

Czech Administrative Law

MVE009Zk Czech Law in Global Context

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Questions and possible answers:

- Why do we have (in a legal order) administrative law?
- What is the purpose of administrative law?
- Which examples/issues are under legal regulation by administrative law?
- What is the relation between administrative law and public administration?

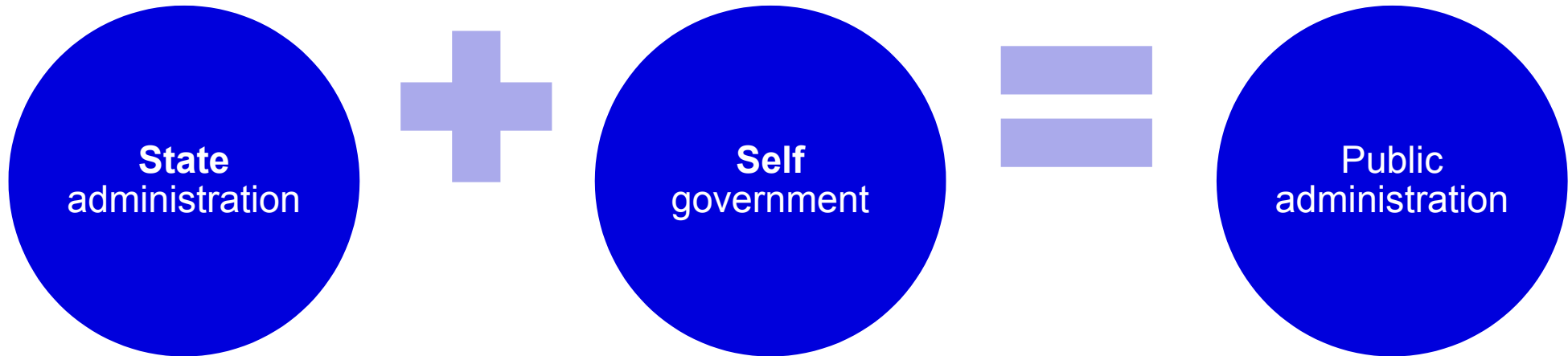
Public Administration in point of view of its organization + activity + control

1. **Public Administration and Administrative Law - relationship**
2. **System of Administrative Law** (according to the Czech theory/doctrine)
3. **System of Public Administration** in the Czech Republic – its organization (*„who conducts administrative law“*)
4. **System of Public Administration activity**; public administration as an activity and its **forms** (*„what different procedural types do we have“*)
5. **Control system** of Public Administration

Administration and Public Administration

- **Administration** – deliberate/intentional **activity aimed at a certain goal**, consists in management/administration, not identical with the term "management,,
- **Private administration** - **private** entities, **private** interest, **private** goals, **private** affairs, private measures, **all that is permitted that is not prohibited**
- **Public administration** – **public law** entities (public administration bodies/administrative bodies), **duty**, **public goals and tasks**, public law measures (forms), **public interest**, public affairs (public tasks), **allowed is only that that is allowed by law**
- Public administration/state is not a "business" - the necessity to implement public tasks (regardless of profit and popularity) and fulfill and protect/promote the **public interest**

System of Czech Public Administration



- **State administration** belongs to **the state**; **important** part of public administration, different tasks of the state are performed by the state and its bodies („**direct state administration**“), but also „indirectly“ by other bodies that are not part of the state administration („**indirect/transferred state administration**“ – under a law are bodies of territorial units entitled (and also obliged) to perform state administration instead of the state and its bodies („**mixed model of state administration**“ – specific „representation“ – they perform the state administration, but in origin, are not part of this body)
- **Self government** includes **local, regional** and also „**university/interest and professional**“ self-government (advocates, tax advisors, doctors, dentists, pharmacists, ...)

