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THE SUPREME ADMINISTRATIVE COURT

The present publication commemorates a great moment in the history of the Czech administrative justice; the apex of the system, the Supreme Administrative Court, opens its first and proper seat. The publication outlines the bumpy road it took to arrive at this stage: it opens with a personal account of the president of the Court and his recollections of the "founding" years at the Court. The opening word is followed by a historical retrospective of the administrative justice on the territory of the today Czech Republic together with the account of the present activity and judicial business of the administrative justice and the role of the Supreme Administrative Court therein.

As this publication celebrates not only an institution, but also a building, the second part of the publication is dedicated to the history and the architectural characteristics of the reconstructed building itself. The closing word on architecture recounts the story of the reconstruction process and its peculiarities. The photograph galleries of the buildings and justices only visually complete the picture of the present Court.

The aim of the ensuing part of the publication is to provide the English speaking readers with a summary of Court's history and present activities. The first part of the summary focuses on the rich history of administrative justice in the Czech Republic; the second part highlights the major areas of the present judicial activity.

AN OUTLINE OF THE HISTORY OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court in the recently created Czech Republic was not established until the 1st January 2003, when the Code of Administrative Justice, law no. 150/2002 Coll., entered into force. It appears therefore somewhat bold to write of the history of such a young institution. The actual story of Supreme Administrative Court is not that short, however.

1867–1918

In the Austro-Hungarian Empire, the constitutional foundations of administrative justice in the regions which now constitute the Czech Republic were laid down in the so-called December Constitution, more precisely in Art. 15 of Basic State Law No. 144/1867 Imp. Coll., on Judicial Power, which established the Administrative Court (*Verwaltungsgerichtshof*) in Vienna. This Court was the sole administrative court serving the entire area of *Cisleithania*, the Austrian half of the Empire; administrative justice was thus conceived as a concentrated and specialised system of judicial review. Administrative justice in the other half of the former Austria-Hungary, *Transleithania*, was established later and based on different, perhaps not as modern, principles.

An important principle, established right at the inception of the Administrative Court and later incorporated into the first Constitution of the Czechoslovak Republic of 1920 (and fully taken over also by the reform of 1993), was to exclude from the jurisdiction of administrative courts all matters in which an administrative authority, in the exercise of its legal competence, decided on private law matters. The review of decisions in these matters was left for decision by civil courts in civil law proceedings.

It took almost ten years before the Administrative Court actually started to function and its rules of procedure were adopted. This step was effectuated by the Act of 22nd October 1875, law No. 36/ex 1876 Imp. Coll., on the Administrative Court (the Administrative Court Act, known in the legal doctrine as the "October Act"). The Court's first hearings were held in July 1876 under the chairmanship of baron Stählin, the first President of the Court. The author of the Administrative Court Act, which is still considered an excellent piece of legislative drafting, was a high civil servant in the Ministry of Culture and Education – Karl von Lemayer. He later became a member of the Court and the president of a chamber.

The Act itself was very concise (encompassing a mere 50 articles). Its conception, albeit to some extent inspired by an older model of south German administrative justice, was eloquently

elaborated and entirely original. The author of the Act chose a path very different from that of the contemporary style of legal drafting, which in the efforts to capture and regulate the tiniest detail of the procedure and to guarantee all possible safeguards of individual rights creates a labyrinthine thicket of hundreds upon hundreds of articles containing formalistic rules which are, as a result, in constant need of amendment. The October Act, on the other hand, by its dense wording, together with its firm and insurmountable outer limits, intentionally left extensive room for flexible judicial rule-making. The quality of the Act is well confirmed by the fact that, after the break-up of Austria-Hungary in 1918, it remained in force in Austria as well as in the then newly created Czechoslovakia. On our territory, the Act stayed in effect until the liquidation of administrative justice after the Communist takeover in 1948. It continues to be influential, as it was the principal source of inspiration for the modern Austrian codification, as well as the new Czech one.

