

# Simplifications of Administrative Procedure

*The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe*

<https://www.facebook.com/SimplificationsofAdministrativeProcedure>

**doc. JUDr. Matej Horvat, PhD.**

**Faculty of Law, Comenius University in Bratislava**

[matej.horvat@flaw.uniba.sk](mailto:matej.horvat@flaw.uniba.sk)



## Content of the lecture

- Historical background of Slovak public administration (PA)
- Constitutional aspects including principles of PA
- Code on Administrative Procedure (general)
- Administrative Justice Procedure (general)
- Remarks on simplification(s) of administrative procedure within CAP and AJP



## Opening facts about Slovakia

- **Territory**: 49 036 km<sup>2</sup> (approx. 1/3 smaller than CZ)
- **Population**: 5 450 000 (80.7% Slovaks, 8.5% Hungarians, 2.0% Roma, 0.6% Czechs, 0.6% Rusyns, 0.1% Ukrainians, Germans and Poles)
- **Capital**: Bratislava
- **President**: Zuzana Čaputová
- **Prime Minister**: Igor Matovič
- **Speaker**: Boris Kollár
- **Currency**: Euro (1.1.2009)
- **GDP** per capita: 15 973 € (420 160 CZK)
- **Average salary** 1088 € (28 615 CZK), minimum salary as of 2021: 623 € (16 387 CZK)
- **Average salary** in Bratislava: 1710 € (44 974 CZK)



# Historical background

1

- **(17.11.)1989** – milestone for public administration
  - Before: state administration as the single component of managing/administering the state
  - High level of concentration of powers in the hands of central government
  - Almost non existent local self-government
  - Communist regime – illusion of protecting human rights
- **1990** – founding of municipalities as basic component of self-administration
  - Start of a new concept of administration of interests – recreation of public administration consists of state administration and local self-government (municipalities)
  - Cca 3000
- **1992** – Constitution of Slovak Republic



## Historical background

2

- **1990-1991**: constitutional reform of public administration
  - Accepting human rights and rule of law
- **1995-1995**: reform of state administration
  - District offices and Regional Offices, ministries at the national level
- **1998-2005**: reform of state administration and local self government
  - 2001: founding higher territorial units (separate unit from municipalities; not higher in a subsidiary kind of way to municipalities): 8 higher territorial units
  - 2001: fiscal decentralisation – designating taxes that are state's and that are allocated to local government
  - Regional Offices and County Offices, many specialised regional offices, ministries and specialised central offices