University self-administration/government

- **Representative body** („akademický senát“): **is elected** by all students and academic staff, **elects** (rector/dean), **approves** university statutes
- Existence of **disciplinary body** („disciplinární komise“) to punish students
https://is.muni.cz/auth/do/mu/Uredni_deska/Predpisy_MU/Masarykova_univerzita/Vnitri_pre_dpisy_MU/Disciplinari_rad_pro_studenty_masarykovy_univerzity/Disciplinari_rad_pro_studenty_Masarykovy_univerzity_ucinny_od_1.9.2022_.pdf
- Existence of university **statutes/norms** (Study and Examination Regulation, fees, ...)
https://is.muni.cz/auth/do/mu/Uredni_deska/Predpisy_MU/Masarykova_univerzita/Vnitri_pre_dpisy_MU/Studijni_a_zkusebni_rad/124377837/II. Consolidated_text_of_the_Masaryk_University_Study_and_Examination_Regulations_1.3.2022_.pdf

System of (Czech) Administrative Law

Administrative Law („Správní právo“)

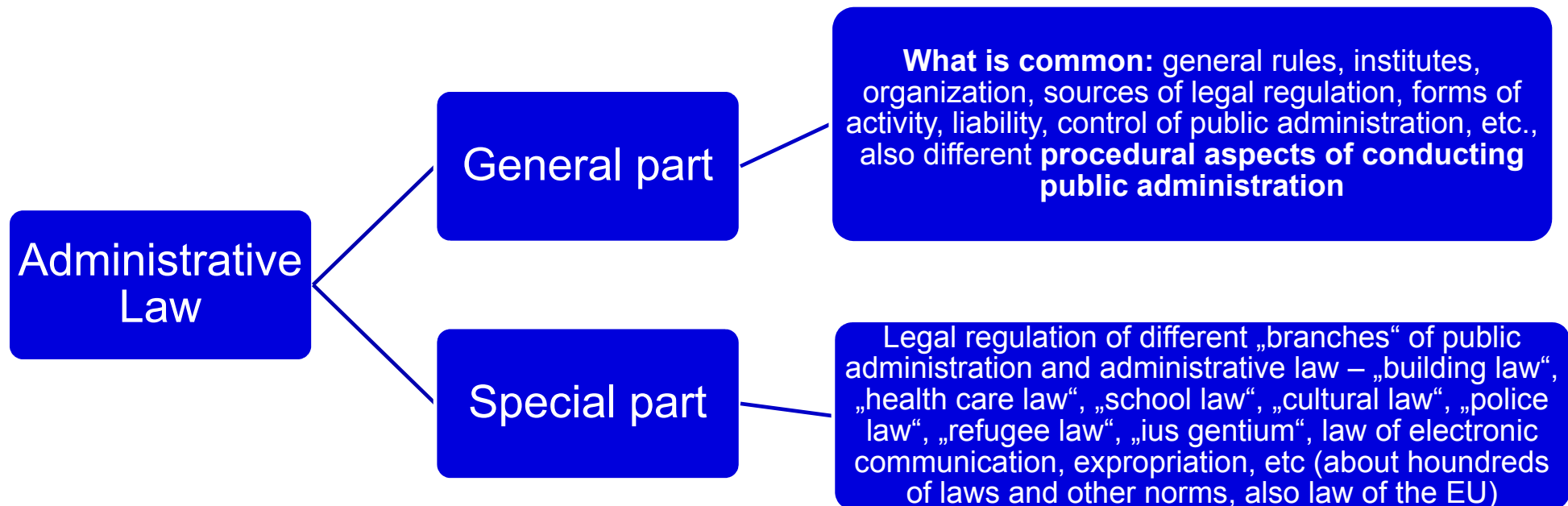
- is the biggest (and also very important – yes? **Really**, it is!) **branch/part of law/legal system** (of each „legal“/“administrative“ state); part of **public law**
- **regulates relations in Public Administration**
 - a) its **organization** (at different levels) and
 - b) its **functions/activities**; public administration is **based on (intentional) activity**
 - ❖ its function in the society;
 - ❖ to gain public goals and
 - ❖ to protect public interest
- represents a possibility of using **public power**; protects **public interest**; examples of **superiority**

(Mighty) Administrative Law - why?