The extensive and high-quality case law of the Vienna Administrative Court is evidenced by the wide-ranging and high-quality compilation of court reports (the editors of which were Exel, Alter, Popelka, Reissig, and especially dr. Adam Budwinski).

1918–1945

The Czechoslovak Republic adopted, as one of its first laws (Act no. 3/1918 Coll., on the Supreme Administrative Court and the Resolution of Conflicts of Competence), the basic framework of the Administrative Court. It also adopted, with some minor changes in wording (the so-called "*Pantůček cuts*"), the October Act of 1875 on the Administrative Court. In the former Czechoslovakia, the 1918 Supreme Administrative Court Act remained in force until the end of 1952.

The first person to hold the office of First President (Chief Justice) of the Supreme Administrative Court was Ferdinand Pantůček (1863–1925), one of the men involved in October 1918 overturn of the Habsburg Monarchy, an important Czech statesman, a member of the Imperial Upper House and later the president of a chamber at the Vienna Administrative Court. The initial Second President (the Vice-President) of the Court was Emil Hácha (1872–1945), who before 1918 had been a councillor at the Vienna Administrative Court. He was one of the most important Czech administrative lawyers and, at the same time, a tragic figure of modern Czech history. Ironically, it was Mr. Pantůček who, by threatening to resign, pushed Hácha's appointment through, even against the will of the government which wished a politician to occupy the Vice-Presidency of the Court. In 1925, following Pantůček's death, Hácha was appointed the First President (the Chief Justice). He remained in that position until November 1938, when he was elected the President of the so-called "*Second Republic*", the devastated rump state that survived the dismemberment of the Czechoslovak Republic by the Third Reich.

It is often stressed that Czechoslovak administrative justice was modelled on the Austrian example. This was not by design, however; it was merely the result of actual developments. The original conception favoured by Pantůček and

Hácha was different: the 1920 Czechoslovak Constitution envisaged a system of administrative justice modelled on the north-German (Prussian) example, with lower administrative tribunals to be created within districts and counties. These were to be composed of a professional civil servant and of lay-judges, who were to be elected by district committees. The Supreme Administrative Court was to act as the court of last instance, deciding solely concerning the legality of matters.

To put the above-described constitutional design into practice, the Administrative Justice before District and County Offices Act (law no. 158/1920 Coll.) was adopted together with the 1920 Czechoslovak Constitution. This Act never entered into effect, however, probably because of political disagreement. The ensuing absence of lower administrative tribunals had an adverse affect on the corresponding workload of the Supreme Administrative Court. Already in the mid-1920s, the number of new cases on the docket exceeded the Court's capacity to dispose of them. The length of proceedings had gradually risen to several years and even a progressive increase in the number of judges (from the original 26 to about 50) was of no avail. Amendments to the 1918 Supreme Administrative Court Act adopted in 1937 (Act no. 164/1937 Coll.) did not ameliorate the situation either.

During the First Republic (1918–1938), the Czechoslovak Supreme Administrative Court was on par with analogous administrative jurisdictions in Europe. The Court's activity is evidenced in its law reports. The Court's official case reports, named after its editor and President of a chamber at the Court, Josef V. Bohuslav, known as the „*Bohuslav Law Reports*", enjoyed the best reputation. Between 1918 and 1948 tens of thousands of decisions were published in it. The Bohuslav law reports were subdivided into two editions – administrative (abbreviated as "Boh. A.") and financial (abbreviated as "Boh. F.").

The period of German occupation (the so-called "Protectorate of Bohemia and Moravia" in the years 1939–1945) represented a dark period for the Court's work. Its judicial activity often involved the interpretation of anti-Semitic legislation. The Supreme Administrative Court was nonetheless able to enter the post-War era with, at least partially, a clean slate – in the judicial as well as personnel sense, as some of the justices left the Court after the War.

