

CASE STUDY

New Legal Regulation of the Administrative Justice in the Slovak Republic¹

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Abstract: Administrative justice is a very strong element of control of public administration. Its decisions not only control but also guide the future directions in an application of particular legal norms. The author evaluates the new changes of administrative justice in the Slovak Republic. He points out the main changes in comparison with the previous legal regulation and tries to evaluate them. He points out that it is too early to evaluate the whole new legal regulation. Despite this fact, he states that it is possible to make a partial evaluation on the basis of a result and experiences acquired to this time.

Keywords: administrative justice; civil judicial proceedings; branch of law; general courts; new legal regulation

1. The Current Legal Regulation

Administrative justice in the Slovak Republic is now connected to many changes. One of the most important is adopting the new legal act. It is Law No. 162/2015 Coll. on Administrative Judicial Order, as amended² (hereinafter: Administrative Judicial Order). It entered into force on 1 July 2016.

This law can be specified as a general law for administrative justice and administrative judicial proceedings. It means that special laws can regulate particular matters in a different way.³ The relation between special laws and the Administrative Judicial Order is based on the principle of subsidiarity.⁴

Nevertheless, it can be stated that most of the legal regulation is included in the Administrative Judicial Order. However, it is difficult to predict its future development. The current situation is influenced by the fact that the Administrative Judicial Order is valid only for a relatively short period. Due to this fact, there was not enough time for the legislation to change special laws and create its own system of judicial review in particular areas of law.

Despite this fact, I suppose that special laws will not depart significantly from the general legal regulation in the Administrative Judicial Order. I think that special laws will

complete the gaps in the legal regulation in most situations or regulate specifics in particular proceedings which are typical for these kinds of proceedings.

2. Legal Regulation before the Administrative Judicial Order

Administrative Judicial Order replaced Law No. 99/1963 Coll. on Civil Judicial Order, as amended (hereinafter: Civil Judicial Order). This law regulated the procedure in matters of administrative justice in its fifth part with subsidiary use of the first part and second part of the Civil Procedural Order.

This was a very big change in the area of administrative justice. Civil Judicial Order was established to regulate the procedures within the civil procedures.⁵ I think that it was not appropriate to regulate the area of administrative justice in the same Law.⁶

Of course, there could be more opinions for this. Among the colleagues of my university, there were also many discussions about the position of administrative justice in the system of law. These disputes were mainly between scholars with specialisation in civil judicial proceedings and scholars with specialisation in administrative proceedings.⁷

Despite the different opinions about this question, administrative justice was considered a part of civil proceedings. It was because of Section 1 § (1) of the Civil Judicial Order which defined the subject-matter of this act. This provision connected the whole legal regulation with civil judicial procedure. It means that if proceedings in administrative justice were regulated in the Civil Judicial Order, this law had to be considered a part of civil judicial proceedings.

3. The New Position of the Administrative Justice after Adopting the Administrative Judicial Order

The adoption of the Administrative Judicial Order strengthened the position of the Administrative Justice. This new legal regulation demonstrates that proceedings in administrative justice cannot be regarded as a part of civil judicial proceedings. Proceedings before administrative courts have their own separate legal regulation which reacts to their own needs and specifics.

Opposite to this fact, it can be mentioned that Section 25 of the Administrative Judicial Order refers to a subsidiary use of Law No. 160/2015 Coll. on Civil Dispute Order, as amended (hereinafter: Civil Dispute Order). This law regulates proceedings before courts in the private law dispute matters.⁸

Truly, I am not satisfied with Section 25 of the Administrative Judicial Order. In my opinion, the proceedings before administrative courts should be separated from the proceedings in civil matters.

I have more reasons for this opinion, which are connected mainly with the aim of administrative justice. This is not to solve disputes between two parties which are in horizontal relations to each other. The aim of administrative justice is the control of public

administration. Because of that, administrative justice controls the legality of acts and activities of public administration.

Even if we take into account the Slovak legal history and tradition, administrative judicial proceedings are closely connected to the civil judicial proceedings. Nevertheless, this fact does not mean that administrative judicial proceedings and civil judicial proceedings are identical. These proceedings can be similar and they have some common features, too. But this does not mean that it is correct to build only one kind of judicial proceedings. Moreover, if this legal regulation is influenced mainly by amendments which are connected with the requests to the better civil judicial proceedings.⁹

Because of these facts I consider one of the most important advantages that the amendments of the Administrative Judicial Proceedings will react only to the needs of administrative justice. They will not be independent and they will be affected by a need to change and influence other areas of law.

The separate legal regulation is also very important for the position of administrative justice. I am convinced that the separate law strengthens the position of every particular area of law. The separate legal regulation stresses the specifics and independence of this area. Division of the previous legal regulation into separate laws should demonstrate that there are independent proceedings with their own aims and ways to reach them.

4. The Main Changes of the New Legal Regulation of Administrative Justice

The new legal regulation follows up the previous legal regulation which was in the Civil Judicial Order. It can be stated that the concept of reviewing is the same as some new kinds of actions. Despite these facts I assume that the main part of the cases will still be connected with the reviewing of the legality of decisions, measures, inactivity and interferences of public administration.¹⁰

If we take into account conceptual changes, I draw attention to one of them, which is connected with the transformation of appeals to extraordinary remedies.

The transformation of appeals to extraordinary remedies means that an appeal was replaced by a cassation complaint which can be filed against the final decision of administrative courts. Pursuant to the Civil Judicial Order, judicial proceedings were built on the principle of proceedings in two instances. The first instance judicial decision could be reviewed by a higher instance administrative court which was usually the Supreme Court of the Slovak Republic.

