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**Seminar organized by the Council of State of Italy and ACA-  
Europe**

**“Techniques for the protection of private subjects in  
contrast with public authorities: actions and remedies  
– liability and compliance”**

Rome, 23 May 2022

**Answers to questionnaire: Czech Republic**



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## **“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.**

### **INTRODUCTION**

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

### **SESSION I**

#### **LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT**

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
  - **An ordinary judge**
  - **An administrative judge**
  - A judge who deals with special areas
  - Others

#### **Czech reply**

Administrative courts decide on complaints against decisions, inaction, or unlawful interference of the administrative authorities. In these cases, the administrative authority becomes a party to the proceeding.



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Civil courts are competent to pronounce disputes in selected cases where an administrative authority has decided on a dispute or other legal matter arising from private law relations (for example decisions of the Czech Telecommunication Office issued in proceedings on due telecommunication charges).

A special chamber (consisting of three judges from the Supreme Administrative Court and three judges from the Supreme Court) is competent to decide competence conflicts between the executive and the judiciary or civil and administrative judiciary based on the Act No. 131/2002 Coll., on the Adjudication of Certain Competence Conflicts.

**2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?**

- **Annulment of administrative acts**
- action of condemnation
- **Other actions**

If you have replied 'other actions', please clarify which.

**Czech reply**

The Code of Administrative Justice (CAJ) contains following types of actions/petitions:

- Action against a decision of administrative authority (sec. 65 CAJ)
- Action against inaction of an administrative authority (sec. 79 CAJ)
- Action against unlawful interference, instruction or enforcement from an administrative authority (sec. 82 CAJ)
- Petitions in electoral matters and in matters of a local and regional referendum (sec. 88 CAJ)
- Special petitions in matters of political parties and political movements (sec. 94 CAJ)
- Competence complaints (sec. 97 CAJ)
- Petition on annulment of measures of general nature (sec. 101a CAJ)
- Petition to repeal service (official) regulations (sec. 101e CAJ)

**3. From which sources can actions be proposed brought before the administrative court?**

- **Law**
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other



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## Czech reply

In the Czech legal system, actions brought before the administrative court are regulated by law, specifically by the Code of Administrative Justice (for further details see above in question I/2). Administrative courts decide also on actions against emergency measures of general nature regulated in the Special Pandemic Act (Act no. 94/2021 Coll.).

### 4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

## Czech reply

Apart from individual administrative acts, also measures of general nature (*Allgemeinverfügung*), such as structure plans or emergency pandemic measures can be challenged before an administrative court.

### 5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

## Czech reply

The court revokes the contested decision as unlawful (breach of the law, including general principles), deciding on both question of law and questions of facts. The court also revokes the contested decision as unlawful if it finds that the administrative authority exceeded the legally defined bounds of discretionary power, or abused it.

The court shall revoke the contested decision also for procedural faults:

- a) on grounds of non-reviewability consisting in incomprehensibility or for absence of reasons for the decision,



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- b) because the facts of the matter which the administrative authority took as the grounds for the contested decision are contrary to the documents or are not supported by them or require extensive or essential supplementing,
- c) for substantial breach of the regulations on proceedings before an administrative authority if it could result in an unlawful decision on the matter itself.

Above that if the court finds that the decision suffers from faults that cause its nullity, the court declares this nullity even without a motion. If the causes of nullity concern only some part of the decision, the court declares nullity only of that part of the decision (if the nature of the matter allows it to be separated from the other parts of the decision).

**6. Can the judge partially annul the challenged administrative act?**

- Yes
- No

If your reply is yes, please elaborate.

**Czech reply**

The administrative judge can annul a part of an administrative act, which is unlawful and separable from the remainder.

**7. Can the judge substitute the Administration by modifying the content of the administrative act?**

- Yes
- No

If your reply is yes, please elaborate.

**Czech reply**

It is possible only in specific, narrow defined cases.

