Administrative Law in the Czech republic

Tomáš Svoboda, Masaryk university
Lukáš Potěšil, Masaryk university

1. The Concept of Administrative Law

1.1. Historical Background

Generally the Czech administrative law was Austrian administrative law until 1918, since up to that year the Czech lands formed the one of the western parts of the Austrian Empire (and later a part of Austria within the Austro-Hungarian Empire). The history of Czech administrative law therefore overlaps to a large extent with the history of Austrian administrative law. The origins of administrative law in the territory of the present Czech Republic could be therefore associated in particular with the revolutionary year of 1848, which led to gradual democratic processes in the former Austrian Empire and the establishment of the foundations of modern administrative law. In that year and the years that followed, in particular, serfdom was completely abandoned, and the former patrimonial administration was replaced by professional state administration and, in some cases, self-government.

These developments occurred on the basis of several Constitutions (the so-called April Constitution of 1848, the March Constitution of 1849, the February Constitution of 1861 and the December Constitution of 1867), which established the structure of a modern state (distinguishing between legislative, executive and judicial powers) and guaranteed citizens certain fundamental rights (such as religious freedom, the right to education, freedom of expression, the right to petition, the right of assembly, personal freedom and others). However, the system was still imperfect and far from democratic (in particular, the universal suffrage for men was introduced in 1907, women's suffrage did not occur until the declaration of independence of the Czechoslovakia in 1918) and this development was not consistent (there was a "backward movement" in the 1850s during the so-called neoabsolutism period).

At the statutory level, we can mention in particular Act No. 18/1960 of the Reich Code, which laid down the basic rules according to which municipal affairs were to be organised (the so-called Reich Municipal Framework Act), on the basis of which laws were issued implementing the *municipal establishments* of Bohemia, Moravia and Silesia (based on the same foundations with some differences), which were applicable until after the First World War and later served as inspiration for the current legal regulation of Czech territorial self-government. Another important law from this period is Act No. 36/1876 of the Reich

Code, on the Establishment of the Administrative Court, which founded the Administrative Court in Vienna, effectively the highest administrative court of the Austrian part of the Austro-Hungarian Empire.

The need for a new legal system arose after the *declaration of independence* of Czechoslovakia from the former Austro-Hungarian Empire in 1918. The new state was established as a unitary state (constitutional republic) consisting of Czechia and two former parts of the Hungarian kingdom - Slovakia and Subcarpathian Ruthenia. Initially the new legal order was based on the adoption of all of the former provincial and imperial laws and regulations (via Act No. 11/1918 Coll., on the Establishment of the Independent Czechoslovak State), some of which remained in force throughout the existence of the newly created state. This resulted in a dualism of adopted Austrian law and newly created law by the Czechoslovak state which lasted until the 1950s (when the existing law was entirely replaced by the communist legal doctrine).

At the same time, however, some aspects of public administration were newly regulated. In particular, the new Supreme Administrative Authorities (Act No. 2/1918 Coll.) and the Supreme Administrative Court (Act No. 3/1918 Coll.) were created. There were also attempts to reform the territorial organization of the state based on the transition from the provincial organization (consisting of four provinces, namely Bohemia, Moravia, Slovakia and Subcarpathian Ruthenia) to the county organization (on the basis of Act No. 126/1920 Coll., on the Establishment of County and District Authorities in the Czechoslovak Republic), which, however, were not successful. Later developments led to the reaffirmation of the provincial and district system (by Act No 125/1927 Coll., on the Organization of Political Administration). However, it is notable for this period that Czechoslovakia was a more centralised state, with a weaker role of territorial self-government (e.g. the Government appointed one third of the Provincial Assembly and could also dissolve it). In terms of administrative procedural law, in particular the first (Czech) Administrative Procedure Code[1] is worth mentioning, which can be seen as a reflection of the influence of the Austrian Administrative Procedure Code of 1925.[2]

In the period following the year 1938 (referred to as the Second Republic, whereas the preceding period is commonly known as the First Republic), Czecho-Slovakia was

[1] Issued not as a law but as the Government Decree No. 8/1928 Coll., on the Proceedings in Matters Falling Within the Competence of Political Authorities (Administrative Procedure).

[2] For more details on the significance of the Austrian Administrative Procedure Code, see the comparative research initiative 'Common Core of European Administrative Laws' (CoCEAL): http://www.coceal.it/index.php

federalized with the newly acquired autonomy of Slovakia and Subcarpathian Ruthenia. As a result of Munich Agreement and related territorial losses, the previous democratic character of the state was lost. During the period of occupation by Nazi Germany between 1939 and 1945, there was a duality of the Reich and state authorities (the first mentioned unsurprisingly having a decisive influence). After the end of the Second World War (in period of the so-called Third Republic), the decrees of the then President of the Republic (Edvard Beneš) played an important role in the legal regulation of the reconstituted state. The administration of the state was performed by a structure of national committees, but with the growing influence of the Communist Party, which culminated in the communist coup d'état in February 1948.

The following period of so-called *communist law*[3] is characterised by a de facto one party political system with the leading role of the Communist Party of Czechoslovakia in society and the state, which was later even constitutionally anchored (see Article 4 of the Constitution of the Czechoslovak Socialist Republic of 1960). According to the Austrian legal scholar Adolf Merkel, a triad of legal-political requirements of liberalism can be recognized. These are the existence of administrative justice, the legality of public administration and self-government.[4] All these requirements were deconstructed during the communist period. With minor exceptions, the administrative justice system was abandoned in practice shortly after 1948, formally in 1953. Self-government was completely "nationalized" and replaced by national committees hierarchically subordinate to the central state authorities and the Communist Party. Finally, the legality of public administration was replaced by so-called *socialist legality*, which was not, however, legality in the true meaning.[5] Therefore, the democratic rule of law was effectively abolished.

Territorially, the state was divided into regions and districts and the administration of the state was provided by a system of national committees (local, district, regional). Even civic utilities were provided by the state through the legal institute of "socialist organisations"; the private sector was, with minor exceptions, legally non-existent. In 1969, Czecho-Slovakia became a federation of two formally sovereign states (the Czech Socialist

[3] It can be pointed out that in this period the economical and political system is rather being described by the term "real socialism", because communism in its theoretical (ideal) sense was far from being achieved. Nevertheless, the term "communist law" as a legal system shaped by communist elites is also used; f.or details see an extensive study: Bobek, Michal, Molek, Pavel, Šimíček Vojtěch (eds.) *Komunistické právo v Československu: kapitoly z dějin bezpráví*. Brno: Masarykova univerzita, 2009.

[4] Merkel, Adolf, *Obecné právo správní. Díl první.* Praha - Brno: Nakladatelství Orbis, 1931, p. 215.

[5] Later, the concept of socialist legality was heavily criticised even by the prominent legal scholar of the communist period Viktor Knapp, see Knapp, Viktor. *Teorie práva*. Praha: C.H. Beck, 1995, p. ...

Republic and the Slovak Socialist Republic). During the last stages of the communist regime, efforts were made to modernise the state administration, but nothing fundamentally changed about its totalitarian character. Administrative law in this period did not follow the legal tradition of the First Republic, but rather became a purpose-built system for upholding the political regime that unsurprisingly did not contemplate the existence of effective guarantees of individual rights and freedoms.

After the so-called Velvet Revolution in 1989, the democratic rule of law was restored, including the renewal of self-government. The administrative law continued to use some of the laws from the earlier period (in particular Act No. 71/1967 Coll., the Administrative Procedure Code, which was in its amended form in force until 31 December 2005) but also drew from the period of the First Republic (especially in the context of the revitalization of territorial self-government). Shortly afterwards, however, the federation broke up and the independent Czech Republic came into existence in 1993, which resulted in the adoption of the current Constitution of the Czech Republic[6] and its own system of administrative law. From an international perspective, the Czech Republic joined the Council of Europe in 1993 and subsequently, on 1 May 2004, also the European Union.

1.2. Public Administration and Administrative Law

Administrative law is generally perceived in Czech legal theory as the legal order of public administration, but not all aspects of public administration are regulated by administrative law. Specific fields include in particular financial law, environmental law and to some extent social security law. Private law is also widely applied in the regulation of public administration activities that do not have an "authoritative character" (see below). There is also a close connection with criminal law (which significantly inspires the field of administrative punishment) and constitutional law, which is particularly relevant to the in terms of guaranteeing the fundamental rights of citizens in the context of public administration (as provided for in the Charter of Fundamental Rights and Freedoms,[7] unless they arise from ratified international treaties). European Union law is also of growing importance for the regulation of public administration (see below, Chapter 8.). Administrative authorities are therefore bound by and apply not only administrative law in its narrow sense.

[6] Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic. Available in English: https://www.psp.cz/en/docs/laws/constitution.html

[7] Constitutional Act No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms. Available in English: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Charter_of_Fundamental_Rights_and_Freedoms.pdf

Public administration is not legally described in the Czech law. Only the Government is defined as the highest body of executive power according to Article 67 of the Constitution. In practice, executive power is usually described negatively as not legislative or judicial power. The concept of *public interest* and its protection by administrative authorities is closely associated with public administration in legal theory, but neither the public interest is (and probably could not be) defined. Instead, it is seen in the legal theory as a so-called non-specific term, the content of which is determined in the context of its application in individual cases. The public interest is legally reflected mainly in the principles of public administration or more precisely as one of those principles (see below, Chapter 3.).

Since the period of the First Republic, public administration has been viewed in theory from two angles, firstly as public administration exercised through public authority (which is characterised by the unequal legal status of the administrative authority and the addressee of its action, the so-called *authoritative administration*) and secondly as public administration in the exercise of which the subjects of public administration do not exercise public power (but are in principle equal in relation to the addressees of public administration). As stated in the prominent textbook on administrative law of the time, *"Administrative authorities are called upon to perform all kinds of state activities: they issue abstract orders (secondary legislation), they find and make law (adjudicate administrative disputes, issue criminal judgments, grant, restrict and abolish rights), but they also perform extensive non-authoritative activities: they build and operate public hospitals, schools, establish and maintain public roads, etc."*[8]

However, only the first of these dimensions of public administration is fully recognized by Czech theory to be part of administrative law. This also corresponds to the approach of the legislator, which is characterised by the significantly more sophisticated and complex legal regulation of public administration exercising public authority (power).

1.3. The System of Administrative Law (general and special, other distinction)

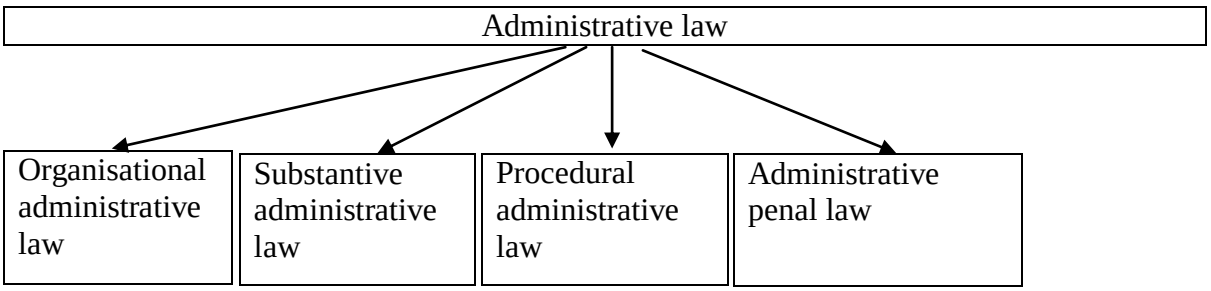
In the contemporary Czech theory, general and special administrative law is distinguished. The *general part* is understood as the theoretical basis or abstraction of the existing administrative law, including everything common to that field of law. It contains in particular basic concepts and legal institutes, the organisation of public administration, general forms of public administration activities (in particular administrative acts), guarantees of legality in

[8] Hoetzel, Jiří. *Československé správní právo*. 2nd ed. Praha: Melantrich, 1937, p. 13.

public administration (in particular control of the public administration), employment of public administration employees (in particular so-called public service), administrative sanctioning or general procedural institutes.[9]

The *special part* of administrative law contains the regulation of various areas of public administration and in practice represents a large part of the legal system. The listing of this part itself is difficult to provide, but among the special administrative law is mainly the regulation of the internal affairs of the State (such as managing various public administration registers, ID cards or foreigners' agenda, etc.), the administration of education (administration of regional and university education), the administration of healthcare (regulation of providing health services or public health insurance), the administration of construction law (spatial planning or authorisation of construction projects), the administration of trades (conditions for running a trade), the administration of culture (regulation of radio and television broadcasting, the press or cultural heritage protection), the administration of security (regulation of security forces or crisis management) and many other areas such cadastral, transport or energy law. State archiving, statistics or the regulation of product requirements may also be mentioned.

Another more detailed distinction applied in theory is the distinction made between organisational, substantive, procedural and criminal administrative law (and the corresponding norms of administrative law).



The *organisational administrative law* can be defined in such a way that it establishes the basic principles of the organisation of public administration, specifying the position, organisation, authority and scope of the subjects of public administration.[10] Organisational norms are present in the most general form in the Constitution or other constitutional laws, as well as in a large number of ordinary laws. Some laws, however, consist mainly of organisational norms, in particular Act No. 2/1969 Coll., on the Establishment of Ministries

[9] See Sládeček, Vladimír. *Obecné správní právo*. 4th ed. Praha: Wolters Kluwer, 2019, p. 45.
[10] Průcha, Petr. *Správní právo: obecná část*. 8th ed. Brno: Doplněk, 2012, p. 43.

and Other Central Bodies of State Administration (the so-called Competence Act, which, in its extensively amended version, is still applied today).