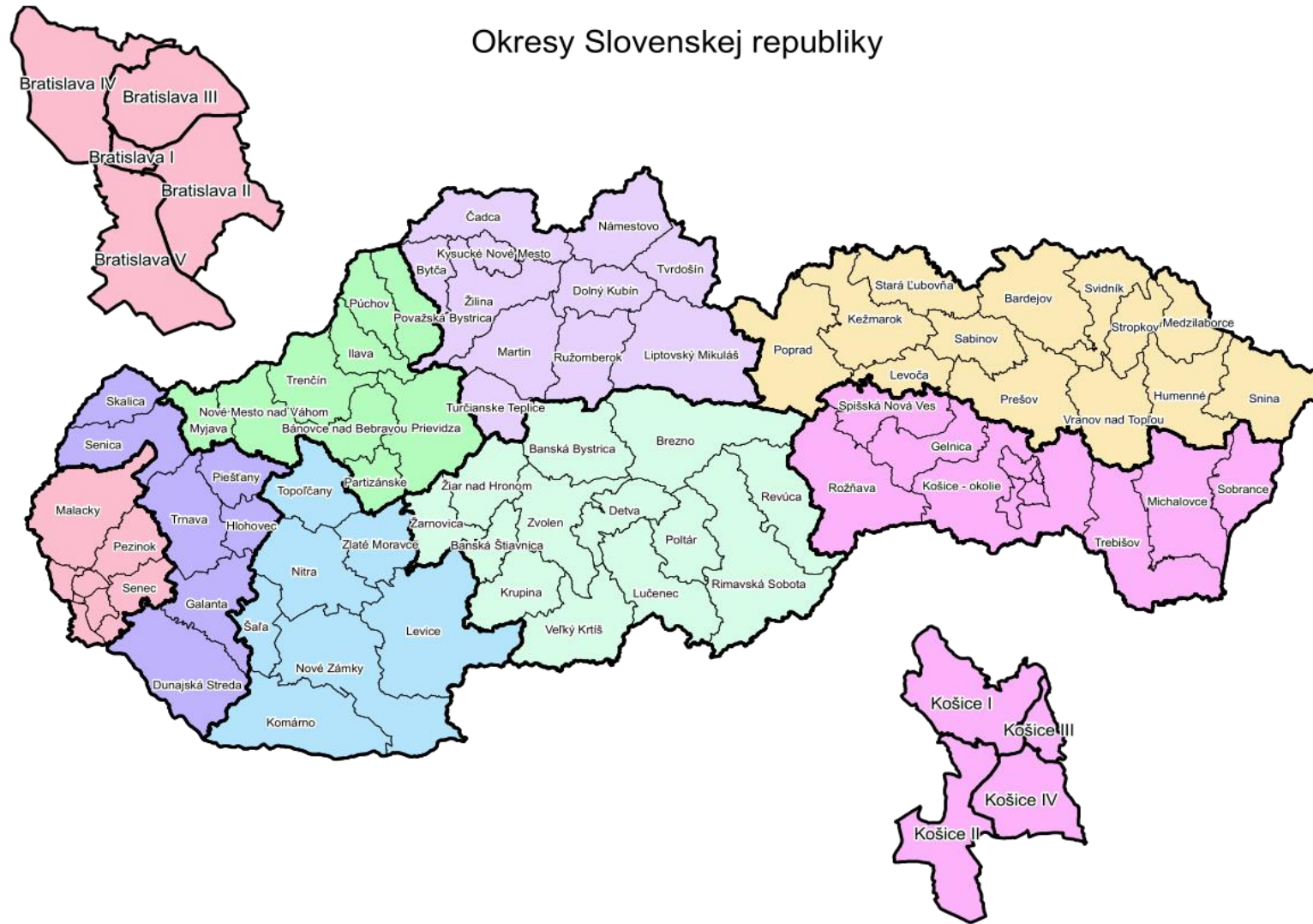
## Historical background

3

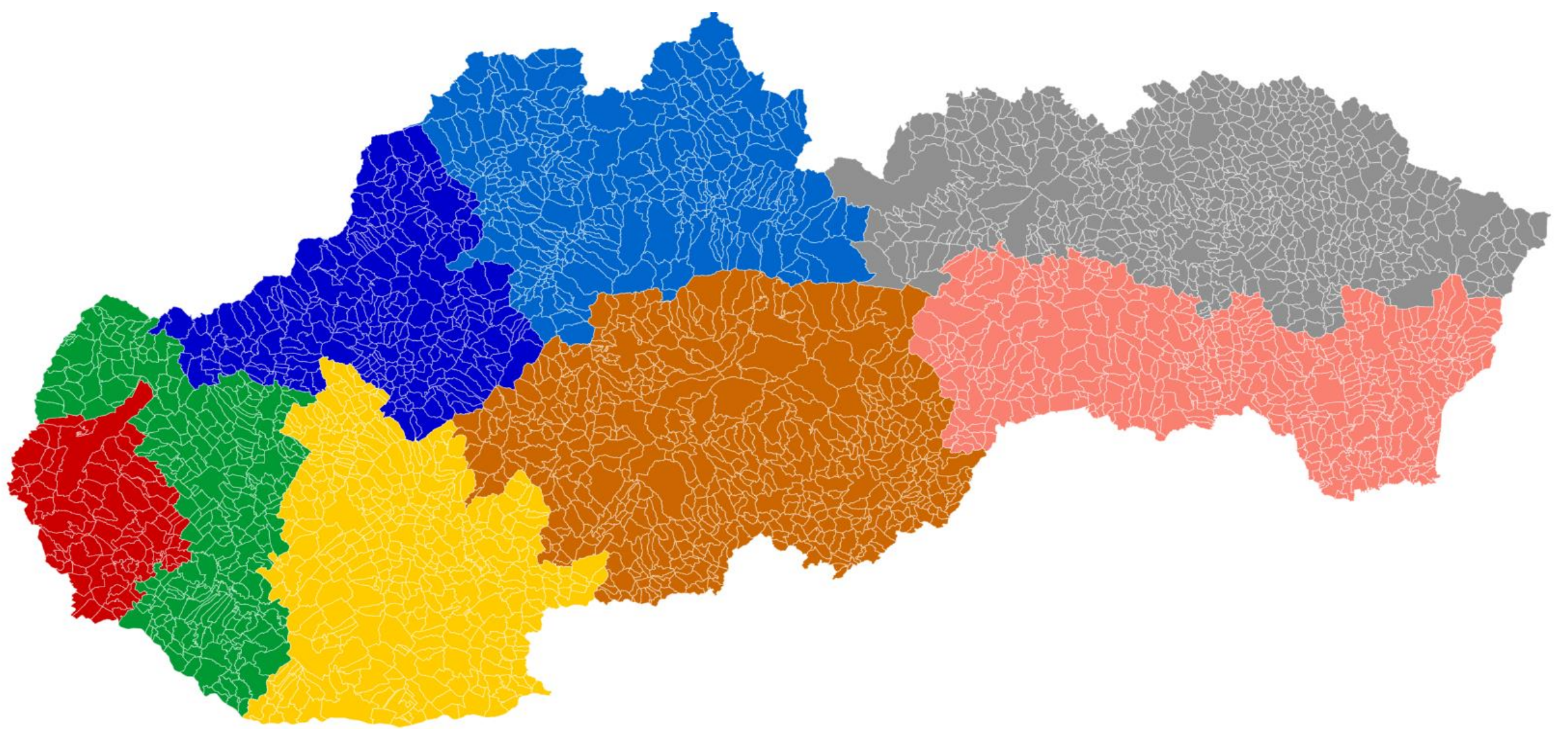
- **2013-today**: reform of (local) state administration called ESO (ace in Slovak language), meaning: effective, reliable and open public administration
  - Back to District offices, revoking of County Offices and almost every specialised regional offices
  - One general local state administration body: District Office (79 districts and 72 Distric Offices)
  - Several specialised bodies still exist



