



„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>

JUDr. Lukáš Potěšil, Ph.D.

Department of Administrative Studies and Administrative Law, Faculty of Law,
Masaryk university, Brno, Czech Republic
Lukas.Potesil@law.muni.cz



The main issue of the project:

Admission:

- To create a system of normative regulations which can make administrative procedures in Visegrad countries simpler and shorter.
- Procedures before authorities have crucial importance for individuals seeking normative protection in many areas, from building cases, through social assistance to administrative enforcement.
- Both for states and individuals it is significant to create such procedural rules to make an administrative process as simple and transparent as possible.

Definition of an simplified procedure:

Separated from general administrative proceeding course of determining an administrative dispute, characterized by simplification of general normative solutions.

Introduction



1. **System of Administrative Law** (according to the Czech theory/doctrine)
2. **System of Public Administration** in the Czech Republic – its organization (*„who conducts administrative procedure“*)
3. **General rules/principles** of public administration **activity**; public administration as an activity and its **forms** (*„what different procedural types do we have“*)
4. **Development and history of legal regulation of administrative procedure** (*„was it better or not?“*)
5. **Czech Administrative Procedure** from the perspective of general rules of proceedings (*„what can be simplified?“*)
6. **Course** of the administrative proceeding with the **existed simplification**
7. **Idea of possible simplifications**

System of (Czech) Administrative Law

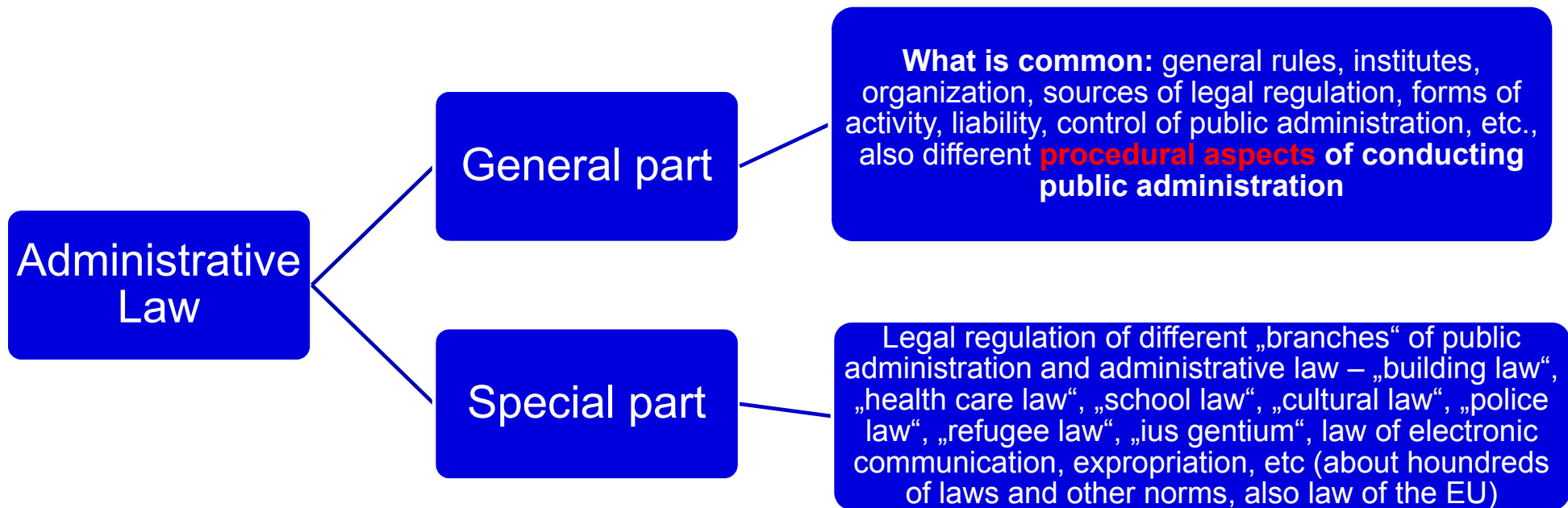
Administrative Law („Správní právo“)

- is the biggest (and also very important – yes? **Really**, it is!) **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**; public administration is **based on (intentional) activity**
 - ❖ its function in the society;
 - ❖ to gain public goals and
 - ❖ to protect public interest
- represents a possibility of using **public power**; protects **public interest**; examples of **superiority**



