis of, or which apply sources of law such as constitutional documents, particularly the catalogues of fundamental rights and freedoms, international conventions on human rights, in particular the European Convention on Protection of Human Rights and Fundamental Freedoms.

These courts deduce and formulate the general principles for the decision–making activity of public administration and find designations for them (and these are then applied internationally and universally), and then they take them as the bases in their decision–making.

These existing principles of public administration are the basis for courts in their review proceedings regarding decisions (interventions, but also inactions) of administrative bodies, and they specify these principles and rules by their application activity for the conditions of individual cases.

There is not a complete and comprehensive catalogue of the principles of Good Governance yet, nor have they been comprehensively determined or proclaimed. As regards the conditions in the Czech Republic, they are dealt with particularly at the theoretical level and individual principles falling to a particular category appear in jurisdiction, especially that of the Constitutional Court.

However, there is now a more general agreement on some individual principles or rules. In this respect it may be considered fundamental that the main legal principles of Good Governance as the fundamental principles of the functioning of administrative bodies have already been incorporated in the new Administrative Procedure Code.

Some of the principles or rules are mentioned separately, some are interconnected with one another, or they may have a relation of the whole and a part.

The term "Good Governance" is now expressly used in the law of the Czech Republic only in two legal regulations (Act No. 349/1999 Coll., on the public rights defender, and Act No. 500/2004 Coll., Administrative Procedure Code), without defining this term.

Before the principles of Good Governance were used in the new Administrative Procedure Code as the criterion for assessment of the functioning of public administration by the public rights defender, specifically within his competence to "protect individuals against acts of authorities and other institutions" (other criteria for the ombudsman's activity are compliance with the law and the principles of a democratic legal state). This activity of ombudsman's should generally contribute to the protection of fundamental rights and freedoms.

The term "Good Governance" includes legal aspects, but also other aspects, especially ethical or economic, such as demands for fairness, politeness, helpfulness, economy, cost saving, etc.

The above mentioned implies that *the term Good Governance may also be understood in its wider meaning*, when it includes also aspects of a non–legal character which may or may not become legally binding, depending on their anchoring within a specific legal order.

However, the requirements of Good Governance are provided by an entire collection of general principles of activities that we find in individual provisions of Section 2 to Section 8 of the new Administrative Procedure Code.

In relation to enforcement of Good Governance in the form of the above–mentioned collection of principles, an emphasis must be placed on their really wide and fundamental extent of competence. The new Administrative Procedure Code establishes their wide competence in the functioning of public administration, not only by their designation ("general principles of the functioning of public administration bodies"), but also by a specific setting of their application.

The basic principles of the functioning of public administration bodies contained in the above–cited provisions should be used in the performance of public administration *„also in such cases when a special law specifies that the Administrative Procedure Code will not be applied, but it itself does not contain any regulation corresponding to these principles"* (Section 177, paragraph 1 of the above–cited law).

As we have pointed out, our interest is focused on legally binding principles. In the outlined context we concentrate on the *principles of Good Governance in a narrower context*, or perhaps more accurately, on the *legal principles of Good Governance.*

For a relatively long period an important role in this process has been played by the **Council of Europe**. In relation to this international organization it may be stated, in the most general context, that one of its priority aims is, along with the protection of fundamental rights and freedoms, support for principles that are the basis for the legal orders of democratic states.

The value basis or source is, naturally, the *European Convention on Protection of Human Rights and Fundamental Freedoms* (hereinafter referred to as "Convention") which is based on the General Declaration of Human Rights and which has become the European criterion for public power acts.

The group of *documents of the Council of Europe* adopted in the form of resolutions or recommendations is a more guarantee element general (in the meaning of matters to which it refers). This does not include only the provision of conditions for a just process in decision–making on matters connected with the administration of public affairs, but also the appropriate quality of the content aspect of such decisions.

The Council of Europe's recommendations addressed to the governments of member states, adopted since the second half of the 1970s, has been gradually and systematically expressing the principles of general functioning of public administration, with a special respect to the protection of individuals and legal entities whose interests, protected by law, may be affected by administrative acts. With its legal nature it is *soft–law.*

The necessity to precise and supplement the content of the Council of Europe's recommending documents for the conditions in this country is accounted for not only by the political commitment that the Czech Republic accepted by its membership in the Council of Europe, but also by the binding character of the Convention for the Czech Republic.

The effect of these documents, or the efficiency of principles established therein is substantially strengthened by the decision–making activity of the European Court for Human Rights which, within its jurisdiction, creates or completes and specifies individual principles of Good Governance.

An example may be the frequently cited principle of proportionality (adequacy), predictability (legal safeguard), and justification.

For the Czech legal environment the essential role in this sphere is played by the *Constitutional Court of the Czech Republic* which, often inspired by the jurisdiction of the European Court for Human Rights or by some foreign courts, refers to respective principles and on the basis of individual solved cases it formulates and completes them for the conditions of this country.

For the administration of the European Union's member states, this effect is strengthened by the competence of the *European Court of Justice* (further only "ECJ") in this respect. With regard to the membership of the Czech Republic in the European Union, it is necessary to take also the EU's standards in this field into consideration.