1945–1952

In 1945, the Court was unable to resume its work at full strength. This was partially due to enduring problems with staffing of the Court and partially caused by the parallel activity of the "rival" Slovak Administrative Court in Bratislava, which had been created during the War in the then independent Slovak State. The division of competence between the two courts remained very unclear and was eventually overcome only in 1949 by the relocation of the Supreme Administrative Court to Bratislava (by Law no. 166/1949 Coll.). This was, however, just one part of a greater plan to abolish the Court altogether, a political decision made soon after the Communist take-over in February 1948.

An institution labelled "Administrative Court" was still foreseen in Art. 137 of the new Con-

stitution of 9th May 1948. Nonetheless, immediately after the February 1948 takeover, it became clear that independent judicial control of public administration and the protection of public-law rights of individuals were to find absolutely no refuge under the new Communist regime. Following an ironhanded cleansing at the then Prague Supreme Administrative Court and after the enforced retirement of some of the older Justices in June 1948, the Court became non-operational. Some chambers could no longer even sit because there was a lack of Justices; no new judicial appointments were made. Soon there was not a single chamber left at the Court which had a president to preside over its proceedings.

The Court was relocated to Bratislava in autumn 1949. In theory, the Court was supposed to operate until 1952, but there is no clear evidence to this effect in the archives. Administrative justice was abolished altogether by Constitutional Act no. 64/1952 Coll., on Courts and the Prosecution Office, which amended the constitutional provisions on the judiciary and without explanation removed all the provisions on the Administrative Court. An additional general derogation clause in Art. 18 of Act no. 65/1952 Coll. repealed all enactments concerning the Administrative Court. The sole remnant of administrative justice in Czechoslovakia was the insurance justice (originally provided for in Act no. 221/1924 Coll., on Employee Insurance in Case of Illness, Invalidity and Old Age). This was however transformed into a special type of proceedings on remedies against the decisions of administrative authorities and became a part of the Civil Procedure Code. The perception of administrative justice changed accordingly; it became merely a minor and specific sub-category of civil justice.

1989–2002

The renaissance of administrative justice became possible (and necessary) only after 1989. The constitutional foundations for administrative justice were laid down in Article 36 (2) of the Charter of Fundamental Rights and Basic Freedoms (Constitutional Act no. 2/1993 Coll.). The need for speed in implementing these constitutional provisions did not enable either a direct revival of the Supreme Administrative Court, or a special code of administrative justice. In the period between 1992 and 2002, judicial review was effectuated on the basis of special provisions contained in Part Five of the Civil Procedure Code (Art. 244 and following of the Code), inserted into the Code by an amendment effected by Act no. 519/1991 Coll. The review was performed by courts of general jurisdiction; the decisive judicial activity in this area was however carried out by the regional courts and the supreme courts of the Czech and Slovak Republics (after 1993, i.e. following the separation of Czechoslovakia, by both High Courts of the Czech Republic, in Prague and Olomouc respectively).

From the legal point of view, the Supreme Administrative Court of the Czech Republic was established on 1 January 1993, when the Constitution of the Czech Republic came into effect. Its Article 91 provides for the Supreme Administrative Court as the second apex of the Czech ordinary judiciary. Despite repeated legislative

efforts in the 1990s, it took 10 years before the Court was actually established.

In the period from 1992 until 2002, administrative justice was plagued by numerous problems, especially as far as the procedure at administrative justice was concerned. The most worrying problem was the inconsistency of the regime with the Czech Republic's international obligations (especially Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). Judicial review in administrative justice was limited to the review of legality of administrative decisions only; the scope of its judicial review did not encompass issues such as protection against the inaction of administrative authority or unlawful interference, which do not result in the issuance of an administrative decision. There were, moreover, no judicial remedies against judicial decisions in administrative justice; the inevitable consequence was the divergence in interpretive practice of the respective regional courts.

