

# Administrative Procedural Law Legal Guarantees in Public Administration (Judicial Review, Ombudsman)

**Lecture 5: 26th April 2023**

*SOC003: Public Administration in the Czech Republic*

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## **1/ System of (Czech) Administrative Law**

- For context of the lecture

## **2/ Legal regulation of administrative procedure**

- Administrative Procedural Law
- Administrative procedure in CAP
- Decisions and other procedural forms

## **3/ Legal Guarantees in Public Administration**

- Principle of legality and other basic principles
- Administrative Justice in the Czech Republic
- Ombudsman institution in the Czech Republic

# 1/ System of (Czech) Administrative Law

## □ **Function of Public Administration in the society**

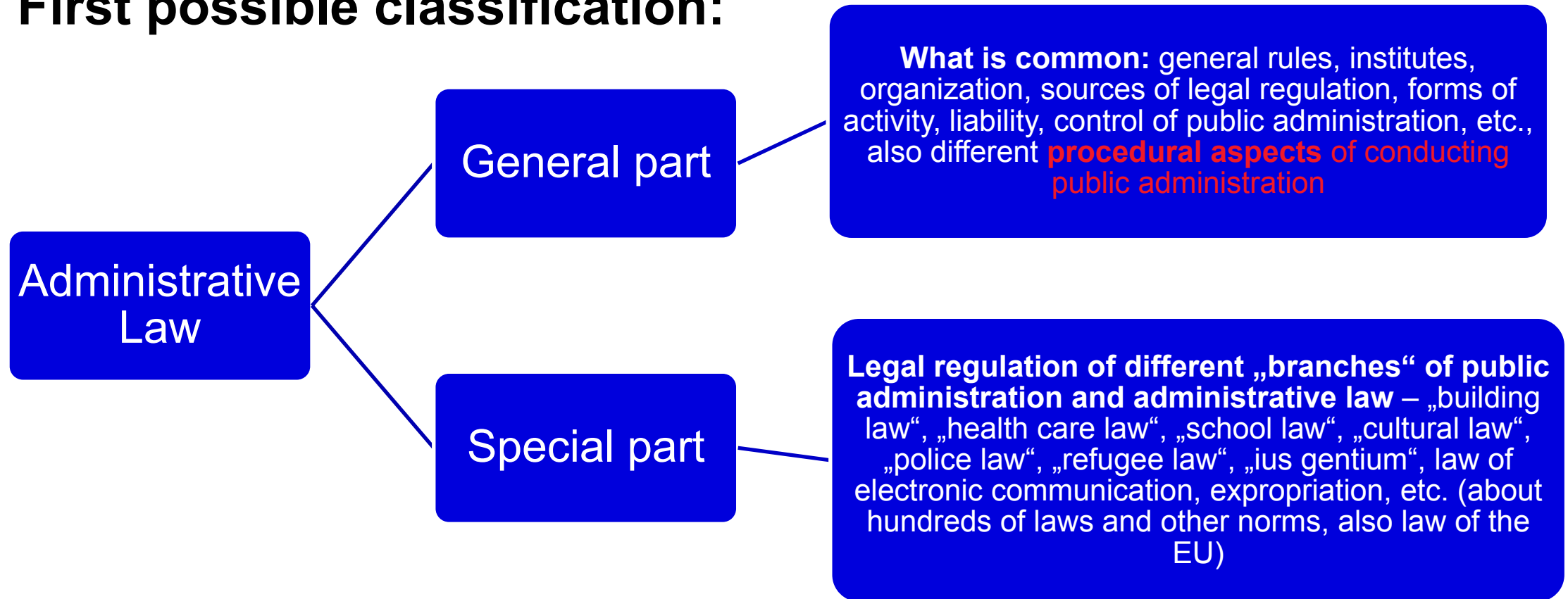
- To achieve **public goals** and to protect **public interest**
- It is generally **based on (intentional) activity**
- Possibility of **using public power**

## □ **Administrative Law („Správní právo“)**

- The biggest (and also important) **branch/part of law/legal system** (of each „legal“ / „administrative“ state); part of **public law**
- **Regulates relations** in Public Administration
  - a) its **organization** (at different levels) and
  - b) its **functions/activities**
- **Where is the place of Administrative Procedural Law?**

