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Abstract of the dissertation

The title of the dissertation:

**The Role of the Courts of Administrative Justice at the Process of the
Unification of the Legal Norm Interpretation of Public Law**

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This dissertation deals with the role of the courts of administrative justice at the process of the unification of the legal norm interpretation in the field of public law.

Ambition of this dissertation first lies in the function and meaning of administrative justice in relation of the legal norm interpretation on the level of interpretation practice of administrative body, second in capturing the process of unification of judicial activities of administrative courts in formal position as instrumental presumption for full development of material conception which has axiological content and might offer the answer to the question of legal-philosophical direction of administrative judiciary.

This work is divided into three chapters on the basic level. The first chapter explains dualism in law within the meaning of dichotomy between private and public law. The administrative law as a part of public law is defined in the relationship to the private law through the different methods and aims of law regulation. This phenomenon has its origin in the contraposition of so called “vertical relationship” within the sovereign position of the public administration is applied and so called “horizontal relationship” within the relationship of private law are played on the basis of equality of subjects and the rule of autonomous will. Although the border between the public sphere and the private sphere is not sharp, it is pervaded and legal institutes are mingled each other. The administrative bodies make decisions about the rights and duties from both of these spheres of law. Traditional law dualism has long been surpassed but the distinction of public as well as private law is significant in terms of administrative judiciary conception.

The second chapter gives an overview of the development of administrative justice in the Czech Republic with the focus on conception in its particular historical phases. Splitting of judicial and legal protection to subject rights, in which it was intervened by the public power, is emphasized, between administrative justice and general courts which make decisions in the civil agenda as a reflection of splitting of public and private law. The origin of this

splitting laid in the old Austrian legislation of administrative justice. The foundations of the Supreme administrative court in the independent Czechoslovakia were laid in the article 105 of the Constitution from the year 1920, which approved the thesis of the administrative justice in its pure form, as it is a judicial protection of individual public-law rights. The continuity of development of the administrative justice was roughly broken off through the implementation of the general supervision of public prosecution and the cancellation of the administrative court at the geographic place of the Czech Republic, which became effective on 1.1.1953. The constitution of the Czech Republic from the year 1993 presumed existence of the administrative justice and established the Supreme Administrative Court as the highest judicial authority. The full renaissance was not achieved even through the Act No.115/1991 Coll., which is an amendment of the Act No. 99/1963 Coll., civil judicial trial in its fifth part "Administrative justice." Deficiency in this legal regulation, which did not make a difference between the protection of the individual public-law rights and rights of the private nature and especially did not provide the protection in the so called "full jurisdiction" in the meaning of the Article 6 (1) of the European Convention on Human Rights, were fully revealed in the judgment of the Constitutional Court Pl.ÚS 16/99 from the 27.6.2001, which took effect on 31.12.2002 and which completely derogated the fifth part of the Act No. 99/1963 Coll., civil judicial trial.

The new regulation of administrative justice contained in The Code of Administrative Justice No. 150/2002 Coll. resurrected the conception of administrative justice as a justice primarily based on providing widely contained protection to the individual public-law rights. The organisation of the courts of administrative justice, when the jurisdiction is implemented partly by specialised benches and specialised judges sitting alone in regional courts and partly by the Supreme Administrative Court, presents the hybrid compromising model of considered options. In the connection of the application of principle of dividing of judicial protection there was established a specialised bench with the jurisdiction to make decision in the area of competence contest arising

between the courts of administrative justice and the general courts making decisions according to the fifth part of the Act No. 99/1963 Coll., civil judicial trial.

The third part is focused on the role of the courts of administrative law and especially of the Supreme Administrative Court by the process of unification of the legal norm interpretation in the field of public law, and it is presented in two levels.

Firstly, the attention is devoted to the mechanism of the unification of the legal norm interpretation, which is in the power of administrative justice ("formal approach to the unification"). This mechanism disposes of two kinds of instruments. Partly, some of them are able to have an effect on the performance of the public administration; partly some of them are defined as a prevention to avoid the disunity inside of the judicial power. The Supreme Administrative Court has presented substantial self-restraint in the relationship to the possibility to adopt the institute of a principal resolution as an extra procedural means of the unification of the legal norm interpretation, which I consider as a manifestation of a respect to the principle of the separation of power.