- Public Administration **surrounds** us in **everyday life**: *public media and press, healthcare, public transport, traffic regulation, education, hygiene and consumer protection, fines, ...*
- Public Administration **follows** us, it **goes step by step with us in our life (from birth to death)**: *health care, birth - register, kindergarten and compulsory school attendance, identity card, driver's license, travel document (passport), unemployment, university admission, studies, dealings with the authorities (purchase of real estate, registration vehicles), wrongdoing, marriage/partnership, business, pension insurance, death, ...*

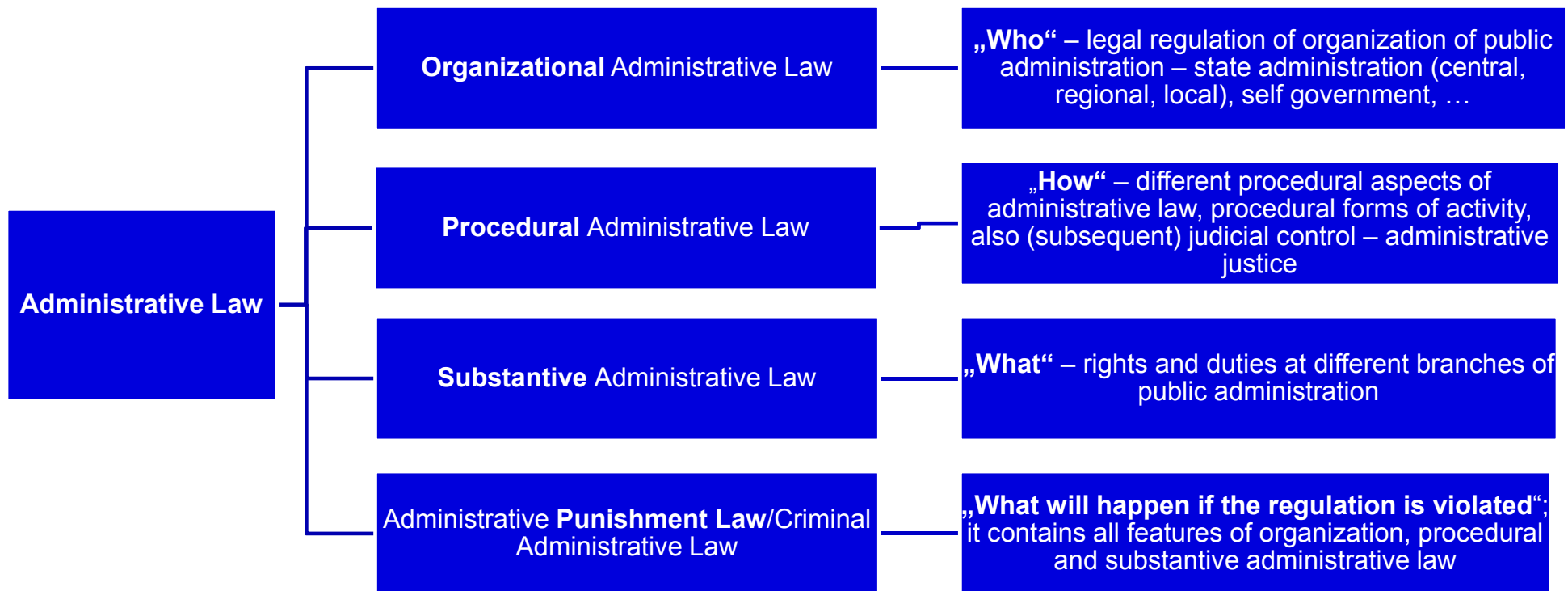
System of (Czech) Administrative Law

One possible division:



System of (Czech) Administrative Law

– Second possible division:



Organizational Administrative Law

- Act no **2/1969** Coll. On the establishment of ministries and other central state administration bodies
- Act no **128/2000** Coll. Municipalities Act
- Act no **129/2000** Coll. Regions Act
- Act no **131/2000** Coll. On the capital city of Prague
- Act no **51/2020** Coll. On territorial state administration division
- Act no **349/1999** Coll. On the Public Rights Defensor/ombudsman

Administrative Procedural Law

- **Procedural part** of Administrative Law (different procedures that can be found in public administration) – **protection** of rights
- **Code of Administrative Procedure** (act no 500/2004 Coll.)
- **Code of Administrative Justice** (act no 150/2002 Coll.)