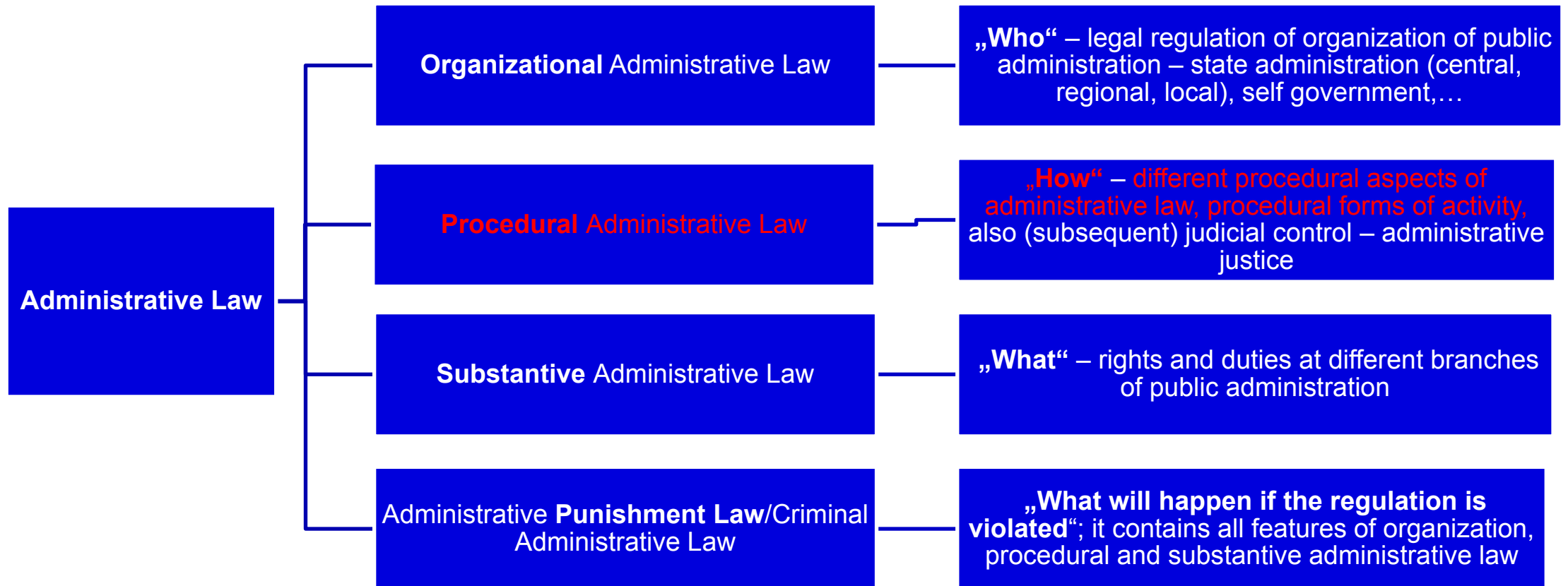
# 1/ System of (Czech) Administrative Law

## First possible classification:



# 1/ System of (Czech) Administrative Law

## Second possible classification:



# 1/ System of (Czech) Administrative Law

## **Administrative Procedural Law**

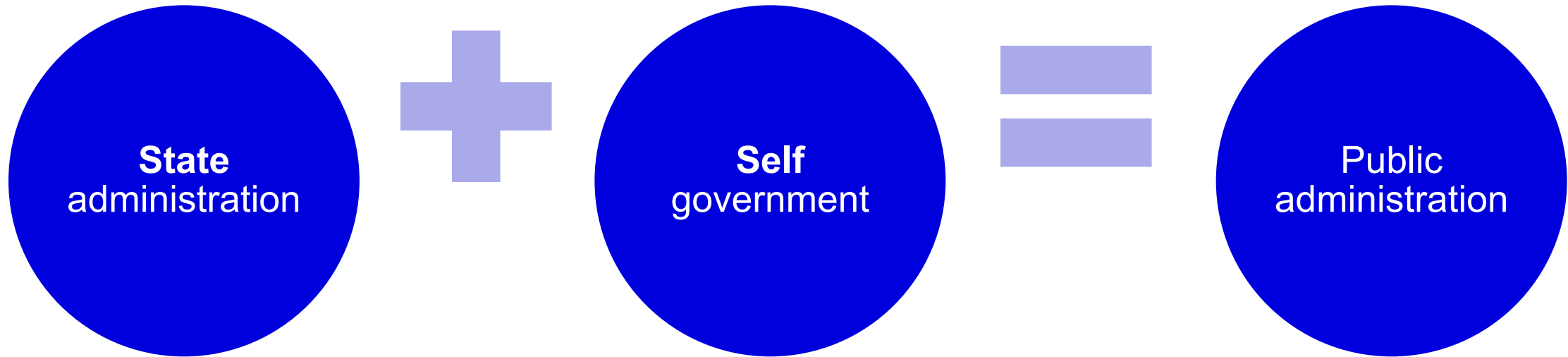
- = *Procedural part of Administrative Law*
- Consists of *different procedures* that can be found in public administration
- Emphasis on *protection of (individual) rights and freedoms*
  