It was the Constitutional Court which, in its decisions from the mid-1990s, repeatedly pointed out the deficiency of administrative justice in the Czech legal order and, eventually, by its decision of 27th June 2001 (published as no. 279/2001 Coll.) annulled in its entirety Part Five of the Civil Procedure Code, which had been the legal basis for administrative justice in Czech law. The Constitutional Court however deferred the effect of its ruling until 1 January 2003, thus providing the legislature with sufficient time to pass the necessary legislation. The Court's ruling became the necessary impetus for the new framework of administrative justice to be adopted by both chambers of the Parliament.

The Supreme Administrative Court was re-established as of 1 January 2003, fifty years after its liquidation.

2003–2006

Upon its creation, the staffing of the new Supreme Administrative Court was rather modest. Despite the fact that the new Code of Administrative Justice provided for the opportunity for all administrative judges at both High Courts to be promoted to the Supreme Administrative Court, not all of them made use of it. The Court started its judicial business with a contingent of 13 Justices, but without any assistants (law clerks) or a proper administrative staff.

2003 was the year of the Court's most rapid growth, at the end of which there were already 88 persons working at it (22 Justices, 23 assistants and over 40 members of support services and administration). These figures did not rise dramatically over the following years: by the end of 2005, the Court comprised 24 Justices, 27 assistants and about 50 support and administrative staff.

Further growth is hampered by numerous factors, the most serious of which is space constraints caused by the fact that the Court is temporarily located in hired premises. This problem is now, fortunately, solved by the Court's current relocation to the new premises.

In conclusion

The reform of administrative justice made in 2002 still left some open questions. It remains to

be seen whether the legislature will repeat some of the mistakes committed by the politicians of the then-Czechoslovakia in the period between 1918 – 1938, or whether it permits the achievement of a fully developed hierarchical system of administrative courts. This may take various forms, be it in the one foreseen by the Constitution of 1920 (the functional model of Prussian administrative justice), or in the form of the system in which administrative courts are supplemented by independent administrative panels (which are used to strengthen judicial review in public-law matters in contemporary continental Europe), or in the form of adopting the good Anglo-American tradition of independent judicial review by various boards and tribunals.

This historical outline may well be concluded by a metaphoric comparison: the presence of certain fish species in a stream testifies to the quality of the water. Similarly, the presence and efficacy of judicial control of public administration is a reliable indicator of the state of democracy and the rule of law.

CONTEMPORARY ADMINISTRATIVE JUSTICE IN THE CZECH REPUBLIC AND THE FUNCTIONS OF THE SUPREME ADMINISTRATIVE COURT

The task of administrative justice is to provide protection to individual (subjective) public rights of natural and legal persons. It is performed by administrative courts, specialised chambers within regional courts acting as administrative courts of first instance, and the Supreme Administrative Court, as the court of last instance.

A special additional task, discharged by the Supreme Administrative Court, is to ensure the unity and legality of the decisional practice of regional courts and administrative authorities. The principal instrument for achieving this objective is the cassational complaint: the Supreme Administrative Court is entitled to hear cassational complaints, in which complainants challenge final decisions of regional courts in matters of administrative justice and seek their annulment. This type of judicial protection against unlawful administrative decisions is supplemented by protection against inaction by an administrative authority (failure to act) and protection against unlawful interference by an administrative authority.

For the purpose of ensuring the unity and legality of the decisional practice of administrative courts, the Supreme Administrative Court (either the full Court or a division of the Court) may adopt opinions. Decisions of a grand chamber of the Court serve the same purpose in respect of the decisional practice of administrative authorities.

Since the reform of administrative justice accomplished in January 2003, the protection of individual public rights in the Czech Republic has entered into a new phase. The actual creation of the Supreme Administrative Court made good on a long-standing constitutional debt dating back to 1993, when the new Constitution of the Czech Republic provided for a Supreme Administrative Court, but which for a decade thereafter was not brought into existence.