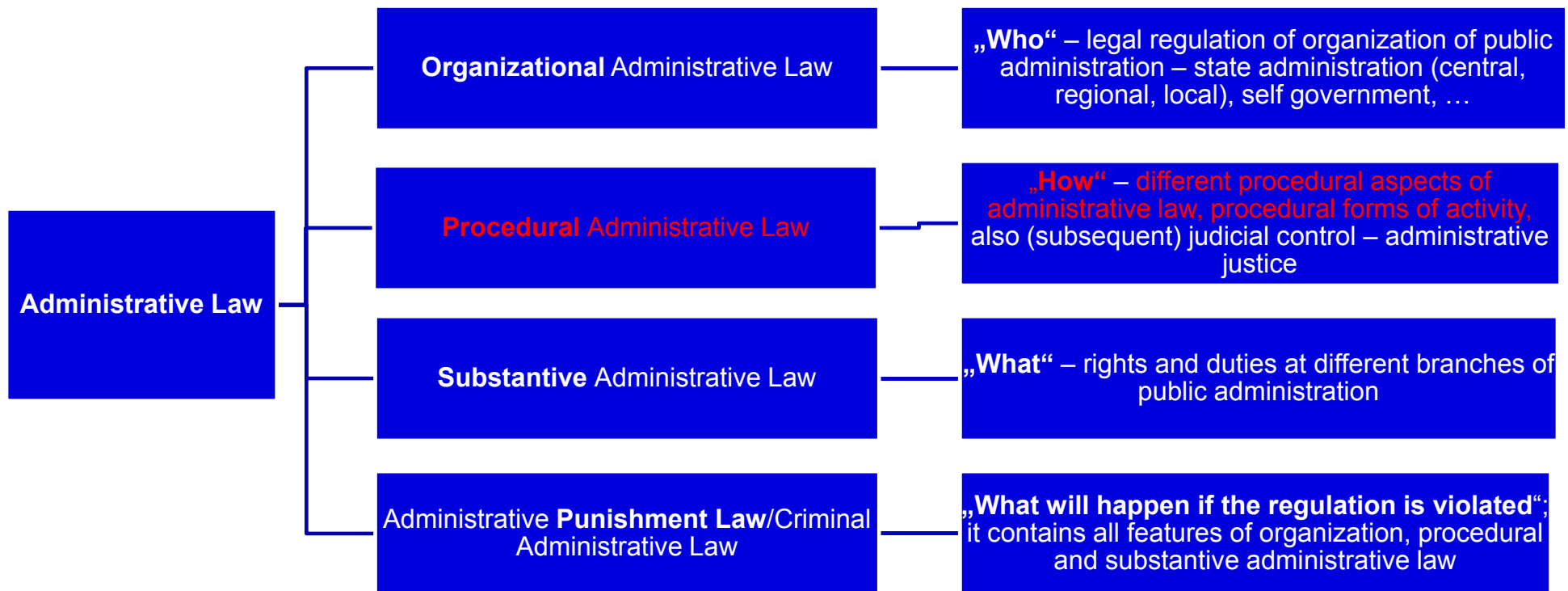
System of (Czech) Administrative Law

One possible division:



System of (Czech) Administrative Law

– Second possible division:



System of Czech Public Administration



Art. 1 section 1 of act nr. 500/2004 Coll., Code of Administrative Procedure

- „*Tento zákon upravuje postup orgánů moci výkonné, orgánů územních samosprávných celků a jiných orgánů, právnických a fyzických osob, pokud vykonávají působnost v oblasti veřejné správy (dále jen "správní orgán").*“
- „*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 its functions and forms**