When fulfilling its tasks, the European judicial system is based primarily on the common constitutional traditions of member states. The function of the European judicial system also impinges into the legal systems of member states whose court structures and legal orders it has affected significantly. Individual means of legal protection give the European judicial system sufficient possibilities to enforce the stabilization and further development of the European communities as a legal community in the meaning of enforcement of legal state principles.

The methods of interpretation chosen by the ECJ are usual interpretation procedures, as well as the systematic and teleological methods, and also special methods of legal comparison. All interpretation methods are used and some of them supplement the others. To fill the gaps the ECJ also uses general legal principles. An important place among them is kept by the principle of protection of constitutional rights and good faith, the principle of prohibition of retroactivity, as well as the principle of proportionality and European human rights and freedoms.

Another possible shift in the principles of Good Governance is represented by the Charter of Fundamental Rights of the European Union which is (for the time being) a political document that has no legal liability, however, it is expected that it will become part of the primary law. For our purposes particularly Article 41 of the Charter is important, titled "Right to Good Governance" and towards administrative considerations it sets the principle of impartiality (Article II–101 in the draft constitution for the European Union).

In the ECJ's activity there are clearly shown efforts to formulate rules differentiating *good performance of administration* (highlighted by author) from its bad performance. And the main of these principles have become a direct part of the primary aquis communautaire, while others are rather of a substitutive or auxiliary character or they fill the gaps where a regulation would look better.

The components of the above–mentioned "higher" or more general principles, mutually interconnected, are then others of the above mentioned, in particular the principle of legitimate expectation and the principle of proportionality that may be considered decisive for the correct decision–making of public administration.

The Constitutional Court of the Czech Republic pointed out the "radiating" function of aquis communautaire, which then, in the form of general legal principles of the EU law, radiates, to large extent, right into the decision–making activity of the Constitutional Court. The Constitutional Court has repeatedly applied general legal principles that are not expressly included in legal regulations, but they are fully applied in the European legal culture (for example, the principle of proportionality).

With its own words, the Constitutional Court has thus joined the European legal culture and its constitutional traditions and it has pointed out that in the light of general legal principles it also interprets constitutional regulations, especially the Charter of Fundamental Rights and Freedoms.

At this point it is not inappropriate to remind the common value, and therefore also "principal" basis, as it is expressly formulated in the Preamble to the Constitution of the Czech Republic and established in some of its provisions, as well as in the Charter.

The meaning of the term Good Governance is represented primarily by the following recommendations of the Board of Ministers of the Council of Europe: Recommendation (81)19 regulating access to information available at administrative bodies, Recommendation (2002)2 on access to official documents, Recommendation (84)15 concerning public

liability, Recommendation (87)16 referring to administrative proceedings affecting a large number of persons, Recommendation (89)8 regulating the taking of temporary injunctions in administrative affairs, Recommendation (91)1 concerning administrative penalties, Recommendation (2000)9 on alternative methods of solving disputes between authorities and private persons. From the documents of the Council of Europe it is necessary to mention for this sphere also the timely and content primary *Resolution of the Board of Ministers of the Council of Europe (77)31 on protection of individuals in relation to administrative acts* dated 28 September 1977. It is focused on the protection of rights of participants in the proceedings conducted before administrative bodies, of which an emphasis should be placed on the right to get acquainted with the grounds of an administrative act and the right to be advised on the procedure of an appeal against an administrative act.

Recommendation (80)2 formulates requirements particularly for the content of decisions in administrative discretion. The area of discretion competence certainly deserves a more detailed cultivation and attention as it is its application that may cause, most easily (and also most often) signs of so–called bad governance called in this context and signs as an abuse of administrative discretion, or an abuse of power.

The public administration body is obliged not to follow other than the prescribed purpose, to refer only to the fact relevant for a particular case while maintaining objectiveness and impartiality (*the principle of following the set aim* and the *principle of non–abuse of discretion*, observance of the *principle of equality before the law* and *prohibition of discrimination*, observance of the *principle of proportionality*, including the requirement to decide within a reasonable, in the given case *adequate time*, to consider special circumstances of a case in conformity with the application of general guidelines (*principle of predictability – legitimate expectation – legal safeguard*) .

Apart from these requirements for the content aspect of decision–making, the above–cited document includes other requirements focused on the process aspect or guaranteeing the fulfilment of the above–mentioned requirements for content, such as *to publish general guidelines* controlling administrative discretion, requirement for *the grounds of deviation from guidelines*, and both of these requirements aim primarily to fulfil the principle of predictability.

Nor the key question of guarantees of an appropriate decision with correct discretion did remain omitted, because it must always be possible for the court or another independent body to review such an act without excluding the possibility to review it by the administrative body from the view of both legality and expediency.

The brief explanation of the content of Recommendation (80)2 shows that this recommendation, focused on formulating the standard of proper administrative discretion, contains general principles referring in particular to that aspect of public administration decision–making that should guarantee justice and appropriateness, or correctness of decision–making, i.e. the most important requirements as to the protection of public entitlements and the widest and most general requirements with their extent towards the decision–making of public administration.