The *substantive administrative law* represents the substantive regulation of particular areas and sections of public administration, defining in relation to the legal status of public administration subjects the conditions and prerequisites for the realization of rights and obligations of the addressees of public administration.[11] This category includes the areas of special administrative law mentioned above.

The *procedural administrative law* regulates the procedural status of the subjects of the administrative procedure , as well as the actual procedural rules for deciding on the rights, legally protected interests and obligations of the participants in administrative procedure (or other types of proceedings carried out by public authorities established to perform duties and tasks of public administration).[12] The main procedural regulation governing this area is Act No. 500/2004 Coll., the Administrative Procedure Code. Administrative judiciary is regulated procedurally mainly by Act No. 150/2002 Coll., the Code of Administrative Justice . However, a number of procedural rules are also contained in special laws.

The *administrative penal law* in some respect intersects through the above categories, as it is applied on the basis of violations of organizational, substantive and procedural norms. Its content is the regulation of the so-called administrative law liability, which in Czech theory is usually divided into the liability for a triad of offences - misdemeanours, disciplinary offences and order offences.

The general (substantive and procedural) regulation of liability for *misdemeanours* is laid down in Act No. 250/2016 Coll., on Liability for Misdemeanours and Procedure thereon, while it is a general category of public-law offences, the nature of which is the punishment of malicious conduct of a lower legal intensity than criminal offences. The specific misdemeanours are regulated in Act No. 251/2016 Coll., on Some Misdemeanours, or in a number of special laws.[13]

Disciplinary offences are offences applied within a certain internal relationship and arise from the violation of internal rules in particular. This type of offense is applied, for example, in the context of certain employment cases in the public administration (particularly "state service", see below, Chapter 3.2.). Finally, *order offences* are offences, the purpose of

[11] Ibid.
[12] Ibid.
[13] For details on the administrative punishment reform that took place in 2017, see Potěšil, Lukáš. A new system and legal regulation of administrative punishment in the Czech Republic. *Prawo.* Wydawnictwo Uniwersytetu Wrocławskiego. 2019, no. 327, p. 311-324.

which is not primarily to punish, but to secure a procedure of the administrative authority, e.g. to enforce cooperation or performance of a task within the administrative procedure.

The latter two categories are also an exercise of public authority, but different legal (procedural) foundations apply. In the Czech law there are also some cases of non-punitive (de facto) sanctions that are not imposed on the basis of the commission of a public law offence (e.g. liability for breach of budgetary discipline) and are thus not formally considered as examples of administrative or similar penal liability (and their subjects therefore often do not enjoy the same standard of legal protection as subjects of administrative punishment).

2. Principles of Administrative Law

In the field of legal regulation of public administration, particularly *general legal principles*, are applicable. These principles include constitutional principles, among others, the principles of equality, proportionality, legal certainty, protection of legitimate expectations, prohibition of retroactivity, protection of property rights or minimisation of infringement of fundamental rights.[14] Some of these principles have their constitutional foundation (e.g. the principle of equality in Articles 1 and 3(1) of the Charter of Fundamental Rights and Freedoms), while the rest are derived from the constitutional order by the case law of the Constitutional Court. These principles are generally applied in the context of the exercise of public authority, including the exercise of public administration. Some principles are also formulated by case law specifically for the area of rule-making (e.g. the principles of clarity or non-contradiction of a legal regulation). A special category of principles are the principles applied in the field of criminal law (e.g. presumption of innocence, ne bis in idem, nullum crimen sine lege), which are similarly applied in the area of administrative punishment.

In addition to these general legal principles, however, there are also some *specific principles* that are legally binding for the exercise of public administration. These principles are regulated in particular in Sections 2 to 8 of the Administrative Procedure Code, as the so-called Basic Principles of the Activities of Administrative Authorities. These principles were established with the entry into force of the Administrative Procedure Code on 1 January 2006 and to some extent overlap with the Public Defender of Rights' principles of good administration (see below, Chapter 6.4.). It should be noted, however, that while the principles defined by the Public Defender of Rights are of a soft-law nature, the principles

[14] See Tryzna, Jan. *Právní principy a právní argumentace: k vlivu právních principů na právní argumentaci při aplikaci práva.* Praha: Auditorium, 2010, p. 295 et seq.

embedded in the Administrative Code are legal principles, the violation of which generally constitutes illegality of action (but also of inaction) of an administrative authority with possible consequences in the form of review of an administrative act or liability for damages.

The first of these principles is the principle of legality (Section 2(1) of the Administrative Code), which establishes that the administrative authority is bound by legal acts (laws and sub-statutory regulations) and applicable international treaties. Within the scope of this principle, adherence to established decision-making practice or case-law (in particularly the unifying role of the case-law of the Supreme Administrative Court) is also regarded as binding through its de facto influence.[15] Other principles are the principle of prohibition of abuse of power (including non-abuse of the so-called administrative discretion), where the administrative authority shall exercise power only for the purposes and to the extent to which it has been delegated (Section 2(2)). The administrative authority must also respect the rights acquired in good faith as well as the legitimate interests of the persons affected by the administrative authority's action in a particular case (Section 2(3)). Finally, the administrative authority must ensure that the solution adopted is in the *public interest* and corresponds to the circumstances of the case, and that no unreasonable differences occur in the decision-making (Section 2(4)).

Other principles include, in particular, the principle of substantive truth as a certain "standard" within which the facts are to be established by the administrative authority (according to Section 3, this means finding of a state of facts beyond reasonable doubt) or the principle of public administration as a servant of the public (within the framework of which, according to Section 4(1), everyone who performs tasks arising from the competence of the administrative authority is obliged to behave respectfully towards the persons affected and to assist them as far as possible), or the principle of informing and "awareness-raising" in relation to the persons affected (Section 2(2) to (4)). The administrative authority should also seek, where possible, to resolve the matter by conciliation (Section 5).

Some principles aimed at increasing the efficiency of administrative proceedings are also regulated, in particular the principle of timeliness and economy (Section 6), procedural equality (Section 7) and procedural harmonization and cooperation between administrative authorities in order to ensure good administration (Section 8). Some other principles of administrative proceedings are derived in theory from individual provisions of the Administrative Code, e.g. the principle of the written form, the principle of non-publicity, the

[15] See Skulová, Soňa. Základní zásady činnosti správních orgánů, zásady správního řízení. In: Skulová, Soňa et al. *Správní právo procesní*. 3rd. ed. Plzeň: Aleš Čeněk, 2017, p. 47.

principle of two-stage procedure, the principle of inquiry, the principle of free evaluation of evidence, the principle of ex officio proceedings or the principle of proper reasoning.[16] However, many of these principles have exceptions in the provisions of the Administrative Code.

Principles legally binding on the administrative authorities are also contained in other legislation.[17] However, as a rule above mentioned are the *principles of authoritative administration* (see above, Chapter 1.2.), while the principles of non-authoritative administration receive considerably less attention, both from the legislator and from legal theory. These principles include in particular the principles of efficiency and economy. In our opinion, many of the above principles are also applicable in this area, such as the principles of equality, timeliness, transparency and many others. However, the application of the principles in this area of public administration is not yet sufficiently developed in Czech administrative law.

3. Administrative Organization and Civil Service

3.1. The System of Public Administrative Bodies

With the exception of the state level of public administration, Constitution of the Czech Republic recognizes only territorial self-government. At the theoretical and legal level, however, non-territorial self-government entities are also perceived as part of the public administration. From an organisational point of view, public administration in the Czech Republic could be divided into *state administration entities*, *territorial self-government entities* (including municipal and regional administration), and to a lesser extent *entities of non-territorial self-government* or even more rarely natural or legal persons to whom the exercise of public administration has been delegated by law.

3.1.1. State Level of Public Administrative Bodies

The state administration is generally divided into *central* and *territorial* levels. The central state administration bodies are specialised and have competencies over the whole territory of the State and are hierarchically superior to the territorial state administration bodies. The latter bodies are either constructed as so-called specialised territorially decentralised bodies of state administration (e.g. tax offices, social security, regional police

[16] Ibid, p. 66 et seq.
[17] In particular Act No. 280/2009 Coll., Tax Code.

directorates) or certain tasks of state administration are performed by territorial self-government on the basis of statutory mandates.

At the central level, according to the Constitution (Article 67), the highest body of executive power is the Government, which consists of the prime minister, deputy prime ministers and ministers and is responsible to the Chamber of Deputies (and more generally to the Parliament of the Czech Republic as the legislative power, including the Senate as the second chamber). The role of the Government is (with rare exceptions where it exercises public authority) the political and conceptual management of the state administration. The Government is therefore generally empowered to manage the administration of the State through its internal decrees.

The Czech legal order distinguishes two types of central state administration bodies - *ministries* and *other central state administration bodies*, in both cases established by the Competence Act. The first group includes central authorities headed by a minister. The number of ministries is currently 14. The second group consists of central bodies not headed by a minister, numbering 17. This group includes both bodies that are fully subordinate to the Government (effectively specialised government agencies) and bodies that have a specific degree of independence.

The Czech legal order does not explicitly identify the status of an *independent administrative bodies*, but some administrative authorities are considered as such (with varying levels of independence from the Government). In particular, the Council for Radio and Television Broadcasting, the Office for Personal Data Protection, the Office for the Protection of Competition, the Czech Statistical Office, the Energy Regulatory Office and the Czech Telecommunications Office.[18] The Czech National Bank, which is enshrined in the Constitution, also has a similarly independent position, particularly in the context of administrative supervision of banking market.

Very significant for the execution of state administration in the Czech Republic at the territorial level is the already mentioned performance of state administration duties through the bodies of territorial self-government, especially through municipalities (municipal offices). For this purpose, a *three-tier categorisation* of municipalities has been established. This categorisation divides municipalities into 'municipalities with basic competence', 'municipalities with delegated municipal authority' and 'municipalities with extended competence' (with decreasing numbers of municipalities in each category).

[18] See Pouperová, Olga, „Nezávislé správní úřady“. *Správní právo*, 2014, vol. 4, p. 216-217.

Municipalities that are higher up in this categorisation are delegated by law a broader range of state administration, and in the exercise of state administration, municipal authorities are generally subordinate to higher-ranking authorities exercising state administration. Municipalities with a registry office and municipalities with a construction authority also form similar categories. In this way, which is legally referred to as *delegated competence of municipalities*, the general state administration in the territory is performed. Apart from the agenda of construction authorities and civic registers (of births, deaths, marriages, etc.), this is also the case, for example, with the agenda of issuing ID cards, hearing of misdemeanours or environmental protection.

It can be added, however, that in the case of construction authorities, the legislator is considering moving the agenda under specialized state administration bodies (e.g. similarly to the aforementioned tax offices), especially because of possible conflicts of interest of municipalities when assessing their own construction proposals and the possibility of better methodical influence of the competent ministry over the construction agenda.[19] The Czech approach to the exercise of state administration in the territory is therefore generally based on the Austro-German tradition in the form of the so-called *mixed model* of territorial state administration, but it also includes cases of separate exercise of state administration from territorial self-government (historically typical for the French approach).

When it comes to the area of exercising public administration not by authority (e.g. in the provision of public utilities), the State is referred to in the Czech legal system as a legal person of (public) law.[20] As such, it has legal subjectivity and can act inprivate law relations with other legal entities. It acts in this way through its organisational units (usually individual ministries), but it may also establish other legal entities to fulfil its duties. However, the legal regulation of these entities is not comprehensive in the Czech public law. It is rather a thorough modernisation of legal forms previously applied before 1989. More specifically, under certain conditions, the State may establish *state enterprises* (as legal entities of public law intended for doing business in the public interest[21]), *state contributory organisations* (as

[19] At the time of completion of this text, however, it was unclear whether this change would be implemented (this issue is related to the final shape of the recodification of Czech construction law through Act No. 283/2021 Coll., the Construction Act, which has already been adopted but has not entered into effect and is subject to some additional amendments).

[20] Under Section 21 of Act No. 89/2012 Coll., the Civil Code, the State is considered a legal person in the area of private law. Another legal regulation determines how the State acts legally (which is the Act on the Property of the Czech Republic and its Representation in Legal Relations mentioned below).

[21] These are in particular state enterprises providing strategic services (e.g. the Czech Post or the Czech Air Traffic Control), the management and use of natural resources (e.g. the Forests of the Czech Republic or state

non-profit public legal entities[22]) or *state funds*. The State may also (as state-owned enterprises) establish and be a shareholder of some legal persons of private law (e.g. the majority state-owned but still formally private energy conglomerate ČEZ).

However, in the Czech Republic the area of so-called public property management is not regulated by administrative law in its traditional sense. Instead, it is rather an area of application of private (contract) law and certain public law restrictions on the State in the management of so-called public property (and similarly on most other public entities owning such property). These restrictions are generally aimed at ensuring due diligence in the management of public property or limiting certain high-risk transactions and, in the case of state property, are codified in particular in Act No. 219/2000 Coll. on the Property of the Czech Republic and its Representation in Legal Relations.[23] Therefore neither state-owned entities are understood in Czech administrative law theory as executive bodies of state administration in the traditional (narrower) sense.

