

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

**Lecture 5: 13th May 2022**

*SOC003: Public Administration in the Czech Republic*

dr. Tomáš Svoboda

# Lecture 5: 13th May 2024

## 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*
- Current issues*

## 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** of procedure/behavior)
- *Retrospective* (**sanction** for the breach of a norm, liability)

## □ **Various forms in public administration**

- *Moral* (e.g. good administration – important general principle)
- *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 damage**

- Special subjects** of liability („public subjects“)
- No-fault** liability
- Special forms** of conduct and forms of illegality
- Nonlimited** (but not „overcompensation“, punitive damages not accepted)

# 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* if too strict)

### **General regulation**

#### **Act no. 82/1998 col.**

- Covers **illegal** exercise of public power
- Constitutional basis (see further)

### **Special regulations**

- E. g. act. no. 273/2008 Sb., on the Police of the Czech Republic
- 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.*

#### □ Charter in English:

[https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/AJ/Charter\\_of\\_Fundamental\\_Rights\\_and\\_Freedoms.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Charter_of_Fundamental_Rights_and_Freedoms.pdf)

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

## **Subjects of liability**

- State** (*liability for state administration*)
- Municipalities + regions** (*liability for self-government*)

## **Strict liability**

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

## **Forms of liability**

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

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

## Liability for illegal (administrative) decision

- Any decision of a public body (not necessarily PA bodies – e.g. also court decisions)
- Only for the parties to the proceedings
- But must be revoked (or changed)
- Specifically for its illegality
- And injured person generally must have used available means of protection
- Not only individual acts (but also „mixed acts“ – acts of general measure)*

## Liability for wrong official procedure

- Intentionally undefined
- Various forms of maladministration
- Some are defined = delays and excessive length of procedure (common example)

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

## □ **Examples of wrong official procedure**

- *Incorrect statement of a building authority on the compliance of a project with municipal zoning plan*
- *Informing the media by the police without respecting the presumption of innocence*
- *Release of property from the custody of the court without a decision to do so*
  
- = „Residual category“ of liability
- Potentially **any breach** of the (legal) rules in operation of a public authority
- Assessed by the civil court in „compensatory proceedings“

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

## Compensation

- Material damage* = restoration or **financial reparation** (in practice the second)
- Non-material damage* = **reasonable satisfaction** (apology or monetary compensation)

## Legal claim

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

## Procedural aspects

- E.g. the legal nature of the right for compensation (civil), the state body designated for the hearing, limitation periods,...

# 1/ Regression payments (act 82/1998)

## **Regression payments**

- State (municipalities) obliged to compensate the injured person
  
- Secondary claim** against those who faulted
  - Legal persons exercising power*
  - Public officials*
  - (Or both)*
  
- Non-strict liability (fault required)
- Limited (protection of employees)
- = *Less stringent than (direct) liability of state or municipalities...*

# 1/ Some current issues

- Liability for normative acts (laws and sub-statutory acts)
- Liability of non-territorial self-governments (e.g. universities)
- Covid-19 compensations
  
- Questions?*

## 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** (only those with strictly **defined powers**)

# 2/ Preconditions

## Objective preconditions

- Wrongfulness of conduct*
- Harmful effect*
- Causation*

## Subjective preconditions

- Fault* (but not always – e.g. legal persons or some traffic offences under **strict liability**)

## 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 Misdemeanours and Proceedings on Them***)
- New system (**harmonisation** of liability for misdemeanours) and various other changes
- Generally **closer to (judicial) penal law** – *but is it always ideal?*

# 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**

- (Primarily not for purpose of sanctioning)
- 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 (most importantly judicial)*

- European legal environment**
- Fundamental rights and freedoms**

*For more detail see study text*

## 2/ Some current issues

- Regulation mimics criminal offences*
- Authorities are public administration = inconsistency of decision-making (complexity of decision-making + many authorities)*
  
- Questions?*

# Responsibility and damages in Public Administration.

## Administrative sanctions and punishment.

**Thank you for your attention**

*For more detail see study text*