The above–mentioned recommendation is focused preferably on the quality of content of decisions of public administration bodies, however by using the necessary means of procedure and review, and guarantees. This thus confirms the crucial importance of administrative discretion for the (correct) decision–making process of public administration.

The principles of Good Governance expressed in Recommendation (80)2 are a sort of model built based on the "minimum necessary common basis" in the member countries of the Council of Europe. With respect to the specifics of the legal order and public administration in the Czech Republic with its concrete tradition and current situation, it is necessary to precise and supplement this basic "network" that is determined to catch and eliminate misconducts against the minimum standard of justice and appropriateness of the performance of administration.

The qualitative shift in the necessary direction, i.e. incorporation or addition of the principles of Good Governance in the so–called fundamental principles of administrative procedure, is only brought in an express form by the new Administrative Procedure Code.

Apart from the essential and undisputed principle of *legality* (already anchored in the applicable regulation), it sets the principle of *predictability (legal safeguard)*, *equality* (not only process, but also material equality) of all persons, and *prohibition of discrimination, protection of good faith*, and *compliance with public interest*, and the principle of *prohibition of abuse of administrative discretion.* The *principle of adequacy* has to be added .

The principle mentioned in the last but one place (prohibition of abuse of discretion) does not have its own independent content, but it will be filled by a proper application of the principles mentioned above, or more generally, by following the principles of Good Governance and the principles of a legal state that control decision–making. The specific profiling of this principle is, to large extent, the task for administrative justice that will review the decision–making process of public administration from this aspect.

Enforcement of the above–mentioned principles may considerably improve the decision–making of public administration. It is also important that these principles are projected appropriately into individual provisions of the new Administrative Procedure Code. These problems will require a detailed analysis and the affected provisions of the Administrative Procedure Code will require a proper systematic interpretation in relation to the respective principles. The question of internal classification in the new Administrative Procedure Code will be more important than it has been until the present time.

The new Administrative Procedure Code contains also some related principles, particularly of a process character, such as the principle of process economy (purposefulness, rapidity, simplicity, economy of the conduct of proceedings), and also the *subsidiarity of entanglement of public administration into the legal relations of affected persons* within proceedings. The last mentioned principle should find its application in administrative discretion applied in decision–making on process matters and help fill the *principle of adequacy* in this aspect of the functioning of public administration.

In the author's opinion, the breaking event in relation to the content of adopted decisions (or other measures) for our application practice will be, in particular, introduction of the *principle of legitimate expectation (predictability)*, or in the diction of the law, duties of the administrative body to ensure that "no unjustified differences occur in decision making on factually identical or similar cases".

Another substantial shift in the new regulation of administrative proceedings may be an expected wider competence of the law than it is established by the current regulation. This includes material competence, comprising not only so–called *classical administrative proceedings, but also other legal forms of activity* (with the exception of so–called immediate actions). *The legal liability of the above–cited fundamental principles for all procedures of administrative bodies during the performance of public administration* is expressly established even for such cases when a special regulation excludes the application of the Administrative Procedure Code as a whole without containing its own regulation of the principles of proceedings.

According to the new regulation, the principles of Good Governance thus should be the pattern for all decision–making processes of public administration.

Another shift in the competence of law and thus also in the principles of Good Governance should consist in including the *bodies of territorial self–governing units*, as regards their decisions on the rights and obligations of persons in independent competence, in the category of "administrative bodies". Hereby the same qualitative demands should be applied to their decision–making and consideration as with public administration.

Adoption of the new Administrative Procedure Code thus means a shift that may be marked as an extension of the palette and effects of the principles of administrative process also to the content aspect or the quality of decision–making of administrative bodies, along with placing higher demands on the criteria for independent procedural methods.

At the legislative level and subsequently at the application–law level the connection of decision–making of public administration in the Czech Republic to the value and principal sources, which have been dealt with, should be straighter and clearer.

Another essential moment and basis of the necessary changes in applying the legal principles of Good Governance has been a new regulation of administrative justice and the commencement of functioning of the Supreme Administrative Court. Apart from administrative justice, an equally important change creating some other space for judicial power in its cultivation competence in the mentioned direction has been the new wording of the fifth part of the Civil Procedure Code.

It must be briefly stated that both of the recently adopted regulations have established space for the formulation and enforcement of the principles of Good Governance for pubic administration's decision making. In the wording of these regulations it is evident that the principles of Good Governance can help, from the view of the relevant courts, consider the possible *„abuse of administrative discretion"*, *„adequacy of imposed administrative sanctions"*, but also *„correctness of decisions"* within reviews according to the fifth part of the Civil Procedure Code, as these terms are introduced by this regulation.

In the Czech legal order, however, we can find, apart from the above–mentioned principles, other proofs of the existence and legal liability of the principles of Good Governance, or those rules that fill these principles, even if they are not expressly designated like this.

As the last in this sequence I will mention another guarantee of enforcement of the necessary principles into the functioning of public administration, which is directly binding for a wide group of persons participating directly in the performance of public administration.

For binding application of the principles of Good Governance, a wide space or the duty to observe these principles was established not long time ago. Specifically, this happened within the regulation of duties of civil servants and territorial self–governments' officers.