- Generally regulated in...**
- Code of Administrative Procedure* (Act no. 500/2004 Coll.) – „**CAP**“
- Code of Administrative Justice* (Act no. 150/2002 Coll.) – „**CAJ**“

# 1/ System of (Czech) Administrative Law

## □ What does CAP regulate?

- Art. 1 section 1 of act nr. 500/2004 Coll., Code of Administrative Procedure
  - „*This Act regulates the procedure of executive bodies, bodies of territorial self-governing units and other bodies, legal and natural persons, if they exercise competence in the field of public administration (hereinafter referred to as "administrative body").*“
  
- Public administration is a **system of different administrative bodies**
- And system of their **functions and forms**
  - See schemes further
  
- But **CAP does not regulate** the area of public administration which does **not exercise any public authority** (public power)
  - *Providing of public services, public property management etc.* – there are also legal rules, but special ones (generally based of modifications of private law)

# 1/ System of (Czech) Administrative Law



- **State administration** belongs to **the state**:
  - **important part** of public administration, different tasks of the state are performed by the state and its bodies („**direct state administration**“),
  - but also „indirectly“ by other bodies that are not part of the state administration („**indirect/transferred state administration**“) – on a legal basis bodies of territorial self-government are performing state administration duties („**mixed model of state administration**“)
- **Self-government** includes **local, regional** and also „**university/ interest and professional**“ self-government



# 1/ System of (Czech) Administrative Law

**Government and ministries (14)** (and **other central administrative bodies – 17**: 1. Czech Statistical Office, 2. Czech Office for Surveying, Mapping and Cadaster, 3. Czech Mining Authority, 4. Industrial Property Office, 5. Office for the Protection of Competition, 6. Administration of State Material Reserves, 7. State Office for Nuclear Safety, 8. National Security Authority, 9. Energy Regulatory Office, 10. Office of the Government of the Czech Republic, 11. Czech Telecommunication Office, 12. Office for Personal Data Protection, 13. The Council for Radio and Television Broadcasting, 14. Office for the Supervision of the Management of Political Parties and Political Movements; 15. Office for Access to Transport Infrastructure, 16. National Office for Cyber and Information Security, 17. National Sports Agency and „independent“ bodies as Czech National Bank or Supreme Control Office

State administrative bodies with the **whole state/national scope**: National Heritage Institute, Czech Social Security Administration, Labor Office, State Labor Inspection Office, Civil Aviation Office, General Financial Directorate, Specialized Tax Office, Railway Authority, Office for International Legal Protection of Children, State Institute for Drug Control, National Accreditation Office

**Local Specialized bodies**: Tax offices (14), regional sanitary stations (14), regional military headquarters (14), district social security administration (84), district mining offices (8), cadastral offices, inspectorates (84)

**Indirect state administration** performed by the bodies of regions and municipalities

# 2/ Legal regulation of administrative procedure

## □ Sources of regulation

- In general **CAP** (art. 1 sec. 2) – „*This Act or its individual provisions shall apply unless a special law provides otherwise.*“
- But also in **various special laws** (special procedural regulations – about 300 laws)
  - Special regulation of Building proceedings under Building Act etc.
  - Various modifications of CAP procedure

## □ CAP

- about **180 provisions**, in effect since **2006**
- can be **excluded** by *lex specialis*, but its not possible to exclude CAP without special regulation in place
- Regulates also **basic principles of administrative bodies activities** (art. 2 – 8 CAP)
  - Those are **legal principles** (are legally binding for authorities), many of them are **principles of good administration** in nature

# 2/ Legal regulation of administrative procedure

## □ Administrative procedure in CAP

- Is **one of the procedural forms** (not the only one), that are regulated by CAP
  - CAP ≠ administrative procedure, but CAP ≥ administrative procedure
- Regulation for **issuing administrative decisions**
- Is important **part of public administration**
  - The decision enables/permits/constitutes **new right** (e.g. to study, to build, to do business, to drive, grant social benefit, authorization...), but also **constitutes duties** (e.g. to pay a fine); sometimes is the decision is in the beginning, sometimes it follows what happened (administrative offence)
- Needs to have its **participants**, who have different rights and duties among the procedure; these are also **addressee of the final decision**
- If started, should be ended with a decision (but usually takes some time, but should be reasonable time) – if not administrative silence/inactivity
- Can be **reviewed** by superior administrative bodies and later by the administrative courts