Substantive Administrative Law (for example)

- Acts on: **IDs** (269/2021 Coll.), **passports** (329/1999 Coll.), **foreigners** (326/1999 Coll.), **asylum (international protection) act** (325/1999 Coll.), **interim protection** (221/2003 Coll.) **building act** (183/2006 Coll.), **expropriation act** (186/2006 Coll.), **state monument care** (20/1987 Coll.), **education** (561/2004 Coll.), **universities** (111/1998 Coll.), **Police of the Czech Republic** (273/2008 Coll.), **state citizenship** (183/2013 Coll.), **health service** (372/2011 Coll.), **special health service** (373/2011 Coll.), **guns** (119/2002 Coll.), **name and surname** (301/2000 Coll.), **protection of public health** (258/2000 Coll.), **sea cruise** (61/2000 Coll.), **domestic cruise** (114/1995 Coll.), **civil aviation** (49/1997 Coll.), **railways** (266/1994 Coll.), **digital service** (12/2020 Coll.), **nuclear energy** (263/2016 Coll.), **fireman service** (320/2015 Coll.), **libraries** (257/2001 Coll.), **spas** (164/2001 Coll.),

Administrative Punishment Law/Criminal Administrative Law

- Act no **250/2016** Coll. Code of Administrative Offenses
- Act no **251/2016** Coll. On some administrative offenses

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

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

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

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

System of Czech Public Administration

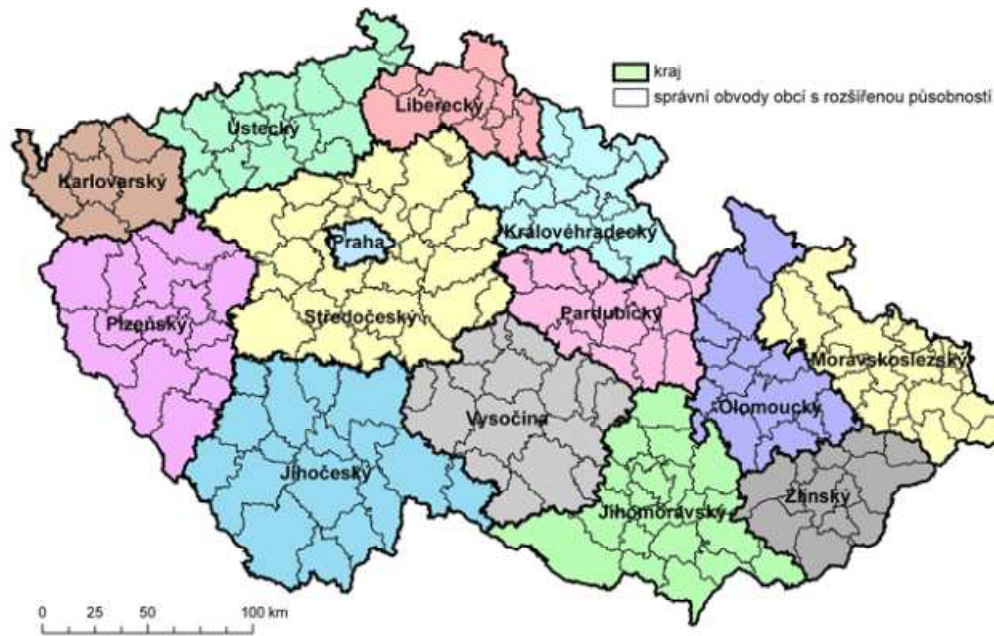
- **Self government** (based in Constitution, European Charter of Local Government) – is protected, „prepares the politicians for the national/state level“
- **14** regions (all perform also state administration)
- **+/- 6254** municipalites (cca 30 cities with specific regime – division between part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

System of Czech Public Administration



System of Czech Public Administration

Územně správní členění České republiky



System of Czech Public Administration

Government and ministries (14) (and **other central administrative bodies – 17**: 1. Czech Statistical Office, 2. Czech Office for Surveying, Mapping and Cadastre, 3. Czech Mining Authority, 4. Industrial Property Office, 5. Office for the Protection of Competition, 6. Administration of State Material Reserves, 7. State Office for Nuclear Safety, 8. National Security Authority, 9. Energy Regulatory Office, 10. Office of the Government of the Czech Republic, 11. Czech Telecommunication Office, 12. Office for Personal Data Protection, 13. The Council for Radio and Television Broadcasting, 14. Office for the Supervision of the Management of Political Parties and Political Movements; 15. Office for Access to Transport Infrastructure, 16. **National Office for Cyber and Information Security**, 17. **National Sports Agency**, 18. **Digital and Information Agency** and „independent“ bodies as Czech National Bank or Supreme Control Office