3.1.2. Regional Level of Public Administrative Bodies

Territorial self-government in the Czech Republic consists of *regions* as 'higher territorial self-government units' and *municipalities* as 'elementary territorial self-government units'. Both of these levels of territorial self-government are established in the Constitution and are associated with the constitutional right to self-government of these entities towards the State.[24] However, despite the constitutional assumption, the regions (of which there are 14, including the capital city of Prague, with a similar status) were created later by Constitutional Act No. 347/1997 Coll., on the Creation of Higher Territorial Self-government Units, with effect from 1 January 2000, and they acquired all their competences as part of completion of the territorial administration reform as of 1 January 2003.

Regions and their functioning are regulated in more detail by Act No. 129/2000 Coll., on Regions (Regional Establishment). As in the case of municipalities, the competences of

---

enterprises managing the basins of the most important rivers) and finally some state enterprises providing research or testing services.

[22] That are most inspired by the previous regulation, in more detail see Havlan, Petr a Jan Janeček. Territorial Self-Governing Units of the Czech Republic as Entities Possessing Ownership and Other Proprietary Rights (the Basic Conceptual Issues). *DANUBE: Law and Economics Review*. Walter de Gruyter, 2016, vol. 2, p. 105-121. Examples of state contributory organisations are university hospitals (operated by the State but closely integrated with the activities of a public university).

[23] Analogous regulation of financial management is laid down in Act No. 218/2000 Coll., the Budgetary Rules. Following the law of the European Union the area of public procurement is also legislated (Act No. 134/2016 Coll., on Public Procurement).

[24] Based on Article 8 of the Constitution, the right of autonomous territorial units to self-government is guaranteed. Surprisingly, the Constitution does not guarantee the right to non-territorial self-government, although it is recognised in the Czech legal system (see below, Chapter 3.1.4.)

regions are divided at the statutory level into *autonomous and delegated competences*. The essence of the autonomous competence is the administration of the region's own affairs, or in other words, its own self-government. As stated in Section 1(1) of the Act on Regions: "A region shall take care of the all-round development of its territory and the needs of its citizens." In this context, regions in particular organise certain areas of regional education, public health, public transport or manage transport infrastructure or other assets for public use. Within the scope of their autonomous competence, regions may also exercise public authority. A typical example is the issuance of some acts of general measure (see below, Chapter 4.2.; e.g. regional zoning plans, which are legally binding for municipal zoning plans). .

As far as the exercise of delegated competence is concerned, its essence has already been explained above (Chapter 3.1.1.), which is the exercise of state administration by the region, more precisely by its bodies on the basis of statutory authorisation. In this context, the bodies of the regions are usually the superordinate bodies to the bodies of municipalities in the area of delegated competences. However, in the area of autonomous competence, the regions and municipalities (regardless of their de facto status, especially in terms of their size and importance) are legally equal public entities with a individually guaranteed right to self-government. The legal interrelation between regions and municipalities therefore depends on the form of the competence being exercised.

The bodies of regions are defined (in the Act on Regions) similarly to the bodies of municipalities with modest differences in terminology, but generally not in the substance and function of these bodies. The main difference is the designation of the person representing the region externally (towards subjects standing outside the region's organisation) as a Governor instead of a Mayor. The highest body of the region is the Regional assembly, which is directly elected on a democratic principle in a similar way to the Municipal assembly (see below, Chapter 3.1.3.).

Related, but different in nature, are *cohesion regions*, which have been established in relation to the needs of regional policy (in particular in connection with the implementation of the Cohesion Policy of the European Union and related NUTS classification of regions).[25] These units are formed by one or more regions (because not all regions were sufficiently populous for the purposes of the NUTS 2 category), but unlike regions they are not self-

[25] See Act No. 248/2000 Coll., on the Support of Regional Development.

governing entities nor exercise delegated competences (and their practical importance is therefore minor).

Similarly, *districts* are distinguished in the Czech territorial-administrative organisation, but there is no longer any organisational level of state administration at this level (until the end of 2002, district offices functioned as the general state administration bodies in the territory, but later they were replaced mostly by municipalities exercising delegated competences), nor is there any territorial self-government at this level. There are currently 76 districts in the Czech Republic.[26]

Also deserving of mention are the parts of the state territory designated as *military areas*, which, according to the legislation, are defined parts of the state territory intended for the purposes of state defence and for the training of the armed forces and form a territorial administrative unit established by law (currently there are 4 such areas[27]) with limited access to its territory. Military areas do not have a self-governing dimension and their administration is carried out by the area authorities subordinated to the Ministry of Defence.[28]

3.1.3. Municipal Level of Public Administrative Bodies

The basis of legal status of municipalities in the Czech territory dates back to the Provisional Municipal Act (also known as Stadion's Provisional Municipal Establishment), promulgated as Imperial Patent No. 170/1849, according to which "The foundation of a free state is a free municipality." As mentioned above in the context of regions (Chapter 3.1.2.), the Constitution is also based on this assumption. However, the "revitalisation" of municipalities began earlier, shortly after restoring the democratic rule of law in 1989, as municipalities in their true meaning did not exist under the previous Communist period. More precisely, the previously existing system of national committees did not represent independent legal entities functioning on the democratic self-governing principle.

With regard to the current legal status of municipalities, according to Article 101(3) of the Constitution, "territorial self-government units" (which include municipalities and regions) are public corporations that may have their own property and manage their own budget. Article 101(4) of the Constitution further limits state interference in the exercise of local self-government by providing that the State may interfere in the activities of territorial

[26] See Act No. 51/2020 Coll., on the Territorial Administrative Division of the State.
[27] See Act No. 15/2015 Coll., on the Borders of Military Areas.
[28] On the basis of the regulation contained in Act No. 222/1999 Coll., on Securing the Defence of the Czech Republic.

self-government units only if the protection of the law requires it and only in the manner prescribed by law.

As provided for in Article 101(1) of the Constitution, the municipality is governed by a municipal assembly. Other municipal bodies (and other aspects of municipal government) are regulated in Act No. 128/2000 Coll., on Municipalities (Municipal Establishment). These bodies are the municipal council, the mayor and the municipal office and in some cases special bodies of the municipality (e.g. misdemeanour commission). The municipal police also has the status of a body of the municipality, but the establishment of the municipal police is optional. The Constitution also provides for the requirement of direct election of members of the municipal assembly on the basis of universal, equal and direct suffrage, including a four-year term of office (Article 102). However, the mayor is elected only indirectly from among the members of the municipal assembly.

The competences of municipalities are also divided into *autonomous and delegated* competence. The tasks and instruments of the municipalities in their autonomous competence are similar to those of the regions. More specifically, as provided for in Section 35(1) of the Act on Municipalities, the autonomous competence of a municipality includes matters that are assigned to the autonomous competence of a municipality by law or matters that are in the interest of the municipality and the citizens of the municipality, unless they are entrusted by law to regions or unless they are delegated competences of the municipal authorities or competences that are given by a special law to administrative authorities as the exercise of state administration.

According to Section 35(2) of the Act on Municipalities, the municipality shall, in accordance with local conditions and local customs, create conditions for the development of social care and for meeting the needs of its citizens. This includes, in particular, the needs of housing, health protection and development, transport and communications, information, education and training, general cultural development and the protection of public order.

Various property law operations related to the management of municipal property can be considered a dominant dimension of the exercise of municipal autonomy. Despite this, however, this area (except for the financial management of municipalities[29]) is not codified in a separate law, as in the case of state property (see above, Chapter 3.1.1.). The same is applicable to the regulation of the regions' property management. Nevertheless, some similarities can be pointed out, e.g. municipalities and regions can establish contributory

[29] Regulated by Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets.

organisations, which are similar in nature to state contributory organisations, or they can also establish or be shareholders of private law companies (typically so-called municipal enterprises providing public utilities on a private law basis).

Similarly to regions, municipalities can also exercise public authority within their autonomous competence. Municipalities can in particular issue *general binding decrees*, which have the nature of administrative sub-statutory (secondary) regulations by which regions can impose rights and obligations on persons within their territory in legally defined area.[30] And to a broader extent than the regions, since in the case of municipalities the legislation does not require statutory authorization to establish rights and impose obligations through them. Instead, it is sufficient that a generally binding decree does not conflict with the law and further regulates one of the areas listed in the Act on Municipalities (Section 10):

> (a) *to safeguard local matters of public order*; in particular, it may determine which activities that may disturb the public order in the municipality or be contrary to good morals, the protection of safety, health and property may be carried out only in places and at times designated by a generally binding decree, or determine that such activities are prohibited in certain public areas in the municipality;
>
> (b) *for the organisation, conduct and closing of sports and cultural events open to the public*, including dance performances and discotheques, by laying down binding conditions to the extent necessary to ensure public order;
>
> (c) *to ensure the keeping of streets and other public spaces clean*, the protection of the environment, the greenery in the built-up area and other public green spaces and the use of municipal assets serving the needs of the public;
>
> (d) *where a special law so provides*.

Other important examples of the exercise of public authority within the scope of municipal autonomy can be mentioned, like for example the issuance of *zoning plans* by municipal assemblies, which are then legally binding for the use of the territory while issuance of these acts not being a delegated competence (on the exercise of delegated competence by municipalities, we also refer to Chapter 3.1.1). When it comes to the distinction between autonomous and delegated competence, the generally applied rules are (in the Act on Municipalities and the Act on Regions) that autonomous competence can only be limited by law, and if the law does not stipulate that it is a delegated competence, then it is an autonomous competence.

[30] Regions can also issue general binding decrees, but these (unlike municipal decrees) are not very common in practice.

The practical significance of the distinction between these levels of competence lies mainly in the form of supervision over the exercise of municipal competence regulated by the Act on Municipalities (where the controlling of autonomous competence is to a greater extent attributed to the judiciary for the purpose of protection of the right to self-government against possible state intervention) or the regime of liability for damage caused in the exercise of public authority, where the State is directly liable for damage caused by a municipality (but also a region) in the exercise of delegated competence, not the municipality (region) itself.

It can be added that the Czech municipal administration is characterized by a large number of municipalities in general (according to the current data of the Czech Statistical Office there are 6 253 municipalities in the Czech Republic[31]) and a very large number of small municipalities (nearly 5 000 municipalities have less than 1 000 and around 3 500 less than 500 citizens[32]). However, the size of a municipality does not have a legal impact on its self-governing status; all municipalities are equal in this respect. Larger municipalities may bear the designation of town or city, but even this designation does not grant them a different legal status. The only exceptions are *statutory cities* as cities divided by a Statute (which is generally a legal regulation governing the basic aspects of a self-governing entity and in this case is issued in the form of generally binding decree) into city municipal districts with their own self-governing bodies and other differences resulting from this arrangement. These cities are established by the Act on Municipalities and (somewhat surprisingly) not necessarily on the basis of their population. The capital city of Prague is also specific, combining the status of a municipality and a region and being regulated by a special law (Act No. 131/2000 Coll., on the Capital City of Prague).

The Czech Republic has also joined the European Charter of Local Self-Government, which entered into force there on 1 September 1999 (however, the Czech Republic has exercised the option to exclude the application of certain provisions of the Charter[33]).

3.1.4. Other Public Administrative Bodies

Although without its constitutional foundation (the Constitution guarantees only territorial self-government), the dimension of self-government is also the so-called non-territorial self-government, sometimes referred to as *"profession and interests self-government"* in administrative law theory. This self-government includes chambers of commerce with

[31] For these statistics in English see: https://www.czso.cz/csu/czso/home
[32] Ibid.
[33] For these exceptions, see Communication of the Ministry of Foreign Affairs No. 181/1999 Coll., on the adoption of the European Charter of Local Self-Government.

compulsory membership (e.g. the Czech Bar Association, the Notary Chamber of the Czech Republic, the Czech Medical Chamber, the Czech Chamber of Architects or the Chamber of Auditors of the Czech Republic) or public universities. Bodies of these entities are, under certain circumstances, considered as administrative bodies because these enetities are established by a law and the law also grants them certain powers which these entities exercise over their members and generally in the public interest. These powers are not considered as "private powers" (i.e. exercised on the basis of contractual consensus), but as a public powers affecting certain public rights and obligations. The procedure for exercise of public authority (particularly decision-making) in this context is also more or less similar to that of a state administration.

For example, according to Act No.111/1998 Coll., on Universities, the university decides on the rights and obligations of a student in the matter of his or her expulsion from studies (and in some other matters, such as provision of scholarships or deciding on disciplinary offences, etc.), and this decision directly affects the constitutionally guaranteed right to education (Article 33 of the Charter of Fundamental Rights and Freedoms) which is of a distinct public law nature. Procedurally, this decision is also governed by the provisions of the Administrative Code. However, non-territorial self-governments as exercisers of public authority are not always reflected by the legislator. In particular, in the case of liability for damage caused by the performance of public authority, this liability is not developed in relation to this level of self-government (see below, Chapter 7.).

The Administrative Procedure Code also contemplates that bodies other than state administration bodies and self-government bodies might act as administrative authorities. It states, in the provisions of Section 1(1), that it regulates the procedure of executive authorities, bodies of territorial self-government units (i.e. municipalities or regions) and other bodies, legal persons and natural persons when they exercise competence in the field of public administration (which are hereinafter collectively referred to by the legislative abbreviation "administrative authority"). Thus, an administrative authority may also be "other authorities" and in some cases legal or natural persons, if they have been granted the corresponding status by law itself or by an appropriate authorization. An example is above mentioned (public) universities. However, natural persons exercising state administration may also have the status of an administrative body (e.g. game wardens).

