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Impact of the Rule of Law as a Fundamental Public Governance Principle on Administrative Law Interpretation in the Czech Republic[1]

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ABSTRACT

The rule of law is a fundamental principle and the cornerstone of Western democracies and their public governance. Its underlying value is the idea of constraint of governmental power. The rule of law principle acts as an interpretative concept in most contexts of the exercise of public powers in the EU and its Member States, with the courts exercising supervision over the activities of administrative bodies. However, the teleological argumentation through fundamental principles is not inherent to all Central and Eastern European judicial and administrative bodies, given the long tradition of formalistic approach in most of them. The article analyses whether the approach has changed during the past thirty years and to which level the principle of the rule of law is used for interpretation of administrative law provisions by courts in the Czech Republic. Since the case law of the Czech Constitutional Court and the Czech Supreme Administrative Court is based on the arguments of legality and proportionality as the key elements of the rule of law, their cases were analysed using a comparative method. The article identifies a general tendency in legally difficult cases to move from purely linguistic interpretation to interpretation through values, including the rule of law. Most of the analysed cases reveal that the formalistic interpretation was strongly criticised by both the Constitutional and the Supreme Administrative courts. However, slight differences in their perception of the principles of legality and proportionality were discerned, namely in the debate on the intensity of control exercised by administrative courts over factual and discretionary decisions by administrative authorities. Nevertheless, these differences produce beneficial effects, as both principles continue being developed thanks to the exchange of opinions between the courts. Further research could be conducted for similar countries in the region.

1 This article is a revised version of the paper entitled *The Impact of Recent European Developments on Operation of the Rule of Law Principle in the Czech Republic* presented at the 27th NISPAcee Annual Conference 2019, Prague, Czech Republic, 24–26 May 2019.

Keywords: rule of law, administrative justice, good governance, legality, proportionality, interpretation, the Czech Republic

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1 Introduction

The rule of law being a guarantee against misuse of power and linked to protection of human rights is an umbrella principle which encompasses a substantial number of other principles, most of them having their own independent existence. Although there has been a vivid academic discussion[2] about its content, universal agreement has not been reached.[3] However, the majority of the scholars agree that the underlying value is the idea of constraint. The principle of legality, division and balance of powers, judicial control and protection of fundamental rights create a shared basis. (Addink, p. 76) The constraint entails that rules created by the state apply not only to citizens but also to the state officials to the same extent. Thus, it comprises such elements as authorization of administrative bodies, correct exercise of their discretionary powers, proportionality, legal certainty and clarity, protection of legal expectations, transparency, legal liability for administrative action, and last but not least right to fair trial before independent court that is empowered to review the contested administrative body's action. This supervision is crucial to ensure public administration bodies' adherence to all other elements of rule of law. "Administrative actors must act within power and only for a proper purpose. Supervisory mechanism must exist to ensure that all actors conduct themselves in conformity with law; supervision gives substance to the rule of law." (Hofmann, Rowe, Turk, p. 150)

The rule of law principle operates as an interpretative concept in most contexts of the exercise of public powers in the EU and its member states. As such, it is applied in administrative authorities decision-making and further by administrative courts when they exercise the supervision mentioned above. This contribution seeks to delineate the understanding of rule of law by the Czech Constitutional Court (hereinafter also the "CCC") and by the Czech Supreme Administrative Court (hereinafter also the "SAC") through analysis of their relevant case law. Subsequently, influence of this case law on the regional administrative courts and administrative authorities practice is evaluated. Mainly, two independent principles contained in the rule of law – the principles of legality and proportionality – were chosen for the analysis. The principle of legality requires that all administrative action has to have a legal ground and that administrative bodies act within the legal framework, contained both in statutory laws and secondary regulations that were created by

2 The Anglo-American Rule of law is connected with the work of Dicey. The doctrine of Rechtstaat usually names Kant and Von Mohl as the first authors. To name only few of the scholars that have contributed to the discussion: Hayek, Waldron, Raz, Fuller, Craig, Hoffman and other authors cited in references.

3 See e.g. Aagaard Tood S.: Agencies, Courts, First principles and the Rule of Law. In: Administrative Law Review 70, 2018, p. 2.

public administration. "Even under a narrow definition, the rule of law clearly and necessarily implies that administrative implementation occurs within the framework established by legislation, that subordinate legislation may be made by the administrative branch only where there is an enabling power in primary… law …, and that such subordinate legislation must be within substantive limits nd conform with procedural requirements of higher law." (Hofmann, Rowe, Turk, p. 150) The principle of proportionality is considered to be a tool to protect from excessive administrative acts and as such it can serve well as ground of judicial review. "Proportionality is a method for determining whether the reasons advanced by the state for limiting a specific fundamental freedom outweigh the values which underlie the constitutional commitment to the protection of that freedom." (Addink, p. 78)

2 The rule of law – key fundamental principle of public Governance

Rule of law represents a fundamental value being the cornerstone of western democracies. The perception of what it exactly means and which principles are most crucial for its preservation depends on philosophical and legal traditions embedded in individual countries as well as on the societal context in which it is developed. There is an ongoing debate (Carlin, Sarsfield, p. 125), with some authors preferring a narrower concept while others insist on broader interpretation. (Berger, Lake, p. 2) Agreement prevails that it is connected to the limitation of statehood on one hand and on the other it contributes to a social equilibrium where the vast majority of people accept to be ruled by legal norms, which then have a high probability of compliance. The state is governed by and has to adhere to the same rules as the citizens and these rules are applied indiscriminately. The state also ensures that the law is enforced.