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

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

Indirect state administration performed by the bodies of regions and municipalities

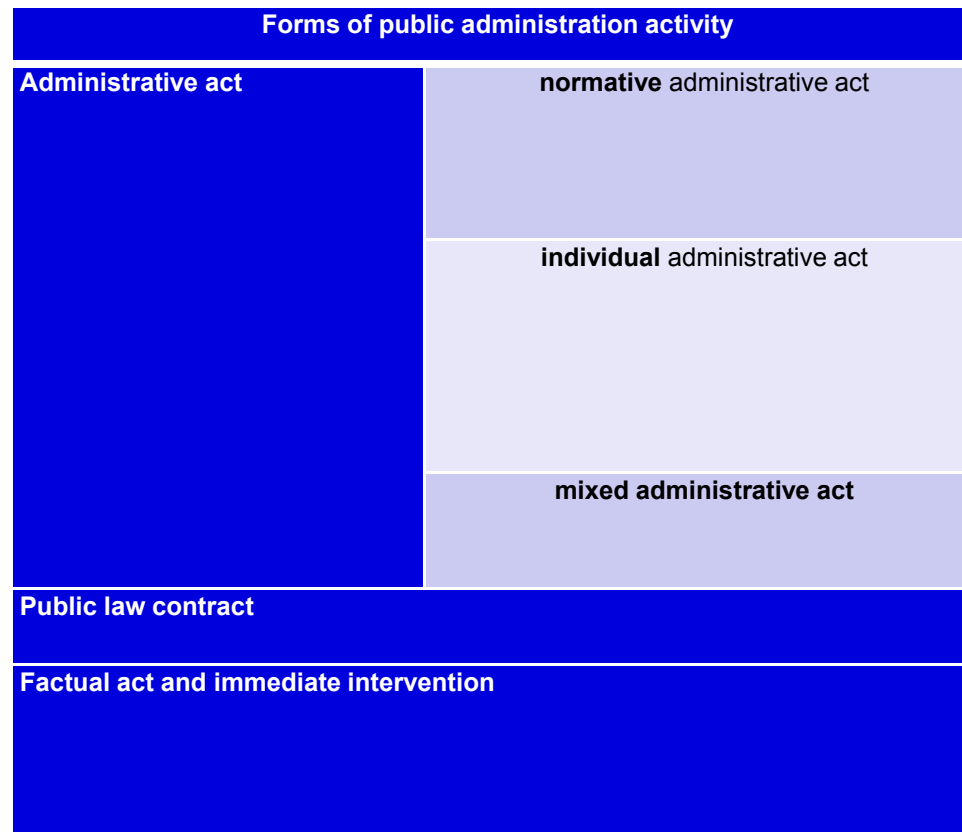
System of Czech Public Administration

- Art. 1 section 1 of law nr. **500/2004** Coll., Code of Administrative Procedure
- „*This Act regulates the procedure of **executive bodies, bodies of territorial self-governing units and other bodies, legal and natural persons, if they exercise competence in the field of public administration (hereinafter referred to as "**administrative body**")***“.
- 1. Executive body** – ministries and central administrative bodies - **act no 2/1969 Coll.**
 - 2. Bodies of territorial self-government units** – **14** regional offices and cca **6254** municipalities offices (but not only the offices)
 - 3. Other bodies**
 - 4. Legal and natural persons** – universities (disciplinary committee), chamber of attorneys, chamber of „doctors“, etc. (about 10 chambers with the right to self government)

Activity of Public Administration

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

Activity of Public Administration



Activity of Public Administration

– Form(s) of activity:

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

General rules/principles of public administration activity

- In **Constitution** (act no 1/1993 Coll. – principle of legality, legal basis for the establishment of authorities, order of the government – government regulation), **Charter of Fundamental Rights and Freedoms** (no 2/1993 Coll.) – **right for a fair trial (art. 36 sec. 1) and judicial protection (art. 36 sec. 2)**
 - Art. 6 **European Convention on Protection of Rights and Freedoms** – is applicable also to the administrative procedure? – existence of judicial protection
 - Art. 2 – 8 **CAP** (principles of **good administration**): **legality**, proportionality, protection of good will, legitimate expectations, public service, alternative solutions, **speed and economy**, **minimalization of interventions**, equality, cooperation – binding for the administrative bodies
- Soft law: **Rec (2007) 7 on good governance**

Legal regulation of administrative procedure

- In general is in the CAP (art. 1 sec. 2) „*This Act or its individual provisions shall apply unless a special Act provides otherwise.*“, so CAP:
- as **lex generalis** (about 300 laws in position of **lex specialis**), we can find **bigger or lower** „deviations“, special legal regulation (problems of knowledge)
- about **180 provisions**, in effect since **2006**

Legal regulation of administrative procedure

CAP in the Czech history:

1. **8/1928 Coll.** – 137 provisions, „only“ administrative procedure
2. **20/1955 Coll.** – 53 provisions, „only“ administrative procedure
3. **91/1960 Coll.** – just 36 provisions, „only“ administrative procedure
4. **Act no 71/1967 Coll.** – 86 provisions, mostly administrative procedure, still in effect in Slovakia (common CAP for the CZ and SK)
5. **Act no 500/2004 Coll.** – 184 provisions, mostly administrative procedure (art. 9 – 153),

Legal Guarantess in Public Administration

- **Principle of legality** (Constitution, Charter of Fundamental Rights and Freedoms, Code of Administrative Procedure, ...)
- **Legal guarantees:** different measures that enables and ensures legality in public administration
 1. **Control** (in public administration – **internal** and **external**), Code of Control (act no 255/2012 Coll.), **external control by: courts**, ombudsman, people (petition), independent administrative bodies, Parliament
 2. **Right to information** (FOIA – act no 106/1999 Coll.)
 3. **Control of administrative acts**
 4. **Responsibility** (act no 82/1998 Coll. for damages), **administrative offences** (act no 250/2016 Coll.)

Administrative Justice in the Czech Republic

- 1867 and 1876 in Austrian Empire – Code of Administrative Justice (Act no **36/1876** Coll.) – this act was in effect (with some changes) till 1952!
- Act no **3/1918** Coll. – Code of Administrative Justice; „only“ Supreme Administrative Court with the the cassation action/complaint (against administrative decision), but continuing Austrian procedural regulation
- Adoption of the **Code of Administrative Procedure** (in 1928) was **strongly influenced by the case law** of the Austrian/Czechoslovakian (Supreme) Administrative Court
- Destroyed in 1952
- **Restoration** in 1992 (to 2003)

Administrative Justice in the Czech Republic

- **New system** (since 1. 1. 2003, Act Nr. 150/2002 Coll., Code of Administrative Justice)
- **Regional courts and Supreme Administrative Court**
- Possibility to take an action against: **decision, inactivity, factual acts, act of general measure**, ... Wide scope of judicial protection

Administrative Justice in the Czech Republic



Ombudsman

- Established in 2000, Act no 349/1999 Coll., seat in Brno
- „Public Defender of Rights“
- <https://www.ochrance.cz/en/>

Ombudsman

- Protects people against the conduct of authorities and other institutions if the conduct is **against the law**, does not correspond to the principles of a democratic **legal state** and the **principles of good administration**, or the authorities **are inactive**.
- He/she also carries out preventive systematic visits to places where people are **restricted in their freedom** and seeks to ensure that their rights are respected. The Defender also contributes to promotion of the **right to equal treatment and protection against discrimination** and also systematically deals with the rights of the **people with disabilities**.

Conclusion

Prepare your answer to the following questions:

1. Why do we have public administration? Is it good/bad thing, helps/is harmful, ...
2. What is (is there any) a connection between public administration and administrative law?
3. Why is important to control public administration?

If you are interested ...

- <https://www.mvcr.cz/clanek/vyrocnizpravyostavuverejnespravy.aspx>
- <https://www.vlada.cz>
- <https://www.mvcr.cz>
- <https://www.nssoud.cz>
- <https://www.ochrance.cz>
- <https://portal.gov.cz/>