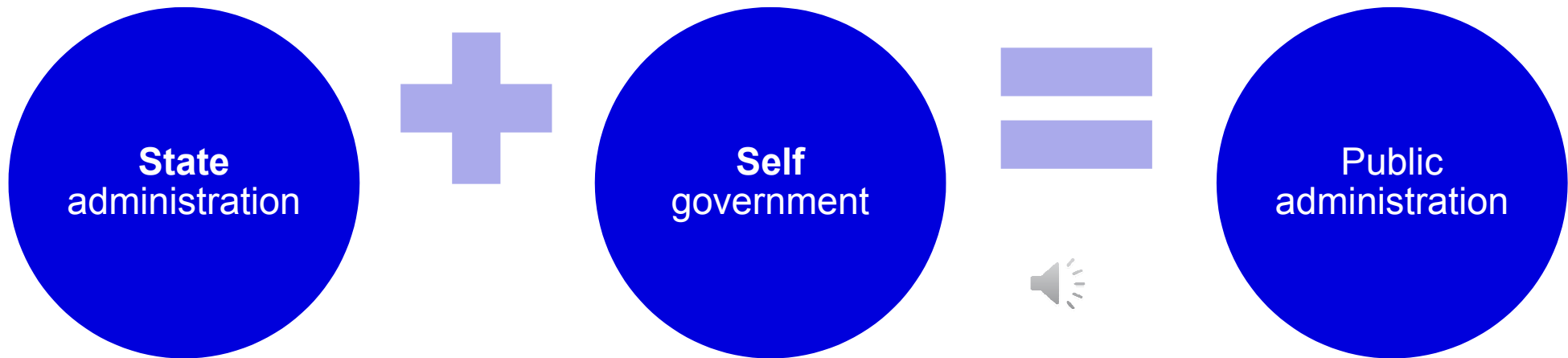
System of Czech Public Administration



Art. 9 of act nr. **500/2004** Coll., Code of Administrative Procedure

- „*Správní řízení je postup **správního orgánu**, jehož účelem je vydání rozhodnutí, jímž se v určité věci zakládají, mění nebo ruší práva anebo povinnosti jmenovitě určené osoby nebo jímž se v určité věci prohlašuje, že taková osoba práva nebo povinnosti má anebo nemá.*“
- „*Administrative procedure is **procedure** performed by the **administrative body** aimed at issuing a **decision** establishing, modifying or abolishing the **rights or obligations** of a **nominated person** in a particular case or declaring that a person has or does not have rights or obligations in a particular case.*“

System of Czech Public Administration



- **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**“) – under a law are bodies of territorial units entitled (and also obliged) to perform state administration instead of the state and its bodies („**mixed model of state administration**“) – specific „representation“ – they perform the state administration, but in origin, are not part of this body
- **Self government** includes **local, regional** and also „**university/interest and professional**“ self-government

How we can know if the state is democratic and legal?



- Adolf Merkl (Austrian scientist) wrote in the 30's that such state recognizes:
 1. Principle of **legality, rule of law**
 2. Existence of **self – government** and
 3. Judicial control of public administration – **administrative justice**

Example: In the Czechoslovakia these roots were destroyed from 1948 to 1989

So, thanks to this heritage, we should be aware and be careful, if someone will try to limit it (due also „economic“ reasons)

System of Czech Public Administration



- **Self government** (based in Constitution, European Charter of Local Government) – is protected, „prepares the politicians for the national/state level“
- **14** regions (all perform also state administration)
- **+/- 6254** municipalites (cca 30 cities with specific regime – division between part of such cities and the city itself); all of them perform (of course) self government and the state administration (but in **different scope** – **three categories of the municipalites**, only for the tasks of **STATE** administration)
- **??? Is it (the mixed model itself) also reason for simplification???**

System of Czech Public Administration



System of Czech Public Administration



Government and ministries (14) (and **other central administrative bodies – 17**: 1. Czech Statistical Office, 2. Czech Office for Surveying, Mapping and Cadastre, 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

System of Czech Public Administration



- Art. 1 section 1 of law 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**")***“.
- 1. Executive body** – ministries and central administrative bodies - **act nr. 2/1969 Coll.** (the procedural result is: **remonstrance**)
 - 2. Bodies of territorial self-government units** – **14** regional offices and cca **6254** municipalities offices (but not only the offices)
 - 3. Other bodies**
 - 4. Legal and natural persons** – universities (disciplinary committee), chamber of attorneys, chamber of „doctors“, etc. (about 10 chambers with the right to self government)

Activity of Public Administration



- Public administration as activity of administrative bodies is represented by the **system of forms** („*formy činnosti*“, „*formy działania*“, „*Handlungsformen*“)
- **Variety of forms** – a lot of task and duties of public administration in the 21st century
- In general are mostly regulated (by the procedural aspects) by the act nr. **500/2004 Coll. – Code of Administrative Procedure (CAP)** – the principle of legality

Activity of Public Administration



- 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 (later) 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
- **If we think about simplification we must not forget that people would have right to defense against illegal administrative acts**

Activity of Public Administration



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	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