Both elements that impact on legislative institutions and those which relate directly to administrative functions are contained in rule of law. (Hofmann, Rowe, Turk, p.149) For purposes of this paper, the impact on administrative functions is to be examined. Focusing on the rule of law's requirements on administrative authorities, some principles have greater importance while some must be put aside. (Stack, p. 1991) Those principles that apply predominantly to the legislator or those that pertain to criminal court processes may be disregarded for the purposes of this article. Most importantly, for the administrative authorities under the rule of law, the available forms of administrative acts are solely those contained within the statutory laws or based upon them (principle of authorization). Administrative bodies must exercise their powers solely for the proper purposes (ban on misuse of powers) and administrative discretion is not unlimited. The administrative acts need to be proportionate; proportionality also sets limits to the discretionary powers. Justification, predictability, consistency, transparency, efficiency and accountability are other principles contained in the multi-faceted rule of law. Last but not least, supervision gives substance to the rule of law, as any breach of the principles

should result in invalidity of such acting. Independent and impartial courts should provide for remedy.

The interpretation of rule of law differs according to the historical and cultural tradition of the country which affects its legal system. Common law perception stresses other key elements to be adopted in courts' decisions and in written rules compared to the continental European tradition.[4] The legal thinking in the Czech Republic is traditionally close to the German and Austrian legal systems and their doctrinal interpretation of constitutional and administrative law principles. The German understanding of rule of law (*Rechtstaat*) is much more related to separation of powers than the common law perception. In common law perception the main aim is to limit the power of the government. In *Rechtstaat* "the state has monopoly over power, meaning the state alone exercises coercion and guarantees the safety of its citizens. The law is the source of government's powers. There is also separation of powers, with the executive, legislative, and judicial branches of government limiting each other's power and providing system of checks and balances. Then the judiciary and the executive are themselves bound by the law, and the legislature is bound by constitutional principles." (Berger, Lake, p. 148) *Rechtstaat* implies the elimination of arbitrary authority and is the ideal of a fully democratic state respecting and protecting human rights. (Sever, Rakar, Kovač) The key elements are legality, division of powers, judicial control and protection of human rights. To the *Rechtstaat,* the role of administrative courts contributing to checks and balances and preventing misuse of power by the executive, is of fundamental importance. The principle of legality and principle of proportionality are core principles in limiting the administrative bodies' powers and as such often referred to by the courts when they ground their decisions on arguments related to the rule of law. The principle of legality demands that democratically elected representatives of the people adopt legislation and the government is bound by it when taking any action including secondary legislation. It is a constraint ensuring that the government acts in accordance with the effective hard law rules. The legislator is bound by the Constitution and may limit human rights when the Constitution allows to do so. The legislator may change the Constitution as well, however a larger quorum is required. The Constitutions of democratic states express the principle of legality explicitly. The German Constitution does so in its Art. 20. The Czech Constitution in expresses the principle of legality Art. 2 par. 3 "State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law." Both the German and the Czech legal systems understand the rule of law in its substantive meaning, not only in the formal meaning. The formal rule of law purports that the state authorities

4 The German Rechtstaat was developed as a counterpoint to the police state and the system of despotic rule and absolutism and symbolizes state's commitment to the realization of justice (described as the material rechtstaat which evolved after Second World War as a reaction to the formal approach of the Weimar republic). The legislator is the main holder of the sovereignty, however bound by the constitutional principles, and the executive needs empowerment of the legislator for al its actions. The common law's starting point close to the Lockean concept of a state with limited sovereignty where government only moderats individual to the minimum extent needed. For details see Henk Addink Good Governance Concept and Content.

are disciplined to carry out all their activities in line with the hard law rules irrespective of the content of these rules. The substantive understanding of rule of law is broader. The state power has to respect ultimate legal principles and values. The content of the legal rules is important, those have to respect fundamental rights.

Different states reach different levels of rule of law. Carlin links establishment of rule of law to wealth and to the degree and longevity of democracy. The more profound the rule of law is, the wealthier the society gets and the democracy is less struggling and more immune to negative political influences. He suggests five main typologies: Full Rule of Law (countries that adhere to all basic attributes of rule of law; according to Carlin many of the post-socialist states fit to this typology including e.g. Slovenia, the Czech Republic, Latvia, Lithuania), Incomplete Rule of Law (main levels of rule of law on all dimensions except peace are significantly lower, e.g. Poland, Bulgaria, Rumania), Peaceful Unrule of Law (the state is neither constrained horizontally by an independent judiciary, nor constrained vertically to uphold citizens' negative and positive rights, e.g. Mexico, China), Unstable Lawlessness (judiciary lacks power and autonomy, minor armed conflict threatens 1 in 6 cases, few countries spend much time in this type, e.g. Georgia, Kyrgyzstan), and Violent Unrule of Law (open conflict). (Carlin, Sarsfield) It is obvious that the post-communist countries including the Czech Republic started their way up from the one but last category in 1990s and that some of them have not reached the top level yet or due to the democratic backslide have lowered. It is less obvious which country falls within which category. However, more important are the factors that influence the speed of the change and tools supporting rule of law promotion.

2.1 The role of principles in interpretation of legal texts and adjudication

Administrative courts provide remedy when administrative bodies fail to act according the statutory laws. As a corollary of the principle of lawfulness the trial before the courts needs to be fair and the review procedure should be accessible to wide range of applicants seeking protection when claiming that an administrative body breached binding legal provisions and thus infringed their rights.[5] The administrative courts should be bound by hard law rules in their adjudication only. They review the application of abstract legal provisions on specific cases by administrative bodies. Doing so, they need to interpret the legal provisions and control whether the interpretation presented in the contested decision is adequate and reasonable. This interpretation influences back the following decision-making of administrative bodies, as they should follow the relevant case law even though it is binding only in the particular case. Thus, through their decision-making the administrative courts do not only provide protection in individual cases, they also provide valuable

5 More details may be drawn from the Constitutional Court's decision Pl.ÚS 16/99 of 27th June 2001 by which the CCC annuled part 5. of the Code of Civil Procedure - the statutory law governing the whole of administrative justice prcedure before 2003 for being contradictory with the Constitution of the Czech republic.

guidelines for prospective activities of administrative bodies when they need to apply hard law rules which might be potentially interpreted in several ways.