Differences of both systems are justified by different legal positions of both categories of employees, when in the first case it is a system of state service while in the case of employees of territorial self–governing units it is a specific form of employment.

For the introduction of the principles of Good Governance as a binding norm, it is explicit that these categories of persons were assigned with some duties the performance of which requires respect to the principles of Good Governance from the view of their interconnection with the principles of a democratic legal stat recognizing fundamental rights and freedoms.

In the case of the so–called service law, the first obligation is *„to maintain loyalty to the Czech Republic during the performance of service"*, which means in the diction of the law the *„observance of the Constitution of the Czech Republic, its legal order in recognizing rights and freedoms" and in observing the Czech Republic's interests.*

As regards its content it is a liability by a range of aspects that is much wider than the observance of legal regulations relating to the performance of service and service regulations when this duty is also included in the list of duties of the civil servant.

The law on territorial self–government's officers is not behind in this respect, when the first duty of the officer is that the officer is obliged *„to observe the constitutional order of the Czech Republic"*. The duty "to observe the legal regulation relating to the performed work" follows immediately.

In the above–cited manner, a wider framework of aspects that should be respected or that should control this activity, is determined for the activities of employees of public administration in both cases, although differently solved as to their formulation.

It this way, a comprehensive range of aspects is thus established for decision–making with the set space for own discretion. This wider framework of aspects (i.e. wider than the framework of specific, expressly established rules) opens the possibility to apply or for the executors of public administration in employment relations the duty to fill the principles of Good Governance in decision–making of public administration in the necessary extent.

For the persons performing public administration on a different basis, this framework (which I hope arises from the above–mentioned) is also binding, but less specifically established for them.

Chapter V

LEGAL GUARANTEES IN PUBLIC ADMINISTRATION

V.1 The term and an overview of guarantees in public administration

Public administration as a sign and part of executive power is fully governed by the principle of legality. However, fulfilling the principle of legality requires the appropriate establishment of legal means that should guarantee that the legal order will be observed *by both the executors of public administration and the addresses of its acts.* These legal means represent a **system of legal guarantees in public administration.**

All functioning of public administration is of a bylaw nature and it should serve for the application of laws, whether directly or by means of a law application process.

However, the aim of public administration is also to ensure that obligations set by law are fulfilled by administered entities. To do this, based on the respective legal regulations, public administration is furnished with control, remedial, sanction and enforcement authorities. The relevant part of control activity applied towards persons that are not in a subordinate position to controlling administrative bodies is called *administrative supervision.*

Legality must be, however, ensured also for the subordinate parts (units, bodies) of public administration, for which the superior administrative bodies are furnished also with appropriate powers. With regard to the hierarchical structure, there are also applied certain control functions within the relations of superiority and subsidiarity inside public administration that should ensure the legality of procedures of subordinate administrative bodies. They are called *instance supervision or control,* or inside service relationships (within state–service or similar relations) as *service supervision.*

Generally, the mentioned areas or parts of the control competence of public administration are represented by the so–called **administrative control.** It is a control activity performed by public administration bodies towards both non–subordinate entities and lower, subordinate units of the public administration system.

The position of public administration within the system of public power and its relations to other units of state power, and also establishment of the relations of public power

and individuals in the conditions of a legal state are the basis and reason for the existence and meaning of the so-called **external control of public administration.**

From the view of addressees of public administration competence, this means, in particular, guarantees of legality of acts that public administration executes towards them. The requirements of a modern legal state, however, expose, in some cases, to external control other aspects of the functioning of public administration such as effectiveness, economy, ethic, or fulfilment of the *principles of Good Governance* (see Chapter 4). The basis of these requirements is established in the applicable law (individual signs will be mentioned with the respective forms of external control). So this also means legal guarantees of the appropriate, effective and just performance of public administration.

Control competence applied towards public administration or its individual units or signs is structured and exercised by various bodies of state power or society. In some cases it is performed directly (as a sign of the appropriate bodies' authority), in other cases the "control" competence is an impulse for application of the prescribed control procedures by the relevant bodies (e.g. complaints, petitions).

In a general view of legal guarantees in public administration, it may be stated that some of their types or forms serve primarily as a *means of protection of the rights of individual persons*, while in others their priority *competence is to protect public interests.* However, the establishment of all guarantees have such a character that they should ensure the fulfilment of general public interests by the proper and legal performance of public administration as a whole including its individual subsystems or executors.

The area of legal guarantees in public administration is closely related to, or sometimes it is the basis for application of *liability* in public administration. Liability is often applied in relation to the performance of control, whether internal or carried out from the outside, towards public administration. This need not be only the application of administrative-law liability (which is applied by the relevant entities performing public administration), but also constitutional-law, criminal-law, and civil-law liabilities. In relation to public administration, apart from legal liability also political or moral liability should be taken into consideration.

V.2 Forms (types) of public administration control

Now we will focus on the form by which public administration may be controlled, which means particularly the external control of public administration within the applicable legal order.

It must be pointed out that individual forms or types of control are not isolated, but they generally represent a certain internally integrated system in which individual control forms relate to one another with their content or formal procedures.