# Okresy Slovenskej republiky



Autor: Vladimír Tóth



Illustrative map of municipalities and higher territorial units in Slovakia





Higher territorial units in Slovakia

# Public administration and Constitution 1

- **1.9.1992**
- Outlines **basic relations** between all state powers and state and its citizens
- Constitution embraces several **principles** regarding public administration and exercising of public administration
- The main **principles are**: rule of law, respecting the human rights, proportionality, equality, legitimate expectations, restriction of discretion powers, legal certainty, unbiased and objective approach, transparency, responsibility and liability, due time and economic proceedings



# Public administration and Constitution 2

## ■ Rule of law

- Art.2(2): State bodies may act only on the basis of the Constitution, within its limits, and to the extent and in a manner which shall be laid down by law
- All decisions and forgoing acts must have its basis in law, its content must be in accordance with law and they must be effectively executed SC, f.no. 3Sžo/202/2015)
- PA must proceed in a way that its activity is based in law, content of its decisions must be in accordance with law. Competences and tasks of of PA bodies must be written down in law in a manner that is clear and certain (TT, f.no. 14S/73/2013)



# Public administration and Constitution 3

## ■ Respecting the human rights

- Art.2(3): Everyone may do what is not prohibited by law and no one may be forced to do anything that is not prescribed by law.
- Art. 13(3) and (4): Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions. When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose.
- Restriction of HR must pay attention to their purpose and content. The scope of restriction must be interpreted in a restrictive way. All HR are protected in a manner and in a way until applying one of them does not unproportionally limit or even deny any other right (CC, f.no. IV ÚS 362/2009)



Public  
administration  
and Constitution

4

## ■ Proportionality

- Art.1(1): The Slovak Republic is a sovereign, democratic state governed by the rule of law
- A fair balance between aim of PA and means on how to achieve it.
- Three criteria: suitability (does it achieve the aim?), need (are any other means possible?) and comparison of the rights between themselves (SC, f.no.10Sžo/5/2015)



# Public administration and Constitution 5

## ■ Equality

- Art. 12: People are free and equal in dignity and in rights. Basic rights and freedoms are inviolable, inalienable, imprescriptible, and inderogable.
- Basic rights and freedoms on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, faith and religion, political, or other thoughts, national or social origin, affiliation to a nation, or ethnic group, property, descent, or any other status. No one may be harmed, preferred, or discriminated against on these grounds.
- No one may be harmed in his rights for exercising of his basic rights and freedoms.



# Public administration and Constitution 6

## ■ Legitimate expectations

- Art. 13(3): Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions.
- A guaranty of readability of PA bodies and protection of persons against unforeseen intervention to their rights that they did not expected (CC, f.no. PL ÚS 10/06). PA bodies are required to preserve continuance in their decisions; similar factual cases decide the same, different factual cases decide differently (SC, f.no. 8Sžf/52/2013)

## ■ Restriction of discretion powers

- Thought process of choosing between various options; it must not be unlimited, limits come from factual case and rules of logical reasoning
- Administrative courts review discretion of PA only in terms of lawfulness



# Public administration and Constitution

7

## ■ Legal certainty

- Art. 1(1)
- All PA bodies must act according to law, in effect, and apply them fairly; the aim is to be certain that they will answer the same legal question in the same factual case in the same way. Different answer, if not objectively and fairly reasoned, is unconstitutional (CC, f.no. III. ÚS 190/2016)

## ■ Unbiased and objective approach

- Clerk must decide cases only based on facts of the case and law

## ■ Transparency

- Right of a person to know about steps taken in the proceedings by PA body and the right to know the reasoning of any decision that concerns him/her





Public  
administration  
and Constitution  
8

■ **Responsibility and liability**

- Art. 46(3) Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administrative body, or as a result of an incorrect official procedure

■ **Due time and economic proceedings**

- Art. 46(1) Everyone may claim his right in a manner laid down by law before an independent and impartial court and, in cases laid down by law, before other body of Slovak Republic
- Art. 48(2) Everyone has the right to have his case tried in public, without undue delay, and in his presence and to deliver his opinion on all evidence. The public can be excluded only in cases laid down by law



# Organisation of public administration in Slovakia

## Public administration in Slovakia

state administration	self-government	other PA
central bodies (ministries [13] and other central state bodies [11])	municipalities (local)	many, such as natural persons, legal persons,...
regulatory and inspecting bodies (territorial district – SR)	higher territorial units (local)	universities,
local state administration bodies	professional self-government (chambers – medical staff, advocates, notary, executors,...	health insurance companies,...
others (such as state police)		



## Code on Administrative Proceedings

- **Act No. 71/1967 Coll. on Administrative Proceeding (CAP)**
- **Enacted in 1967**
- **Effect: January 1st, 1968**
- **In 50 years: only 10 amendments, only 1 was crucial**
  - 1st amendment was in 2002 (34 years after its effect)
  - The most important was the 2nd amendment in 2003 (effect from Jan 1st 2004) – this text of the CAP is almost the same now
  - Since then: minor changes, the last two were about electronisation and anti-bureaucracy
  - These two areas are the biggest challenge that the PA is facing now