One of the methods of legal interpretation, i.e. ascertaining the meaning of a certain legal provision contained in statutory laws, is the so-called teleological method. This method is used to capture the aim the legislator wanted to achieve by adopting the statutory law, its purpose and function in the whole of the legal order. The arguments that are used are the general principles of law, the values that the law is intended to promote and protect (the final goals of the law), and human rights. Whenever more interpretations of a legal text may be considered, the one which is closest to the values of the society and general principles of law, should be chosen. The rule of law thus serves as a value and principle for interpretation of legal provisions meaning.

Another method is linguistic interpretation. This method is usually the first to be used by administrative bodies. Especially, when there is no reason to doubt what is meant by the text of the legal rule strict adherence to hard law by administrative authorities is expected and consistent with the principle of legality. However, the role of the text must not be overestimated especially in difficult case where several interpretations are possible. Otherwise it may lead to extreme formalism which is characterized by disregard for the purpose and effect of the interpreted legal provision and the values contained in it and the whole legal system. The formal approach to the rule of law and legality principle must retreat and the substantial conception in modern democratic states should prevail.[6]

Interpretation of legal provisions in the communist regimes in most of the CEE countries was almost purely linguistic intentionally disregarding any values such as human rights. Legal science disregarded anything like customary practice, impact of rules and their efficacy; it put an emphasis on written law. Actually, the only source of law[7] were the written rules. Basically, no unwritten principles existed. Therefore, the courts disregarded principles as interpretation tools.

The reasons for such formalistic approach were several. First, not dealing with any principles and rationale of law behind the text is a comfortable and practical way of deciding cases without deeper and time-consuming analysis. (Letnar Černič, Avbelj) Secondly, the communist judges were solving much simpler cases than their western colleagues (almost no administrative cases appeared before the courts, the commercial issues of businesses did not exist, as private businesses were not allowed to exist). (Kühn) Some of the judges protected themselves while hiding behind the legal texts as they refused to serve the regime. Interpreting hard law rules by values of contemporary

6 Formal concept of rule of law and legality focuses on the procedure, how the law was passed and whether it is clear. Substantive conceptions in reaction to the bad experience with laws of the Weimar Republic add another requirement. The hard laws need to respect values such as human rights. For more detail see Paul Craig, Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework. (1997) Public Law, pp. 467–487.

7 The sources of law are the origins of binding legal rules which take a form respected by the state. Thus, they may differ depending on the legal system. The most common are legislation, case law, international treaties, customs, unwritten principles, books of authority.

society would mean interpreting with the help of Marxist doctrine which they did not believe in.

Hand in hand with the change of the regime came the change in legal thinking. However, the ordinary judges progressed rather slowly – in the Czech Republic as well as in other post-communist countries. They continued in their formalist reading of law focusing on the legal text only. Hoff and Stiglitz explain how after the fall of communism in Eastern and Central Europe most observers agreed that were it politically feasible to establish quickly the rule of law to underpin a market economy as or before state enterprises were privatized, it would be desirable to do so. (Hoff, Stiglitz) However, it was argued not to be politically feasible. Advocates of rapid privatization claimed that granting individuals' control of property would create a political constituency for the rule of law, where there is protection for private property rights. But there was no theory to explain how this process of institutional evolution would occur and, in fact, it did not. The Czech Republic belonged to the group of unsuccessful countries. Hoff and Stiglitz argue that the central reason was the weakness of political demand for the rule of law and show that the beneficiaries of privatization may fail to support the rule of law even if it is the Pareto efficient "rule of the game". (Hoff, Stiglitz) Thus, it is obvious that the adherence to the rule of law principle did not come easily only with the change of centrally managed economy to a market one.

However, the situation was different with Constitutional Courts which were newly (re)established in many CEE countries.[8] The CCC exercising review of both constitutionality of statutory laws and constitutionality of individual decisions repeatedly emphasized the necessity of anti-formalist way of interpretation.[9] Although some scholars joined this effort to fight the textual positiv-

8 The history of the constitutional judiciary in the Czech Republic began in 1921 when pursuant to the Constitutional Charter of 1920, a separate Constitutional Court of Czechoslovakia was established. During the Second World War, the Court did not meet, and after the war its work was not resumed. Act on the Czechoslovak Federation not only envisaged the creation of a constitutional court for the federation, but also for each of the two republics in 1968. None of these courts was ever established, however, even though the unimplemented constitutional provision stayed in effect for more than two decades. Constitutional Court of the Czech and Slovak Federal Republic (ČSFR) was established by an act in February 1991. After the dissolution of the Czechoslovak federation, the existence of a constitutional court was also provided for in the Constitution of the independent Czech Republic of 16 December 1992. The newly established Constitutional Court of the Czech Republic began its work on 15 July 1993. The CCC main competences comprise the power to annul statutes or individual provisions thereof if they are in conflict with the constitutional order; to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute; over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state. Other countries such as Slovakia, Hungary, Poland, Lithuania, Latvia, Estonia, Bulgaria, and Romania have established or re-established their constitutional courts. Constitutional Court of Yugoslavia and the constitutional courts of the member republics were introduced by the Yugoslav Constitution already in 1963. The constitutions of the new independent republics at the beginning of 1990s newly stressed division of powers and stressed the position of constitutional courts.

9 See case file No. Pl. ÚS 21/96 where the CCC emphasizes the necessity to abandon the formalist approach by explaining that ordinary courts are not: "…absolutely bound by the literal wording of a legal provision, and they can and must deviate from it if such a deviation is demanded by serious reasons of the law's purpose, the history of its adoption, systematic reasons or any principle deriving from the constitutionally conform legal order … In doing so, it is necessary to avoid arbitrariness; the decision of the court must be based on a rational argumentation."

ism,[10] the legal academia predominantly approached new laws in an utterly textualist way. (Kühn) Kühn explains that "When it was necessary to solve a more difficult case, the judges, poorly supported by their legal academia, often sought a way out by disposing of the case on purely formalist grounds. In this way the simplified version of textual positivism and the ideology of bound judicial decision-making were able to survive. … In post-communist countries, such an approach became untenable, however, as literally overnight the level of societal life became much more complex and the courts were faced with the post-Communist transition – in which they had to solve completely new issues such as commercial cases, privatization and new types of business practices – and to cope with an increased caseload." (Kühn)

2.2 Research question and research methodology

The question this article is trying to find answer to is whether the administrative courts in the Czech Republic use principles of legality and proportionality in their interpretation of hard law rules and whether such interpretation is required from administrative bodies as well. Further, the contribution of the CCC to the move from formalist interpretation by both the administrative courts and authorities is contemplated. The cases discussed before administrative courts are often difficult and not suited to be decided only on the basis of a legal text. Therefore, the presumption is that the formalist approach is retreating and use of teleological arguments should prevail in difficult cases.