# 2/ Legal regulation of administrative procedure

## □ **Administrative procedure in CAP**

- The proceedings are conducted by a **competent administrative body** and authorized **public officials**
- The participants have the right to propose and demand and **many other procedural rights**
  - Make proposals/demands/objections
  - To comment, explanate
  - Access to the files...
- **Various activities** of the administrative body before, during and after the proceedings
  - Some pre-litigation procedures, oral hearing during the proceedings, appellate proceedings etc.
- Initiation of proceedings – **upon request** or **ex officio**
- **Written form** is dominating, but also oral hearings (but written protocol)
- An administrative file is established and maintained in each case

# 2/ Legal regulation of administrative procedure

## □ Administrative decision

□ Specifying the rights and duties **for a given case and circumstances** (*act of application of law*), creates decision-making practice – binding in the future

□ “Parts”

- *Statement*
- *Justifications/reasoning*
- *Information about remedies*

## □ Review

□ Principle of **two instances** – common principle of the administrative law (in the Czech law not constitutionally guaranteed but generally respected)

- **Appeal** = ordinary form of remedy against a decision
- **Remonstrance** = special form of appeal against decisions of ministries or other central administrative bodies

□ Some other “**extraordinary remedies**” (but more protection of legality than individual rights)

□ *Administrative justice (see further)*

# 2/ Legal regulation of administrative procedure

## □ **Not only decisions...**

### □ **Other forms** of public administrative activities regulated by law

- Outcome/result of public administration activity; **several forms (due to complexity** of public tasks and goals)
- Shows in which ways/forms is the **public administration realized and applied**
- Presents **scope of administrative and judicial protection**

### □ **See scheme** further...

- (But its **not required to memorize the details of the scheme** as it is meant only for **basic orientation** in categorization of forms and scope of CAP)

## 2/ Legal regulation of administrative procedure

Forms of public administration activity (theory)		Where is it regulated (CAP)	Form of protection (CAP)
<b>Administrative acts</b>	<b>Normative</b> administrative acts	<b>Not provided for</b> ; however, the CAP shall be applied at least in the scope of its basic principles contained in Part one (Sections 2 to 8 CAP)	<b>No provisions</b>
	<b>Individual</b> administrative acts	1) Administrative decisions – Parts two and three (Section 9 to 153 CAP) 2) So-called other acts – Part four (Sections 154 to 158 CAP)	1) <b>Remedial measures</b> (ordinary and extraordinary, Sections 81 to 100 CAP) 2) Ex-officio revision and the form of so-called review proceedings (Section 156 CAP)
	<b>Mixed</b> administrative acts	Acts of a general measure – Part six (Sections 171 to 174 CAP)	Ex-officio form of so-called <b>review procedure</b> (Section 174 par. 1 CAP)
<b>Public law contracts</b>		Part five (Sections 159 to 170 CAP)	Ex/officio form of so-called <b>review procedure</b> (Section 165 CAP)
<b>Factual act and immediate interventions</b>		<b>No provisions</b> ; however, the CAP shall be applied at least in the scope of its basic principles contained in Part one (Sections 2 to 8 CAP)	<b>No provisions</b>

# 3/ Legal Guarantees in Public Administration

## □ Principle of legality

- Constitution, Charter of Fundamental Rights and Freedoms, CAP...
- **Legal guarantees** = different measures that enable and ensure legality in public administration
- Important role of the **control** of public administration
  - *Internal* – by PA itself
  - *External* – by other state bodies (courts, ombudsman, etc.) or citizens (right to information, petitions etc.)
  