General rules/principles of public administration activity



- In **Constitution** (act nr. 1/1993 Coll. – principle of legality, legal basis for the establishment of authorities, order of the government – government regulation), **Charter of Fundamental Rights and Freedoms** (nr. 2/1993 Coll.) – **right for a fair trial (art. 36 sec. 1) and judicial protection (art. 36 sec. 2)**
- Art. 6 **European Convention on Protection of Rights and Freedoms** – is applicable also to the administrative procedure? – existence of judicial protection
- Art. 2 – 8 **CAP** (principles of **good administration**): **legality**, proportionality, protection of good will, legitimate expectations, public service, alternative solutions, **speed and economy**, **minimalization of interventions**, equality, cooperation – binding for the administrative bodies

Soft law: **Rec (2007) 7 on good governance**

General rules/principles of public administration activity

- Case law of the **administrative courts** (8 regional and Supreme Administrative Court) – also sources of principles, subsequent control



Legal regulation of administrative procedure



- In general is in the CAP (art. 1 sec. 2) „*This Act or its individual provisions shall apply unless a special Act provides otherwise.*“, so CAP:
- as **lex generalis** (about 300 laws in position of **lex specialis**), we can find **bigger or lower** „deviations“, special legal regulation (problems of knowledge)
- about **180 provisions**, in effect since **2006**
- can be **excluded** by lex specialis – art. 177 sec. 1 CAP (requirements for the lex specialis about the principles and content itselfs) – OK, but the **CAP shall apply in the scope of principles of good administration** (art. 2 – 8 CAP) – **so the CAP will apply, even it is excluded**
- **It is not possible to perform public administration and do not apply CAP**

Legal regulation of administrative procedure



- 1867 and 1876 in Austrian Empire – Code of Administrative Justice (Act Nr. **36/1876** Coll.) – this act was in effect (with some changes) till 1952!
- Act Nr. **3/1918** Coll. – Code of Administrative Justice; „only“ Supreme Administrative Court with the the cassation action/complaint (against administrative decision), but continuing Austrian procedural regulation
- **Lack of procedural norms** in the sphere of public administration – big place for the case law
- Adoption of the **Code of Administrative Procedure** (in 1928) was **strongly influenced by the case law** of the Austrian/Czechoslovakian (Supreme) Administrative Court

Legal regulation of administrative procedure



CAP in the Czech history:

1. **8/1928 Coll.** – 137 provisions, „only“ administrative procedure
2. **20/1955 Coll.** – 53 provisions, „only“ administrative procedure
3. **91/1960 Coll.** – just 36 provisions, „only“ administrative procedure
4. **Act. nr. 71/1967 Coll.** – 86 provisions, mostly administrative procedure, still in effect in Slovakia (common CAP for the CZ and SK)
5. **Act nr. 500/2004 Coll.** – 184 provisions, mostly administrative procedure (art. 9 – 153),

Shortening or lengthening of legal regulation as a measure, how to simplify administrative procedure?

Legal regulation of administrative procedure



Art. 9 of act nr. **500/2004** Coll., Code of Administrative Procedure

– „*Administrative procedure is **procedure** performed by **administrative body** aimed at issuing a **decision** establishing, modifying or abolishing the **rights or obligations** of a **nominated person** in a particular case or declaring that a person has or does not have rights or obligations in a particular case.*“

1. **Procedure** (based on cooperation with participants)
 2. Performed by **administrative body** (has public power)
 3. In the sphere of **public administration** (not all things are made by administrative bodies)
 4. (Administrative) **decision** is product (and also under the **control of courts**)
 5. Twice concrete – **rights and duties** and **addressee**
- **Provisions 9 – 153 CAP**

Czech Administrative Procedure from the perspective of general rules of proceedings



Administrative procedure:

- is **one (not the only one)** of the procedural forms, that are regulated by/ can be found in CAP, **CAP ≠ administrative procedure**, but **CAP ≥ administrative procedure**
- is important **part of public administration** – the decision enables/permits/constitues **new right** (to study, to build, to do business, to drive, grant social benefit, authorozation, ...), but also **constitues duties** (to pay a fine); sometimes is the decision the first thing, sometimes it follows what happened (administrative offence)
- is performed by hundreds/thousands of **different administrative bodies** and in **different situations** (azylum, permission for foreigners, ...)
- some provisions are still the same, some of them differs (*lex specialis*) in **different cases/examples**