## Timeline of the procedure

<u>1st instance proceedings</u>	<u>1st instance decision</u>	<u>Remedies (2nd inst. pr.)</u>	<u>2nd instance decision</u>
<ul style="list-style-type: none"><li>• ex offo/disposition</li><li>• objective</li><li>• case facts and evidence</li></ul>	<ul style="list-style-type: none"><li>• enunciation</li><li>• reasoning</li><li>• remedies</li></ul>	<ul style="list-style-type: none"><li>• appeal</li><li>• remonstrance</li></ul>	<ul style="list-style-type: none"><li>• based on 1st inst. decision</li><li>• principle of appellation (not cassation)</li></ul>



## Scope of CAP

- This act applies to proceedings in the area of public administration in which public administration bodies decide on rights, interests and obligations of natural/legal persons **unless special statute stipulates otherwise**
- PA body is a state body, local self-government body, professional self-government body and natural/legal persons that decide on rights, interests and obligations of natural/legal persons in the area of public administration



## Principles of CAP

- Important, apply throughout whole proceedings
- Help to explicate meaning of statutes provisions
- Already mentioned
- Two more when it comes to scope of this lecture
- Principle of informing the public
  - Art. 3(6): PA bodies are obliged to inform public about commencement, continuance (process) and issued decision in matters of public interest
- Principle of 2 instance proceedings
  - Art. 53: Party to a proceedings may file an appeal against PA body's decision unless special statute provides otherwise or party ceases this right.



## Proceedings competency

- Rules that decide which PA body will decide particular case
- Only and exactly 1 PA body – legal certainty
- CAP distinguishes:
  - Material competency
  - Territorial competency
  - Functional competency
- General rules that apply unless special act provides otherwise



# Conflicts in competency

- Rules to overcome such state
- Conflict in subject matter
- Conflict in territorial competency
  - Positive conflict
  - Negative conflict





# Referrals

- Similar to conflicts of competence, but independent institutes
- Referral of application
- Referral of case



# Bias

- PA body must decide the case based on case fact and law
- Any subjective factors should be eliminated
- Legal regulation on bias prevents biased employees of PA body to decide the case
- Conditions:
  - relation to the subject matter, parties to the proceedings or their representatives
  - if the employee decided the case as employee of the PA body of another instance



# Parties

- Very broad and very general
- In general it is a person that will be directly affected by a decision
- 4 groups of parties, but they are equal in rights/obligations so it does not matter under which condition a person is a party
  - A person whose rights/interests/obligations is the proceeding about
  - A person whose rights/interests/obligations could be directly influenced by the decision
  - Special act providing a person is a party
  - A person who claims to be a party until proven otherwise
- Other subject: interested public



## Commencing of the proceedings

- Principle of disposition (application) – upon delivery
- Ex offo principle (impulse) – first act of PA body (notification of commencing the proceedings)
- PA body notifies all parties – if it does not know who they are/their residence, notification via official notice board
- Submissions (incl. applications) – in written form (paper, electronic), orally
- Electronic form without authorisation – 3 bussiness days to confirm (PA body does not notice on that)
- Forms by special acts – only using this form prescribed by special act



# Delivery

- Complicated matter
- Electronic delivery and delivery by delivery services (post)
- Electronic delivery has priority, but the complicated legal regulation could result in delivery using other way than the one prescribed by law (so far there is not single judicial decision on the matter)
- Legal regulation on delivery: act on e-Government, CAP and special acts



## Electronic delivery 1

- Act on e-Government No. 305/2013 Coll.
- Applies to all public authority bodies, PA bodies included
- The main idea: public authority is executed only in electronic form = electronic communication, using informational systems that are interconnected, electronic delivery, electronic case files,...
- Creation of electronic mailboxes
- Electronic mailbox is not an e-mail, owner can log in only by using his/hers own electronic ID and personal identification code = no doubts about who logged in and saw the electronic message



## Electronic delivery 2

- Electronic box – everyone (legal and natural persons)
- Delivery with legal consequences: the box must be activated
- Ex lege activation: legal persons in commercial register (1.7.2017), other legal persons (such as NGOs,...) 1.6.2020, natural persons upon their own consideration (there are exceptions – laid by special acts – e.g. advocates, tax advisors(?))
- For every legal position you are in – different electronic box



## Electronic delivery 3

- We have to distinguish between PA bodies that are state bodies and other bodies
- State bodies are obliged to deliver via electronic boxes even though the box is not activated
- If the box is activated – delivery is legally effective with all legal consequences
- The moment of delivery: either opening the document or expiry of deposit period which is 15 days, depending what happens first
- Before opening the document, the addressee must confirm the delivery – it is a condition to open the document – once the addressee does that – automatic electronic delivery report is made and delivered back to PA body with date, hour and minute of delivery





## Electronic delivery 4

- If the electronic box is not activated (i.e. natural persons), still the state body is obliged to deliver electronically
- Since the box is not activated, the PA body gets a notification on the fact and „clasic“ delivery must be made
- This delivery is carried out by National Agency for Network and Electronic Services – responsible for so called central official delivery
- This agency secures conversion of the document from electronic form into written form and carry out its delivery (usually via post office), therefore pursuant to rules stipulated in CAP → GDPR(?)
- Costs of this delivery are costs of the agency
- All other PA bodies (other than state bodies) deliver on their own, but can sign a contract with the Agency on the matter