If a bench of the Supreme Administrative court makes its decision at a proposition of law which differs from the proposition of law already expressed in a previous decision made by the Supreme Administrative Court, the bench shall refer the matter to an extended bench for its decision. The problem of consideration to maintain the identity of the legal issue and the qualification of relevant propositions of law in the meaning of their competition are raised. The impartiality of the administrative authority of a territorial self-governing unit, if a decision is made by the officer of this body in the matter to touch the individual public-law rights of territorial self-governing unit, which is widely discussed, belongs to the current issues placed in front of the extended bench for its decision. The Supreme Administrative Court realizes its function as a guarantor of the unification of decision-making by ruling of cassation

complaint, an extra-procedural adoption of a position and by the publishing of the Collection of Decision of the Supreme Administrative Court, which contained selected decisions. Publishing of main judicial decisions made by judicial courts is determined by the law to the Collection of decisions of the Supreme Administrative Court, only if it is not possible to play the role of a case filter in administrative judiciary.

The role of administrative courts in the interpretation of unifying norms of public law is also subjected to analysis in terms of grasping the interpretation of norms of public law (the “material, value concept unification”). Interpretation of the law in the hands of administrative courts is a tool for axiological direction decision making practice of administrative bodies. In this way we can look at each decision of the Administrative court as at the decision to significantly intervene in the process of unifying the interpretation norms of public law either by reinforcing unifying tendencies or by its slowdown. Some core problems of interpretive practices of public administration can be traced in the case law of administrative justice.

Firstly it is issue of language methods of interpretation of legal norms. This subchapter includes the methodology of interpretation of legal norm. It also deals with the limits levels of language interpretation with illustrations of particular decisions of administrative courts. Among the legal opinions, which are here given attention, belongs an embarrassing material concept approbation of general character from the Supreme Administrative Court.

As another additional problem area of public law standards of interpretation was chosen the admissibility of analogy (“analogy legis, analogy iuris”) in administrative law. Judicial activity of administrative justice in this matter occupies a vital role in the direction for application practice of public administration. The matter is conceptually linked with the no-loopholes and no-conflict concept of rights and of loopholes law and to the postulate ban “denegation iustitiae” (“denial of justice”), when the loopholes in the law “condition sine qua non” (“condition, without which no”) are application

analogy. This subchapter, in addition to the knowledge of legal doctrine, follows the development of legal opinion of the Supreme Administrative Court on the admissibility of analogy, which crystallized from largely rejecting attitude of its admissibility in administrative law to a precise determination of its acceptability.

The third point of divergence and obvious illegality of performance practice of public law is the absence of application of the principle of legitimate expectations. The principle of legitimate expectation found its form both in terms of substantive law in the position of legal certainty and in terms of procedural law as a part of the right to a due process (in terms of a regular process and aware of not finding a satisfactory definition of justice – “fair process”) within the meaning of Art. 36 par. 2 of the Charter of Fundamental Rights and Freedoms. Legitimate expectation is strongly supported by the interpretation practice which does not contradict each other and which can become the source. In this content I can not forget to mention at least the arguable legal opinion of the Constitutional Court judgment (520/06 of 23.1.2008 – N 18/48 SbNU 195) to create a legitimate expectation on the basis of long-term illegal uniform interpretation and application practice of administrative authority.

The thesis conclusion summarizes the discussed problems and highlights the axiological charge whose presence is perceptible from specific judgment presented in this thesis. It can observe the conscious no-positive direction of decision making of the Supreme Administrative Court, which gives the direction of exercise of jurisdiction in matters of administrative law as a part of public law. It also affects the interpretation and application practise of public administration seen as a public service, having in mind the principles of a good administration.

Key Words

dualism of law, public law, administrative law, individual public-law right, administrative justice, administrative authority, administrative decision, judicial protection, general supervision of public prosecution, the European Convention on human Rights, full jurisdiction, moderation, the Supreme Administrative court, the Constitutional Court, specialised bench, specialised judge sitting alone, person participating in the proceeding, nullity, inaction, unlawful interference, extraordinary bench, expropriation, complaint, extended bench, position, ruling of an exemplary nature, the Collection of Decision of the Supreme Administrative Court, mechanism of unification, disunity, interpretation, legal norm, judicature, language interpretation, material conception, formal conception, principle, legitimate expectation, legal certainty, fair trial, good administration, public administration