FACT FINDING IN THE CZECH ADMINISTRATIVE PROCEDURE

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STRUCTURE

- Principles
- Ask more/less
- Limits
- Motivations
- Sanctions
Principles

- **Principle of material truth:** „Unless stated differently, the administrative authority has a duty to investigate a state of matter beyond reasonable doubt (…).“ [Section 3 CAP] *

- **Deciding without unreasonable delays** [Section 6(1) CAP]

- **Principle of economy of procedure:** “An administrative body shall act in such a way that no one incurs unnecessary costs and persons concerned shall be burdened as little as possible. An administrative body shall request documents form a person concerned only where provided by the law. Where it is practicable to obtain necessary data from central register kept by the administrative body itself and where the person concerned so request, the body shall be obliged to arrange for provision of the data.” [Section 6(2) CAP]
GENERAL ATTITUDE

- Administrative body* participants * witnesses
- „Decision should be based on proposals of participants, pieces of evidence, facts generally known, known to administrative body from official activity or from other public authorities.“ [Section 50(1) CAP]
- „An administrative body shall collect all grounds for the issuance of its decision. (…)“ [Section 50(2) CAP]
General Attitude

- **Proposing participant + duty to cooperate:** “(…) Unless the purpose of proceedings might be put at risk the administrative body may permit, **upon a participant’s request, that the participant shall collect the grounds in its stead. If there is no provision to the contrary in special law, participants shall be obliged to fully cooperate with the administrative body in collecting grounds for issuing its decision. (…)” [Section 50(2) CAP]

- **Demanding participant:** “Participants shall be obliged to propose evidence **supporting their allegations.** An administrative body shall not be bound by proposals of the participants; however, it shall always produce in evidence what appears to be necessary for determination of the issue.” [Section 52 CAP]
Contentious proceeding: „An administrative body shall, in contentious proceeding, rely on evidence proposed by the participants. Should the proposed evidence be insufficient for the determination of the facts the administrative body may produce other evidence. If the participants fail to require other evidence to support their respective allegation, the administrative body shall rely on the evidence already produced. The administrative body may also recognize identical allegations of participants to be factual binding.” [Section 141(4) CAP]
Principle of full investigation: “An administrative body shall be obliged to ascertain all circumstances important for the protection of the public interest. In proceeding aimed at the imposition of a duty by virtue of office the administrative body shall be obliged, with or without a motion, to ascertain all relevant circumstances advantageous or disadvantageous to the person upon whom the duty should be imposed.” [Section 50(3) CAP]

In administrative offence procedure: burden on the administrative body (SAC judgement dec. no. 5 As 126/2011, 14 January 2014, No. 3014/2014 Coll. SAC) + the privilege against self-incrimination
The privilege against self-incrimination/right to remain silent: resignation on effective defence (SAC judgement dec. no. 2 As 3/2004, 22 April 2004, No. 309/2004 Coll. SAC) * subsidiary responsibility of car operator
Limits to duty to testify (mainly for witnesses):

- **The privilege against self-incrimination**: “Only a person who may by his testimony cause himself or a person close to him to be subject to prosecution for a crime or administrative delict may refuse to testify.” [Section 55(4) CAP]

- **Secret information**: “A witness may not be asked questions about secret information protected by a special law which he is obliged not to disclose unless he is released from such duty by competent authority.” [Section 55(2) CAP]

- **Confidentiality**: “A witness may not be interviewed if his testimony results in the breach of duty of non-disclosure imposed or recognized by the state unless he is released from such duty by a competent authority or by the person within whose interests the duty has been established.” [Section 55(3) CAP]
Motivations

- **Negative outcome:** failure to bear a burden of allegation and negative result in administrative proceedings initiated by application (especially in contentious proceeding [Section 141(4) CAP])

- **Concentration of evidence:** “New facts and new evidence proposed in the appeal or in the course of appellate proceedings shall only be taken into consideration if these are facts and evidence which could not have been produced earlier by the participants. [...]” [Section 82(4) CAP]
SANCTIONS

- **Procedural fine:** “An administrative body may decide that a procedural fine of the amount of up to 50,000 CZK will be imposed on one who seriously obstruct the course of proceedings as follows: a) he fails to appear upon a summon before the administrative body; b) he disturbs the order despite an earlier admonition; or c) he fails to obey the instruction of an official.” [Section 62(1) CAP]

- **Administrative offence** (fine up to 20,000 CZK): „A natural person commits an administrative offence by: (…) providing false or incomplete testimony in administrative procedure. “ [Section 2(2/e) Act No. 251/2016 Sb., on selected administrative offences]

- **Crime:** false or incomplete testimony before a court punished in criminal proceeding (Section 346 Criminal Code – max. 3 years imprisonment)