

MUNI
LAW

Public Administration Activities. Decision-making.

Anna Chamráthová Richterová

Public Administration

Administration = intentional activity aimed at reaching stated goal
Public Administration = Administration of public affairs in public interest

In opposition to the private affairs administered in private interest

Performed by Public Bodies as their duty by public means, often authoritative

Organization – structure of Administrative Bodies

or

Activity – functional understanding

Service for the public

One of three state functions – legislation, justice, administration
– provides the means of the application of the Administrative Law
(direct realization, authoritative application)

Implements the Acts of Parliament by making its own legislation

Authoritatively applies the Acts on individual cases

Supervises compliance with the legislation

May punish non-compliance with the legislation

Is concerned with public rights and public duties – related to the
state

Executing activity

Authoritative activity – orders, authoritative decisions

Subordinate to Acts of Parliament – cannot change them, must comply with them, its own legislation must not be inconsistent with them

Legislation – creates law, general and binding rules of conduct

Problem: The rules of conduct are GENERAL and it may be unclear whether they were breached or not

Example: The person commits administrative offense by arousing public outrage.



We need somebody who has an authoritative power to declare whether the public outrage was aroused or not..



Administration

hierarchical

May create its own rules to complete the rules created by legislation



Justice

independent

General types of activities

Authoritative – superordinate, non-equal to the recipients of Public Administration

Non-authoritative, non-superordinate – taking care of the public (i. e. services), financial

Public means or private means

Legal forms or non-legal forms

Management and regulation

Decide which of the activities below are public administration or not

1. Minister M. preparing a programme for culture development
2. Chairman of the court exercising the administration of the court
3. Legislation enacting the bill on the State budget
4. The government enacting a regulation to complete an act of Parliament
5. A judge deciding a case
6. A judge being fined for an administrative offence
7. A municipality enacting a regulation
8. A president issuing a decree to appoint a person to be a professor
9. A municipality providing the collection of waste for its citizens

Decide which of the public administration activities below are authoritative and which are not

1. Minister M. preparing a programme for culture development
2. Chairman of the court exercising the administration of the court
3. The government enacting a regulation to complete an act of Parliament
4. A judge being fined for an administrative offence
5. A municipality enacting a regulation
6. A president issuing a decree to appoint a person to be a professor
7. A municipality providing the collection of waste for its citizens

The Chain of Realization of Public Administration Activities

1 Aims and 2 Tasks

3 Functions – planning, supervision, registration, coordination, decision-making...

Organizing

Protecting

4 Methods

General – management and regulation

Specific – administrative (direct influence), economic (indirect influence), organizational

The Chain of Realization of Public Administration Activities II

5 Forms of Activity

Legal

Administrative Acts

Public Law Contracts

Operation with Direct Legal Impact (factual acts and immediate interventions)

Non Legal=Organizational

Public Contracts

- establishes, alters or cancels rights and obligations in the sphere of public law
- must not diminish the trustworthiness of public administration, must be purposeful its objective must be the fulfilment of public administration tasks

Coordinative – between two Administrative Bodies

Subordinative – between an individual and an Administrative Body, substitutes an Administrative Decision

Between two individuals, its subjects are public rights

Administrative Acts

Normative Administrative Acts – their subjects and recipients are abstract, general = legislation of Administrative Bodies; external or internal

Individual Administrative Acts – their subjects and recipients are specific, individual; external or internal

Mixed Administrative Acts – their recipients are abstract and the subjects are specific or the other way round (rare) = General Measure

Individual Administrative Acts

Authoritative application of Administrative Law
Decisions, notifications, statements...
Constitute or declare a right/duty

Administrative Decisions

Authoritative acts

Acts of the application of law

Legally binding

Published by Administrative Bodies

Published by Administrative Procedure

Are concerned with specific rights and duties of a specific individual – in particular case establishes, changes or revokes the rights or obligations of an explicitly defined person or declares that such a person has or has not any rights or obligations.

Administrative discretion

Legal regulation gives a public body space to choose from two or more possible solutions, therefore it decide which solution (or if any) it adopts

Blank discretion

Limits – legal regulation, legal principles

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Principles of Good Governance (Administration).

Anna Chamráthová Richterová

Importance

Public Administration as a service – is for the people, people are enabled to participate in and supervise, have right to protection against its activity

- Reliability
- Predictability
- Liability
- Transparency
- Effectiveness

= describes how the Public Administration should be, even if it is not legally prescribed

Binding or non-binding principles

Maldaministration – byrocratic, insensitive, unfair, careless, arrogant, rude, groundless delays...

Sources

courts

Acts – Code of Administrative Procedure

Legislation of the Public Administration

International organizations – e.g. Council of Europe, and their
recommendations

ombudsmen

Courts

- Constitutional Court – applying legal principles not expressly included in legal regulations
- Supreme Administrative Court
- European Court of Human Rights
- Court of Justice of the European Union

Ombudsmen

European ombudsman – Code of Good Administrative Behavior,
Public Service Principles

Czech Ombudsman – Ten Commandments of the Good
Administration

- explanatory notes – protection against maldaministration

Legality
Equality
Integrity
Objectivity
Fairness
Courtesy
Transparency
Liability

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Transparency of Public Administration, Personal Data Protection.

Anna Chamráthová Richterová

Transparency of Public Administration

Public Administration is a part of the Public Power and the source of the Public Power are the people

The people have the right to check how the Public Power (Public Administration) is performed

Public Administration – service for the people, can act only if the legislation allows it

People have the right to be informed about the Public Administration activities

Increases its credibility

Decreases the risk of corruption

Part of the Public Administration control

Legal guarantee

Information

Constitutional duty of Public Bodies to inform about their activity

Aarhus Convention

Constitutional right to be informed about the condition of the environment

One of the principles of the good governance

Manifestations of transparency

Register of contracts

Act no. 106/1999, on the Free Access to Information

Act no. 123/1998, on the Right to Information on the Environment

Register of contracts

Act no. 340/2015

Public Bodies

Duty to publish contracts which subject is to pay an amount higher than 50.000CZK

Publishing = condition for the contracts to be in force

Free Access to Information

Public Bodies publish basic information on their activity by themselves, they provide more information to individuals when the individuals ask

Application for the information – informal or formal, 15 days to reply

Personal Data Protection

The Personal Data Processing Act 2019 (No. 110/2019 Coll.) +
GDPR

Confidentiality of public officials - Authorised officials shall be obliged to maintain confidentiality in respect of facts they learn of in association with the procedure and which need to remain confidential in order to ensure the proper conduct of public administration or to preserve the interests of other persons, unless stipulated otherwise by law.

The Office for Personal Data Protection