According to the sec. 78 CAJ, if the court decides on a complaint against a decision whereby the administrative authority imposed a penalty on account of an administrative delict, the court may, if there are no causes for the revocation of the decision, but the penalty imposed was apparently unreasonably large, either waive the penalty or decrease it within lawful limits. That is only if such a decision can be made based on the facts from which the administrative authority used and which the court may have supplemented through its own evidence in nonessential ways and if the complainant proposed such a procedure in his or her complaint.



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Furthermore, the Czech administrative courts can also order a provision of information (based on the Act no. 106/1999 Coll., on Free Access to Information to the public), commencement of a referendum (based on the Act no. 22/2004 Coll., the Local Referendum Act) or correct the results of elections (replace the illegitimately proclaimed candidates with those who were truly entitled; based on the sec. 90 CAJ) and therefore modify the content of preceding administrative act.

According to the Court of Justice of the EU case of Torubarov (C–556/17), Czech administrative courts have, following the right to an effective remedy, the power to overturn administrative decisions in granting international protection.

**8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?**

- Yes
- No

If your reply is affirmative, please elaborate.

**Czech reply**

A judge shall dictate conditions which must be adhered to when the administration authority makes new decision after the annulment (sec. 78 par. 5 CAJ).

**9. When do the effects of the jurisdictional annulment of an administrative act become applicable?**

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

**Czech reply**

In most cases, the effects of the jurisdictional annulment of an administrative act are applicable *ex tunc*, but in proceedings on annulment of a measure of a general nature, the court may annul the measure also *ex nunc* or on a date in the future specified in the judgment.

**10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?**

- Yes
- No



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- Other

### Czech reply

Generally no. But in the case of review of a measure of a general nature the judges can annul the measure *ex tunc* (which happens extremely rarely in practice), *ex nunc* or on a date in the future specified in the judgment.

### 11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

### Czech reply

The Code of Administrative Justice does not regulate the compensatory action (see answer to the question I/14). It is a civil action procedure regulated by the Act no. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Improper Official Action (hereinafter referred to as “Act no. 82/1998 Coll.”).

### 12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate.

### Czech reply

Generally, the claim for damages can be filed on the grounds of an illegal decision or improper action of an administrative authority.



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In very exceptional cases the courts have held that if the damage was caused by an action or decision that complies with the law but at the same time constitutes a disproportionate restriction on the rights of an individual, it is possible to seek compensation for damages outside the regime of Act no. 82/1998 Coll. - on the basis of the provisions of the Czech Charter of Fundamental Rights and Freedoms, which regulate the protection of the right to property (it relates in particular to structural planning).

**13. Which are the different kinds of reimbursable damages?**

- Material damage
- Non-material damage
- Loss of opportunity

**Czech reply**

In the Czech legal system, all kinds of damages indicated above are reimbursable (according to Act no. 82/1998 Coll.).

**14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?**

- Yes
- No
- Other

**Czech reply**

In general, the condition for the establishment of a compensatory claim (before the civil court) is the existence of an administrative court decision confirming the unlawfulness. Therefore, to successfully seek the damages, it is necessary to bring an action against the unlawful administrative decision.

However this does not apply to other unlawful administrative action (interference in essence). Therefore the action against unlawful interference (before administrative court) is not an obligatory prerequisite in order to seek damages before the civil court.

**15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?**

- Yes – the party with burden of proof is...



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- No

### Czech reply

Yes, the party with burden of proof is the injured party. They have to prove **the amount** of the damage they have suffered due to an unlawful decision/procedure of the administrative authority, **decision/procedure or any other action** of the administrative authority itself and the causal link between the damage and the action of the administrative authority.

#### 16. Can the judge convert *ex officio* one action into another?

- Yes
- No

If the reply is yes, please elaborate

#### 17. Is there a time-limit for the proposition of the compensatory action?

- Yes
- No

If the reply is yes, please elaborate

### Czech reply

According to sec. 32 of the Act No. 82/1998 Coll., the time limit for filing an action to compensate material damages is 3 years, which can be prolonged to maximum of 10 years. For non-material damage, the time limit is 6 months and it can be prolonged to 10 years.

