

## European Rule of Law Mechanism: input – Czech Republic

*Additional contribution - questions 40 and 41*

### IV. Other institutional issues related to checks and balances

#### C. Accessibility and judicial review of administrative decisions

##### **40. Modalities of publication of administrative decisions and scope of judicial review**

###### **Judicial review of administrative decisions**

Administrative justice is regulated by law no. 150/2002 Coll., the Code of Administrative Justice. Administrative courts provide protection to public subjective rights of natural and legal persons. These courts are regional courts and Supreme Administrative Court. Supreme Administrative Court decides on cassation complaints against a decision of a regional court, where such complaint is allowed, in certain specific proceedings it decides directly.

Types of administrative proceedings:

- Action against a decision of an administrative authority (action against an unlawful administrative decision, that can be filed by a person who claims that his rights have been infringed by a decision of an administrative body (either directly by the decision itself or as a result of a violation of rights in the course of administrative proceedings). In those cases, the applicant seeks the annulment of such decision. Anyone who has been punished for an administrative offense and considers that the sentence imposed is manifestly disproportionate may apply that the sentence imposed is reduced or annulled. One of the basic conditions of admissibility of such action is, that the plaintiff, before going to court, exhausts all ordinary remedies in the proceedings before the administrative authority.
- Protection against inactivity of an administrative body can be sought by a person who has demanded the issuance of a decision or certificate from an administrative body, the administrative body has remained inactive and the applicant has exhausted the means provided by a procedural regulation for protection against such inactivity.
- Protection against unlawful interference, instruction or coercion by an administrative body - protection against interference which is not a decision but which nevertheless damages the plaintiff's legal sphere. In practice, this can be a wide range of different interventions by public authorities (e.g. illegal police intervention). An action may be brought against unlawful interference or a declaration may be sought that the interference taken was unlawful.
- Electoral matters and matters of local and regional referendums - redress can be sought in administrative courts in matters of electoral register, in matters of registration (rejection of a list of candidates or applications for registration, deletion of a candidate from a list of candidates or vice versa against registration of a list of candidates or applications for registration), as well as in matters of invalidity of elections and invalidity of voting, and also to provide protection in matters of duration of the mandate of a member of a municipal council. In matters of local and regional referenda, it is possible to seek a decision that the proposal to hold a referendum has no shortcomings, to declare a referendum, to declare the decision taken in the referendum invalid, and to invalidate the referendum vote. In electoral matters and in matters of local and regional referenda, decisions are made within short, statutory deadlines; Substantive jurisdiction is entrusted to the regional courts, however, some issues related to the elections to the Parliament of the Czech Republic, the European

Parliament and the election of the President of the Republic are decided directly by the Supreme Administrative Court.

- Proceedings in matters of political parties and political movements - special proceedings in matters of political parties and political movements provide for proceedings before a regional court against the procedure of the Ministry of the Interior, if this Ministry refuses to register a political party (or register a change of statute). The Supreme Administrative Court decides directly on dissolution or suspension (or, on the contrary, resumption) of a political party (or political movement).
- Judicial review of measures of a general nature – a measure of a general nature is an administrative act imposing an obligation on a group of individuals. Regional court are competent to decide on the validity of the measure or its specified provisions. It is entitled to review whether an administrative authority acted ultra vires and whether the procedure leading up to the adoption of the measure was duly followed.
- Competence complaints - the Supreme Administrative Court also conducts proceedings on competence complaints. A competence conflict arises either between a state administration body and a self-government body or between two self-government bodies or between two state authorities over who is to issue a decision in a certain matter. In practice, negative jurisdictional disputes are more frequent (both parties to the dispute consider that it does not fall within their competence), but the opposite cases also occur (when, for example, a party to the proceeding finds that his (identical) matter was decided by both the state administration body and self-government body). Disputes between central state administration bodies are also entrusted to the Supreme Administrative Court for decision (for example, a dispute over who is to issue a decision, which arose between two ministries).

Furthermore, it is important to mention, that the Czech legal order does not contain any general obligation to publish issued administrative decisions. Such obligation is laid down by the Czech legal order only exceptionally for particular types of decisions. For example: Pursuant to Article 272 of the Act No. 134/2016 Coll. on Public Procurement, as amended, the Office for the Protection of Competition regularly publishes its final decisions on the website. According to Article 20, paragraph 1(c) of the Act No. 143/2001 Coll. on the Protection of Competition and Amending Certain Acts (Act on the Protection of Competition), as amended, the Office for the Protection of Competition publishes proposals for granting permission for a merger of competitors and its final decisions. In this connection, the Czech legal order defines in Article 5, paragraph 1 (i) of the Act No. 106/1999 Coll. On Free Access to Information the obligation to publish the resolution of the superior body on the amount of compensation. (For additional information, please see our contribution to the question 35.)

#### ***41. Implementation by the public administration and State institutions of final court decisions***

According to Article 1 and 12 of the Act No. 2/1969 Coll. on Establishing Ministries and Other Institutions of Central Government of the Czech Republic, as amended, the Ministry of the Interior is the central governmental authority for home affairs, in particular for public order and other matters relating to internal order and security within its defined scope of competence, including supervision over road traffic safety and smooth traffic flow; first names and surnames, Birth Registers, nationality, ID cards, reporting residence, civil registration and birth registration numbers, the right of assembly and association in political parties and political movements; public collections; archiving and document management; firearms and ammunition; fire protection; travel documents, granting residence to foreign nationals and granting refugee status; territorial structure of the state; national

borders, surveying of the national border, maintenance of documentation, establishing, closing and changing the nature of border crossings; national symbols; elections to Representative Bodies of Municipalities, elections to the Parliament of the Czech Republic, the European Parliament elections on the territory of the Czech Republic and presidential election; crisis management, civil emergency planning, civil protection and integrated rescue system; management of public administration's information systems; digital identification and services promoting trust; information systems for public administration.

In legal disputes, where the Ministry of the Interior represents the relevant Czech organizational national unit as defined in the Article 6 of Act No. 219/ 2000 Coll. on the Property of the Czech Republic and its Representation in Legal Relations, as amended, which result in final decision, the Ministry of the Interior generally and fully accepts and follows the operative part of such final decision, regardless of whether it acts as a plaintiff or as a defendant.

In practical terms, if the court imposes an obligation (whether of payment or other nature) to the Ministry of the Interior, it seeks according to its best abilities and possibilities to fulfil the obligation within the required period, including compensations for court proceedings expenditures. Otherwise, if the Ministry of the Interior is granted the right to claim a compensation by the court (whether of monetary or other nature), the Ministry of the Interior seeks to obtain it by all adequate means offered by the Czech legal system in this regard.