Administrative justice has a long tradition in our country. A detailed account of the historical development of administrative justice is elsewhere in this publication. In order to better understand the present Czech system of administrative justice, it should be remembered that administrative justice was suppressed following the Communist take-over in 1948 and was re-established only in 1991 (by the Charter of Fundamental Rights and Freedoms). The new administrative justice procedure, hastily adopted in 1992, was deficient from the very beginning. It also became partially incompatible with the Czech Republic's obligations under international law (the European Convention for the Protection of Human Rights and Fundamental Freedoms). In the course of 1990s, several attempts were made to pass a new legislative framework, but all failed. The decisive incentive for the adoption of new legislation eventually came with a decision of the Constitutional Court (published as no. 276/2001 Coll.). In this decision, the Constitutional Court annulled a substantial portion of the Code of Civil Justice, in fact the entire part governing the procedure at administrative justice. The Constitutional Court decision paved the way for the adoption of new legislation, which provided for the institutional, jurisdictional and procedural framework of the new system of administrative justice.

The new legal regime for administrative justice consists of several laws; law no. 150/2002 Coll., the Code of Administrative Justice (hereinafter CAJ), the accompanying law no. 151/2002 Coll., on the amendments related to the adoption of the Code of Administrative Justice, and law no. 131/2002 Coll., on Deciding Certain Conflicts of Competence.

The judiciary is, together with the legislature and the executive, one of the three basic powers in a state. Its traditional task is, apart from criminal justice, to provide protection of individual private rights. Individual private rights stem from legal relationships in the areas of civil, commercial, labour or family law. They are characterised by the equality of parties to the legal relationship.

There are also, apart from these „private" rights, individual rights and duties that exist between parties, which are in an unequal position. These typically occur between a natural or legal person on the one hand and a state authority, a municipality or a region on the other. This type of legal relationships is characterised by the inferior position of the natural or legal person in the legal relationship. In other words, the su-

perior party in the legal relationship is given the legal privilege of authoritatively deciding on the rights or duties of the natural or legal person. This type of legal relationship is called a public law legal relationship.

This type of legal relationship is quite common in everyday life: most people, at one time or another, are confronted with tax or customs rules, trade licenses, construction permits, traffic rules, various dues and duties etc. In similar types of public law legal relationships, it is the state that represents the general interest in matters like socio-economic rights, a healthy environment, the protection of the cultural heritage, the right to information etc. In all these cases, we find ourselves in the realm of public law and public law legal relationships.

It is a very old principle that public law legal relationships and individual rights and duties flowing therefrom are to be protected by an independent judiciary and that everybody who claims that his/her rights have been violated by an act of a public authority has the right to an effective judicial remedy. As evidenced in our recent history, the assertion of this principle in absolutist, authoritarian or totalitarian regimes is unfeasible. The new framework of administrative justice, in force since 2003, provides the individual with a greater level of judicial protection: not only are potential encroachments by public authorities broadly defined, but the protection is also more effective. The litigants are furthermore provided with more extensive procedural rights.

What types of judicial protection are available?

Action against a decision of an administrative authority

The basic and traditional type of protection is the judicial review of an unlawful administrative decision. This type of action can be filed by anyone who claims that his/her rights have been infringed by a decision of an administrative authority, be it directly by the decision itself or in the course of the administrative procedure prior to the issuance of the decision. The petitioner seeks the annulment of the challenged decision. If the administrative authority imposed a penalty for an administrative delict, the petitioner may also seek the reduction of the penalty or its annulment.

One of the essential admissibility criteria for the action is that the petitioner has exhausted all ordinary remedies in the proceeding before the administrative authority. As regards the time limit for filing an action, in general, an action must be filed within two months of the notification in writing of the final decision by the administrative authority.