The correct establishment of the control system applied towards public administration is then not only a *guarantee of legality* of the public administration performance, but it should also serve to reach *effectiveness* of public administration (in the meaning of a wide social effectiveness which means the quality of fulfilment of aims and tasks of public administration), including requirements for economy and purposefulness in using public funds. In its general competence the correctly established and strictly performed control system in public should and can lead in public administration to the fulfilment of an entire range of requirements – the principles of Good Governance.

Now to individual forms of public administration control as they are regulated in the legal order of the Czech Republic:

– Control performed by elected bodies (legislative, representative)

The basis of this type of control arises from the general relation of elected bodies and executive bodies both at the state level (relation of legislative power and executive power) and at the level of territorial self–governing units.

In the sphere of territorial self–government, that is at the level of regions and communities, we can find a detailed establishment of control relations of the board of representatives of regions and communities to the executive bodies of regions and communities (municipal council, municipal office and its parts for which it also establishes, among others, control and financial boards).

These control competence is applied, from the nature of matter, to the activities performed *within the independent competence of communities and regions* (i.e. within self–governing activities), not to the performance of public administration (delegated competence that falls to the area of instance supervision performed by superior bodies within the performance of public administration – by regional offices towards communities, by ministries towards regions).

Similar relations are generally applied *also in the professional (interest, university) sphere* between elected bodies and executive bodies.

– Control performed by the Supreme Audit Office

The Supreme Audit Office (hereinafter referred to as "SAO") is an independent control body established according to Chapter V of the Constitution. It performs audits of state property management and state budget fulfilment.

The position, competence and organizational structure of the SAO are regulated in the law on SAO. According to this law, the SAO performs audits, in particular, of the management of state property and financial means collected based on the law in favour of legal entities, but with the exception of funds collected by communities or regions within

their independent competence, the state balance account, fulfilment of the state budget, management of means provided for the Czech Republic from abroad, and means for which the state has taken guarantees, placing of state contracts, etc.

The SAO may perform audits at the organizational units of the state and at legal entities and individuals, unless otherwise specified by a special law.

Apart from *legality*, the aspects of the SAO's audits are also *purposefulness* and *economy* of audited activities. After an audit has been performed, the SAO draws up a *written report* summarizing and evaluating the facts found during such audit.

– Control performed by administrative bodies

This area of public administration control fully falls to the area of administrative control that is performed by appointed state administration bodies or bodies performing state administration. In this respect, it ranks to the forms of control performed towards entities performing public administration. Generally, however, it may be or, in many cases or in some areas prevailingly, is directed to entities standing outside public administration, generally those that are not subordinate to public administration.

As regards *entities* performing this field of control, it includes control performed by ministries and other central administrative bodies, then it is control performed by the bodies of communities and regions within the execution of delegated competence, and control performed by other administrative bodies (specialized administrative offices, inspections, expert supervision bodies). This area also includes specialized control focused on the fiscal interests of the state performed by financial control bodies.

The above–mentioned means that the performance of this form of control must have a legal basis that is usually established in *individual special laws* regulating the competence and functioning of individual units of state administration (and some of them perform this control or supervision as their principal or sole activity of their acting outwards – for example Trade Licensing Offices).

The general legal framework for the performance of this type of control is the *law on state control* that contains a "control order" with a detailed regulation of the rules of control according to which the auditing bodies must proceed, unless a different procedure of control is stated in a special law.

According to the law on state control the subject of control is the management of financial means and fulfilment of other obligations arising for audited entities from legal regulations or obligations established on their basis, but always within their material, personal and local competence, as established by individual laws.

The control order sets, quite in details, the rules of control course including written authorization with which the auditors must be furnished, the specification of authorities

of auditing persons aimed at a proper and undisturbed performance of control, cooperation of other persons, particulars of the so–called "audit report", institute of objections against the content of such report and the method of their processing, and also so–called "disciplinary penalties". The law on state control, however, does not contain authority to impose corrective measures. Such authority should have to be regulated in a special law, otherwise audit conclusions are assigned to the bodies authorized to take corrective measures.

However, the competence of the law on state control *does not include instance control* performed inside the relations of superiority and subsidiarity in public administration. It is applied primarily in the mode of the law on administrative proceedings by superior (appeal, review) administrative bodies within administrative proceedings and similar process proceedings.

The aim of this type of control is to reach rectification of so–called defective administrative acts, if their illegality or incorrectness is found by the relevant body authoritatively. In administrative proceedings, the principle of double instance is generally applied and it establishes the claim of the participant in administrative proceedings to reach, by means of a filed appropriate legal remedy (appeal, analysis), a review of the attacked decision by a higher administrative instance – administrative appeal authority. If the administrative body, which has issued the decision, accepts it to the entire extent the review authority of the higher instance body is not applied.

However, apart from proper legal remedies, a decision that has become effective may be reviewed under the set conditions and with certain limitations (particularly the protection of rights acquired in good faith, as well as firmly set statutory time limits – usually three years of legal validity). Generally, the review authority is in the competence of a superior instance body if it is a so–called "out–of–appeal" (according to the new Administrative Procedure Code "review") proceeding. If the so–called resumption of proceedings is permitted or ordered (or according to the new Administrative Procedure Code a so–called "new decision" will be issued), procedure to a higher instance will not be applied.