In 2003 the Supreme Administrative Court was established. It does not comprise career judges only, as former legal practitioners and legal academics may apply to become a judge with this court. The SAC decisions thus might be influenced by other views similarly to the situation of the CCC. However, Matczak, Bencze and Kűhn in their study of 2010 come to a conclusion, that "…formalistic approach to judicial decision-making seems to be a consistent strategy followed by the administrative judiciaries in CEE, with the Czech Republic judiciary being formalistic with regards to general principles application. This strategy is not in accordance with the approach taken by the legislative branches of government in these countries, which raises question over judicial deference to legislative value choices." (Matczak, Bencze, Kühn, p. 96) However, they also show in a study dedicated to decision-making during the years 1999 - 2004 that compared to other CEE countries due to the influence of the CCC the ordinary Czech courts tend to use for their argumentation standards external to law more often (approximately in 20% cases). (Matczak, Bencze, Kühn, p. 92) Can such tendency be discerned not only in the CCC case law but also in the SAC case law?

10 For example Pelikánová tried to rouse judges: "The aim is not to create new systems and new constructions, the aim is to understand the existing legal principles and solutions, whether they are in our own past or in other countries. In our situation, the idea of arriving at our own and better concepts is usually a perilous one that leads to the prolongation of that transitional stage between totalitarian and democratic law, to the introduction of new legislation by distorted pseudo-constructs, requiring laborious corrections in a number of subsequent amendments." [19]

The main research question is whether and how the rule of law and principles of legality and proportionality are applied as interpretative concepts by the Czech administrative courts when they exercise supervision over administrative bodies' decisions and other activities. The hypothesis grounded on the literature research mentioned above is that mainly in difficult cases there is a tendency to prefer the usage of principles and teleological interpretation to a formalistic interpretation. Also the influence of the CCC case law on the administrative courts adjudication should not be negligible.

As the rule of law principle is rather broad containing other principles which also work separately, the case law analysis restricts the two key principles. Due to the Czech understanding of rule of law being affected by the German legal science and the doctrine of Rechtstaat, two sub-principles, the principle of legality and the principle of proportionality were chosen for the analysis as most relevant. Both principles are mentioned in literature[11] as the principles influencing the German understanding of Rechtstaat. (Bumke, Voßkuhle, p. 76)

For the purposes of this qualitative research, several different methods were applied as relevant. First, a comprehensive overview of the rule of law and the principles of legality and proportionality was made through literature review and normative-analytical method. Using systematic approach, the author analysed relevant case law of both the Czech Constitutional Court and the Czech Supreme Administrative Court focusing on cases where these courts provide guidance to regional (administrative) courts regarding interpretation of hard law rules and legal argumentation using these principles. A sample of 50 decisions of SAC from the years 2003–2019 was studied. Also 25 CCC decisions in the period 1993–2019 were analysed. The most important ones are listed in the references part. The decisions were chosen as a combination of three criteria. First group relating to expressly mentioned formalistic interpretation was chosen using the search tools available at the CCC and SAC web sites.[12] These search tools turned out not to be suitable when it came to searching for decisions related to the principles of legality and proportionality. The breach of legality being the main ground for quashing of an administrative decision was mentioned in a particularly large number of SAC decisions. On the other hand, the CCC decisions contained many related to penal justice. Thus the literature including commentaries on the Code of Administrative Procedure and the Constitution was consulted. Most recent case law of 2018 and 2019 was added with the help of the search tools. The third group contained decisions related to the principle of proportionality. As this principle applies in difficult cases a group of such cases deal with by administrative courts was selected. The SAC developed a mechanism for control of zoning plans con-

11 See e.g. Addin, H. Good Governance Concept and Context p. 76: "The German rule of law, the rechtstaat, consists of following principles: (1) the separation and differentiation of state power, (2) the principle of legality, (3) the principle of legal certainty, (4) the principle of trust, (5) independent judicial control, and (6) the principle of proportionality."

12 The CCC decisions search tool – https://nalus.usoud.cz/Search/Search.aspx. The SAC decisions may be searched at http://www.nssoud.cz/main0Col.aspx?cls=JudikaturaSimpleSearch&pageSource=0&menu=188 .

taining the proportionality test as the last of five steps. Thus, the stress was put onto cases dealing with zoning plans.

The sample of the decisions was studied using analogy, comparative method and inductive reasoning. Their content was compared and interpreted. In the conclusion a synthesis of the findings is carried out.