The scope of judicial review of administrative decisions at administrative justice is determined by the general positive clause in favour of such review, which states that unless expressly excluded by law, all administrative decisions are subject to judicial review. The Code of Administrative Justice provides for some such jurisdictional exclusions, typically all decisions of a procedural character (e.g. decisions of provisional nature, decisions which only regulate the course of procedure before the administrative authority). Other exclusions are provided for in special laws (e.g. the review of decisions on voluntary sick-

ness insurance contributions). It should be stressed again that these are exceptions to the general rule in favour of judicial review.

The most important exception to the jurisdiction of administrative courts to engage in judicial review applies in cases in which the administrative authority decided issues or disputes arising under private law. A typical example of such a decision by an administrative authority in the area of private law is a decision taken by the Czech Telecommunications Office concerning the disputed amount of telecommunication fees; this in fact involves the payment for a private service provided by the telecom operator to an individual. If administrative authorities are, in exceptional cases, called upon to decide private law disputes, it is because of their technical expertise in the field (here, for instance, the ability to review telecom bills). Such a dispute is of a private law nature, however. Thus, there is no reason to assign the review of such cases to administrative courts, as there is no public law issue at stake, and the decision, if challenged, can be reviewed by civil courts. A special type of procedure for this purpose is laid down in § 244 and f. of the Code of Civil Justice.

An action for the judicial review of unlawful acts does not have automatic suspensive effect. The petitioner may, however, request the suspension of the challenged act, provided that the legal consequences of the decision would result in irreparable damage to the petitioner. If the suspension is granted, the execution of the challenged decision is stayed.

The action must be brought before the competent court, and in such actions regional courts are competent courts of first instance. The regional court which is the proper venue for a particular action is determined according to the seat of the defendant administrative authority; the action must be brought in the judicial district in which is located the administrative authority which decided in last resort in the administrative procedure.

There might also be other persons participating in a proceeding before an administrative court, namely natural or legal persons who, similarly to the petitioner, have been affected in their rights by the decision. These may also be other persons who would be directly affected by the annulment of the challenged decision (e.g. the holder of a construction permit, if the issuance of the permit is challenged by the owner of the neighbouring plot of land).

The petitioner does not need to be legally represented before administrative courts of first instance (i.e. regional courts). This changes, however, in proceedings before the Supreme Administrative Court, where representation by legal counsel (attorney) is mandatory. It would nonetheless be advisable for a petitioner before an administrative court of first instance to seek qualified legal advice as well. Although proceedings before administrative courts are informal, the correct and timely formulation of the grounds for an action is, however, essential. The reason for this is the existence of the strict principle of the "concentration of proceedings". This means that the petitioner is obliged to submit all the relevant submissions at the stage of filing the petition before the court of first instance. Later submissions and evidence will be disregarded.

In exercising their judicial review function, administrative courts focus mainly on questions

of law. In contrast to the pre-2003 system of judicial review, however, they are entitled to collect evidence of facts which were present at the time when the administrative authority made its decision. Errors by administrative authorities in marshalling the relevant evidence, which under the previous system necessarily led (sometimes repeatedly) to the annulment of the challenged decision, may now be partially corrected by presenting evidence before the administrative court.

The court renders final decision on the merits in a judgment. The court can either dismiss the action and uphold the administrative decision or annul the decision and send the case back to the administrative authority for a fresh assessment. When deciding the case anew, the administrative authority is bound by the proposition of law expressed by the court. If a penalty for an administrative delict is challenged, the court may also reduce the penalty or waive it altogether. In cases where the court does not decide on the merits, it issues a ruling (e.g. refusing to hear the action, discontinuing the proceedings etc).

A special way of terminating proceedings before administrative courts is the newly established possibility of the "satisfaction of the petitioner". It enables the administrative authority, should it realise, in the course of proceedings before administrative courts, that it had erred in its assessment, to rectify its error. Until the moment when the court issues its decision, the defendant administrative authority is entitled to take a new decision or measure which would satisfy the petitioner. In such case the court, having heard the petitioner's statement, will discontinue proceedings.