- *How can we know if the state is democratic and legal?*
- Adolf Merkl (Austrian legal scholar) wrote in the 1930's that such state recognizes:
  - *Principle of legality, rule of law*
  - *Existence of self-government and*
  - *Judicial control of public administration – administrative justice*
- **Example:** In the Czechoslovakia from 1948 to 1989 (under so-called *communist era*) these requirements were systematically undermined and more or less destroyed



# 3/ Legal Guarantees in Public Administration

## □ **General rules/principles of public administration activity**

- In **Constitution** (Act no. 1/1993 Coll. – *principle of legality, legal basis for the establishment of authorities, government regulation*, etc.)
- **Charter of Fundamental Rights and Freedoms** (Act no. 2/1993 Coll.) – *right for a fair trial* (art. 36 sec. 1) *and judicial protection* (art. 36 sec. 2) + *many other fundamental rights and freedoms* (free speech, voting, right to property, education, healthcare etc.)
- **European Convention on Protection of Rights and Freedoms** – existence of judicial protection + guarantees of many other fundamental rights and freedoms
- **CAP – basic principles**, focused on a concept of **good administration** (Art. 2-8): *legality, proportionality, protection of good will, legitimate expectations, public service, alternative solutions, speed and economy, minimalization of interventions, equality, cooperation* – legally binding for the administrative bodies
- **Soft law: Council of Europe** – <https://rm.coe.int/16807096b9>

# 3/ Legal Guarantees in Public Administration

## □ Administrative Justice in the Czech Republic

- Roots in **Austrian** administrative law
  - 1867 and 1876 in Austrian Empire – Code of Administrative Justice (Act No. 36/1876 Coll.)
  - Act No. 3/1918 Coll. – Code of Administrative Justice
- During the **communist era** generally dysfunctional
- Restoration in **1992**, reform in **2003**
  
- Now regulated in **Code of Administrative Justice** (Act no. 150/2002 Coll.) – „**CAJ**“
- **New system** – possibility to take an action against:
  - **Decisions, inactivity, factual acts, acts of general measure**
  - = Wide scope of judicial protection
- **Supreme Administrative Court** (Brno ---->)
- + **8 regional administrative courts**



# 3/ Legal Guarantees in Public Administration

## □ Administrative Justice in the Czech Republic

- 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**. "
- **Supreme administrative court** (8 As 47/2005, 1764/2009 Coll., SAC)

# 3/ Legal Guarantees in Public Administration

Forms of public administration activity		Form of judicial protection
Administrative act	Normative administrative act	cancellation by <b>Constitutional Court</b>
	Individual administrative act	1) administrative decision - proceedings on <b>action against a decision</b> of an administrative authority (Section 65 et seq. of the Code of Administrative Justice - CAJ) 2) so-called other acts - review as the <b>underlying act in proceedings</b> on action against decision of an administrative authority (Section 75 par. 2 of the CAJ), or in proceedings on action for protection against <b>unlawful intervention</b> (Section 82 et seq. of the CAJ)
	Mixed administrative act	Measure of a general nature - proceedings on a <b>petition for cancellation</b> 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 - <b>proceedings on action against decision</b> of an administrative authority (Section 65 et seq. of the CAJ) or in <b>proceedings on action for protection</b> against unlawful intervention (Section 82 et seq. of the CAJ)
Factual act and immediate intervention		proceedings on <b>action for protection against unlawful intervention</b> (Section 82 et seq. of the CAJ)

# 3/ Legal Guarantees in Public Administration

## □ Ombudsman institution in the Czech Republic

- Established in **2000**, Act no. 349/1999 Coll., seated in Brno
- One universal institution, considered as a body of Parliament (of Chamber of Deputies)
- „**Public Defender of Rights**“ - <https://www.ochrance.cz/en/>
- One representative of the institution + one deputy (and administrative office)

## □ Ordinary aspects of this type of institution (Ombudsperson)

- Protects citizens **against state bureaucracy**
- **Nonformal, accessible, fast**
- Cannot decide, instead using its **nonformal authority to persuade** administrative bodies to follow its findings
- **Autonomous** on the executive power (elected by the Chamber of Deputies)
- Gather complains and **informs** executive power

## □ Primary and secondary (added later) **competences**

# 3/ Legal Guarantees in Public Administration

## □ Ombudsman (Ombudsperson) institution

### □ Primary competences

- *Protects citizens against the conduct of authorities and other institutions if the conduct is **against the law, does not correspond to the principles of a democratic legal state and the principles of good administration, or the authorities are inactive.***
- Controls **most state authorities**
- Special emphasis on the use of **principles of good administration**

### □ Secondary competences

- *He/she also carries out **preventive systematic visits to places where people are restricted in their freedom and seeks to ensure that their rights are respected.** The Defender also contributes to promotion of the right to equal treatment and protection against discrimination and also systematically deals with the rights of the people with disabilities.*

# Administrative Procedural Law

## Legal Guarantees in Public Administration (Judicial Review, Ombudsman)

*Questions?*

Thank you for your attention