3 Analyses of the use of the legality and proportionality principles

3.1 Requirement of legality of all administrative authorities' activities and its dimensions

Administrative bodies must always act within the law, irrespective of its source. They have to adhere to statutory rules but also to the rules created by the public administration itself, in government or ministerial ordinances. The hierarchy of legal norms has to be respected. The law (both the substantive and the procedural) may not be violated as the executive branch has a duty to respect the primacy of the legislative power. Thus, the requirement of legality includes a number of overlapping elements. Among them – (a) acting within power (ban on misuse of doctrine of ultra vires acts), (b) correct exercise of administrative discretion, (c) acting in good faith and avoidance of an improper purpose, (d) acting in conformity with legally mandated procedures, e.g. granting a right to hearing of the affected parties and providing reasons for the decisions, and (e) responding to justified individual claims. (Hoffman, Rowe, Turk, p. 153)

The principle of legality is contained in Art. 2 par. 3 of the Czech Constitution which reads: "State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law." The Charter of fundamental rights and freedoms contains the principle in Art. 2 par. 2. No state authority may in a democratic state governed by rule of law move outside the limits, ie the competence and authority, which are defined by the constitutional order, or by statutory laws. The provision serves as basic safeguard against arbitrary exercise of public power. "Every person has a right to be protected from unrestrained and therefore unpredictable and erratic state power. The idea of the rule of law, as mentioned above, has two dimensions, formal and material." (Wagnerová, p. 87) The principle of legality binds both the legislator and the administrative authorities. "The government must move *secundum et intra legem*, not out the boundaries set by statutory laws (*praeter legem*). Basically, if the law provides for X, it is for the government to provide that it should be X1, X2, X3 ... not also that it should be Y (see decision file No. Pl. ÚS 45/2000). Therefore, the legislature's will to adjust beyond the statutory law's standard, respectively, must always be obvious. In other words, the limits of further legislation by a sub-legal regulation must be set." (Wagnerová, p. 88)

The Czech Code of Administrative Procedure[13] contains the principle of legality in Section 2 (1) which explicitly states that any administrative authority shall proceed in compliance with the acts and other legal regulations as well as international treaties which form part of the legislation. This provision is applicable to all types of administrative activities, not only to decision-making.

The legality requirement manifests itself in several aspects. First, the administrative bodies must be authorized by hard law rules when they act (their powers stem from the legal provisions). Thus, they may not act ultra vires. They have to use the powers only for the purposes for which they were vested, not for improper purposes. Administrative discretion must be exercised within the limits set by the hard law rules – administrative bodies may choose only from the tools foreseen by the laws and they may not impose sanctions other than within the range. Acting must be within the procedures set by the laws, including the equal treatment of participants, and such participant rights as right to provide evidence, to be represented, to access the file, and to appeal. The administrative body must conduct enquiries, gather necessary evidence in sufficient quantity to be able to ascertain the facts of the case correctly. It has to allow for participation of public, if the law grants for it, and the decisions have to be reasoned.

The principle of legality is intertwined throughout the Code of Administrative Procedure as the administrative authorities are bound by it in all procedures to which the Code of Administrative Procedure applies and, as a result of Sec. 177 (1), also in other activities of public administration. It is also explicitly mentioned in Sec. 89 (2), which regulates the procedure of the appellate administrative authority. The appellate authority examines conformity of the contested decision and the procedure which preceded it with statutory laws.[14] If the challenged decision is contrary to legal regulations, the appellate administrative body shall revoke the decision or part thereof and terminate the proceedings, or return the case for new consideration to the administrative authority which had issued the revoked decision. It may also alter the challenged decision or parts thereof. However, defects of the procedure that may not be reasonably considered to have impacted the compliance of the challenged decision with legal regulations, or its correctness, if applicable, shall be disregarded. The Code of Administrative Procedure prefers material legality to formal legality. (Vedral, p. 82)

The review procedure, being an extraordinary remedy and allowing under certain conditions for revocation or change of terminal decisions, is also grounded on the principle of legality. Solely conformity with legal regulations is reviewed. However, the review procedure is also an excellent example demonstrating potential collisions between general principles. The principle of legality might sometimes conflict with the principle of efficiency or with the principle of protection of rights acquired in good faith. It follows from

13 Act No. 500/2004 Sb., the Code of Administrative Procedure, as amended.
14 It also may review the incorrectness of the decision, when it is contested.

Sec 94 (4) of the Code of Administrative Procedure[15] that protection of rights acquired in good faith may prevail over the requirement of legality. Administrative authorities must act in accordance with the law and are thus obliged to issue decisions that are legal and do not suffer from defects. If a decision is issued which suffers from a defect, it should, in principle, be annulled or amended. Proper remedies (usually an appeal) are used to correct such defective decisions. However, if none of the parties appealed or appealed, but the illegality has not been detected and the decision has been upheld, then it becomes final and should not be interfered with by the administrative authorities. A situation where a final decision shows signs of illegality can be resolved by bringing an action before the administrative court or, under strictly defined conditions, by using an extraordinary appeal in administrative proceedings. This extraordinary remedy is the review procedure in the Czech Republic pursuant to the provisions of Section 94 et seq. of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended. Interventions in final decisions by administrative authorities should, however, be scarce, as far as possible, as they undermine the legal certainty of the parties and, consequently, their confidence in the activities of the public administration. Addressees of administrative decisions who have acquired rights from final decisions may be convinced that they have acquired the rights legitimately and as such will be able to exercise them in the future. They act accordingly. Every human being should be able to plan his or her behaviour and to predict its consequences with some degree of (legal) certainty. Any subsequent revocation or amendment of the final decision will affect this legal certainty.

It is therefore clear that if an administrative authority finds that a final decision is unlawful, there are conflicting interests. It is in the public interest that the defects of the unlawful decision are remedied and the legality principle observed. Thus the decision should be changed or annulled. However, this public interest competes with the private interest of the party to the administrative proceedings ended by the illegal decision in no interference with his/her rights already acquired from the final decision. In case of conflict of fundamental legal principles, these should be measured according to the principle of proportionality. The administrative authority shall compare the interest on adherence to the principle of legality with individual interests. If the harm caused to the rights acquired in good faith caused by revocation or change of the decision would bring on more negative consequences to the individual, than to public interest, it shall confirm the decision however the principle of legality had been breached by it.

15 According to Sec 94 (4) of the Code of Administrative Procedure: "If, following the commencement of a review procedure, the administrative authority arrives at a conclusion that despite the decision having been issued contrary to a legal regulation, the harm that would arise from its revocation or alteration for any party who has acquired a right by the decision in good faith, would be in apparent disproportion to the harm caused to another party or to the public interest, it shall terminate the procedure. "

3.2 Principle of legality in case law

The principle of legality is mentioned in abounding numbers of SAC decisions as breach of law[16] is the sole reason for quashing of the contested decision. The CCC reflects the principle of legality as one of the most important principles and stresses the necessity to adhere to it by administrative bodies in its case law as well. Although both courts generally approach this principle in concordance, there have appeared recently some slight differences in its perception by the SAC compared to the CCC, as will be shown below.