Czech Administrative Procedure from the perspective of general rules of proceedings



Administrative procedure:

- needs to have its **participants**, who have different rights and duties among the procedure; these are also **addressee of the final decision**
- If started, the only way how to terminate it is the **decision** (or **public law contract**), if not – **administrative silence/innactivity**
- Usually takes some **(reasonable) time**, but the participant wants to have decision immediately or „never“ (sanctions) – **different attitude of participants** (cooperation x obstacles)
- Can be **controled** by the superior administrative body and later by the administrative courts

Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

- is terminated by a **decision** and the decision is **issued in administrative proceedings**
- is a **legal relationship** (procedural nature, unequal position, superiority of the administrative body), **has entities** (administrative body and participants), **object** (why, for what purpose - issuing a decision on rights and obligations) **and content** (procedural rights and obligations)



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

- the '**master** of the proceedings' is the competent administrative bod - the **participants** have the **right to propose and demand**... but they may not be
- complied with (but justify why – in reasoning)
- **time limit for issuing** a decision (Art. 71) x administrative silence (Art. 80), in some cases the time **limits initiating proceedings** and issuing decision/termination of proceedings
- **gaining of documents** from other (affected) administrative bodies, as well as the participants (may propose), **ascertaining the facts things**
- activities of the administrative body **before, during and after** the proceedings



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

- **participants** - those whose rights or duties are to be decided (established, changed, canceled or confirmed)
- min. **1 participant**, special laws may **include a broader/narrower** definition,
- **in case of doubt** – is better to consider person as a participant (risk of „forgotten participants“)
- the responsibility for the **proper delimitation of the participants** lies with the administrative body, the need to check the circle of participants
- more than **30 participants** (**simplified procedure** Art. 144)



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

– **participants**

1. **main, strong or unforgettable participants** – Art. 27 sec. 1 CAP (persons whose rights or duties are **directly decided**)

2. **weaker participants** – Art. 27 sec. 2 CAP, those whose rights or duties can be **directly affected** by the decision (somehow this will have a negative effect on their legal sphere)

3. **participants under a special law** (lex specialis) – Art. 27 sec. 3 CAP

4. **the participant in case of doubt** – Art. 28



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

– **participants** and their rights

1. **make proposals/demands/objections * concentration**
2. **to comment, explain**
3. **to be familiarized with the documents before issuing a decision**, if not:
significant procedural error
4. Access to the files



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

- the proceedings are conducted by the relevant administrative body and in particular the so-called **authorized official person**
- **written form** is dominating, but also **oral hearings** (orally to the protocol)
- the **file** is established and maintained in each case – right to access to the files



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure: ways of delivering the documents

1. on site (vis-à-vis the present)
2. to **data box** or otherwise electronically (e-mail)
3. written (by post)
4. hybrid



Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative procedure:

- **Pre - litigation** procedure

1. acceptance of **initiatives** for initiation of proceedings ex officio
2. **postponement** of the case
3. **explanation**
4. **provision** (ensurance) of evidence
5. **preliminary information**



- **initiation of proceedings**

upon **request** and **ex officio**

oral hearing

documents for issuing the decision

Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative decision:



1. Statement
 2. Justifications/reasoning
 3. Information about remedies
- It **follows the initiation** of the proceedings (application / notice of initiation) and the **subject of the proceedings** (it is not possible to decide on something else)
 - **Specifying the rules** of conduct for a given case and circumstances (act of **application of law**)
 - Creates decision-making **practice – binding in the future**

Czech Administrative Procedure from the perspective of general rules of proceedings

Administrative decision:

- *the decision itself is only that part of it which is truly 'capable of curtailing its addressee's rights and which is manifested by the' power of law 'if the decision becomes final. In the operative part of the decision, the administrative authority authoritatively establishes, modifies, or cancels or declares authoritative subjective authority of the participant. (High Court in Prague, 13. 8. 1996, nr. 6 A 154/94)*
- **interim and partial decision, subject to binding opinion, order (, „document“**



Principle of Two Instances



- **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**

– **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?

Remedies



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 ...)