PROTECTION AGAINST A FAILURE TO ACT

An action for the failure to act is a new form of legal protection, provided for in § 79 CAJ. This type of action is open to any person who, despite having exhausted all the existing remedies before an administrative authority, was not able to obtain a decision or an attestation that the competent authority was competent to issue. The procedural precondition for this type of action to be admissible is that, in spite of invoking all the remedies the administrative procedure (provided for, in most cases, by the Code of Administrative Procedure) offers, the competent administrative authority remains inactive.

The failure to act relates, in practice, not only to failures to deal with a pending matter timely, but also to disputes over competence. In the former case, the action for failure to act is not the typical remedy; the more common and direct way to compel an authority to dispose of a matter in a timely fashion is to submit a complaint to the authority superior to it. In the latter case, the failure to act and the need for individual protection is often the result of competence transfers between state authorities and the authorities of self-governing territorial units resulting in uncertainty as to which of the authorities is competent to act.

If the action is successful, the court will issue a judgment ordering the administrative authority to issue a decision or give an attestation within a time frame set by the court. Should the administrative authority fail to comply with the court's judgment in a timely fashion, the court can enforce its judgment by imposing financial penalties.

Protection against unlawful interference

An action against unlawful interference is also a new type of action in Czech administrative law. § 82 CAJ provides that anyone who claims that he or she has been directly prejudiced in their rights by an unlawful interference, instruction or coercion, exercised by an administrative authority, which is not a decision and which is aimed directly against the person, may seek protection before an administrative court. The concepts of interference with individual rights refers to a broad scale of activities of administrative authorities, e. g. an unlawful police intervention. Protection against unlawful interference is a complementary form of legal protection; it can only be invoked against some type of activity of an administrative authority which does not result into the issuance of a formal decision that could be challenged. Logically speaking, an unlawful interference is also distinct from the failure to act. In a certain sense then, the protection against unlawful interference creates a "left-over" category, in which a person can challenge the activities of an administrative authority which encroaches upon individual rights, but which does not constitute a decision or failure to act.

To avoid purely academic questions being decided in this type of proceeding, there is a limitation on the *locus standi*: the action will be dealt with by the court only if, following the filing of the action, the interference continues or its effects persist or if there is a danger of its repetition. There is furthermore a strict time limit for filing such an action, namely within two months of the day the petitioner became aware of the interference (the „subjective" time limit) or, at the latest, within two years of the day the interference took place (the „objective" time limit).

Should the action be successful, the court will order the administrative authority to discontinue violating the petitioner's rights. It will further order the restoration of the *status quo* which prevailed prior to the interference.

Judicial review of measures of a general nature

A measure of a general nature is a new type of decision-making by administrative authorities, introduced into the Czech Code of Administrative Procedure by law no. 500/2004 Coll., Code of Administrative Procedure, modelled on the *"Allgemeinverfügung",* existing in the Germanic legal culture (Germany, Austria and Switzerland). A typical measure of a general nature is an administrative act imposing an obligation on a group of individuals.

The Supreme Administrative Court is competent to hear direct actions challenging the validity of an entire measure or specified provisions thereof (§ 101a and f. CAJ). The Supreme Administrative Court is entitled to review whether, in adopting the measure of general nature, an administrative authority acted *ultra vires* and whether the procedure leading up to the adoption of the measure was duly followed.

Justice in electoral matters

In contrast to the situation in the pre-WWII Czechoslovak period, the Czech Republic has no distinct electoral courts. Before January 2003,

justice in electoral matters was fragmented. Since 1 January 2003 (the date the new Code of Administrative Justice entered into force), administrative courts have been competent to hear all disputes relating to elections (§ 88 and f. CAJ). Although electoral disputes are not strictly speaking administrative law issues *per se* (they do not involve judicial review of public administration), since electoral matters are issues of public law, competence in this area was bestowed on the administrative courts.