## Electronic delivery 5

- Ineffectiveness of the delivery
  - objectively could not receive the document for a reason which did not occur on his/her part or by his/her action, or
  - there were reasons on his/her part that did not objectively prevent him from receiving the document, but such it would cause disproportionate difficulties which are not fair to require to overcome by him/her
- Request must be made within 15 days since addressee reached the document or could have reached the document
- No objective time period
- Decision of the PA body on ineffectiveness subject to appeal and judicial review



## Electronic delivery 6

- Special acts might provide an obligation for natural and legal persons to communicate with PA bodies electronically
- Advocates (barristers) with courts and tax authorities, and tax advisors with tax authorities, also natural persons conducting trade with tax authorities
- Issue: a moment of delivery and time limit
- If you deliver in written form → the stamp mark of post office is sufficient if it was made upon last day of time limit
- If you deliver electronically → courts made it unclear, whether it's the moment you sent the document or the moment when it is in the electronic box of the addressee



## CAP delivery

- Only under condition the delivery is not carried out in electronic form
- We distinguish delivery into own hands (delivery report) and common delivery (without delivery report)
- Delivery to natural person, natural person businessman, legal person PA body



CAP delivery  
into own  
hands

- **Natural persons**
  - Two attempts
  - Must dwell at the place
  - Fiction of delivery - upon return of the document back to the PA body
- **Others (legal persons, public authorities)**
  - Only one attempt
- **PO BOX**
  - Anyone can claim this means of delivery
  - 3rd day after deposit of the document into PO BOX



## Delivery via official notice board

- Unknown parties or unknown residence
- 15 days - delivery: last day
- Obligatory published by other means also (at least one)
- Competition with physical delivery: PA body must choose only one; cannot deliver by both means
- Electronic version of official notice board



## Time limits and their counting

- Time limits set by law and by PA body
- PA body: PA body can ,move' with them, especially prolong them
  - Set them upon own consideration, proportionate
- Set by days
- Set by weeks, months and years
- Only if delivered to competent body
- *In dubio pro reo*



## Pardoning missed time limit

- PA body may pardon missing the time limit
- Serious reasons
- 15 days / 1 year
- Suspensive effect of the submission (upon PA body consideration)
- Decision on the submission cannot be appealed





## Temporary stay of proceedings / termination of proceedings

- **Temporary stay**
  - Ex offo or upon request (max of 30 days)
  - Decision, cannot appeal
  - Suspension of the running of time limits
- **Termination**
  - Conditions laid in CAP

## Grounds for decision 1

- Principle of material truth vs. principle of due time
  - PA body is obliged to ascertain exactly and completely the actual case facts
  - not bound by the parties' suggestions/pleadings
  - submissions, motions and statements of the parties, evidence, affidavits and facts generally known or known to the PA body from its official activities.
  - extent and method of establishing the grounds for the decision shall be determined by the PA body
  - Data/extracts from public administration information systems = generally known facts and are applicable for legal purposes.
  - This data need not be proven by the party



## Grounds for decision 2

- Anti-bureaucracy act - act No. 177/2018 Coll.
- Names all informational systems of public administration that are supposed to be connected to each other
- Principle ,one time is enough' – present the document one time to one PA body = no other PA body is entitled to ask for that document again
- Only several informational systems:
  - Register of legal persons, entrepreneurs and public authority bodies
  - Land register
  - Criminal record register
  - Register of students (elementary, high school and university)
  - December 2020: register of Financial Administration of SR – tax and customs deficiency
  - 2021: social security deficiency register of Social Insurance Agency



## Grounds for decision 3

- Right to propose evidence
  - Parties and interested parties
- Opportunity to express their opinion on the grounds before issuing the decision



## Evidence process

- All means of finding and clarifying the actual state of the case that comply with the law may be used in the evidence process
- The evidence are mainly: witness testimony, expert opinions, documents and an examination on sight
- The party to the proceedings is required to propose evidence in support of his claims
- Evidence process belongs to the administrative body
- The PA body shall evaluate the evidence at its discretion, each evidence individually and all evidence in their mutual relationship
- There is no need to prove facts which are generally known or known to the PA body from its official activities



# Evidence

- Witness testimony
  - Any natural person
  - Prohibition of testimony/denial of testimony
- Expert opinion
  - Appointed by PA body
  - Party may appeal against appointed expert
- Documents
  - Public and private documents
- Examination on sight
  - Real property or corporeal chattel
- Others: audio, visual, audiovisual, recognition,...