The new legal regulation changed this principle. According to that, administrative courts decide in one instance. The final decisions of administrative judicial courts can be reviewed by the Supreme Court of the Slovak Republic which has the status of a cassation court. This court decides on the basis of the filed cassation complaints, as an extraordinary remedy.

It means that decisions of the administrative courts issued in one instance proceedings produce legal effects.¹¹ This is different from the previous legal regulation which connects filing of the appeal with the suspensory effect.

Moreover, reviewing of decisions of the administrative courts by the Supreme Court of the Slovak Republic is built on the cassation principle. It is connected with the fact that a court of cassation cannot repair legal defects. It can only cancel acts which were issued in previous proceedings and return cases back with its legal opinion.

This situation has an impact on legal certainty. It is connected mainly with the factor of time. If we take into account the length of the proceedings before a cassation court,¹² it is possible to presume that decisions of the cassation court are issued at the time when decisions of administrative courts may be enforced. If decisions of administrative courts are enforced before issuing of decisions of cassation courts, decisions of the cassation courts may constitute only a formal outcome.

In this context, it is important to notice that a cassation complaint is not the final remedy within the system of reviewing of administrative decisions. Decisions of the Supreme Court of the Slovak Republic can be reviewed by the Constitutional Court of the Slovak Republic. According to Article 127 § (1) of Law no. 460/1992 Coll. on the Constitution of the Slovak Republic, as amended (hereinafter: Constitution of the Slovak Republic) there is a possibility to bring the constitutional complaint to the Constitutional Court of the Slovak Republic if the particular private persons invoke the violation of the own fundamental rights and freedoms.¹³

The new legal regulation changed the situation within the system of legal remedies in the area of reviewing of final administrative decisions. That means that internal legal regulation offers three legal remedies which are built on the cassation principle and can intervene in the final legal situation.

Of course, there are also possibilities to protect particular rights and duties at the international level. Of particular importance in this context is the protection according to Article 34 of the Convention for the protection of Human Rights and Fundamental Freedoms before the European Court of Human Rights. Through this remedy, it is also possible to open the final legal situation.

5. Conclusion

It is hard to evaluate the current legal regulation of administrative justice. The main reason is that this regulation is very young and every society needs time to adapt to the changes. After a certain time of application of the new law, we can identify the main advantages and disadvantages and make a systematic evaluation. Now we have only partial results which we reach from the direct assessment of the impact of the current legal regulation on the legal application practice.

Despite these facts we can conclude that the new legal regulation strengthens the position of the administrative justice because of the own separate legal regulation in the particular fields of law. It is also possible to state that the new legal regulation is more complex and more detailed.

It will be interesting to monitor the changes within the system of remedies. The system amendment of replacing an appeal by a cassation complaint can help the participants to solve the matter in the administrative judicial proceedings in a shorter time by the final

judicial decision of administrative courts, but on the other hand, there are more possibilities to interfere in the existing legal situation which was guaranteed as final. That is a further possible intervention in the principle of legal certainty which can have an impact on the costs and time in which the case will be finally solved.

References

- 1 This contribution is a part of the research project “Legal Consequences of Final Individual Administrative Acts” supported by the Scientific Grant Agency of the Ministry of Education, Science, Research and Sport of the Slovak Republic and the Slovak Academy of Sciences. The registration number of this project is 1/0686/18.
- 2 This Law was amended two times until the present day.
- 3 For instance Section § 228d § (8) of Law no. 233/1995 Coll. on enforcement agents and enforcement activities (Enforcement Order) and amending of other acts as amended establishes a different jurisdiction of administrative courts in matters of disciplinary delicts of enforcement agents.
- 4 For the principle of subsidiarity see Soňa Košičiarová, *Správne právo procesné. Všeobecná časť*, 115 (Šamorín, Heuréka, 2015).
- 5 It was established in Section 1 of the Civil Procedural Order. For the term civil procedure see Svetlana Ficová, Marek Števec et al., *Občianske súdne konanie. 2. Vydanie*, 19–30 (Praha, C. H. Beck, 2013).
- 6 This confirms also the General Part of the Explanatory Memorandum of the Administrative Judicial Order. See www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408731 (accessed 1 February 2019).
- 7 This is a personal experience of the author.
- 8 See Section 1 and Section 3 of the Civil Dispute Order.
- 9 This can be demonstrated by the number of amendments to the Civil Judicial Order. This law was amended more than eighty times. Only around thirty from these amendments were adopted with the purpose to regulate also the administrative justice. These information were taken from the system ASPI and www.slovlex.sk/pravne-predpisy/SK/ZZ/1963/99/20160614#predpis.cast-piata (accessed 26 February 2019).
- 10 These terms are defined in Section 3 of the Administrative Judicial Order.
- 11 See Ida Hanzelová, Ivan Rumana, Ina Šingliarová, *Správny súdny poriadok. Komentár*, 71 (Bratislava, Wolters Kluwer, 2016).
- 12 We can take into account the length of the proceedings before a cassation court for the period up to one year. Of course the length of the proceedings can be longer. See Zuzana Hamuláková, *Preskúmvacia činnosť správneho kolégia Najvyššieho súdu Slovenskej republiky z hľadiska dĺžky konania*, 60–65, in *Právoplatnosť správnych rozhodnutí – právna istota vs. legalita* (Bratislava, Univerzita Komenského v Bratislave, Právnická fakulta, 2018).
- 13 Article 127 § (1) of the Constitution of the Slovak Republic stated: “*The Constitutional Court decides on complaints by natural persons or legal persons objecting to violation of their basic rights and freedoms, or the basic rights and freedoms ensuing from an international treaty ratified by the Slovak Republic and promulgated in a manner laid down by law, unless other court makes decision on the protection of such rights and freedoms.*” The English version is published on www.ucps.sk/Ustava_SR_anglicky (accessed 7 March 2019).