3.2. Employment in Public Administration

3.2.1 State Service

Employment in the Czech public administration involves several legal regimes depending on the type of public employee and employer. Employees providing only auxiliary and support jobs are legally no different from employees in the private sector (and are therefore employed under an employment contract regulated by labour law[34]). The private law regulation is also applied to employees of self-governments. Although, in the case of some civil servants employed by the territorial self-governments, this legal regime is modified by special public law requirements (see below, Chapter 3.2.1.).

However, the employment of civil servants by the State is implemented through a different legal regime referred to as the "public service" ("state service" in case of state officials). The public service is fundamentally a relationship under public law. Instead of an employment contract, it is based on a recruitment or appointment decision, which is a decision of an administrative authority. Similarly, the service relationship is subject not to private law employment liability but to liability for disciplinary offences, which is a special category of administrative liability (see above, Chapter 1.3.). The public service of state officials was created relatively recently with effect from 1 January 2015, on the basis of Act No. 234/2014 Coll., on State Service. A similar law in terms of its regulation was already adopted in 2002,[35] but for the most part it has never entered into force and has not been applied. It could be mentioned that one of the reasons for the adoption of state service legislation later were the requirements of the European Union in connection with the administration of its Cohesion Policy in the Czech Republic (which should be handled by an appropriate staff).

In addition to the objective of *professionalising* the performance of the state service (in the form of setting various requirements for persons recruited to the state service and their rights and obligations, including requirements for continuous education), the Act on State Service also regulates certain mechanisms of *depoliticising* the state service. It thus separates, for example, the management of the day-to-day operations of state officials and fulfilling service orders from their superiors from decisions on the fundamental elements of their service or from decisions on disciplinary offences. For that purpose, the law constructs a more or less politically independent structure of service bodies, headed by a Deputy Minister for the Public Service. As regards the duties of civil servants, according to the Act on State Service, they are obliged in particular toto maintain loyalty to the Czech Republic in the

[34] Particularly by the Act No 262/2006 Coll., Labour Code.
[35] Act No 218/2002 Coll., on the Service of State Employees in Administrative Offices and on the Remuneration of such Employees and Other Employees in Administrative Offices (the Service Act).

performance of their duties; to perform the service impartially, within the limits of their authority or in the performance of their duties, comply with the law, the service regulations and the service orders.[36] As already mentioned, state officials are subject to disciplinary liability, which may result in disciplinary measures (from disciplinary reprimand or reduction of salary, to dismissal from service). This measure is essentially a public penalty with its consequences and requirements. Another dimension of the public law approach to the employment of the state officials is the method of remuneration, which is subject to fixed salary scales. In general, the states service should be of indefinite duration, with the length of service influencing the salary. Overall, the Czech state service system reflects more of a 'career system' based on a stable and professional corps of officials, which in practice may be less flexible than a system based on fixed-term contracts. However, some exceptions that increase flexibility and performance are present (such as the possibility to change the number of staff positions on the basis of 'systematisation', usually on an annual basis).

3.2.2 Other Public Service

However, not all the exercise of state administration takes place under the regime of the Act on the State Service. The exercise of delegated competences of the territorial self-governments, which in its nature also is a state administration (see above, Chapter 3.1.), is an exemption. Here the legislator, perhaps somewhat unsystematically, did not introduce a public service relationship based on public law, but chose a modified employment relationship on the basis of of the Act No. 312/2002 Coll., on Officials of Local Self-Government Units (where certain obligations, professional requirements for officials or system of their education are particularly regulated).

Other examples of employees who perform state administrative duties, but are not employed under the Act on the State Service, include members of the security forces. Their employment is regulated by Act No. 361/2003 Coll., on the Public Service of Members of the Security Forces. According to this law, among the "security forces" are the Police of the Czech Republic, the Fire Rescue Service of the Czech Republic, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic, the General Inspectorate of Security Forces, the Security Information Service and the Office for Foreign Relations and

[36] Some other obligations according to the Act on State Service include: to carry out official duties personally, properly and in a timely manner; to further his or her education as instructed by the service authority; to obey the discipline of the service; to maintain confidentiality in the performance of duty; to refrain from any action which may bring the public interest into conflict with his or her personal interests; not to accept gifts or other benefits in connection with the performance of his or her duties (with limited exceptions) or to comply with the rules of ethics for state officials laid down in the service regulations.

Information. This law contains, in principle, a similar regulation to the Act on the State Service, but taking into account the numerous specifics of the security forces. It is therefore also a public service relationship. The same applies to the employment of professional soldiers or diplomatic staff of the Czech Republic, but on the basis of different statutory regulations.[37]

4. Administrative Acts and other Activity of the Administration

4.1. Normative Administrative Acts

According to Article 79(3) of the Constitution of the Czech Republic, ministries, other administrative authorities and regional self-government bodies may issue legal regulations (referred to as "normative administrative acts" by part of the administrative law theory) on the basis of and within the limits of the laws if they are authorised to do so by a law. As is apparent, the nature of these regulations is essentially sub-statutory (sub-legislative or by-law), where the public administration regulations specify the legal norms adopted by the legislator. The general prerequisite is an explicit statutory authorisation for the public administration to issue such regulations. There are only two exceptions. The first is the issuance of regulations, which the Government is delegated the power to issue under Article 78 of the Constitution to implement the law and within its limits (but without the requirement of express authorisation to do so). The second exception, albeit only partial, is the issuance of generally binding decrees by municipalities (under Article 104(3) of the Constitution). While this still requires statutory authorisation, it is set out quite broadly and allows for the creation of some rights and obligations beyond the scope set by the legislator (self-regulation). However, the area for such rule-making must always be respected and there must be no conflict of the regulation in special laws (see above, Chapter 3.1.3.).

Despite the relatively high importance of administrative rule-making, Czech administrative law does not contain a comprehensive procedural regulation of the enacting of sub-statutory (secondary) rule-making. Or more accurately, this regulation is rather fragmentary. The rule-making of territorial self-governments is regulated in greater detail in the laws generally regulating this area (in particular the Act on Municipalities and the Act on Regions). However, general regulation is absent in the case of rule-making by state authorities. In this case, its procedure is mainly regulated by the Government's Legislative

[37] In the case of soldiers, it is Act No. 221/1999 Coll., on Professional Soldiers, and in the case of diplomats, Act No.150/2017 Coll., on Foreign Service.

Rules, which, however, are not themselves a generally binding legal regulation, but an internal document. Therefore, they are binding only internally (on the basis of the Government's authority to manage the state administration).

The Government's Legislative Rules mainly regulate the procedure of ministries and other central government bodies in drafting and deliberating on prepared legal regulations (laws and sub-statutory regulations), especially in the form of the so-called *inter-ministerial consultation procedure* and the functioning of the Government Legislative Council (which is an advisory body to the Government independently assessing the quality of proposed legal regulations) and its commissions. Secondly, they regulate the requirements concerning the content and form of draft regulations. These requirements are not mandatory for the legislator, but only for the state administration's drafts, but are generally respected in practice when laws are proposed by someone else than the Government (or subordinate state authorities).

The Czech legal order, however, provides for a general condition of publication of a legal regulation (in order to enter into force), which in the case of laws is implemented by the Collection of Laws, in which some legal regulations of the public administration are also published (in particular the Government's regulations and ministerial decrees[38]). A similar mechanism has been recently adopted for the publication of other public administration regulations.[39] Neither the Government nor any other public authority can legislate in a formal sense, as this power is given only to the Legislator. However, in the legislative process, apart from its own legislative initiative, the Government is given the opportunity to comment on all legislative proposals. In the area of public administration bodies, except for the Government, the regional assemblies also have the legislative initiative.

In some cases, the public administration may also adopt acts which are not regulations (normative acts) in a formal sense, but are legislation in nature. These are in particular situations of so-called *emergency governance*, where public administrative authorities are granted stronger powers in order to deal with a particular emergency situation, including the possibility to restrict some fundamental rights. These powers are, however, conditional on a specific legal regime (a so-called *state of emergency*, as there are several in the Czech law) and not on a normal situation. An example of this is the measures taken by the Czech public administration during the covid-19 pandemic (in the context of which normative measures

[38] See Act No. 222/2016 Coll., on the Collection of Acts and International Treaties.
[39] Through Act No. 35/2021 Coll., on the Collection of Legal Regulations of Territorial Self-Government Units and Selected Administrative Authorities.

were first adopted mainly by the Government under Act No. 240/2000 Coll., the Emergency Act, and later similar measures were adopted by the Ministry of Health under Act No 94/2021 Coll., on Emergency Measures During the COVID-19 Disease Epidemic).[40]

Various *internal regulations* are also applied as part of the internal management of the public administration (in form of various organisational rules, methodological guidelines, staff regulations, etc.). However, even these are not generally regulated. The power to issue such regulations is deduced from the internal relations of hierarchy within the public administration and the right to manage subordinates. However, as an exception, they may be specifically legally regulated on an ad hoc basis (as in the case of "service regulations" under the Act on the State Service, see above, Chapter 3.2.).

4.2. Individual Administrative Acts

As the traditional form of an administrative act and the dominant form of public administration in Czech administrative law can (still) be considered an *administrative decision* as an individually oriented act of an administrative authority. An administrative decision is usually the result of a proceedings legally referred to as an *administrative procedure*. This is defined in Section 9 of the Administrative Code as a procedure of an administrative authority which purpose is to issue a decision establishing, amending or revoking the rights or obligations of a named person in a particular matter or declaring that such person has or does not have rights or obligations in a particular matter. Due to its individualised nature, an administrative decision is sometimes referred to in theory as an *individual administrative act* (some part of legal theory, however, uses the more general term administrative act for individualised acts).

An important difference between administrative decisions and normative administrative acts, besides the difference in the range of their regulative effect (specific instead of abstract), is the level of procedural regulation of their issuance. While there is no comprehensive procedural regulation in the case of the issuing of sub-legislative regulations by the public administration (see above, Chapter 4.1.), in the case of the issuing of decisions, the general rules are laid down in the Administrative Code (specifically in its sections two and three). A similar regulation of the administrative process for the purposes of tax proceedings is contained in Act No. 280/2009 Coll., the Tax Code. These procedural

[40] In more detail see Frumarová, Kateřina. Defending against crisis measures of Czech government in connection with COVID-19 pandemic. *Institutiones Administrationis - Journal of Administrative Sciences*. 2021, vol. 2, p. 4-15.

standards are further complemented or modified by procedural provisions in specific laws (e.g. in the Act No. 183/2006 Coll., Construction Act, which contains a special regulation of construction proceedings).

The Administrative Code contains, in particular, the regulation of the jurisdiction of administrative authorities (Section 10 et seq.), basic aspects of the conduct of administrative procedure (Section 15 et seq.), service of process in procedure (Section 19 et seq.), parties to procedure including their representation and actions (Section 27 et seq.), initiation of procedure (Section 42 et seq.), grounds for a decision and evidence (Section 50 et seq.), securing the course of procedure (Section 55 et seq.), situations of discontinuance and suspension of procedure (Section 64 et seq.). As regards the decision itself, the Administrative Code provides for a number of formal and substantive requirements (Section 67 et seq.). The decision must therefore be in writing and apart from certain other formal requirements, must contain, in particular, the decision's verdict, the statement of reasons and a statement of the possibility of submitting an appeal.

The possibility of an appeal, although not constitutionally guaranteed, is broadly provided for in the Administrative Code (Section 81 et seq.), whereby the appellate administrative authority assesses certain defects of the decision ex officio (without a proper appeal objection). In general, an administrative decision must not only be formally lawful but also substantively (content-wise) correct. It is worth emphasising that the basic principles of the administrative authorities as defined in the Administrative Code (Sections 2 to 8), which were already mentioned (see above, Chapter 2.), also fully apply to the issuance of administrative decisions. In making its decision, the administrative authority must therefore, in particular, properly investigate the factual situation, ensure that the decision is in accordance with the public interest, and must not discriminate against the parties to the procedure or abuse its powers. The administrative procedure should also comply with the general requirement of timeliness and economy. As a rule, appeals cannot be filed against non-final decisions or decisions of a purely procedural nature.[41] In case of decisions issued by the central administrative bodies special type of appeal (remonstrance) is implemented.[42]

[41] In more detail on the appeal see Skulová, Soňa, Potěšil, Lukáš, Hejč, David. Administrative Appeals, Ombudsman, and Other ADR Tools in the Czech Administrative Law. In Dragos, Dacian C., Neamtu, Bogdana (Eds.). *Alternative Dispute Resolution in European Administrative Law.* 1. ed. Heidelberg New York Dordrecht London: Springer, 2014. p. 393-420.

[42] In more detail on the remonstrance see Skulová, Soňa, Potěšil, Lukáš, Hejč, David. Remonstrance Against Decisions Made by Central Administrative Bodies in the Czech Republic. *International Public Administration Review.* Ljubljana: University of Ljubljana, Faculty of Administration, 2014, no. 2-3, p. 123-142.

The Administrative Procedure Code also provides for certain other means of legal protection, such as retrial (Section 100 et seq.) or an ex officio review (Section 94 et seq.). However, the application of ex officio remedies is subject to the discretion of the eligible administrative authority and leads to a more limited scope of review. The Administrative Code also provides for remedies against unlawful inaction by an administrative authority, including not issuing a decision within the statutory time limit (Section 80). A number of other aspects of administrative procedure and the issuance of decisions are also regulated by the Administrative Procedure Code, such as certain types of enforcement of final administrative decisions that are not followed by the obliged person (Section 103 et seq.).

