



- 1. Administrative Procedural Law**
- 2. Legal Guarantees in Public Administration**
- 3. Ombudsman. Public Administration control. Judicial Review**

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Questions and discussion

Prepare your answer to the following questions:

1. Why do we have public administration? Is it good/bad thing, helps/is harmful, ...
2. What is (is there any) a connection between public administration and administrative law?
3. Do we need any procedural norms in administrative law? Who is the addressee?
4. Why is important to control public administration?

Administrative Procedural Law

- **Procedural part** of Administrative Law (different procedures that can be found in public administration) – **protection** of rights
- **Code of Administrative Procedure** (act nr. 500/2004 Coll.)
- **Code of Administrative Justice** (act nr. 150/2002 Coll.)

Legal Guarantess in Public Administration

- **Principle of legality** (Constitution, Charter of Fundamental Rights and Freedoms, Code of Administrative Procedure, ...)
- **Legal guarantees:** different measures that enables and ensures legality in public administration
 1. **Control** (in public administration – **internal** and **external**), Code of Control (act nr. 255/2012 Coll.), external control by: courts, ombudsman, people (petition), independent administrative bodies, Parliament
 2. **Right to information** (FOIA – act nr. 106/1999 Coll.)
 3. **Control of administrative acts**
 4. **Responsibility** (act. nr. 82/1998 Coll. for damages), **administrative offences** (act nr. 250/2016 Coll.)

...and now selected issues

1. In general...
2. Forms of activity and protection of rights
3. Remedies
4. Administrative Justice

1. General remarks

- Printed materials

2. Forms of Public Administration Activity in the Czech Republic and Protection of the Rights of Individuals

- **System of forms** of public administration activity
- **Approaches** to the system of forms
- Forms of public administration activity and **judicial protection**

Normative vs. instrumental approach to the forms of public administration activity

- Form(s) of activity:
 - 1) Outcome/result of public administration activity; several forms (due to complexity of public tasks and goals)
 - 2) shows in which ways/forms is the public administration realized and applicated
 - 3) Presents scope of administrative and judicial protection.
- Normative approach to the forms: which forms has the public administration permitted/allowed and „prescribed“ to fulfill its tasks (principle of legality), helps the public administration
- Instrumental approach: the system of forms protects the individual rights, another than prescribed form can´t be applied/used



Forms of public administration activity		Where in the Code of Administrative Procedure (CAP) it is provided for/regulated	Form of protection under the CAP
Administrative act	normative administrative act	not provided for ; however, the CAP shall be applied at least in the scope of its principles contained in Part one (Sections 2 to 8 CAP)	no provision
	individual administrative act	1) administrative decisions - Parts two and three (Section 9 to 153 CAP) 2) so-called other acts - Part four (Sections 154 to 158 CAP)	Ad 1) remedial measures (ordinary and extraordinary, Sections 81 to 100 CAP) 2) interlocutory revision and the form of so-called review proceedings (Section 156 CAP)
	mixed administrative act (since 2006)	measure of a general nature - Part six (Sections 171 to 174 CAP)	form of so-called review procedure (Section 174 par. 1 CAP)
Public law contract		Part five (Sections 159 to 170 CAP)	form of so-called review procedure (Section 165 CAP)
Factual act and immediate intervention		no provision ; however, the CAP shall be applied at least in the scope of its principles contained in Part one (Sections 2 to 8 CAP)	no provision

3. Principle of Two Instances – Administrative Appeal and Remonstrance

- **Common principle** of the Administrative Law
- **not expressly stated** in the legislation – non written down exactly
- **X - Admitted** by the practice a jurisprudence
- **X - Existence of ordinary remedies** – their admissibility – existence of this principle
- **! - BUT** has **no nature as BASIC/FUNDAMENTAL principle**, only standard/normal principle
- **THEREFORE:**
 1. **Absolute exclusion** of this principle
 2. **Relative exclusion** of this principle

Principle of Two Instances

- **Absolute exclusion** of the principle
 1. **no ordinary remedies**
 2. **legal force**
 - Independent administrative bodies (no superior body)
 - No administrative review – due to the independence
 3. Instead of administrative review – straight **judicial review**

Principle of Two Instances

- **Relative exclusion** of the principle

1. Remonstrance

- ? *Is it a **special, but independent ordinary remedy, or only a special type/kind of an administrative appeal?***
- **Whose decision are controlled** in remonstrance proceedings?
- **Who decides** on remonstrance?