Remedies



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 **concurrency** with Administrative Justice

Remonstrance



– Use by the aggrieved participants **against decision** that was made by the „**Central administrative bodies (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!**
- Issues **not decision** on remonstrance, but „only“ **recommendation/advices**
- Recommendation is **not binding**, but in practice is mostly respected – **WHY?**
- **5 members**; „experts“
- ? **Who** is an expert? – no legal requirements
- Are appointed by the **head** of the „CAB“
- ? Are these „experts“ **impartial?**





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?**

Public Law Contract



- New form of activity, or old form of activity (1907) with „new“ approach (2006)
- Not unilateral feature, but **contract**
- Kind of **ADR** measuers?
- May **replace** an administrative procedure and administrative decision
- Public law contracts may be used very often (building law, subventions, ...)

Public Law Contract



- Code of Administrative Procedure (Act No. 500/2004 Coll.), **art. 159 – 170, general legal provision** *x lex specialis*
- It constitutes legal relations in the sphere of public administration, respects public interest, helps to perform public tasks
- Contractual process (art. 163 – 164), application of the Civil Code (art. 170)
- Approval by superior administrative body (art. 161 and 163)
- Review procedure (art. 165), solving disputes (art. 169)
- Three types: a) **coordinating** (art. 160), **subordinating** (art. 161) and c) about **transfer of rights and duties** (art. 162)

Public Law Contract

When it is possible to make the public law contract?

- Principle of legality (*secundum et intra legem*)
- Only when the law/act enables to make the public law contract

(Supreme Administrative Court, 2. 4. 2008, 1 As 12/2008)



Public Law Contract



Protection of rights of affected (third) persons

- Who makes the public law contract? – administrative bodies or administrative body and person
- If it replace administrative procedure and administrative decision what rights have other persons that possible should be participants of the procedure?
- These affected shall approve the public law contract (*ex post*), which is a condition of its effectivity
- How to defend the rights of these persons?

(Supreme Administrative Court, 28. 8. 2017, 7 As 100/2014) „*the person who claims that his consent was not required for the conclusion of a public contract may use an application as a mean of protecting his rights under Section 142 (1)*“

Existing simplification?

- **No special part** of CAP, only **some provisions** that can be as such regarded
- It is **right/duty to use** these simplifications
- More simplifications we can find **in a special laws** than in the general CAP



Existing simplification?

1. Delivery of documents

- **Data boxes** (compulsory for all legal persons and some natural persons)
- Using the **public notice**
- **Electronic forms** of delivery documents (for a request)



Existing simplification?

2. The guardian

- rather for solving some problems, than for simpliciatioin itself



Existing simplification?



3. Procedure with a large number of participants (art. 144 CAP)

- More than **30**
- Participants may be *notified of the commencement of proceedings by **public notice**. Proceedings are **initiated upon expiry of the time limit** set in the public notice; the time limit shall not be shorter than 15 days from the date of publication of the public notice on the official notice board.*
- *a call pursuant ... for participants ... may be **replaced by the publication of the draft operative part and the reasoning of the decision**. Once the concept has been published, it is not possible to raise objections that a party may have previously raised in the proceedings.*
- *Where a **guardian** is appointed in proceedings involving a large number of participants, one person may be appointed as a guardian **for several participants** whose interests do not conflict.*
- ... the administrative authority shall **inform the parties of the appeal filed** by means of a public notice specifying the time limit for submitting observations, which may not be less than 5 days.
- Documents ... may be served by **public notice**. This shall not apply to the parties to the proceedings referred to in 27 (1) who are known to the administrative authority; these parties **are served individually**.

Existing simplification?

4. Decision without reasoning (art. 68 sec. 4 CAP)

- *There is no need to justify the decision if the first-instance administrative body **fully complies with all participants.***
- In practice **limited**: it shall not be used in cases of **discretion and vague terms**



Existing simplification?

5. Concentration of administrative procedure

- In general in art. 36: *the administrative body may declare by **which time the participants can make their proposals.***
- In appellate procedure in art. 82 sec. 4: *New facts and proposals for the production of **new evidence**, referred to in the appeal or in the course of an appeal, shall be taken into account **only if it is such facts or evidence that the party could not have previously relied on.** If a party contends that it has not been allowed to take action in the proceedings at first instance, that action must be taken together with the appeal.*
- But only in case of procedure that was **initiated by the participant**, no in example *ex officio*



Existing simplification?

6. Different resignations

- Art. 36 sec. 3 to be familiarized with the documents
- Art. 49 sec. 1 resignation for right to participate in the oral hearing
- Art. 51 sec. 2 resignation for the right to take part in the taking of evidence
- Art. 72 resignation for the right to receive a written copy of the decision, or all decisions made during the procedure
- Art. 82 sec. 2 resignation from bringing an appeal (*The right to lodge an appeal does not belong to the party who, after notification of the decision of this right, has given up in writing or orally to the protocol.*)



Existing simplification?