However, the Administrative Procedure Code does not procedurally regulate all public administration decision-making. By virtue of the definition of its scope, it does not apply to public administration not in the form of the exercise of public authority (so called non-authoritative administration, see above, Chapter 1.2.), i.e., mainly to the property-law conduct of administrative bodies (although this conduct may be subject to some other public law restrictions). However, when it comes to the exercise of public authority, it is not relevant whether the administrative authority has taken a decision in a public or private law matter. Generally administrative authorities make decisions on public subjective rights and obligations, but in some cases the legislator, mostly for pragmatic reasons, assigns them the competence to adjudicate also private law disputes instead of civil courts (e.g. in the case of adjudication of disputes between telephony service providers and their clients by the Czech Telecommunications Authority). Therefore the nature of the law that is being adjudicated is not relevant from the point of view of the Administrative Code. Although the nature of these rights becomes crucial for the judicial review of these decisions (see below, Chapter 5.).

4.3. Act of General Measure (Plans)

An administrative decision is not the only act that is regulated by the Administrative Procedure Code. The second important category are acts of general measure. In simple terms, it is a combination of the attributes of a administrative decision (as an individual act) and a legal regulation of public administration (as a normative act) - in theory, it is therefore sometimes referred to as a *mixed administrative act*. The Administrative Procedure Code defines measure of a general nature negatively as an act that is neither a sub-statutory regulation nor a decision and specifies the procedure for its issuance (Section 171 et seq.). In particular, the duty of the administrative authority to publish the draft of an act of general

measure and to allow the concerned persons to submit comments or objections to the draft, which must be dealt with in the prescribed manner, is established.

As far as their application is considered, this instrument was introduced into the Czech legal system along with the enactment of the current Administrative Procedure Code (with effect from 1 January 2006), therefore it is still a relatively new instrument. In practice, it is mainly associated with the enacting of municipal *zoning plans* (see also Chapter 3.1.3.). But its scope of application is significantly wider. At present, the acts of general measure has been applied extensively in the context of the adoption of various "pandemic measures" by the Czech public administration in response to the covid-19 epidemic. This has led in particular to relatively accessible judicial protection against these administrative measures compared to the situation when these measures were issued as public administration normative acts.[43]

According to the Administrative Code, such acts of general measure must contain a reasoning and the administrative authority shall announce it by public notice. It cannot be appealed against, but it can be reviewed and, if found illegal, annulled ex officio and, above all, it can be reviewed in the administrative judiciary. It may be added, however, that these acts have sometimes become problematic in practice, given their not always clear boundary between decisions and normative acts. In these cases, the case-law applies the so-called material-formal approach, under which not only the act which is designated by the legislator as such, but also the act having its material characteristics, may be regarded (reviewed as such) as a act of general measure.[44]

4.4. Administrative Contracts

The Administrative Procedure Code also contains a general regulation of administrative contracts (Section 159 et seq.). However, not all contracts entered into by administrative authorities are administrative contracts within the meaning of the Administrative Procedure Code. The legal regime of administrative contracts is aimed only at contracts with "public law content" (public rights and obligations being concerned), not ordinary private-law relations. In the case of private-law matters administrative authorities enter into, in principle, related contracts may be subject to certain public-law restrictions (see above, Chapter 3.1.1.),

[43] In more detail see Frumarová, Kateřina. Defending against crisis measures of Czech government in connection with COVID-19 pandemic. *Institutiones Administrationis - Journal of Administrative Sciences*. 2021, vol. 2, p. 4-15.

[44] On this approach, see Resolution of the Supreme Administrative Court from 21 January 2011, No. 8 Ao 7/2010.

but in their nature they still remain private-law contracts. Similarly, disputes arising from these contracts are decided by the civil courts, whether or not a public entity was a party to the contract.

In the case of administrative contracts, disputes arising from them are decided by the designated administrative authorities. These authorities must also, in some cases, give their prior consent to the administrative contract or join the contract so that it can be concluded. Some contracts also require statutory authorisation for their conclusion. In addition to compliance with the law, administrative contracts also require compliance with the public interest, otherwise they may be cancelled ex officio by competent administrative authority. The Administrative Procedure Code regulates a number of other aspects, but in particular it regulates three types of administrative contracts - so-called coordination contracts, subordination contracts and administrative contracts between addressees of the public administration.

The essence of *coordination administrative contracts* are contracts concluded exclusively between administrative authorities for the purpose of cooperation within the sphere of public administration. Examples include contracts through which changes are made in the exercise of delegated competences by municipalities (when the execution of these competences is, for example for capacity reasons, "transferred" from one municipality to another) or a contract through which the tasks of the municipal police in the territory of a certain municipality are performed by the municipal police of another municipality.

Subordination administrative contracts, on the other hand, presuppose that a person who would otherwise be a party to a particular administrative procedure will be a party to the contract alongside the administrative authority. This contract therefore often replaces the issuing of an administrative decision and is thus a 'softer' alternative to this traditional form of exercise of public administration. Examples include the providing of certain subsidies which is based on a administration contract or a public administration contract authorising of a specific construction project instead of issuing a construction permit. It should be noted, however, that in the context of the making of such contracts, principle of contractual equality is not entirely applied. Although the addressee of the public administration must agree to conclude the contract, failure to conclude or breach of such a contract may subsequently lead to the issuing of an administrative decision (and a bilateral act in the form of a contract may be superseded by a unilateral act by the administrative authority - usually an administrative decision). The administrative authority is thus still in an generally inequitable position vis-à-vis the other party to the contract.

The last category of administrative contracts provided for by the Administrative Procedure Code (*administrative contracts between addressees*) allows the addressees of public administration to transfer certain public rights and obligations and their exercise on the basis of this contract between themselves (e.g. contract on the transfer of a mining area between private mining organisations). However, this type of contract is not very common. The Administrative Procedure Code does not exclude the existence of other types of public-law administrative contracts regulated by special laws.

4.5 Factual Interventions

Czech administrative law identifies the practical necessity to perform certain administrative tasks quickly and informally, therefore it distinguishes so-called factual interventions as public administration activities that are the exercise of public administration in nature but are not result of a certain formalized procedure. However, these acts are not reflected by theory, nor by the legislator in a comprehensive way. Therefore, factual interventions are not generally regulated in the Administrative Procedure Code (which regulates only "formalised" administrative procedure or other proceedings and acts issued thereunder), but the authority and some conditions for their realization are laid down ad hoc in special laws.[45] But at the same time, the principles of administrative law also apply to these acts (see above, Chapter 2.). The most typical example of factual interventions are the so-called *immediate interventions*, when, usually, a member of the security forces intervenes in case of emergency in order to protect some significant value (life, health, property, etc.).

4.6. Other Acts

In theory and also in the legal system itself, other unilateral acts of administrative authorities are also distinguished in the form of so-called other acts. These acts are generally understood as *acts other than decisions*. The difference between such acts and administrative decisions lies in their lower legal importance for the addressee. As a rule, therefore, they do not decide on rights and obligations and consequently are not issued in the administrative procedure. Nevertheless, the legislator has regulated the procedure for their issuance in the Administrative Procedure Code, which is, however, very simplified.

[45] For example see Act No. 273/2008 Coll. on the Police of the Czech Republic, which regulates a wide range of operations by members of the Police of the Czech Republic, from technical means to prevent the escape of a vehicle to restrictions on the personal freedom of an individual or the conditions for the use of a firearm.

It regulates the applicability of certain provisions on administrative procedure to the issuance of other acts (Section 154), the competence of the administrative authority to issue such an act and the obligation to do so if the conditions are met (Section 155), as well as the correction of defects or its review ex officio if it is unlawful (Section 156 et seq.). The Administrative Code identifies such acts as statements, certificates, verifications or notices, but also covers a unspecified number of other acts of a similar 'non-regulatory' nature (e.g. various informational, conceptual or registration acts).

5. Judicial review

As the legal foundation of the review of administrative acts in the Czech administration can be regarded, in particular, Article 36(1) of the Charter of Fundamental Rights and Freedoms, according to which "everyone may assert, through the prescribed procedure, his or her rights before an independent and impartial court or, in specified cases, before another body" and Paragraph 2 of the same Article, according to which "unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be removed from the jurisdiction of courts."

The legal order regulates certain proceeding (in particular appeals against decisions or broader possibilities of ex officio review), on the basis of which the activities of the public administration are subject to control by superior administrative authorities. However, independent and separate (from public administration) control is exercised by the administrative judiciary, which was re-established shortly after the collapse of the communist regime in 1989 (see above, Chapter 1) but has only been functioning in its current form since 1 January 2003. Prior to this date, the review of administrative decisions was carried out as a special type of proceedings before the civil courts.

5.1. The Organization of the Courts

The administrative judiciary was initially restored in 1992 through an amendment to Act No. 99/1963 Coll., the Code of Civil Procedure. Under this amendment, however, it was only possible to challenge administrative decisions, not other forms of public administrations activities (of which there are more; see above, Chapter 4). This situation was perceived as a rather temporary and inadequate legal regime, which later resulted in the Constitutional

Court's annulment of the former legislation on administrative justice.[46] On that basis, Act No. 150/2002 Coll., the Code of Administrative Justice, was drafted, which came into force on 1 January 2003.

Together with the adoption of the Code of Administrative Justice, the Supreme Administrative Court was re-established (after having ceased to operate under the Communist law). In addition to this judicial body, specialised judges or chambers of regional courts decide on administrative matters, and the regional courts (eight courts in total) also form the system of administrative justice. The Czech administrative judiciary is therefore a *two-tier system* (however, the Supreme Administrative Court does not have the status of an ordinary court of appeal). Administrative tribunals, as is typical, for example, in some common law countries for the review of administrative acts of minor importance,[47] are not utilised in the Czech administrative, which distinguishes only administrative courts (and other courts involved in the scrutiny of public administration).

In some cases review of the activities of administrative authorities is also delegated to the civil courts and the Constitutional Court. Civil courts review the decisions of administrative authorities when they have ruled on rights of a private nature (according to the part five of the Code of Civil Procedure), whereas administrative courts provide protection for public subjective rights. In cases where it is not clear what the nature of the legal matter decided by the administrative authority is, the legislator created a special judicial chamber whose purpose is (inter alia) to resolve conflicts of competence between administrative and civil courts in this context.[48] The tasks of the Constitutional Court are twofold. First, it carries out a review of decisions of administrative courts from the perspective of the protection of fundamental constitutional rights and freedoms. In this case, the Constitutional Court primarily reviews and eventually annuls non-constitutional decisions of administrative courts. At the same time, it is also the only judicial body with the power to review legislation (see below, Chapter 6.1.), including review of legal regulations issued by the public administration.

5.2. Jurisdiction of Administrative Courts

As stated in Section 2 of the Code of Administrative Justice, "in the administrative justice system, courts provide protection of public subjective rights of natural and legal persons in

[46], See Finding of the Constitutional Court of the Czech republic from 27 June 2001, No. Pl. ÚS 16/99.
[47] See Creyke, Robin, ed. *Tribunals in the common law world*. Sydney: The federation press, 2008.
[48] See Act No. 131/2002 Coll., on the Resolution of Certain Competence Disputes.

the procedure established by this Act and under the conditions established by this Act or a special law, and decide on other matters in which this Act so specifies." In this sense, the agenda of the Czech administrative judiciary could be divided into the "classical administrative justice", the subject of which is the review of public administration's legal actions (including protection against inaction of administrative authorities), and "other agendas" given to administrative courts by the legislator. These other agendas include, in particular, electoral and political party matters. Administrative courts also adjudicate competence disputes within the public administration or decide in disciplinary cases of judges and state prosecutors (which is one of the agendas of the Supreme Administrative Court).

As for the core agenda of the administrative justice system, it is organised in a group of four types of procedures, which in principle directly covers nearly all recognized forms of public administration (see above, Chapter 4.).

The main types of proceedings according to the Code of Administrative Justice	
Type of proceeding	**Its focus**
Proceedings on action against a decision of an administrative authority (§ 65 et seq.)	Administrative decisions (and some "other acts" which have the character of decisions of an administrative authority in material sense)
Proceedings on action against an inactivity of an administrative authority (§ 78 et seq.)	Inactivity of the administrative authority in the form of not issuing a decision (in the matter) within the time limit and not issuing a certificate
Proceedings on action for protection against unlawful intervention, instruction or enforcement by an administrative authority (§ 82 et seq.)	Factual interventions, some "other acts" not having a character of a decision and other cases of inactivity
Proceedings for the annulment of a act of general measure (§ 101a et seq.)	Acts of general measure

Exceptions not covered by the administrative justice system are public contracts, which are reviewable in the administrative justice only indirectly (in the form of a decision of an administrative authority regarding such a contract) and sub-statutory regulations of the

administrative authorities. Despite the broad scope of judicial review, difficulties sometimes arise in qualifying the "correct type of action" for a specific situation. In particular, the use of various "non-standard acts" (administrative acts for which it is not clear whether they are decisions or other acts) in the legal system seems problematic. However, the case-law in this context has established that it is the duty of the administrative court to instruct the applicant on the appropriate type of action for his or her circumstances (the action cannot therefore be dismissed on the ground of an incorrect choice of the type of action by the applicant).[49]

In practice, the most frequent type of proceedings is the proceedings against a decision of an administrative authority. *A decision* is defined very loosely in the Code of Administrative Justice as an act having the (material) effects of a decision and at the same time fulfils certain minimum formal requirements required by case-law. The concept of a decision under the Code of Administrative Justice is wider than the definition of a decision in the Administrative Code. It therefore allows for the review of act having the nature of a decision regardless of the procedure according to which it was issued (under the Administrative Procedure Code, the Tax Code or any other law). However, it has to be a decision of an administrative authority (which is defined similarly to the Administrative Procedure Code), not of a different public authority, that would not be reviewable in the administrative justice. Neither can it be an exercise of public administration where the administrative authorities do not exercise any public power , typically in property-law matters (in such a case, the civil courts would have jurisdiction to settle the resulting disputes). Administrative courts also do not adjudicate claims for compensation for damage caused by public authorities.