# Affidavits

- PA body may accept
- Only from party
- Instead of evidence
- Exceptions: special act provides otherwise, breach of general interest, breach of equality between the parties, cannot replace the expert opinion
- Only truth
- PA body informs on consequences of stating other than truthful statement



## Preliminary question

- Any question that arises in the proceedings and needs to be answered before issuing decision
- PA body is bound by decision in which the question is already answered
- Otherwise it may make either its own consideration (reason for new trial) on the matter or initiate proceedings at competent authority
- Exceptions: whether and who committed a criminal or administrative offense, status of natural person or existence of a legal person, if it is for courts to decide





Ensuring the  
course and  
purpose of the  
proceedings

- Principle of economy of proceedings
- Tools for PA body to make the proceedings run smoothly
- Some of them have coercive character
- Principle of proportionality and principle of due time process
- 5 means:
  - Summons
  - Bringing before PA body
  - Preliminary ruling
  - Performing an act by means of a request
  - Measures to maintain the rules of proceedings



## Summons and bringing before PA body

- **Summons**
  - anyone whose personal participation is necessary in the hearing of the case
  - must inform on legal consequences of failure to appear (bringing before PA body, costs, fine for obstructing the proceedings)
- **Bringing before PA body**
  - Police force, upon request
  - Only party and witness
  - Without excuse or due excuse
  - At least two summons
  - Personal participation is necessary



## Preliminary ruling and performing an act by means of a request

- Preliminary ruling
  - Before ending of proceedings
  - Only necessary extent (proportionality)
  - Aim: ensure the purpose of the proceedings
  - Parties: order to do something, to abstain from something or to endure something
  - Anyone: order the seizure of things (evidence)
  - Time: as soon as the reason for which it was ordered has ceased to exist otherwise moment when a decision is legally binding
  - Appeal without suspensive effect
- Performing an act by means of a request
  - within their area of competence
  - If unable or other expedient reasons: other PA body (same subject matter competence)
  - The requested PA body shall, within the limits of its competence, comply with the request within 15 days at the latest, unless a longer period is specified in the request



## Measures to maintain the rules of proceedings

- Fine for obstructing the proceedings (up to 165 €, repeatedly, may pardon it subsequently)
  - Conditions: one who obstructs the proceedings (e.g. by failing to appear without excuse upon summons, disrupting the order of the oral hearing, unreasonably refuses to testify or produce a document)
- Expelling from the place where an oral hearing is conducted
  - Conditions: one who grossly disturbs the order of the oral hearing
  - If the party is expelled, the proceedings may continue without party's presence



# Decision

- Individual administrative act (IAA)
- CAP does not define, but any IAA is a decision issued in administrative procedure which binds particular parties in particular case
- Their legal effects may be ex nunc or ex tunc; some have both effects
- CAP does not distinguish between decisions (subject matter) and resolutions (procedural decisions); it names them the same – decision
- Special acts may name IAA differently, such as permission, building licence, payment order, ...
- Requirements: pursuant to law, issued by a competent PA body, based on a reliably ascertained case facts and must contain the prescribed essential elements



## Elements of a decision (material)

- Elements:
  - Eunciation/statement
  - Justification/reasoning
    - Justification is not necessary if PA body complies with application fully and complies with all parties
  - Notice of remedies
    - Only the regular remedies
    - Whether the decision is final or whether it can be appealed, within set period, to which authority and where the appeal can be lodged
    - Also information whether the decision can be reviewed by a court (first instance or second instance?)



## Decision

- Writing errors, error in numbers and other obvious inaccuracies in the written copy of the decision shall be corrected by the PA body at any time and without notice or notifying the parties
- Special laws stipulate that when the party is fully satisfied, the decision is only indicated in the file to the proceeding and PA body issues a separate document instead of a written copy of the decision



# Settlement

- If the nature of the proceedings permits so
- The parties may conclude between themselves a settlement
- Approval of PA body
  - Not if it contradicts law or the general/public interest
- Approved settlement cannot be appealed
- Approved settlement is enforceable
- Legal practice does not make use of the institute regularly
- In proceedings on infringement: mandatory attempt by PA body, but only offence of defamation





## Time limits

- In simple matters, in particular where it can be decided on the basis of documents (evidence) submitted by the party to the proceedings, the PA body shall issue a decision without delay
- In other cases, unless a special law provides otherwise, the administrative authority shall decide on the matter within 30 days since the commencement of the proceedings
- In particularly complicated cases, it shall take a decision no later than 60 days since the commencement of the proceedings
- If, on account of the nature of the case, when it cannot be decided within 60 days time limit, the time limit may be extended by the appeal body
- If the PA body cannot decide within 30 or 60 days, it is obliged to notify the party to the proceedings and state reasons therefore



## Silence of administration

- If the nature of the proceedings permits so
- Unless the remedy can be achieved otherwise
- If the PA body did not commence the proceedings or did not make time limits to issue a decision
- The PA body which would otherwise have been empowered to decide on the appeal shall itself decide on the case
- Devolution/attribution?



## Silence of administration 2

- Legal theory and legislation – created a few other measures against silence of administration
- Not very effective
- E.g. complaint pursuant to Act on Complaints 9/2010 Coll.
  - 60 business days(!) to handle the complaint
- Disciplinary liability of PA body employees
  - Act No 55/2017 Coll. On State Service does not stipulate any disciplinary offences



## Silence of administration

3

- The most strict measure: fictional decisions
- Conditions: statute must stipulate the institute itself and it must stipulate exact time-limit upon which the decision is issued
- Positive and negative
- Positive used to be in Building Act when it came building permissions – the regulation was criticised
- Nowadays only in Act on Protection of Nature and Landscape – spraying the fields
- Negative is only in Act on Freedom of Information no. 211/2000 Coll.
- 8 business days



## Notification and effects of decision

- Oral form or written - written (electronic incl.) is preferable
- The day of delivery of the decision is the day of its notification
- Oral declaration: only if the party is present at the time
- The day of the oral declaration of the decision shall be the date of notification only if the present party has waived the right to receive a written copy of the decision (not the right to appeal)
- Notification: day of validity
- Legal force (binding) – expiration of possibility to file a regular remedy
- Enforceability: expiration of possibility to file a regular remedy



# System of remedies

Regular remedies	Irregular remedies
Appeal	New trial
Remonstrance	Review of decision outside of appeal procedure

- Whether the decision is in legal force or not
- Other remedies: protest against payment order, objections in tax proceeding, ...