The case law of both courts stresses interpretation of statutory laws in congruence with the provisions of the Constitution and the Charter of Fundamental Rights when they are to be applied by administrative authorities. In a situation whereby a specific provision might be interpreted in several ways, it is the task of all state bodies to interpret it in the way which is conform to the Constitution.[17] In another decision the CCC concluded that: "Any court is not absolutely bound by exact wording of a legal provision. It may and must deviate from it in situations when it is required for serious reasons by the purpose of the statutory law, history of its creation, systematic context, or any of the principles that are grounded in legal order conform to the Constitution as semantic unit. Arbitrary decision-making needs to be avoided, the decision of the court has to be grounded in rationale argumentation."[18] The findings of the CCC are applicable not only to courts but to administrative bodies as well.

The body interpreting legal provisions should not rely on pure linguistic interpretation. "The linguistic interpretation is only an initial approximation to the applied legal provision. It is merely a starting point for elucidating and clarifying its meaning and purpose (which is also served by a number of other procedures, such as logical and systematic interpretation, *e ratione legis* interpretation, etc.). Mechanical application abstracting from, or unaware of, either intentionally or as a result of ignorance, the meaning and purpose of the legal norm, makes law a tool of alienation and absurdity."[19]

The CCC has stressed in several findings[20] that one of the functions of the Constitution and especially those of its provisions dealing with human rights is to "shine through" the whole legal order. The purpose of the Constitution is not just being source of applicable and supreme legal rules, but also creating duty to all bodies exercising public power (that is also administrative bodies) to interpret ant apply all statutory laws with regard to of human rights protection.[21] Administrative authorities are not bound by exact wording of legal

16 The review searches for error in law, misuse of power (doctrine of *ultra vires* acts), or error in fact which is nothing else than not satisfying procedural requirements by breaching the rule that facts need to be set beyond any reasonable doubt.

17 Decision of the CCC file No. III. ÚS 277/96 of 22 October 1996.

18 Decision of the CCC file No. Pl. ÚS 21/96 of 22 October 1996.

19 Decision of the CCC No. Pl. ÚS 33/97 of 17 December 1997.

20 Mainly decisions of the CCC file No. III. ÚS 4/97 of 19 November 2000, file No. III. ÚS 129/98 of 21 July 1998, file No. III. ÚS 257/98 of 21 January 1999, and file No. III. ÚS 765/02 of 15 May 2003.

21 Decision of the CCC file No. III. ÚS 139/98 of 24 September 1998.

provisions, they need to consider the purpose and the aim of the applicable rule and of the rules being higher in the hierarchy.

The SAC followed the CCC when it started to require from the administrative authorities to argue through the principle of good governance and other principles: "The law, viewed by the applicant's interpretation, becomes an atomized set of laws, from which any values and principles and respect for the human individual are lost. This interpretation is therefore contrary to the basic maxim of the Czech Constitution, according to which state power serves to all citizens (Article 2 (3) of the Constitution), deprives the law of any social purpose, and instead legal norms become self-serving. The view that social reality serves needs law and its formalities, and as such must conform to the natural tendencies of public authorities is however, inherently contrary to the case-law Supreme Administrative Court. … Thus, where administrative authorities only consistently require the fulfilment of obligations by citizens in administrative proceedings, while not caring for the protection of their interests, the expression of this procedure is an overly formalism which results in a sophisticated justification of manifest injustice."[22]

Similarly the SAC found that: "…any administrative authority is authorized and also has a duty to consider the use of an interpretation other than a literal linguistic approach. If, on the basis of different methods of interpretation, different conclusions are reached, it must apply an interpretation which, in addition to the text itself, also takes into account the broader context of its adoption, in particular its purpose." [23]

Regarding the binding nature of principles and necessity of leaving formalistic and purely linguistic interpretation in favour of teleological approach both courts, the CCC and SAC, come to the same conclusions. Nevertheless, formalistic interpretation has not disappeared from all decisions of administrative courts including the SAC. This can be demonstrated on a case concerning thwarted demonstration against the visit of Chinese president. The CCC overruled the previous judgments.[24] Both Prague Municipal Court and the SAC dismissed an action against a decision on closure of roads on rather formalistic grounds. They concluded that the type of administrative action selected by the claimants was incorrect. The CCC ordered the administrative courts to measure the public interest in national security and protection of lives and health of people on one side, with the right to gather and demonstrate on the other.[25]

22 Supreme Administrative Court decision file No. 1 As 30/2008 – 49 of 11 September 2008

23 Decision of the SAC file No. 3 Ads 50/2006 of 9 May 2007.

24 Decision of the SAC file No. III. ÚS 2634/18 of 15th January 2019.

25 The action was filled by applicants who summoned a demonstration near the Prague castle. After they have announced the demonstration in accordance with the Czech statutory laws, the Prague municipality decided on closure of the roads and the Hradčany square. Later, police prevented the coming demonstrators from entering the square. The action was dismissed, as the claimants did not file an appeal against the decision on closure, even though according to previous SAC case law the individuals notifying demonstrations were not in a position of participants in the administrative procedure discussing road closure. However, the case was more complicated as the type of administrative action selected by the claimants was also discussed. The CCC confirmed the opinion of administrative courts, that the claimants may not choose