In conclusion, let us remind that instance control is included in the category dealt with, i.e. control performed by administrative bodies. It is thus its second part, besides the above–mentioned state control.

– Control performed by institutions of an ombudsman type

This area of public administration control includes control carried out by the Public Rights Defender and it may also include the control activity of the Office for Personal Data Protection. These bodies were incorporated in the control system of public administration based on the respective legal regulations in 1999 and 2000 respectively.

The common sign of both is that in their control activities they stand outside public administration (and outside the classical parts of public power), they are independent, which is typical of institutions of an ombudsman type, as well as another sign that is control specialization and purpose of their activity which should serve (primarily) to the protection of rights of individuals and they stand outside the structure of judicial authorities to whom the protection of rights generally falls according to a constitutional regulation.

The specific positions of both institutions and their control or remedial and sanction competences are established differently, as it arises from the respective legal regulations.

Public Rights Defender (hereinafter referred to as "Defender") (elected by the Assembly of Deputies from candidates proposed by the President and the Senate) acts on the basis of a direct impulse from a citizen, on his own initiative, or on the basis of an impulse assigned by a deputy, senator, or one of the chambers of the Parliament.

The Defender's mission is, according to the diction of law, to act for the protection of persons before proceedings of offices and other institutions set in the law, if they are contrary to law, if they do not meet the principles of a democratic legal state and Good Governance, as well as against inaction, and thus to contribute to the protection of fundamental rights and freedoms.

The Defender is authorized to perform investigations in respective offices and if he finds a misconduct, he will call the office for its statement within 30 days. If the Defender recognizes the sufficiency of such measure, he will inform both the complainant and the office, and if he does not, he will conveys his final opinion to the office and complainant, including a remedial measure. The Defender has no remedial, coercive or sanction authorities, he may only inform the superior office or the government and may inform the general public.

The Defender's competence applies to state administration bodies, the bodies of territorial self-governing units in the performance of state administration (not to the area of their independent competence), armed security forces, and also to the facilities for the execution of custody, sentence of imprisonment, protective or residential care, protective treatment, and to public health insurance companies. It does not apply, however, to the Parliament, President and the Government, SAO, intelligence services, bodies responsible for penal proceedings, Public Prosecutor's Office, and courts (except for the state administration of courts).

Compared to the Public Rights Defender, the range of audited entities of the **Office for Personal Data Protection** is wider as it applies to all that process personal data (i.e. also private entities), with the exception of some designated activities and types of cases.

The Office for Personal Data Protection, as an independent body (with the position of a central administrative body for the area of personal data protection and some other issues), has, apart from control powers adequately set for the audited area, also power to

impose measures for remedy of drawbacks found, as well as a large sanction power referring to non–provision of cooperation during an audit and in particular to various breaches of rules specified by the law on personal data processing.

The control performance of the Office may also be initiated by an individual and it is also carried out according to its own plan of audits.

– Control initiated by citizens' impulses, complaints and petitions

The right to turn to state bodies and territorial self–government bodies with applications, proposals and complaints in the matters of public or other common interest is one of the rights guaranteed by the Constitution (Article 18 of the Charter).

The right to petition is based on the adopted law on the right to petition (Act No. 85/1990 Coll.), according to which a petition may be lodged by any citizen himself/herself or together with others. To draw up a petition, citizens may establish a petition board on behalf of which, however, an appointed citizen will act. The law sets the procedure for obtaining signatures from other citizens under a petition, including the possibility to call for petition support and its display in public places, but without violating the peace or traffic etc. The particulars of so–called petition sheets are prescribed. Signatories provide their first names, surnames, and places of residence.

The body that has received a petition, will assess its content, will take or provide necessary measures and will provide an answer to the person who has lodged the petition. In the case of a justified petition, the relevant body is obliged to remedy the matter. The term for the processing of petitions is 30 days. By delivering the answer to the person who lodged the petition, the petition is considered settled. There is no possibility of an appeal, however, lodging another petition is not excluded.

The regulation of the right to petition is an example of the form of control that usually results in applying another, appropriate form (e.g. control performed by administrative bodies).

Through petitions it is not possible to intervene with the independence of courts, nor may they be used for calling for a breach of fundamental rights and freedoms guaranteed by the Charter.

Complaints are of a different nature; they are now regulated in Section 175 of the Act No. 500/2004 Coll., Administrative Procedure Code. They may be lodged against the procedure of an administrative body or against misbehaviour of officials, but only in such cases in which other process modes, such as administrative proceedings, are not applied.

The lodging of complaints is basically regulated informally, from their lodging up to the form of settlement. A complaint must be properly examined, the necessary measures must be taken (the relevant body then monitors how they are fulfilled) and the complainant

must be informed. Afterwards the complaint is considered settled. A repeated complaint is examined only from such an aspect as to whether the original complaint was properly settled.

The right to submit proposals, comments and suggestions to community (regional) bodies is established for the citizens of a community (region) and also for the persons who own a property on the territory of such community (region) in the respective laws on communities and on regions. Municipal bodies process such suggestions without delay, but no later than within 60 days and, if this is in the competence of the board of representatives, within 90 days.