Administrative courts are competent to hear disputes relating to the keeping of electoral register, the registration of a candidate list for the election, the removal of a candidate from the candidate list or challenges to the registration of a candidate list. Administrative courts may furthermore hear actions concerning the validity of elections, the validity of individual ballots and, finally, protection in matters relating to the duration of the mandate of a member of a municipal council.

In electoral matters, administrative courts are required to decide within strict time limits (typically twenty or thirty days).

Justice in matters concerning political parties or political movements

The Code of Administrative Justice provides in § 94 and f. for a special type of judicial proceeding in matters relating to political parties or political movements. In this type of proceeding, a petitioner may challenge the decision of the Ministry of Interior, by which the Ministry refuses to register a political party or a political movement.

The second type of proceedings relating to political parties or political movements, which may be brought only before the Supreme Administrative Court, is the petition for the dissolution, discontinuation or resumption of the activities of a political party or a political movement.

Competence complaints

The Supreme Administrative Court is entitled to hear disputes over competence (§ 97 and f. CAJ). A conflict of competence may arise between a state authority and a self-governing authority, between two self-governing authorities or between two state authorities respectively. Two types of conflicts of competence may arise, positive or negative ones. A positive conflict of competence involves a situation in which two or more authorities claim the competence to decide an issue. A negative conflict of competence, which is more common in practice, involves the situation in which neither of the authorities feels competent to decide. The most complex type of competence complaints tends to be disputes between two state authorities, typically ministries.

Decisions of administrative authorities in private law matters

Following decades of the effective fusion in the Czech Republic of decision-making on matters in public law (administrative) justice and private law justice, the 2002 reform of administrative justice separated them once again. A necessary part of this reform was also the establishment of a mechanism which would ensure that private

law matters are not brought before administrative courts and that issues relating to public law are not dealt with by the civil courts, i.e. courts normally deciding issues of civil, commercial, labour or family law.

This mechanism is established on two levels: procedural and institutional.

The procedural one is laid down in the Code of Civil Justice (for issues of private law) and the Code of Administrative Justice (for administrative law issues). Both procedural codes provide for the possibility to reject an action brought before a non-competent court, i. e. an administrative action before a civil court and a civil-law suit before an administrative court. In such a scenario, the courts of both jurisdictions are obliged to advise the petitioner as to the competent court. At the same time, if the petitioner follows that advice and submits accordingly the petition to the competent court, the time limit for filing the action is deemed to have been observed.

It is evident that it might be difficult to determine whether a decision of an administrative authority in a given case is a public or private law issue. Questions relating to the distinction between private and public law and the so-called legal "dualism" are among the most complex legal issues. Disputes might arise between the administrative and civil courts as to competence, be it a positive competence dispute (i. e. both jurisdictions claiming to be competent) or a negative one (i. e. both denying their competence).

The task of resolving these types of disputes has been assigned to a special judicial body – a judicial panel – created by Act no. 131/2002 Coll., on Deciding Certain Conflicts of Competence. The panel consists of 6 judges, appointed for 3 years: the Chief Justice of the Supreme Court appoints three of them to the panel from among the Justices of the Supreme Court; the other three are appointed by the Chief Justice of the Supreme Administrative Court from among the Justices of the Supreme Administrative Court. The panel decides which jurisdiction is competent to hear the case in question. This means in practice that the panel will decide whether the administrative authority's decision is one of private or public law. The decision of the special panel is binding – among others – on all courts.

Conflicts of competence between the executive and the judiciary

Another type of conflicts of competence that the special panel is called upon to decide is that of the competence conflicts between the judiciary (in broad sense, including civil as well as administrative judiciary), on the one hand, and the executive (i.e. state administration, territorial or professional self-governing bodies), on the other. The decision as to which power is competent to decide in an individual case, albeit formally binding only on the parties to the dispute, enjoys a broad authority, amounting to a *de facto* precedent.

OBSAH

NEJVYŠŠÍ SPRÁVNÍ SOUD

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