As far as the jurisdiction of the Supreme Administrative Court is concerned, its main role is to decide on cassation appeals against rulings of lower administrative courts. However, a cassation appeal is not equivalent to an ordinary appeal, since the grounds for raising (and hearing) it are limited. In particular, with effect from 1 April 2021, the Supreme Administrative Court may in some simpler cases reject a cassation complaint for *inadmissibility* if it does not substantially exceed the complainant's own interests.[50] This is in large part an attempt to reduce the heavy workload[51] and to accentuate the Supreme

[49] See Finding of the Constitutional Court of 14 August 2019, No. II. ÚS 2398/18.

[50] In more detail on this change see Potěšil, Lukáš. Restriction of access to the Supreme Administrative Court to reduce its burden (via expanding the institution of inadmissibility of a cassation complaint in the Czech Republic). *Institutiones Administrationis - Journal of Administrative Sciences*. Györ: Széchenyi István University, 2021, no. 1, p. 74 - 81.

[51] In more detail to the workload of the Supreme Administrative Court in a comparative perspective see Potěšil, Lukáš, Piątek, Wojciech. A Right to Have One's Case Heard within a Reasonable Time before the Czech and

Administrative Court's objective of unifying case-law in more complex cases. On the other hand, it nevertheless limits the 'availability' of review of the decisions of the lower administrative courts.

5.3. Standing

As was already mentioned, the right of access to the courts is guaranteed under the Charter of Fundamental Rights and Freedoms, but this right is subject to certain restrictions. The basic prerequisite for access to an administrative court is the use of the remedies provided by the Administrative Procedure Code or other special laws (which is, inter alia, intended to reduce the burden on administrative courts). As a rule, only the use of the remedies, the exercise of which depends on the applicant, is required (thus remedies ex officio are generally not required). In the case of a review of an administrative decision, such remedy is an appeal.

All proceedings in the administrative justice system are based on the *principle of application* (disposition), therefore the administrative court cannot initiate proceedings ex officio. In addition to the general requirements of identification of the plaintiff and defendant, the application (usually an action) must contain special details according to the type of proceedings concerned. Generally, however, it requires identification of the act by which the applicant's rights have been infringed, the pleas in law (on what grounds, in fact and in law, the applicant considers the contested act to be reviewable), the evidence in support of the applicant's allegations and a proposed judgment.

The only option for the administrative court to rule on an action against a decision of an administrative authority, if it is substantiated, is to annul the contested decision. Except in rare situations, the administrative court has no power to alter the decision of the administrative authority. This is based on the separation of judicial review from the exercise of public administration, whereby administrative courts only review, not exercise, public administration. But there are some rare exceptions to this rule (in particular, the power of the administrative court to lessen the sanction imposed by an administrative authority if there is no other ground for annulment of the decision than disproportionality of its sanction).

Other types of action allow for other alternatives to the administrative court's ruling, but these are determined by the practical impossibility of overturning the act under review. Therefore, in the case of an action for interference, the administrative court may order the administrative authority to refrain from interfering or to restore the status quo ante, or it may

---

the Polish Supreme Administrative Courts – Standards, the Reality and Proposals for the Future. *Utrecht Law Review*. Utrecht, 2021, no. 1, p. 20-32.

simply declare the illegality of the interference. In the case of an action against an inactivity of an administrative authority, it may order the administrative authority to issue a decision or certificate (without deciding what its content should be - whether the right should be granted, etc.).

5.4. Grounds of Review

In the case of the most frequent review of administrative decisions, the administrative court annuls the decision if it is *unlawful* (in its content) or for *procedural defects* (procedural errors preceding its issuance). A decision is also annulled for illegality if the court finds that the administrative authority exceeded the limits of its administrative discretion or abused it. However, in the case of a review of the so-called administrative discretion, the court leaves more room for the administrative authority to assess the solution adopted by the administrative authority (in other words, it is not the role of the court to replace the administrative authority in its professional capacity or to substitute judicial discretion for administrative discretion[52]). Whether administrative discretion is exercised in a specific case depends on the scope of the administrative authority's powers as defined in the law. Both the issues of legal reasoning and the quality of the findings of facts by the administrative authority are reviewable. It may be added, however, that a narrower scope of review is constructed in the case of decision making of the Supreme Administrative Court on cassation complaints, more precisely, not every defect in the decision of the regional court automatically leads to the validity of the cassation complaint.

A special type of defect of a decision recognised by the Code of Administrative Justice (but also by the Administrative Procedure Code) is *nullity*. This is a case where the decision is burdened with such serious defects that it is regarded as having no legal effects from the beginning (typically an administrative decision issued by the wrong type of administrative authority). If such a defect is found, the administrative court will declare nullity. Otherwise, the presumption of validity of the administrative decision applies and its defect only gives grounds for its review (not necessarily by administrative court).

The same applies to other types of proceedings before administrative courts, where only the lawfulness of the activity or inactivity of the administrative authority is reviewed. However, lawfulness (legality) is understood in a broader sense and a breach of constitutional order, sub-statutory regulations or even internal regulations may be found to be unlawful.

[52] See Decision of the Supreme Administrative Court of 18 December 2003, No. 5 A 139/2002-46.

Rather, it is a review from the point of view of compliance with the legal rules which are binding on the administrative authority.

6. Other types of Control

6.1. Constitutional Review

According to the Article 83 of the Constitution of the Czech Republic, the judicial body for the protection of constitutionality in the Czech legal system is the Constitutional Court. This includes protection against unconstitutional exercise of public administration. Any final decision, measure or "other intervention" of a public authority may be reviewed by the Constitutional Court on the basis of a *constitutional complaint*. The condition for this application is a violation of a fundamental right or freedom guaranteed by the constitutional order (otherwise the constitutional complaint will be rejected). However, due to the broad scope of administrative justice (and the fact that fundamental rights are protected under Article 4 of the Constitution by any court), the Constitutional Court generally provides protection against unconstitutional decisions of administrative (or other) courts, not directly against acts of administrative authorities. The use of previous legal remedies is also a condition for access to the Constitutional Court.

In some matters, however, the Constitutional Court provides protection as the first "instance". Although Article 87(3)(b) of the Constitution provides that the legislator may assign the review of sub-statutory regulations issued by the public administration to the Supreme Administrative Court, this possibility has not yet been utilised. The Constitutional Court is therefore part of the administrative judiciary in a wider sense in the respect that it performs a review of normative administrative acts and is the only authority with the power to repeal such acts.

The right to initiate such a review belongs to the Government, a group of members of the Chamber of Deputies or the Senate, the regional council, the Public Defender of Rights and some other applicants (this is a so-called abstract review). A natural or legal person may also file a motion to repeal a public administration regulation, but only if the motion is joined with a constitutional complaint (this is the so-called incidental review).

In the context of the review of sub-statutory regulations, their unlawfulness is sufficient as a ground to repeal. Similarly, the Constitutional Court also provides protection against laws, but in this case their unconstitutionality is required and the range of applicants for the review is narrower. The Constitutional Court also provides protection to the territorial

self-government on the basis of the proceedings on the constitutional complaint of territorial self-government bodies against unlawful state intervention and performs some other functions which, however, do not directly affect the public administration.

6.2. Parliamentary Scrutiny

Public administration can also be controlled by the legislative power, mainly by the Chamber of Deputies of the Parliament of the Czech Republic. According to Article 53 of the Constitution each Deputy has the *right to interpellate* the members of the Government concerning matters within their competence. In addition to this right, Deputies are also entitled (under the rules of proceeding of the Chamber of Deputies[53]) to *request information and explanations* necessary for the performance of their duties also from the heads of administrative authorities and local government bodies. Senators have the same right as well.[54]

More generally, parliamentary control of the public administration lies in the derivation of the Government from Parliament, or more precisely from the majority in the Chamber of Deputies, since the Government is accountable to the Chamber of Deputies under Article 68(1), which may pass a vote of non-confidence in the Government, which then translates into an obligation for the Government to resign (under Articles 72(1) and 73(2)). However, the legislature also has some "softer" control instruments at its disposal (for example, the ability to establish the ad hoc commissions of inquiry,). Similarly, parliament resolutions may be passed on matters of state administration, but these are not binding on the Government. The Chamber of Deputies also considers and approves the Act on the State Budget and the State Final Account, as a form of financial control.

6.3. State Audit Office

The State Audit Office, legally designated as the Supreme Audit Office, is enshrined in the Constitution (Article 97), which states in particular that it is an independent body that audits the management of state property and the fulfilment of the state budget and that its chief representatives (the President and Vice President) shall be appointed by the President of the Republic on the proposal of the Chamber of Deputies. A more detailed regulation is contained in Act No. 166/1993 Coll. on the Supreme Audit Office.

[53] See Act No. 90/1995 Coll., on the Rules of Proceedings of the Chamber of Deputies.
[54] On the basis of Act No. 107/1999 Coll., on the Rules of Proceedings of the Senate.

The Supreme Audit Office operates on the basis of a plan of audit activity containing the scope and timing of audit activities for the following financial year. Its audit does not only monitor compliance with legal rules in the audited activities, but also their factual and formal correctness and assesses whether they are efficient, economical and effective (adoption of the so-called *3E principles*). The audit results in a written report containing a summary and evaluation of the facts found during the audit. The Supreme Audit Office possesses certain powers for the purpose of effective auditing, but it is not competent to impose any legal liability (e.g. to claim reimbursement for losses incurred) on the basis of its findings. All approved audit conclusions are published in the Office's Bulletin and are forwarded to the Chamber of Deputies, the Senate and the Government (the annual report of the Supreme Audit Office is also submitted to these bodies). Liability may therefore arise secondarily on the basis of the publication of these findings, e.g. in the form of liability for damage caused by officials in breach of their duties in the state property management claimed against these persons by the state (usually by the affected organisational unit), or even criminal liability may arise.

In addition to the scope of auditing defined in the Constitution, the Supreme Audit Office is also authorised by Act on the Supreme Audit Office to audit, for example, the State Final Account, the management of funds provided to the Czech Republic from abroad or the procurement of state contracts. The Supreme Audit Office is allowed to carry out such audits of organisational units of the state (typically ministries) as well as of legal and natural persons, if necessary (e.g. recipients of state subsidies).

The Supreme Audit Office is not, however, authorised to audit the property management of state-owned enterprises, municipalities or regions and enterprises owned by these entities, despite the large amount of public assets held. The scope for control over public funds and budgets is therefore limited. Nevertheless, it has been repeatedly drafted at the legislative level that local self-governments and other public entities should be subject to such control, at least in terms of auditing the legality (not efficiency) of their operations. No such proposal has yet been legislated.

6.4. Ombudsperson

The ombudperson-type institution was introduced into the Czech legal system by Act No. 349/1999 Coll. on the Public Defender of Rights (unlike the Supreme Audit Office, it has no constitutional basis). According to this Act, "the Public Defender of Rights acts to protect persons from the actions of authorities and other institutions specified in this Act if they are

contrary to the law, do not comply with the principles of the democratic rule of law and good administration, as well as from their inaction, and thus contributes to the protection of fundamental rights and freedoms."

The administrative authorities which the Public Defender of Rights is entitled to control include the vast majority of state administration bodies in the form of ministries and other state administrative authorities with jurisdiction over the entire state territory, including administrative authorities subordinate to them. The Public Defender of Rights' competence does not extend to the legislative and judicial powers, including criminal law enforcement authorities and prosecutors' offices. However, it also does not apply to the public administration exercised by self-governments (territorial and non-territorial). It is thus primarily a mechanism for protection against state bureaucracy.

The institution itself can be classified as a parliamentary-type ombudsman, since the person representing the institution and his or her deputy are elected to office by the Chamber of Deputies and are accountable to that body for the exercise of their functions, although they can only be removed for very limited reasons defined by law. The Public Defender of Rights also submits periodic information on his or her activities and an annual report to the Chamber of Deputies, and may attend its sittings if they are relevant to his or her competences.

The institution is described as monocratic, with one ombudsperson and his or her deputy who can be (and in practice always is) delegated by the ombudsman to exercise part of the ombudsman's competence. It may be added, however, that the deputy is not chosen by the Public Defender of Rights, nor is the deputy accountable only to the Public Defender of Rights, but also to the Chamber of Deputies. The Public Defender of Rights' deputy therefore has a position which is close to that of the Public Defender of Rights, but this is not considered as a collective type of ombudsperson institution.

