

Responsibility and damages in Public Administration. Administrative sanctions and punishment.

Lecture 6: 19th May 2021

SOC003 Public Administration in the Czech Republic

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- 1/ Responsibility and damages in Public Administration
 - *Forms of responsibility in the Czech PA*
 - *Starting points of liability for damage in PA*
 - *Basics of act no. 82/1998 col.*
 - *Regression payments*
- 2/ Administrative sanctions and punishment
 - *Administrative legal liability*
 - *Preconditions*
 - *Sub-systems of administrative l. Liability*
 - *Sanctions for a misdemeanour*
 - *Procedural regime*



1/ Forms of responsibility in the Czech PA

- Concept of responsibility
 - *Prospective* (model procedure/behavior)
 - *Retrospective* (sanction for the breach of a norm, liability)

- Various forms in public administration:
 - *Moral* (e. g. good administration)
 - *Political* (e. g. self-government)
 - **Legal**

1/ Forms of responsibility in the Czech PA

- Legal responsibility (liability) of the Czech PA, mainly:
 - Administrative legal liability (see 2/)
 - Liability for damage
- Liability for damage
 - In the Czech law differentiation **according to exercise of public power** (not broadly PA)
 - If not = ***civil liability*** for damage (act no. 89/2012 col. = *civil code*)
 - If so = ***liability for damage caused by public power*** (= mainly act no. 82/1998 col.)
 - **In case of PA = 2 regimes**
 - *Non-authoritative PA* – civil means + civil liability
 - *Authoritative PA* – public means + „public“ liability

1/ Starting points of liability for damage in PA

- General prerequisites of (civil) liability for damage
 - *Occurrence of damage*
 - *Causation (causal nexus)*
 - *Fault*
 - *Conduct*
 - *Illegality*

- **Modifications** in case of („public“) liability for exercise of public power
 - *No-fault liability*
 - *Special forms of conduct and measures for illegality*

- + *Unlimited (but not „overcompensation“)*

1/ Starting points of liability for damage in PA

- Liability for damage caused by exercise of public power
 - Relatively long history (some forms since 19th century)
 - Required in the modern legal state (x *chilling effect*)
 - **General regulation**
 - **Act no. 82/1998 col.**
 - Covers *illegal* exercise of public power
 - Constitutional basis
 - **Special regulations**
 - E. g. act. no. 273/2008 Sb., Police Act
 - Covers (some cases) of *legal* exercise of public power
 - W/o constitutional basis

1/ Starting points of liability for damage in PA

– Charter of Fundamental Rights and Freedoms

– Chapter Five - Right to Judicial and Other Legal Protection

– **Article 36**

1) Everybody may assert in the set procedure his or her right in an independent and unbiased cerate of justice and in specified cases with another organ.

2) Anybody who claims that his or her rights have been violated by a decision of a public administration organ may turn to a court for a review of the legality of such decision, unless the law provides differently. However, review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of courts.

3) Everybody is entitled to compensation for damage caused to him or her by an unlawful decision of a court, another organs of the State or public administration, or through wrong official procedure.

4) The conditions and detailed provisions in this respect shall be set by law.

1/ Basics of act no. 82/1998 Col.

– Subjects of liability

- **State** (for state administration)
- **Municipalities** (for self-government)

– Strict liability

- Absence of *fault* prerequisite (negligence/intent unexamined)
- But „outcome“ must be **illegal**

– Forms of liability

- **Liability for illegal (administrative) decision**
- **Liability for maladministration** (wrong official procedure)

1/ Basics of act no. 82/1998 Col.

- Liability for illegal (administrative) decision
 - **Any decision** of a public body
 - But must be **revoked**
 - For its **illegality**
 - And injured person must have used **means of protection**
 - *Not only decision (but also mixed acts)*
- Liability for wrong official procedure
 - Intentionally **undefined**
 - Various forms of **maladministration**
 - Some defined = **delays and excessive length of procedure**

1/ Basics of act no. 82/1998 Col.

– Compensation

- *Material damage* = restoration or financial reparation
- *Non-material damage* = reasonable satisfaction (apology or monetary)

– Legal claim

- 1) *obligatory preliminary hearing* – voluntary compensation (state)
- 2) *court action* – awarding compensation (civil courts)

– Procedural aspects

- E.g. Limitation periods



1/ Regression payments (act 82/1998)

- Regression payments
 - State (municipalities) obliged to compensate
 - **Secondary claim** against those who faulted
 - *Legal persons exercising power*
 - *Officials*
 - *(Or both)*
 - Non-strict liability (fault)
 - Limited (protection of employees)
- Current issues – *discussion (2nd part)*

2/ Administrative legal liability

- Regulated by administrative penal law
 - = *Subsystem of administrative law*
- Retrospective liability
 - Liability as a *sanction* (duty to bear a sanction) – **administrative legal sanction**
 - Wrongful conduct (**administrative offense** – but not all violations of administrative law)
 - Exercising through imposing administrative sanctions = **administrative punishment**
- Specific features
 - Social relations **protected by administrative law** are infringed (but not always)
 - Realized by **administrative bodies** (but strictly defined powers)



2/ Preconditions

- Objective preconditions
 - *Wrongfulness of conduct*
 - *Harmful effect*
 - *Causation*
- Subjective preconditions
 - *Fault* (but not always)
- Functions
 - Various – e. g. *protective, preventative, repressive* (see study text)

2/ Sub-systems of administrative l. liability

- Current system (since 2017)
 - Administrative legal liability for ***misdemeanours***
 - Administrative legal liability for misdemeanours of natural persons
 - Administrative legal liability for misdemeanours of artificial legal persons and entrepreneurs
 - Administrative legal liability for so-called ***other administrative offences***
 - Administrative legal liability for **disciplinary offences**
 - Administrative legal liability for **order offences**
 - Different before 2017 (*see study text*)
 - **Reform** of administrative penal law
 - Mainly act no. 250/2016 Col. (Act on Liability for Misdemeanors and Proceedings on Them)
 - New system (harmonisation of liability for misdemeanours) and various other changes
 - Generally closer to (judicial) penal law

2/ Sanctions for a misdemeanour

– Sanctions

- *Reprimand*
- *Penalty*
- *Prohibition of activities*
- *Forfeiture of a thing (or a substitute)*
- *Publication of the decision on the offense*

– Protective measures

- *Restrictive measure*
- *Seizure of a thing*

2/ Procedural regime

- Main principles
 - *Legality*
 - *Prohibition of retroactivity*
 - *Non bis in idem*
 - *Sufficient speed*
 - *Right of defence*
 - *Burden of proof on state*
 - *Review*
- **European legal environment**
- **Fundamental rights and freedoms**
- *For more detail see study text*