- 7. self-review of the decision by the first instance authority (art. 87)**
- The administrative body which **issued the contested decision** may **revoke or amend** them if it **fully complies** with the appeal and if it does **not cause harm** to any of the parties, unless everyone concerned has given their consent. This decision may be appealed.
 - Possible only when the appeal is used, no ex officio



Existing simplification?



8. order (art. 150)

(1) *Obligations* in proceedings *ex officio* and in disputed proceedings may be imposed by *written order*. The administrative authority *may issue* the order if it considers the factual finding to be sufficient; issuing an order may be the *first act in proceedings*. If the issuing of the order is not the first act in the proceedings, the order *may not contain a statement of reasons*.

(2) In the procedure for issuing an order, the only document may be the *inspection protocol issued* pursuant to a special law by the same administrative authority, which is competent in the matter and locally competent for the administrative procedure following the inspection, ...

(3) The person to whom the obligation is imposed may *file an opposition to the order within 8 days* from the date of notification of the order. By submitting a *resistance, the order is canceled and the procedure continues*; ... Withdrawal of the resistance is not permitted. The statement of opposition shall be lodged with the administrative authority which issued the order. **An order that has not been challenged becomes a final and enforceable decision.**

(4) The order must contain a notice in which the administrative authority states that it is possible to file an opposition against the order, within what period it can be done, from which day this period is calculated and with which administrative authority the opposition is filed. Where the issue of an order is the first act in the proceedings, it shall not be liable to pay the costs.

(5) If the participant *is present and fully acknowledges the reasons for issuing the order*, the **state of the matter shall be deemed proven** and the order may be issued on the spot if it imposes an obligation for monetary performance of up to CZK 10,000 or an obligation for non-monetary performance on the place. The statement of *reasons for the order may be replaced* by the participant's *self-signed declaration of acceptance of the obligation*. By signing the declaration, the order **becomes a final and enforceable decision. The participant must be demonstrably informed about this fact in advance. An on-site order cannot be opposed.**

Existing simplification?



9. confirmation (art. 151)

(1) If the administrative **authority fully complies with the application for granting a right**, the existence of which is certified by **a document stipulated by law**, **only this document** may be issued **instead of a written copy of the decision**.

(2) The record of the document shall be recorded in the file containing the particulars Instead of justification, the record shall contain the **list of supporting documents for the decision**.

(3) On the day of receipt of the document by the participant, the decision **becomes final and legally effective**.

Existing simplification?

10. Shortened review procedure (art. 98)

- If the *infringement is evident from the file*, the other conditions for the review procedure are met and there is no need for an explanation of the parties, the competent administrative authority may conduct a summary review procedure. *No taking of evidence*. The first act of the administrative body in summary review proceedings is the issuance of a decision



Existing simplification?

11. Public law contract (art. 161)

(1) If a *special law so provides*, the administrative authority may conclude a public contract with a person *who would be a participant ...* even *instead of issuing a decision*. The condition of the effectiveness of a public contract is the **consent of other persons who would be participants ...**

(2) A public contract may be concluded *even after the initiation of proceedings ...* Once the public contract has been concluded, the administrative authority **shall terminate the proceedings** by resolution.

Idea of possible simplifications

1. Is better to **simplify CAP as a lex generalis**, or **special laws as a lex specialis**?
2. In case of simplifications we shall aware the principle of **legality**.
3. Is it possible to **simplify administrative procedure without simplifications of administrative justice and its procedural part**?
4. Is it possible to **simplify administrative procedure without any change of legal regulation**? – is it necessary to write long reasoning?



Idea of possible simplifications

Advantages:

- Comprehensibility
- Economy, minimalization of interventions
- Reasonable time
- In administrative procedure is important the result: decision, not the way of issuing it



Idea of possible simplifications

Disadvantages:

- Complexity of legal regulation, the risk of „simple solutions“
- Protection of rights and very high standard



Idea of possible simplifications

Final conclusions:

- Everything shall be **on line and transparent**?
- The law causes only obstacles?
- **Disrespect** to the authorities, to the system of law, to the state –
obstacles, misusing the law
- *„it takes a long time, I want it just now“*