#### 18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes – explain
- No

### Czech reply

The administrative court can rule that the administrative authority issues a provision which had been requested but illegitimately denied. For example, it may order the administrative authority to provide information (sec. 16 par. 5 of the Act no. 106/1999 Coll., on Free Access to Information).



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The administrative court can also oblige the administrative authority to issue a decision in cases of its inaction.

## **SESSION II – SPECIAL PROCEDURES**

### **1. Does your administration have provisions for special procedures**

- Yes
- No

If the reply is yes, please elaborate

#### **Czech reply**

Ordinary procedure includes four general types of actions – action against a decision of administrative authority, action against inaction of an administrative authority, action against unlawful interference, instruction or enforcement from an administrative authority and petition on annulment of measures of general nature.

Above that the Code of Administrative Justice contains provisions for following special procedures (according to subject matter):

- proceedings in electoral matters and in matters of a local or regional referendum (sec. 88 CAJ),
- special proceedings in matters of political parties and political movements (sec. 94 CAJ),
- competence complaint proceedings (sec. 97 CAJ).

### **2. What do the specialities consist of?**

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

### **3. The special rites are established:**

- According to subject ( for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above



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Please elaborate

### **Czech reply**

Proceedings with special subject are in electoral matters, in matters of political parties and political movements and in proceedings on annulment of measures of general nature.

#### **4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?**

- **Yes**
- No

If the reply is yes, please elaborate

### **Czech reply**

According to the sec. 79 and following of the CAJ, the person who has ineffectively exhausted the remedies which the rules of procedure applying to proceedings before an administrative authority prescribe for the protection of the person against the inaction of an administrative authority may request by means of a complaint that the court oblige the administrative authority to issue a decision in the merits of the matter. This does not apply if a special law connects the inaction of an administrative authority with the legal fiction that a decision with certain contents has been issued or with another legal consequence.

#### **5. Do the Administrations comply spontaneously with the decisions of the administrative courts?**

- Yes, always
- No, never
- **In the majority of cases**, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

### **Czech reply**

In the Czech Republic there is no special enforcement remedy in the administrative law.



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**6. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?**

- Yes

- No

If the reply is yes, please elaborate

**Czech reply**

The Czech legal system provides a procedure for the execution of judgements in the part VI of the Act no. 99/1963 Coll., the Code of Civil Procedure. Section 274 par. 1 lit. b) states that these provisions shall also apply to the enforcement of enforceable decisions of administrative courts. However it is used very rarely (the Supreme Administrative Court has never used this special procedure).

**7. Are the judge's decisions which are not of the last resort immediately enforceable?**

- Yes

- No

If the reply is yes, please elaborate

**Czech reply**

In principle, decisions are enforceable unless the law anticipates the suspension of the administrative act. Exceptionally, there is also the possibility of granting the applicant's request for a suspensive effect to a cassation complaint.

**8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**

- Yes – elaborate

- No



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## Czech reply

The administrative court is bound by the content of the action, and assesses the legality within the scope of the objections raised. The discretionary power of the administrative authority can be “reduced” by the grounds of the annulment.

### SESSION III – PRECAUTIONARY MEASURES

#### **1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**

- Yes
- No

## Czech reply

The proposition of an appeal does not suspend the effectiveness of the administrative act automatically, but the law anticipates the suspension of the administrative act in some cases in specific areas of law – such as deciding on the base of Act 325/1999 Coll., Asylum Act, Act no. 326/1999 Coll., on the residence of foreigners, Act no. 40/1995 Coll., on the regulation of advertising or of Act no. 231/2001 Coll., on the operating of radio and television broadcasting.

#### **2. In your legal system, are precautionary measures provided for?**

- Yes
- No

## Czech reply

In the Czech legal system, the petitioner can request interim measures (sec. 38 CAJ) or suspensive effect of the decision (sec. 73 CAJ).