Remonstrance

- Use by the aggrieved participants **against decision** that was made by the „**CAB**“ in the first instance/level
- „**CAB**“
 - ❖ central bodies (on the top of the hierarchy)
 - ❖ no superior bodies
 - ❖ preparation of the legislation
 - ❖ conceptual task, analysis, advices
 - ❖ ministries, other ...
- ***Should or shouldn't the „CAB“ participate in the administrative decision making process and should or shouldn't make an individual decisions?***

Remonstrance

- „CAB“ in the administrative proceedings
- 1. Represents the **second/final instance****
 - with accordance to the principle of two instances
 - final instance – final decision, end of the procedure
 - instrument for control
- 2. Represents the **first instance** – the administrative proceedings **begins at this stage/level****
- In respect to the principle of two instance – **who will then decide in the second instance?**
- No superior administrative body

REMONSTRANCE

Remonstrance

- By the **head** of the „CAB“ who made first instance/level decision
- ? internal or external control?
- ? **Impartiality** – control of decision that was made by „his/her“ office, „his/her colleagues“, ...
- Legal requirement: **estabilishing** the „independent“ **remonstrance commitee**
- ! decision on remonstrance is made **by the head, not by the commitee!**

Extraordinary Remedial Measures in Administrative Procedure

- **Purpose** of remedial measures
- **Distinction** between ordinary and extraordinary remedial measures
- **Extraordinary remedial measures** in the Czech „CAP“, its system

Extraordinary Remedial Measures in Administrative Procedure

WHY REMEDIES IN ADMINISTRATIVE PROCEDURE? NEED OF REMEDIES?

- Normative approach: how to **protect legality and public interests** in administrative procedure, to ensure legality of administrative acts itself (**law**)
- Instrumental approach: system of remedies that helps aggrieved parties (participants) against unlawful and unjust decisions (**right**)
- YES, we need them, but ... (is not so much remedial measures? **More remedies = more rights???** How to **use this system...**)

Extraordinary Remedial Measures in Administrative Procedure

Are remedial measures in administrative procedure more „normative“ or „instrumental“?

- **Ordinary remedies** – more **instrumental**

(**Appeal** - Sec. 81 – 93 CAP, and/or **Remonstrance** - Sec. 152), **right to** administrative appeal, the decision is **not in legal force**, principle of **two instances**, condition for **access** to Administrative Justice

- **Extraordinary remedies** – more **normative**

(**Review procedure** – Sec. 94 – 99, and **Renewal procedure** – Sec. 100), more **ex officio**, scope of **legality** (q. iuris et facti) problems with **legal force**, problems with **time limits and concurrence** with Administrative Justice

Extraordinary Remedial Measures in Administrative Procedure

- **Extraordinary remedies**

1. problems with **legal force** (is relative or absolute?) **and rights**
2. problems with **time limits**
3. **concurrence** with Administrative Justice
4. **purpose** of this measures
5. the **need of legality** x **gained rights in good faith**
6. **Ex officio** (initiative from parties)
 - **Do we really need them? Can the society and public Administration exist and function without them?**

Extraordinary Remedial Measures in Administrative Procedure

- **Review procedure** – instrument of connectivity in CAP, is used in other procedural forms
- **Retroactivity in favor** – bound by the the date of issue, no later changes, even in favour ...
- **Is it effective?**

4. Administrative Justice in the Czech Republic

- „changes and expectations“ in Administrative Justice (not only) on the example of the Czech Republic
 - 1) **Purpose** of the Administrative Justice and its **history** and **development**
 - 2) **Today's situation** and legal regulation
 - 3) Possible **changes and expectations** in future

Administrative Justice in the Czech Republic

Why do we have the Administrative Justice?