– Administrative justice

Judicial review generally falls, from the view of the public power system apart from control performed by legislative and representative bodies, to another important area of public administration control, which is absolutely essential in a legal state, and it represents one of the signs of a modern legal state.

We will deal with the sphere of administrative justice, as a part of judicial power specialized in the sphere of public administration, separately and in details.

Public administration control performed by independent courts is one of the fundamental stones of a legal state. In the second half of the 19th century a new type of justice developed in Czech lands, focused on the legality control of administrative bodies' decisions, called administrative justice. The framework of this judicial review includes a review of so–called individual (specific) administrative acts, not normative (abstractive) acts – legal regulations issued by public administration, the review of which, as regards their compliance with constitutional regulations and laws, is in the competence of the Constitutional Court.

The current regulation of administrative justice has its basis in Article 36, paragraph 2 of the Charter, according to which those who state that they have been encroached upon their rights by a decision of a public administration body, may turn to the court to review the *legality* of such decision, unless otherwise stated by law. However, the review of decisions concerning fundamental rights and freedoms according to the Charter must not be excluded from the jurisdiction of courts.

After cancelling the previous regulation of administrative justice contained in the fifth part of the Civil Procedure Code in 2001, which suffered from some substantial drawbacks, the current regulation of administrative justice is contained in the **Administrative Justice Code** (Act No. 150/2002 Coll.).

Courts in administrative justice (these are ordinary courts, specifically materially competent regional courts within which specialized benches and judges operate, and in specified cases the Supreme Administrative Court) provide protection to the *public entitlements* of individuals and legal entities.

Judicial review by the administrative court is always initiated by an action of the person whose public entitlements have been breached, affected, or are threatened, under the conditions set by the Administrative Justice Code.

The courts in administrative justice decide:

- *on actions against decisions* issued by public administration, by which the plaintiff claims to cancel the decision or to express its nullity (the court, without ordering proceedings by a judgment expresses nullity even without a petition if it is found during proceedings) if he claims that he was encroached upon his rights directly or as a consequence of a breach of his rights in the previous proceedings by an act of an administrative body, which establishes, changes, cancels or bindingly determines his rights or obligations.
  An action may also require a reduction of sanction or cancellation of sanction imposed by an administrative body, if it was imposed in an inadequate amount. Here the so–called full jurisdiction of court is applied, which may judge, by judgment, not only legality, but also correctness – adequacy of an imposed sanction and to reduce its amount or to cancel it.
  In the case of illegal decisions, the court will also cancel the decision of an administrative body which exceeded the limits of administrative discretion given by law or misused it.
  The condition for an action in general is exhaustion of regular remedies in proceedings before an administrative body. It is not possible to sue separately for only the grounds of a decision, it is not possible to state the nullity of a decision as the only reason if the participant did not claim the expression of nullity before an administrative body. The action must include for what factual and legal reasons the decision is considered illegal or null, as well as evidence to prove the plaintiff's statement.
  Generally, an action may be filed within two months from the announcement of a decision, and within three years from the legal effect of such decision.
  The basis that the court takes when reviewing a decision is the factual and legal state that was at the time when the administrative body made its decision. The court will review the attacked statements within the limits of the points of claim.
  Without proceedings the court will cancel the attacked decision by judgment for inability to review lying in incomprehensibility or a lack of reasons or because the factual state is in discordance with the files or it has no grounds in them or it requires a large or substantial completion, or for a serious breach of the provision on proceedings that could cause an illegal decision in the matter. Otherwise the court will order proceedings.
  During proceedings on an action, the court performs evidence, may repeat or supplement evidence, the court considers the evidence by the principle of a free consideration of evidence along with evidence performed before the administrative body

and it keeps to the factual and legal state found in this way. In this competence of court, the so–called full jurisdiction can also be seen.
Apart from the attacked decision, the court may cancel the decision of a lower–level administration body that preceded it. Along with the cancellation of the decision, the court states that the case is returned to the sued administrative body for other proceedings. The administrative body is bound by the legal opinion of the court.
If the action is not legitimate, the court will dismiss it.

- *on actions for the protection against inaction* (if a decision was not issued within the statutory limit and after exhaustion of the process means for the protection against inaction) by which the plaintiff claims that the court should impose an obligation to the administrative body to issue a decision on the matter alone, or a certificate. An action may be filed within one year from the day on which the term set by law for issuing the decision or certificate has elapsed, or from the day when the last act was performed.
  The court decides according to the factual state as to the day of its decision–making. If the claim is legitimate, the court will impose to the sued administrative body the obligation to issue a decision or certificate within the set term. Otherwise it will dismiss the action.
- *on actions for protection against an illegal intervention, instruction or coercion of an administrative body.* An action may be filed by the person who states that he was directly encroach upon his rights by the stated illegal signs of the administrative body that are not a decision and they were led directly against him or, as their consequence he was directly affected. The condition is, however, that such an intervention or its consequences last or there is a threat that it will be repeated.
  As regards the procedures of various boards that are not administrative bodies, the action is against the administrative body that controls such board or to which the board is subordinate, or in the case of municipal police, it is the community.
  The action must be filed within two month from the day on which the plaintiff had knowledge on the intervention, no later than within two years from the time when it happened. If a remedy may be claimed by other legal means, such action is not permissible.
  The basis for the decision–making of the court is the factual state on the day of the decision. By judgment the court will forbid the continuation and breach of the plaintiff's rights and it will order, if it is possible, restoration of the state that had been before the intervention. If the action is not legitimate, the court will dismiss it.
- *on competence actions. The Supreme Administrative Court* decides on positive (administrative bodies claim the right to decide) or negative (administrative bodies disclaim their authority to issue a decision) competence disputes the parties of which are either an administrative body or a territorial body, interest or professional self–governments, or self–government bodies mutually, or central administrative bodies mutually.