#### **3. What kinds of decisions can the judge apply as a precautionary measure?**

- The suspension of the challenged act,
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;



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- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- **Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties**

### Czech reply

Administrative judge can also decide about interim measures. That means that if it is necessary to take temporary measures to adjust the parties' circumstances liable to cause serious harm, the court may resolve to impose on the parties the obligation of having to do something, to restrain from doing something or to endure something by a provisional ruling. For the same reason the court may impose such an obligation on a third person, if he or she can be justly requested to do so.

#### 4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- **Other prerequisites (please specify)**

### Czech reply

The conditions for accepting the request for a **suspensive effect** are following:

- the application is filed together with an application for the commencement of proceedings on the merits or in proceedings already pending,
- enforcement or other legal consequences of the judgment would result in **greater harm to the petitioner**, then the harm may occur to other persons by the grant of suspensive effect,
- grant of a suspensive measure is **not contrary to the public interest**.

The conditions for accepting the request for **an interim measure** are following:

- the application is filed together with an application for the commencement of proceedings on the merits or in proceedings already pending,
- the person seeking an interim measure must allege that he or she would suffer **serious personal injury** if an interim measure were not granted,



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- such harm must be considered to be of a **certain minimum intensity** (i.e. causing serious adverse consequences). It must also be taken into account whether the **harm is irreversible** or under what conditions the harm suffered **could be remedied**.

**5. Can the judge force the petitioner to pay bail?**

- Yes
- **No**
- If yes, in which cases?

**Czech reply**

There is no such possibility in the Czech administrative law.

**6. Are precautionary measures generic?**

- Yes
- **No** – are there some subjects in which precautionary measures are not admitted? Which?

**Czech reply**

In the Czech legal system, interim measures are rarely used. They are applied only in cases where conditions need to be temporarily adjusted because of the threat of serious harm (for example mostly in asylum cases: The Ministry of the Interior is ordered to tolerate the stay of applicants in the detention centre and to provide them with basic material security until the final outcome of the proceedings in this appeal). Suspensive effect may be claimed only in actions against a decision of administrative authority or in a cassation complaint with the Supreme Administrative Court.

**7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?**

- Yes
- **No**

**Czech reply**

A condition for granting an application for a precautionary measure (interim measures, suspensive effect) is that the application is filed together with an application for the commencement of proceedings on the merits or in proceedings already pending.



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**8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?**

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

**Czech reply**

Not applicable.

**9. When dealing with the precautionary request, does your legal system provide for specific procedure?**

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

**Czech reply**

There is no special procedure under Czech administrative law. Precautionary decision is taken within the core of the main proceedings and the code sets forth only some procedural elements, such as that the court shall decide on the application without undue delay; if there is no risk of delay, it shall decide within 30 days of its submission. See also answer to the question III/10 below.

**10. Is the precautionary decision taken unilaterally or collegiately?**

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

**Czech reply**

The legal process for adopting decisions on interim measures or suspensive effect follows the process of the decision in the merit of the case. Therefore if the case is to be decided by a single judge, the application for interim measures or suspensive effect shall also be decided by that single judge; the same applies for decisions that are adopted by a chamber).



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**11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?**

- Yes ( explain in which conditions )
- No

**12. Can precautionary measures be challenged before the Supreme Court /Council of State?**

- Yes
- Yes, but only if they pass a test of eligibility
- No

**Czech reply**

Decisions about precautionary measures (interim measures, suspensive effect) cannot be challenged before the Supreme Administrative Court, because they are considered to be decisions of a temporary nature which are excluded from the judicial review.

**13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?**

- Yes
- No

**Czech reply**

Yes, the Supreme Administrative Court can suspend the judgements on the merit of a judge of a lower level.

**14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?**

**Czech reply**

In the last two-year period (2019/2020), the Supreme Administrative Court decided on 443 suspension effects and 34 interim measures. They account together for 3 % of the total decisions of the Supreme Administrative Court.



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