# Appeal

- Against any decision issued in the proceedings
- Unless CAP or special act provide otherwise
- Right to waive the appeal and to withdraw the appeal
- Within 15 days from notification (delivery)/ 3 months
- Addressed to 1st instance body
- CAP does not name any specific elements to the appeal, a party may appeal by simply writing he/she appeals (no need for reasoning why the party is of opinion the decision is unlawful or unjust) – the second instance PA body must review the decision and the proceedings as a whole



## Appeal's effects

- Suspensive effect (unless urgent public interest or where there is a risk that the party or someone else will suffer irreparable damage by postponing enforcement; cannot appeal)
- Devolutive effect – second instance PA body





Duties of 1st  
instance PA body  
and remedying  
PA body's own  
erroneous  
decision

- Informs the other parties on the appeal, bids them to comment on it and, if necessary, produce any new evidence

- *Error coram nobis*

- The PA body which issued the contested decision may itself decide on the appeal if the appeal is fully upheld to the appeal and the decision does not concern any other party than the appellant or if the other parties agree

- 30 days

- Otherwise: it shall submit case file along with all supplements to the proceedings and own consideration on the appeal to the 2nd instance body

- Inform the party to the proceedings



## Second instance proceedings

- Unless a special law provides otherwise, the appeal body is the administrative body of the next higher level
- Superior to the administrative body that issued the contested decision
- Appellate principle (the whole first instance proceedings and decision; examine lawfulness and justness)
- Time limits are the same as in the 1st instance proceedings
- The decision of the appellate body on appeal cannot be further appealed



# Remonstrance

- Special type of regular remedy
- Used only if the 1st instance body is ministry (or any other body that does not have a superior body)
- Decision on remonstrance: minister
- Based on recommendation of a remonstrance committee – named by minister



## New trial

- Irregular = after decision's legal force
- Conditions are stricter; party must name reasons why he/she submits the remedy
- New trial reasons are more specific compared to review of decision outside of appeal procedure – all of the reasons based in breaching the principle of material truth – the case facts of the proceedings were not examined (proved/carried out) in the right way
- Request/ex offo (general interest)
- 3 months/3 years
- Two stages
- The new decision annuls the original decision (may /not/ be different)
- Appeal is admissable



Review of  
decision  
outside of  
appeal  
procedure

- Breach in rule of law principle
- More general than new trial
- Superior body decides
- Only ex offo
- 3 years
- Appeal is admissable



## Forced enforcement of decision

- Not very common
- First instance body
- Only enforceable decisions
- 3 years since enforceability of a decision
- Monetary performance
  - deductions from salary, order to satisfy the claim in a prescribed manner (most likely from debtor's bank), or sale of movable property or real estate
- Non-monetary performance
  - substitute performance, by imposing fines or by directly enforcing the imposed obligation



## What next?

- Several options that can overlap
- If they do, judicial review is temporarily suspended
  - Prosecutor's office
  - Judicial review



## Prosecutor's office

- Prosecutor's office have huge powers in supervising the public administration (outside control)
- Serve not only as prosecutors in criminal cases, but in administrative matters too
- Protest of a prosecutor – against decisions
- Notice of a prosecutor – against acts in procedure/inactivity
  - PA body has 30 days to handle the notice
  - If it is justified, it shall remedy the unlawful situation
  - If not, it shall notify the prosecutor within those 30 days and its superior body (it decides on notice)
  - Superior body has 30 days to its own consideration
  - If it finds the notice unjustified, prosecutor is entitled to file an administrative action against inactivity





# Administrative justice outline

## 1

- Act on Administrative Justice Proceedings (AJP) No 162/2015 Coll.
- Part of general courts; Slovakia does not have separate administrative courts
- General courts: district (54), regional courts (8), Supreme Court (Bratislava)
- General administrative court: regional courts
- Based on seat of first instance PA body
- Condition: appeal in the administrative proceedings
- General administrative action, administrative punishment action, social security action and action in matters of foreigners
- Other actions: inactivity, other intrusion, elections matters, local government matters, political rights, competence action



## Administrative justice outline

### 2

- The administrative court may exceptionally dismiss the action on grounds of misuse the rights
- Administrative action does not have a suspensicve effect (unless AJP provides otherwise)
- Court may grant this effect to administrative action based on actors request
  - serious damage, significant economic or financial damage, serious environmental damage or other serious irreparable consequence
  - 6 months to decide on the matter