As is typical for institutions of this type, the Public Defender of Rights has no decision-making or order-making powers. Instead, he or she acts as a *mediator* between the person concerned and the administrative authority, carrying out an investigation (through certain investigative powers) and, on the basis of that investigation, proposing remedies for the defects found in the administrative authority's practice. The Public Defender of Rights' procedure results in reports which are also published in information system of the institution.[55] However, the Public Defender of Rights also has a 'soft sanction' available in form of permission to publicize findings in the media in cases where the findings have not

[55] See: https://eso.ochrance.cz/

been complied with (and thus to "pressure" the administrative authority to correct the misconduct), but this option is only rarely used.

The Public Defender of Rights exercises his or her competence through the Office of the Public Defender of Rights. Its procedure is mostly informal and therefore more accessible to persons addressing the institution with complaints. However, the Public Defender of Rights may also initiate investigations on his or her own initiative. As already mentioned, the inspection activity is not only concerned with legality but also, and in particular, with compliance of administrative activities with *the principles of good administration*. Therefore, the Ombudsman carries out control of even minor (non-legal) misconduct of the state administration. These principles are not specifically defined by the Act on the Public Defender of Rights, therefore the Public Defender of Rights has defined them through soft-law in the early days of the institution.[56]

Some of these principles were also adopted as the basic principles of the activities of administrative authorities regulated by the Administrative Procedure Code (which have already been mentioned above, Chapter 2.; however, these principles are no longer "soft-law" but are legally binding as statutory principles).

The scope of the Public Defender of Rights' activities has evolved over time, with the addition of "subsidiary competences" to the "core competence" outlined above. These new competences include, in particular, the agenda of systematic visits to places where persons deprived of their liberty by public authority or as a result of dependence on care are or may be found, with the objective of strengthening the protection of such persons against torture, cruel, inhuman, degrading treatment or punishment and other ill-treatment. In this context, the Public Defender of Rights may carry out inspections not only of state facilities but also of privately run facilities. Other examples of the Public Defender of Rights' competences are the competence in matters of the right to equal treatment and protection against discrimination (in relation to Act No.198/2009 Coll., the Anti-Discrimination Act) or monitoring the implementation of an international treaty regulating the rights of persons with disabilities (in relation to the Convention on the Rights of Persons with Disabilities).

[56] These principles include principle of compliance with the law, impartiality, timeliness, predictability, persuasiveness, proportionality, efficiency, accountability, openness and helpfulness; see the Public Defender of Rights' Ten Principles of Good Administration: https://www.ochrance.cz/dokument/principy-dobre-spravy/principy-dobre-spravy.pdf

The expansion of the Public Defender of Rights' competences is not always perceived uncritically;[57] in particular, it can be argued that by expanding its competences, the Public Defender of Rights is moving away from its original purpose (and closer to the state bureaucracy it is meant to control). In practice, however, these new roles do not seem to have a negative impact on the functioning of the institution.

6.5. Access on Information and Public Control

The right to information is constitutionally guaranteed. Under Article 17(1) of the Charter of Fundamental Rights and Freedoms, freedom of expression and the right to information are guaranteed. Paragraph five of the same Article further provides that State bodies and territorial self-governments are obliged to provide information on their activities in an appropriate manner. At the legal level, this right is regulated in particular by Act No. 106/1999 Coll., on Free Access to Information.

On the basis of this law, the "obliged entities", which are state authorities, territorial self-governments and their bodies and public institutions (among which the case law also includes some of commercial enterprises controlled by the State or municipalities[58]), are required to provide information related to their activities. However, this obligation does not apply to inquiries about opinions, future decisions and the creation of new information, and some other limitations on this right are also set out (e.g., if the information is created without the use of public funds, if it would violate the protection of third parties' copyright or if the information is provided under another legal regime). Other exceptions include, for example, certain information on the activities of law enforcement authorities or security forces relating to the prevention, detection or prosecution of crime or the protection of security. However, final administrative or judicial decisions may generally be requested.

The Act on Free Access to Information further regulates the process of deciding on a request for information, which provides in particular for time limits for providing information and the possibility of appealing against a negative decision. Judicial protection in the

[57] See e.g. Sládeček, Vladimír. Teoretické problémy působnosti ombudsmana, jeho působení ve vztahu k jiným orgánům a institucím. In: Sborník z mezinárodní vědecké konference na téma Působení ombudsmana v demokratické společnosti konané dne 5. června 2003, available online: https://www.ochrance.cz/dokument/pusobeni_ombudsmana_konference/

[58] Among the obliged subjects, the case law included, for example, the state enterprise Letiště Praha (Prague Airport), České dráhy a. s. (Czech Railways), Pražský dopravní podnik a. s. (Prague City Transport Company) or even a football club fully owned by the municipality. The case-law of the Supreme Administrative Court also considered the energy conglomerate ČEZ, a. s. (majority-owned by the State) to be an obliged entity, but this conclusion was later overturned by a decision of the Constitutional Court (see the Finding of the Constitutional Court of 20 June 2017, No. IV ÚS 1146/16-2).

administrative judiciary is possible, and if the court finds that there were no grounds for withholding the information, it will itself order its provision. However, proactive provision of information without submitting a request is also anticipated (the National Catalogue of Open Data has been created as a remotely accessible public administration information system used to register information published as open data).

Other than requests for information, some other instruments to ensure transparency of public administration have been introduced recently such as the Register of Contracts, which contains all major (private-law) contracts concluded by the State or regional self-governments. Overall, however, the level of transparency of the Czech public administration can be described as less than ideal and not being developed entirely conceptually.

It is also possible to address public administration authorities with complaints and petitions, likewise with a constitutional basis. According to Article 18(1) of the Charter of Fundamental Rights and Freedoms: "The right to petition is guaranteed; in matters of public or other common interest, everyone has the right, alone or with others, to address state authorities and territorial self-government bodies with requests, proposals and complaints". The right to petition the state authorities is regulated in more detail by Act No. 85/1990 Coll. on the Right to Petition. Not all petitions are allowed (in particular, petitions may not, according to Article 18(2) and (3) of the Charter, interfere with the independence of the judiciary or call for violations of fundamental rights and freedoms). The formal requirements of a petition and the obligations of the authorities to which it is addressed to accept and respond to the petition are established.

However, the petition is not binding for that authority addressed. Only referendums, which are generally regulated in the Czech legal system only as local referendums (under Act No 22/2004 Coll. on Local Referendums), can become binding under certain conditions. As regards complaints, although the possibility of filing them is assumed at the constitutional level, Czech law does not contain a general regulation of complaints to the State or other public entities. The broadest regulation of complaints is contained in the Administrative Procedure Code (Section 175), but this option applies only to the area of application of the Administrative Procedure Code, which is limited (see above, Chapter 4.).

7. Administrative Liability

In Czech theory, in the context of administrative law, administrative liability could be divided into two levels. The first level is liability for administrative offences, which consists of

liability for misdemeanours, disciplinary offenses and order offences (on these categories see above, Chapter 1.3.) as generally the liability of the addressees of public administration for their wrongdoing (however, with regard to the rule of law, public entities, including the State, may of course also be liable for committing some offenses).

The second dimension to be distinguished is the liability of the public administration for damages. The legal regime of this liability is governed by the nature of the exercise of public administration - if it is a public administration exercising public power, the liability is regulated by a special law (Act No. 82/1998 Coll.); if, on the contrary, it is a case of so-called non-authoritative public administration (see above, Chapter 1.2.), public entities, if they cause damage, are liable under the ordinary rules of private law (in particular Act No. 89/2012 Coll., the Civil Code).

The legal liability regulated by Act No. 82/1998 Coll. is different from the general private liability for damages in two respects. If we disregard the fact that this law regulates the liability of only selected public entities (the state and territorial self-governments - municipalities and regions), it is a liability on an exclusively objective basis. Thus, no fault on the part of the State (municipality or region) is required and liability cannot be exempted. Secondly, special forms of conduct of the state (municipal a regional) bodies are regulated. These are liability for the *issuance of an unlawful decision* and for an *incorrect official procedure*.

The first of these categories applies to all decisions, not only those of administrative authorities, but also, in particular, judicial decisions. It is therefore not legislation aimed exclusively at damage caused by public administration. At the same time, however, several restrictive conditions are laid down. In order to be entitled to compensation, the injured person must have been a party to the proceedings in which the decision was made. The decision must have become final and been annulled or changed for unlawfulness (and not for any other reason) before the claim for compensation can be brought. Finally, the victim must have exhausted all effective remedies against the decision (usually not ex-officio remedies), reflecting the principle of prevention of damage on his or her part (an exception to this condition may, however, be made in special cases). This form of liability also covers cases of damage caused by an act of general measure, which is not anticipated by Act No.82/1998 Coll. with regard to the time of its origin (however, the possible classification of such acts under decisions has been established by the case-law).

The second form of liability is liability for incorrect official procedure (in case of public administration also so-called *maladministration*). This is largely a "residual category"

for misconduct in the exercise of public authority which is not directly reflected in the issuance of a decision. The incorrect official procedure cannot therefore be a decision, nor is the injured party free to choose between these forms of liability. Incorrect official procedure is not defined in Act No 82/1998 Coll. and can consequently be any breach of the legal rules governing the conduct of a public (administrative) authority. However, what has been consistently rejected by the case-law of the Czech supreme courts is the liability for damage caused by illegal normative acts (both in terms of laws and sub-statutory regulations of the public administration).[59]

Two categories of incorrect official procedure are however legally defined - delays and unreasonable length of proceedings, which are the most common cases in practice. In the case of delays, it is a violation of a statutory time limit for the action of the public authority, regardless of the overall length of the proceedings itself. In the case of the overall length of the proceedings, the consequence is a violation of the right to a decision within a reasonable time (with grounds in Article 6 of the European Convention on Human Rights).[60] Unlike liability for a decision, the existence of a incorrect official procedure is assessed by the court in compensation proceedings.

In the case of claims for damages against the State, the precondition is that the claim must first be submitted to a designated state authority (usually a ministry) on a preliminary basis. The purpose of this hearing is to enable the State to compensate the injured person voluntarily and to avoid court litigation. Compensation for material damage and non-material damage can be claimed, while financial compensation (reasonable satisfaction in the case of non-material damage) is usually provided.

Czech administrative law also contains some other legal provisions on liability for damage in the exercise of public authority that do not require its unlawfulness.[61] However, these legal arrangements have not received much attention so far, although this has changed somewhat with the covid-19 pandemic and the issue of providing compensation for some legal but damage-causing public administration measures.[62]

[59] See e.g. Opinion of the Constitutional Court of 28 April 2009, No. Pl. ÚS-st. 27/09.
[60] It was the violation of this right that led to several condemnatory judgments of the European Court of Human Rights against the Czech Republic (see the judgment of 10 July 2003 in Hartman v. Czech Republic, no. 53341/99) and subsequently to the amendment of Act No. 82/1998 Coll. in response to this problem.
[61] For example, according to the aforementioned Act No. 273/2008 Coll., on the Police of the Czech Republic.
[62] The Act that explicitly allows for such compensations is Act No. 94/2021 Coll., on Emergency Measures during the COVID-19 Disease Epidemic, however, its subsequent application is still rather unclear.

8. European Influence on Czech Administrative Law

As already mentioned, Czech administrative law has its basis in Austrian administrative law. After the establishment of Czechoslovakia in 1918, the existing legislation was adopted, but it soon began to be changed. Even the theory of administrative law in the Czechoslovak period (until 1938 or 1948) was based on common Austrian foundations and the overall proximity of the subject matter. Publications dealing with the comparative approach were also produced at this time, especially in the field of administrative justice. The theory of administrative law was fully integrated in the wider European context, which is also evident in the fact that domestic works reflected current trends not only in neighbouring countries but also in France and the United Kingdom. In particular, the knowledge of the German language, as one of the consequences of the long-standing affiliation of the Czech lands with Austria, allowed for a "dialogue" (and not only in the field of administrative law).[63]

In contrast, Czech administrative law was a relatively strongly isolated domestic or national branch of law from 1948 to 1989. Its interaction with the legal systems of other countries was minimal. Although it was possible to encounter comparative studies in administrative law theory, these mainly focused on comparisons of legislation in other "friendly socialist countries" of the so-called Eastern Bloc. Indeed, it was difficult to get access to current scholarly works from Western countries, it was impossible to attend conferences, etc. Nevertheless, the studies produced in the 1960s and later in the 1980s stood out positively. These were focused on administrative justice, which is why they also dealt with the Western countries and their legislation. Overall, however, it can be stated that at this time administrative law was free of any significant European context. However, this changed after 1989.

Contemporary administrative law, like other branches of law, is strongly influenced by the so-called Europeanisation. This is due to the changes that occurred after 1989 and the integration of the Czech Republic into European structures. In addition to the membership in the Council of Europe (1 January 1993), it is necessary to mention the later joining of the Czech Republic to the European Union (1 May 2004). Thanks to this, it can be stated that Czech administrative law was and is "daily" confronted with European requirements.

Czech administrative law complies with the essential current requirements arising from the soft-law of the Council of Europe. The principles of good administration are recognised, which the Public Defender of Rights, among others, aims to promote (see above,

[63] One can mention F. Weyr as a personality of the so-called Brno school of normative theory, who was associated with the so-called Vienna school of H. Kelsen.

Chapter 6.4.). The reform of the administrative justice system in 2002 and the adoption of the Administrative Procedure Code in 2004 were also undertaken to comply with these requirements. Naturally, Czech administrative law is also subject to the requirement of the so-called right to a fair trial under Article 6 of the European Convention on Human Rights. In addition to the requirement for effective judicial protection, it is also a requirement for due/fair administrative process.