However, most recently, another case proves that understanding of rule of law by the SAC is when the competence of administrative courts is concerned much broader than the CCC perception. A debate on the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities is according to Craig inherent to all systems of administrative law. "The debate ebbs and flows in and across legal systems, with claims that the courts are trespassing too far beyond their proper remit and intervening on the merits of decisions made by the political branch of government, met by counterclaims that if substantive review becomes too exiguous then it ceases to exist as any form of meaningful judicial oversight." (Craig, p. 477) In its finding file No. Pl. ÚS 39/17 of 2 July 2019 the CCC dealt with a proposal of the SAC to revoke Sec 26 of the Act No. 186/2013 Sb., on Citizenship of the Czech Republic on grounds of non-conformity with the Constitution. This provision excludes court review of administrative decision of the Ministry of Interior not granting Czech citizenship on grounds of the applicant's being a threat to security of the Czech Republic. The decision of the ministry follows the secret information provided by the police or security service. The SAC believed that such exemption is unconstitutional. It argued by its previous case law. Absolute discretion is not sustainable in a democratic state governed by rule of law and discretion must be limited by the principles of proportionality, ban on arbitrary decisions and requirement to decide in similar cases similarly and in same cases in the same manner.[26] Absolutely free discretion may not appear in a state governed by rule of law.[27] Even though there is no human right to obtain citizenship, the ministry may not decide in an arbitrary manner. Thus, the SAC argued, an exemption from the general rule that administrative courts may review any administrative authority decision may not withstand. However, the CCC took a different view. It decided that such exemption is in accordance with the Constitution. Art. 36 (2) of the Charter of human rights and freedoms grants court review of administrative decisions unless a statutory law creates an exemption. Such exemption may not be created by the legislator, if a fundamental human right is interfered with by the administrative authority's decision. In the discussed case there is no fundamental right to obtain citizenship. Maintaining sovereignty and territorial complexity of the Czech Republic, protection of its democratic foundations and protection of lives, health and property values is one of the basic duties of the state. Security interest of the state is also a value protected by the Constitution. "This state interest means existential interest, which legitimises specific restrictions of individuals' sphere of rights; however, it is the state who finally protects the position of individuals. … In order to protect this interest, the state has to dispose of necessary measures. One of them is the area of secret information." The CCC followed by balancing the individual's interest on obtaining the citizenship with the security interest of the state. The court concluded that the legislator incorporated the exemption of courts' review into the law only for the cases when it is in the state's interest

the type of action freely and the courts do not have a duty to inform the claimants which type of action is suitable for their case.

26 Decisions of the SAC file No. 2 As 31/2005-78 and file No. 4 As 75/2006-52.

27 Decisions of the extended chamber of the SAC file No. 6 A 25/2002-42.

not to tell the individual the reasons why his/her request was denied, as making these reasons transparent could jeopardise security of the state or third persons. Thus, incorporating such exemption is not a gesture of arbitrariness of the legislator. Therefore it is not contrary to the rule of law principle.

3.3 Three dimensions of proportionality

The principle of proportionality is based in German legal culture and is closely related to the rule of law. Over time, many continental European constitutional courts have begun to rely on it. It also became one of the fundamental principles of administrative law. It is another legal instrument by which the government is to be forced to comply with the legal rules contained in the statutory laws. State interventions should be minimal and should only be taken if they are necessary in public interest. As such, it is intended primarily to address conflicts of public interests on one side and private ones on the other. At the same time, private interest may also have nature of a fundamental human right which might be affected by acting of administrative authorities.

The principle of proportionality is according to Bumke and Voβkuhle "The most important substantive requirement imposed on a state power which is authorized to interfere with fundamental rights." (Bumke, Voβkuhle, p. 60) They also quote the German Federal Constitutional Court[28] which has described its origin: "It emerges from the principle of the rule of law, from the essence of the fundamental rights themselves, which as expression of the citizen's general claim to freedom as against the state, requires that fundamental rights be limited only to the extent necessary to protect public interests." (Bumke, Voβkuhle, p. 60)

The Czech Code of Administrative Procedure contains the principle of proportionality in Sec. 2 (3) which explicitly states that any administrative authority may intervene only to the extent which is necessary. Together with other principles it applies to the exercise of all administrative activities, not only to their decision-making.

The principle of proportionality consists of three constituent elements - prohibiting abuse of discretion, protection of good faith and legitimate interests, and subsidiarity.[29] All these components stand also as separate principles. Subsidiarity requires administrative authorities to use the least intrusive means which still leads to the objective pursued. Public administration protects public interests which are often contrary to individual interests. Thus, it may not always avoid interference with rights of individuals, however this interference must be the softest possible. Therefore, a reasonable measure, an acceptable compromise, is being sought. The degree of restriction in relation to the purpose of the restriction is assessed.

28 BverGE 19, 342, 348 et eq. - U-Haft [Investigative Custody].

29 Decision of the SAC 1 Ao 1/2005-98 of 27 September 2005 and further decision of the CCC file No. Pl. ÚS 61/04 of 5 October 2006, decision of the CCC file No. Pl. ÚS 83/06 of 12 March 2008, decision of the CCC file No. Pl. ÚS 54/10 of 24 April 2012.

The proportionality test elaborated by courts includes three basic criteria for balancing two interests. These are the criteria of suitability, necessity, and measurement of the relevance (importance) of two conflicting interests. The suitability criterion answers the question of whether a measure used by public administration restricting a certain private interest (or right) makes it possible to achieve the objective pursued. That is, whether the public interest can be achieved at all by using that particular measure. The criterion of necessity consists in comparing the instrument used limiting the private interest with other measures enabling it to achieve the same objective but not affecting that private interest. If another (milder) means could be used, this criterion will not be met. Finally, measuring the relevance of the two competing interests on the imaginary plates of scales is understood to be the proportionality in the strict sense.

If a measure taken by any administrative authority is found not to be proportionate, then it is invalid and should be revoked or changed by appellate administrative body or quashed by administrative court in course of review.