## Administrative justice outline

### 3

- Proceedings in administrative courts are one-instanced, unless provided otherwise in AJP
- Cassational complaint – irregular remedy
- Very broad, therefore almost each decision can be challenged in front of Supreme Court
  - Decided on the basis of an error in law consideration of the case
- If the administrative court finds that it has no material, territorial or causal competence, it shall refer the matter to the competent administrative court
  - The legal effects associated with bringing an action preserves
- Evidence: administrative courts are not evidence courts, but courts of law



## Competency action

- The plaintiff may seek a decision on positive conflict of competence or a negative conflict of competence linked to a commenced proceedings or not commenced proceedings between PA bodies
- Plaintiff: PA body or party to a proceeding
- Supreme Court in its judgement determines which of the PA bodies is competent to carry out administrative proceedings or that the competence to proceed belongs to another entity
- No time limit to file the action



## Action against inactivity of PA body

- 2 actions:
  - The plaintiff may seek the remedy to eliminate inactivity of PA body in the commenced proceedings
  - Prosecutor can file the action in cases PA body was supposed to commence the proceedings ex offio
- No time limit to file the action
- Court orders the PA body to act and issue a decision or to commence the proceedings within a specified time limit that should not be longer than 3 months
- If the PA body fails this time period, the court may impose a fine on it without a motion; up to 2000 eur (52 638 CZK), repeatedly



## Actor's satisfaction

- The PA body may apply to the administrative court to consider actor's satisfaction if it issues a new decision
- PA body may do this if it does not interfere with the rights, legally protected interests or obligations of third parties and the administrative court has not yet decided on the matter
- The administrative court shall decide whether or not to consent to the procedure of satisfaction
- Court delivers the actor a request asking whether actor is satisfied, court also specifies time period to state his opinion to the court
- The new decision shall enter into force on the date of the decision of the court that terminates the proceedings
- On the same day, the legal effects of the contested decision cease to exist



## Cassational complaint

- Against any decision of regional courts
- Must be reasoned (for exaple error in law consideration, or diversion from settled/repeated decision-making practice,...)
- One month
- Does't have suspensive effect
- One exception to cassational principle: If the Supreme Court concludes that the contested decision of the PA body is not lawful, but the regional court dismissed the action (therefore saying that the PA body's decision was lawfull), it may change the decision of the regional court by revoking the decision of the PA body and return/refer the case straight back to PA body for further proceedings





Measures and institutes pursuant to special acts



## Trade / small business

- Act on trades (small business/entrepreneurship) No. 455/1991 Coll.
- Right to carry out business
- Trades: usually small businesses and natural persons
- Such as carpenters, hairdressers and so on
- Trade certificate – issued by District Office, within 3 business days since notification (NOT request/application)
- The right to carry out business is granted from the day 1, therefore District Office issues decision only if a person does not comply conditions laid by law onto particular trade
- Otherwise it will issue the certificate
- However, trade could be performed from the day of submitting the notification



## Building Act

- Act no. 50/1976 Coll. Building Act
- Building permission, notification, without notification
- W/o notification
  - Maintenance works, stalls, distribution networks
- Notification
  - Simple buildings – residential buildings, up to 300 m<sup>2</sup> and with one overground floor
  - Wait for the written statement of PA body that it does not have any objections against your intention to build

## Act on Infringements (petty crimes)

- Act. No. 372/1990 Coll. on Infringements
- Administrative offence - procedure in front of PA bodies (District Offices or Police Departments)
- Of minor severity
- PA body must always prove mens rea (direct intention, oblique intention, recklessness, negligence)
- Acts before procedure – focused on whether the act happened, whether it is infringement and was probably conducted by suspect
- So called clarifying procedure – 30 days, PA body may dismiss the case before commencing the procedure, aggrieved party rights(?)



## Shortened forms of proceedings

- Proceedings on ticket
- Proceeding on fine order
- If the conditions are met
- The proceedings is simplified
- No evidence consideration and several other formal requirements are easier (such as elements of ticket)



## Proceedings on ticket

- Usually offenses „hic et nunc“ – the PA body witnessed the offence (police department)
- Conditions:
  - if the infringement is reliably identified (there are no doubts it was committed)
  - accused is willing to pay the fine (admitting his guilt)
- The only sanction is fine (33 eur – 868 CZK)
- Admonition is possible too (not a sanction)
- Offender cannot lodge the appeal, renew the proceedings or reviewed ticket outside the appeal proceedings
- Cannot file administrative action
- If the offender cannot pay a fine on the spot – a ticket will be issued with instructions on how to pay the fine, the timelimit of paying the fine and the consequences if he/she does not pay the fine
- Acknowledge by signing the ticket



## Proceedings on fine order

- If there is no doubt that the accused committed an offense and the case was not dealt with in proceedings on ticket
- The fine order cannot be issued if the accused person's legal capacity is limited.
- The fine order has the same elements as the decision
- It shall always be notified in writing
- The accused of an offense may protest the fine order within 15 days
- The order is revoked and the PA body continues the proceedings
- The accused cannot be imposed a different type of sanction, except for reprimand (admonition) or a higher penalty than stated in the order, unless new facts of case are found





Thank you!

[matej.horvat@flaw.uniba.sk](mailto:matej.horvat@flaw.uniba.sk)