In the case of the European Union, it can be stated without any doubt that it is administrative law that is most affected by EU law. The rules that make up domestic administrative law are repeatedly amended or completely new rules are adopted, following developments in EU law. In order to ensure the proper implementation of EU law, special mechanisms for the legislative procedure at domestic level have been created. It is compulsory for every draft law to be examined as to whether it complies with EU law. To this end, detailed tables are also drawn up to show how and where implementation takes place in Czech law. Although there are no precise statistics, it is estimated that approximately 70% of Czech administrative law regulations have their basis in EU law. As regards the relationship between Czech administrative law and European Union law, or EU administrative law, it should be added that the traditional requirements regarding its priority application and supremacy are respected. By the end of 2020, a total of 816 infringement proceedings had been initiated against the Czech Republic. Only 35 of the total number have resulted in an action before the Court of Justice of the European Union. The majority of these actions (18) concerned the lack of transposition of the Directive. In the remaining cases, the Czech Republic was accused of infringing EU law by incorrect (or incomplete) transposition of the Directive or incorrect application of EU law.[64]

The Czech administrative judiciary has quite a lot of experience with the application of EU law. This concerns in particular the relationship between the Supreme Administrative Court as the court of last instance and the need to submit a preliminary question. Until 2007, the Supreme Administrative Court did not submit any preliminary questions to the Court of Justice. However, it became quite active thereafter. This concerns in particular the tax and financial area.[65] To date, the Supreme Administrative Court has taken almost 40 preliminary questions. This number is essentially the same as the approximately 50 preliminary questions

[64] For more detail see: https://isap.vlada.cz/homepage2.nsf/pages/esdvlz/$file/VLZ-zprava_2020.pdf
[65] For more detail see: https://www.nssoud.cz/rozhodovaci-cinnost/predbezne-otazky/predbezne-otazky-podane-nss

submitted by all other courts (e.g. in civil cases). It is already evident from this basically identical proportion that Czech administrative law is in close relation with the EU law.

Concluding Remarks

In terms of historical background, Czech administrative law was closely linked to Austrian administrative law until the end of the Second World War. The following period marked the de facto isolation of Czech legal doctrine from Western influences (and the politically motivated eastward orientation of administrative law, with all its consequences). The emergence of modern Czech administrative law can only be linked to 1989, with the creation of Czechoslovakia (and later its separation and the establishment of an independent Czech Republic in 1993 and its constitutional order), but maybe even more precisely to the years 2001 to 2006.

In the course of these years, two important procedural laws came into force - the Code of Administrative Justice (2003) and the Administrative Procedure Code (2006). These years therefore saw both the creation of a modern administrative justice system based on the reviewability of a wide range of acts of administrative authorities by administrative courts and the adoption of procedural rules for the issuance of these acts, including the introduction of entirely new acts (mainly acts of general measure). The reform of territorial administration was also completed, the most obvious manifestation of which is the exercise of state administration (referred to as delegated competence) by territorial self-governments. This has been done on the basis of the adoption of new legislation regulating territorial self-government - in particular the Act on Municipalities and the Act on Regions. Some other important substantive legislation was also recodified in this period (e.g. Act No. 183/2006 Coll., the Construction Act). Thus, it could be said that today's Czech administrative law is to a large extent a continuation of the many foundations laid some twenty years ago. On the other hand, this means that Czech administrative law carries with it the shortcomings of those solutions.

As far as administrative justice is concerned, after twenty years of the entry into force of the Code of Administrative Justice, two problems arise in particular. The first problem is the position and role of the Supreme Administrative Court, which has long struggled with overload. The current solution is rather to limit its review functions, but this is not, of course, a conceptual solution. The question is therefore the future organisational design of the administrative judiciary, foreshadowing the need for a possibly difficult reform. Secondly, it

appears that the structure of the types of actions in administrative justice, although at first sight it appears to be rational and comprehensive in covering the area of activity (and inactivity) of administrative authorities, is not always easily applicable. This is especially true in situations where the legislator constructs various "non-standard" forms of acts of administrative authorities which are difficult to qualify for the purposes of their judicial review. In our opinion, this tendency is growing stronger.

As far as the Administrative Procedure Code is concerned, simplification of the administrative procedure is the long-term objective (whereas the current Administrative Procedure Code represents rather a more complex regulation than the previous regulation). The introduction of acts of general measure as a new form of public administration regulated by the Administrative Procedure Code has also brought some application problems. More generally, a certain inconsistency between the Administrative Procedure Code and the Code of Administrative Justice can be pointed out.

However, a number of other problems could be mentioned. In particular, the insufficient means of protection of subjective rights against normative acts, including acts issued by the public administration, seem to be a pressing issue. These acts are currently reviewed only by the Constitutional Court, with an indirect and relatively difficult access to the judicial review, which has manifested itself in particular in the current covid-19 epidemic.

Unfortunately, the State´s response to the covid-19 situation has also revealed some shortcomings in the conceptual and operational capacity of the Czech public administration. This is mainly because, while at first the state administration's measures were not sufficiently reviewable by the courts, the changes in the legal regime[66] led to rather frequent judicial annulments of these measures, which was perceived by many as inability of the Czech state administration to effectively and still lawfully adopt the necessary restrictions in this context (in particular and somewhat ironically, the state administration has had noticeable difficulties in complying with the legislation it itself has proposed[67]).

BIBLIOGRAPHY

Books

Bobek, Michal, Molek, Pavel, Šimíček Vojtěch, eds. *Komunistické právo v Československu: kapitoly z dějin bezpráví*. Brno: Masarykova univerzita, 2009.

[66] Act No. 94/2021 Coll., on Emergency Measures during the COVID-19 Disease Epidemic.
[67] Ibid.

Creyke, Robin, ed. *Tribunals in the common law world*. Sydney: The federation press, 2008.
Hoetzel, Jiří. *Československé správní právo*. 2nd ed. Praha: Melantrich, 1937, p. 13.
Knapp, Viktor. *Teorie práva*. Praha: C.H. Beck, 1995.
Merkel, Adolf, *Obecné právo správní. Díl první.* Praha - Brno: Nakladatelství Orbis, 1931.
Průcha, Petr. *Správní právo: obecná část*. 8th ed. Brno: Doplněk, 2012.
Skulová, Soňa et al. *Správní právo procesní*. 3rd. ed. Plzeň: Aleš Čeněk, 2017.
Sládeček, Vladimír. *Obecné správní právo*. 4th ed. Praha: Wolters Kluwer, 2019.
Tryzna, Jan. *Právní principy a právní argumentace: k vlivu právních principů na právní argumentaci při aplikaci práva*. Praha: Auditorium, 2010.

Periodicals and chapters

Frumarová, Kateřina. Defending against crisis measures of Czech government in connection with COVID-19 pandemic. *Institutiones Administrationis - Journal of Administrative Sciences*. 2021, vol. 2, p. 4-15.
Potěšil, Lukáš. A new system and legal regulation of administrative punishment in the Czech Republic. *Prawo.* Wydawnictwo Uniwersytetu Wrocławskiego. 2019, no. 327, p. 311-324.
Potěšil, Lukáš. Restriction of access to the Supreme Administrative Court to reduce its burden (via expanding the institution of inadmissibility of a cassation complaint in the Czech Republic). *Institutiones Administrationis - Journal of Administrative Sciences*. Györ: Széchenyi István University, 2021, no. 1, p. 74 - 81.
Potěšil, Lukáš and Wojciech Piątek. A Right to Have One's Case Heard within a Reasonable Time before the Czech and the Polish Supreme Administrative Courts – Standards, the Reality and Proposals for the Future. *Utrecht Law Review*. Utrecht, 2021, no. 1, p. 20-32.
Skulová, Soňa, Potěšil, Lukáš, Hejč, David. Administrative Appeals, Ombudsman, and Other ADR Tools in the Czech Administrative Law. In Dragos, Dacian C., Neamtu, Bogdana (Eds.). *Alternative Dispute Resolution in European Administrative Law*. 1. ed. Heidelberg New York Dordrecht London: Springer, 2014. p. 393-420.
Skulová, Soňa, Potěšil, Lukáš and Hejč, David. Remonstrance Against Decisions Made by Central Administrative Bodies in the Czech Republic. *International Public Administration Review.* Ljubljana: University of Ljubljana, Faculty of Administration, 2014, no. 2-3, p. 123-142.
Sládeček, Vladimír. Teoretické problémy působnosti ombudsmana, jeho působení ve vztahu k jiným orgánům a institucím. In: *Sborník z mezinárodní vědecké konference na téma Působení ombudsmana v demokratické společnosti konané dne 5. června 2003*, available online: https://www.ochrance.cz/dokument/pusobeni_ombudsmana_konference/

Case-law

Judgment of the of European Court of Human Rights from 10 July 2003, No. 53341/99 (*Hartman v. Czech Republic*).
Finding of the Constitutional Court of 14 August 2019, No. II. ÚS 2398/18.
Finding of the Constitutional Court of the Czech republic from 27 June 2001, No. Pl. ÚS 16/99.
Finding of the Constitutional Court of 20 June 2017, no. IV ÚS 1146/16-2.
Finding of the Constitutional Court of 14 August 2019, No. II. ÚS 2398/18.

Opinion of the Constitutional Court of 28 April 2009, no. Pl. ÚS-st. 27/09.
Decision of the Supreme Administrative Court of 18 December 2003, No. 5 A 139/2002-46.
Resolution of the Supreme Administrative Court from 21 January 2011, No. 8 Ao 7/2010.

Legal acts

Imperial Patent No. 170/1849, the Provisional Municipal Act (the so-called Stadion's Provisional Municipal Establishment).
Act No. 36/1876 of the Reich Code, on the Establishment of the Administrative Court.
Act No. 2/1918 Coll., on the Establishment of the Supreme Administrative Authorities in the Czechoslovak State.
Act No. 3/1918 Coll., on the Supreme Administrative Court and the Resolution of Conflicts of Competence.
Act No. 11/1918 Coll., on the Establishment of the Independent Czechoslovak State.
Act No. 126/1920 Coll., on the Establishment of County and District Authorities in the Czechoslovak Republic.
Act No. 125/1927 Coll., on the Organization of Political Administration.
Government Decree No. 8/1928 Coll., on the Proceedings in Matters Falling Within the Competence of Political Authorities (Administrative Procedure).
Act No. 18/1960 of the Reich Code, the so-called Reich Municipal Framework Act .
Act No. 71/1967 Coll.,, on the Administrative Procedure (Administrative Procedure Code).
Act No. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of State Administration (the so-called Competence Act).
Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic.
Constitutional Act No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms.
Act No. 90/1995 Coll., on the Rules of Proceedings of the Chamber of Deputies.
Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Incorrect Official Procedure and on Amendments to the Act of the Czech National Council No. 358/1992 Coll., on Notaries and their Activities (Notarial Code).
Act No.111/1998 Coll., on Universities.
Act No. 107/1999 Coll., on the Rules of Proceedings of the Senate.
Communication of the Ministry of Foreign Affairs No. 181/1999 Coll., on the adoption of the European Charter of Local Self-Government..
Act No. 221/1999 Coll., on Professional Soldiers.
Act No. 222/1999 Coll., on Securing the Defence of the Czech Republic.
Act No. 128/2000 Coll., on Municipalities (Municipal Establishment).
Act No. 129/2000 Coll., on Regions (Regional Establishment).
Act No. 131/2000 Coll., on the Capital City of Prague.
Act No. 219/2000 Coll. on the Property of the Czech Republic and its Representation in Legal Relations.
Act No. 218/2000 Coll., the Budgetary Rules.
Act No. 240/2000 Coll., the Emergency Act.
Act No. 248/2000 Coll., on the Support of Regional Development.
Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets.

Act No. 150/2002 Coll., the Code of Administrative Justice.

Act No. 218/2002 Coll., on the Service of State Employees in Administrative Offices and on the Remuneration of such Employees and Other Employees in Administrative Offices (the Service Act).

Act No. 131/2002 Coll., on the Resolution of Certain Competence Disputes.

Act No. 312/2002 Coll., on Officials of Local Self-Government Units.

Act No. 361/2003 Coll., on the Public Service of Members of the Security Forces.

Act No. 500/2004 Coll., the Administrative Procedure Code.

Act No. 183/2006 Coll., the Construction Act.

Act No. 262/2006 Coll., Labour Code.

Act No. 273/2008 Coll. on the Police of the Czech Republic.

Act No. 234/2014 Coll., on State Service.

Act No. 15/2015 Coll., on the Borders of Military Areas.

Act No. 222/2016 Coll., on the Collection of Acts and International Treaties.

Act No. 250/2016 Coll., on Liability for Misdemeanours and Procedure thereon.

Act No. 251/2016 Coll., on Some Misdemeanours.

Act No. 150/2017 Coll., on Foreign Service.

Act No. 51/2020 Coll., on the Territorial Administrative Division of the State.

Act No. 283/2021 Coll., the Construction Act.

Act No. 35/2021 Coll., on the Collection of Legal Regulations of Territorial Self-Government Units and Selected Administrative Authorities.

Act No. 35/2021 Coll., on the Collection of Legal Regulations of Territorial Self-Government Units and Selected Administrative Authorities.

Act No. 94/2021 Coll., on Emergency Measures During the COVID-19 Disease Epidemic.