Generally, such actions may be filed by the mentioned administrative bodies or also the person on whose rights of obligations was or should have been decided in proceedings before an administrative body.
The court by judgment will determine which of the administrative bodies has the power to issue a decision in the case stated in the action, and also it expresses nullity of all decisions (or individual statements) issued contrary to the determination of authority by court.

Also, in administrative justice, courts decide *in the matters of elections* and in *the matters of local referendums*, and also *in the matters of political parties* and *political movements.*

In the system of administrative justice, a specific task is assigned to the **Supreme Administrative Court** which, apart from the mentioned decision–making on competence disputes, should ensure, by law, the continuity in decision–making as such and also the *unity and legality* of decision–making of courts in administrative justice, and also of administrative bodies. It may make so–called leading resolutions (against procedures of public administration) or so–called statements (towards decisions of courts), if it finds deviations or non–observance of the current jurisdiction of administrative courts, or in the interest of the uniform decision–making of courts.

These statements or leading resolutions of the Supreme Administrative Court are, along with selected decisions of administrative courts, published in the *Collection of Decisions of the Supreme Administrative Court.*

Also important is the role of the Supreme Administrative Court in decision–making on so–called *nullity complaints* that are not a common regular remedy against decisions of courts in administrative justice, but a remedy against final decisions of regional courts in administrative justice, by which the participant claims cancellation of a judicial decision for precisely determined reasons (illegality lying in an incorrect consideration of a legal matter by the court in previous proceedings, defects of proceedings – the facts have no grounds in the files or are in contradiction with them, inability to review for incomprehensibility or a lack of grounds for a decision, invalidity of proceedings before the court, but also illegality of the decision on refusal of proposal or on discontinuance of proceedings). A nullity complaint must be filed within two weeks from the delivery of decision.

The Administrative Judicial Code also knows a *resumption of proceedings* that is only permissible against a judgment issued in proceedings on protection against an intervention of an administrative body and in the matters of political parties and political movements. It is not permissible against decisions on nullity complaints. The term for filing a proposal is three month, arbitrary (from the finding of grounds for resumption of proceedings by the participant) and three years, objective (from the legal effect of the attacked decision).

Apart from reviews performed in administrative justice, our legal order knows another remedy of judicial protection of individuals' rights – in the mode of **the fifth part of the**

Civil Procedure Code. According to this regulation, effective also since 1 January 2003, a dispute or a legal matter of a private–law nature (a matter that results from civil–law, labour, family, and business relations) on which an administrative body decided, may be processed, upon proposal, in civil judicial proceedings, by "legal procedure".

Here the so–called full jurisdiction of court is established (in accordance with Section 6, paragraph 1, European Convention of the Protection of Human Rights and Fundamental Freedoms). There is no liability by the factual status as found by an administrative body and it is not a review of legality. The court will consider the *correctness* of the decision of the administrative body that is not a participant in the proceedings before court.

The participants in such proceedings before court are plaintiff (the person that claims that his rights were affected by a decision of an administrative body) and those who were participants in the proceedings at the administrative body. The action must be filed within two months from delivery of the administrative body's decision. At the first level there are competent district courts, while regional courts decide in the matters of registration in the land registry (this is a clear example of a decision in the matter of a private–law nature, as well as, for example, decision–making on compensation for damage caused by an offence according to the law on offences).

If the court concludes that a dispute or another legal matter should be decided differently than an administrative body decided, the court will make a decision by judgment. The judgment then supersedes the decision of the administrative body in such extent in which it is affected by the judgement.

If the court concludes that the administrative body decided correctly, it will dismiss the action. In such case (and also if the court dismisses the action or will discontinue the proceedings), the decision of the administrative body remains unaffected (unless the proposal by which the administrative proceedings were started has been withdrawn, which is permissible by law).

– Constitutional Court

According to the Act No. 182/1993 Coll., it reviews the constitutionality and legality of legal regulations (normative acts) issued by public administration bodies.

It also provides protection to constitutionally protected rights of individuals if they claim in their constitutional complaint that they were affected by a legally effective decision of an administrative body, but after exhaustion of process remedies (usually within administrative justice). Similarly, it applies in the case of other interventions of public power bodies (e.g. the police) in constitutionally guaranteed rights and freedoms of individuals.

For further information please refer to a similar textbook of constitutional law.

PUBLIC ADMINISTRATION IN THE CZECH REPUBLIC

Multimediální učební text

doc. JUDr. Soňa Skulová, Ph.D.

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