

Setting of Judicial Review in Administrative Matters

Abstract

The thesis deals with selected types of lawsuits, which are the most common. These three main lawsuits are a lawsuit against an administrative decision, a lawsuit against inactivity and a lawsuit against unlawful interference. The thesis deals primarily with the current problem, that in some cases it is not certain what form of administrative action or inactivity the addressees of legal norms should defend themselves against. This is connected with the question of drawing the line between the different types of lawsuits. Although most of the actions of administrative bodies can be easily classified under a clear form of public administrative activities or inactivity, there are also cases in which this classification causes difficulties not only for the addressees of legal norms but also for the courts themselves.

The thesis consists of three main chapters, an introduction and a conclusion. The first chapter provides a description of the current situation, which is characterised by a plurality of types of lawsuits. In the first place, the thesis describes a lawsuit against an administrative decision, which is considered to be the main type of lawsuit. It also discusses selected issues concerning the relation between a lawsuit against unlawful interference and a lawsuit against inactivity, as well as their relation to a lawsuit against an administrative decision. The thesis deals also with some issues related to a measure of a general nature. The relation between a lawsuit against unlawful interference and a negative competence lawsuit is also mentioned.

The second chapter analyzes some elements of foreign legislation that could become a source of inspiration for *de lege ferenda* considerations in Czech legislation. The description of some aspects of the Slovak legislation focuses on partial issues of locus standi or the possibility to sue also normative acts. This chapter also includes an insight into the approach of Slovak judicial practice to the choice of the wrong type of lawsuit, which, however, unlike the current Czech case law, does not allow changing the type of lawsuit and the court is bound by the choice. The chapter also briefly mentions the Austrian approach. The Austrian legislation could become an inspiration for a greater use of the appeal principle in court decision-making. Moreover, Polish legislation provides a significant source of inspiration in the area of the universal administrative lawsuit, which has been proven to work in some form in Polish administrative justice.

The third chapter concentrates on problems resulting from the current binding of the court by the type of lawsuit and the duty to provide guidance by the courts from the perspective of Czech case law. The chapter then turns to the question of whether it is possible to see an alternative approach in bringing several lawsuits at once. This is followed by a discussion of the *de lege*

ferenda form of the universal type of lawsuit. The thesis seeks to resolve the main questions of the form of the newly constructed lawsuit, which are, for example, the locus standi, the elements of the lawsuit, or its admissibility. Due to the complexity of the issue of the admissibility of a lawsuit, which is closely linked to its timeliness, the thesis also suggests the wording of the provision to address this issue. The thesis proposes the implementation of a broader duty to provide guidance by the courts directly into the text of the law and suggests the wording of this provision too.

Keywords: judicial review, universal type of lawsuit, plurality of types of lawsuits