- To **protect rights** of individuals and **thus** to **control state/public administration**
- **More protection or more control?**
- **Control as a result of protection** – Administrative Justice may control only such cases where the action was taken (no ex officio)
- Protection is **not possible in all cases**, but only in which the legal regulation **enables it** (reasons for actions are very wide)

Administrative Justice in the Czech Republic

- NSS (sp. zn. 8 As 47/2005, 1764/2009 Coll., NSS) Administrative Justice and „Code of Administrative Justice is by its nature a **„defensive,, act**. It is **not a "control" standard that would allow anyone** to initiate, by bringing an action in the administrative justice, to control any act of the public administration. It is only intended to **ensure legal protection in cases where public administration enters into the legal sphere** of natural or legal persons. The limitation criterion for prominence is the alleged interference with public subjective rights. **Not all the activity** (or any misconduct) of public administration **is subjected to judicial control**, but only when the activity of the administration **exceeds their public subjective rights.** "

Administrative Justice in the Czech Republic

- **External products** of Administrative Justice – the ruling/court's decision – is still an **individual decision** or the **law for other cases**?

Administrative Justice in the Czech Republic

- 1867 and 1876 in Austrian Empire – Code of Administrative Justice (Act Nr. **36/1876** Coll.)
- Act Nr. **3/1918** Coll. – Code of Administrative Justice; „only“ Supreme Administrative Court and the cassation complaint (against administrative decision)
- Adoption of the **Code of Administrative Procedure** (in 1928) was **strongly influenced by the case law** of the Austrian/Czechoslovakian (Supreme) Administrative Court
- **To cover the Loopholes in legal regulation**

Administrative Justice in the Czech Republic

- **Restoration** in 1992 (to 2003), with **lack** of Supreme Administrative Court – **8 regional** administrative courts and **2 High Courts** in administrative matters
- **Different/inconsistent** court rulings

Administrative Justice in the Czech Republic

- **New system** (since 1. 1. 2003, Act Nr. 150/2002 Coll., Code of Administrative Justice)
- **Regional courts and Supreme Administrative Court**
- Possibility to take an action against: **decision, inactivity, factual acts, act of general measure** (since 2005), ... wide scope of judicial protection
- **Unacceptability of cassation complaint** (since 2005) in the matters of international protection (azylum sphere)

Forms of public administration activity		Form of judicial protection
Administrative act	Normative administrative act	cancellation by Constitutional Court
	Individual administrative act	1) administrative decision - proceedings on action against a decision of an administrative authority (Section 65 et seq. of the Code of Administrative Justice - CAJ) 2) so-called other acts - review as the underlying act in proceedings on action against decision of an administrative authority (Section 75 par. 2 of the CAJ), or in proceedings on action for protection against unlawful intervention (Section 82 et seq. of the CAJ)
	Mixed administrative act	Measure of a general nature - proceedings on a petition for cancellation of a measure of a general nature (Section 101 et seq. of the CAJ)
Public law contract		It is as such not a direct subject matter of a judicial review, but a decision based on it may be subjected to a review - proceedings on action against decision of an administrative authority (Section 65 et seq. of the CAJ) or in proceedings on action for protection against unlawful intervention (Section 82 et seq. of the CAJ)
Factual act and immediate intervention		proceedings on action for protection against unlawful intervention (Section 82 et seq. of the CAJ)

Administrative Justice in the Czech Republic

- **Creation and transforming the law**, even the legal regulation contains the rule (against the law), power to rewrite the legal regulation – **no loopholes**
- **The Parliament usually agrees** (only in small amount of cases was adopted legal regulation that is different than the case law – **3 cases**)
- Purpose of Administrative Justice – **ex post control** or **direct decision making proces?**

Administrative Justice in the Czech Republic

Expectations:

- **Specialization?**
- **Control or direct decision making in the case?**
- **Scope of review? Unacceptability of cassation complaint**