3.4 Principle of proportionality in case law

As already mentioned above, all types of activities of administrative bodies, not restricted to decisions, need to be proportionate. Zoning plans[30] which are issued in the form of a binding general measure,[31] create numerous cases which are solved by administrative courts on regular basis through application of a five-step test where proportionality creates the last step. Owners of property situated in the area covered by the zoning plan may often feel that their individual interest in using their property in a way they prefer is prejudiced by the land utilization prescribed in the zoning plan. On the contrary, municipalities need to set mandatorily the areas in their territory that shall be used for different specific purposes. Thus, conflict of an individual and public interest is inherent to zoning plans. Administrative courts have to review the level of compliance with the principle of proportionality. Permissible might be only such changes in land use interfering with property rights which are necessary in order to reach purposefully the public interest they are meant to promote. Moreover, they may not be excessive.

In its consistent case-law, the SAC concludes that even intensive intervention is not necessarily disproportionate if the principle of subsidiarity and minimi-

30 The zoning plan is regulated in the provisions of Sec. 43 - 60 of Act No 183/2006 Sb. on town and country planning and building code (Building Act). Pursuant to Section 43 (1) of the Building Act, it determines the basic concept of the development of the territory of the municipality, the protection of its values, its areal and spatial arrangement, landscape layout and public infrastructure, development, for restoration or re-use of degraded land, for publicly beneficial buildings, for publicly beneficial measures and for territorial reserves and sets conditions for the use of these areas and corridors.
During the building procedure the compliance of the building with the zoning plan needs to be assessed (Sec. 111 (1) letter a) of the Building Act). It is evaluated by the zoning authority, which issues a binding opinion on the compliance of the building with the zoning plan, by the content of which is bound by the building authority.

31 A measure that is defining specifically the matter (the plots of land concerned) and abstractly the subjects (all current and potential future land owners). The procedure of their issuance is covered by Sections 171 – 174 of the Code of Administrative Procedure.

zation of such intervention are respected.[32] According to the SAC case law, proportionality requirement is met under the following cumulative conditions - the intervention:

– serves a constitutionally legitimate objective which is supported by the aims pursued by statutory laws;
– is implemented to the extent which is necessary;
– is effectuated by the most gentle of the ways still leading to the intended goal;
– is conducted in a non-discriminatory manner;
– is accomplished with the exclusion of arbitrariness.

Administrative courts' decisions balancing the conflicting interests are based on premise that when zoning plans are changed interference with ownership rights appears on ordinary basis; while such interference might not be often eliminated. Invalidity of zoning plans (their changed parts) might be caused essentially only by absolute excess and ignorance of the principle of proportionality. It is not the task of the court to define how to use a territory to actively complete spatial planning, only to correct extremes. The SAC is of the opinion that it is the competent authorities' responsibility to sensitively measure public and private interests; especially with the view of specific historical, economical, demographical a geographical conditions of the municipality. However, in the event of an excess, it will provide protection by revoking the relevant change in the land-use plan.

The case law relating to zoning plans was chosen to demonstrate all the principle of proportionality nuances as it is elaborated in great detail due to the regularity of proportionality control. However, courts use the proportionality test for balancing interests while reviewing administrative decisions and other administrative activities as well, even if not on such regular basis.

Most recent case which appeared before the CCC[33] shows that opinions on what measure might be viewed as proportionate may vary and that the CCC may come to different conclusions than administrative courts. The claimant in the original request posited that he was deprived of his ownership rights to his car by an amendment to the law on registration of vehicles. As there were abundant cases when the evidence did not correspond to the true state of things, which caused difficulties to determine the owner of the car, the leg-

32 The extended chamber of SAC in its leading decision No. 1 Ao 1/2009-120 of 21 July 2009 came to this conclusion: "IV. The condition of the zoning plan's legality, which the court always examines in proceedings under Sec. 101a et seq. s., is that all restrictions on ownership and other substantive rights arising therefrom have constitutionally legitimate objectives and are only done inevitably to the extent necessary and in the most prudent of the ways still leading to the intended objective, in a non-discriminatory manner and excluding arbitrariness (subsidiarity and minimization of intervention). V. Assuming that the principle of subsidiarity and minimization of intervention is respected, a land-use plan (its change) may result in restrictions on the owner or others holders of rights in rem over land or buildings in the territory regulated by this plan, if they do not exceed the righteous peace; such restrictions do not require the consent of the proprietor concerned and the latter is obliged to tolerate them without compensation."

33 Decision of the CCC file No. Pl. ÚS 21/18 of 14 May 2019.

islator created a duty of the owners who were not registered (mainly due to their reluctance and even their intention as they profited from not being registered) to register in additional six months period. If they breached this duty, it resulted in administrative erasure of the car from the evidence. Any car may not be operated on the road, if it is not registered. The claimant argued, that such interference with ownership right is not proportionate with the public interest in keeping the registry faultless. Regional (administrative) court in Hradec Králové agreed with the claimant's arguments and approached the CCC with a request to revoke the respective provision of the law for its being unconstitutional. The CCC applied the three elements test - suitability, necessity and relevance. It concluded that the measure was suitable to reach the aim, as it applied to several hundreds thousands of vehicles and only several tenths of owners complained. [34] It was also necessary, as it is now possible to identify the person operating the vehicle. The law was foreseeable as there was enough time to change the entry in the registry, and the change in law was known to public more than a year before it came into effect. The most questionable is the CCC's finding regarding the relevance. The CCC argued that the owner was not deprived of his ownership right although he may not operate the car on the road or transfer it to anyone else. There is still a theoretical possibility to have the car registered after proving that it is technically fit, i.e. that it meets all the legal requirements applicable to the newly produced cars, or it may be sold for parts. The CCC finally stressed again the requirement of foreseeability of hard law rules which was met. This foreseeability created the "imaginary tongue on scales" when balancing the public interest and individual rights.

This case serves also as good example of the regional court using the principle of proportionality as main interpretative argument.

It may be concluded that the three elements evaluated by SAC when balancing the individual rights and public interest correspond to those applied by the CCC, however rarely the administrative courts may come to a different conclusion. Especially, when balancing of individual and public interests tends to be complicated, subjective opinions may differ. As it was demonstrated by the most recent case law, the CCC sought help in another rule of law principle – the foreseeability of statutory laws.

4 Discussion

In difficult cases when legal provisions cannot be interpreted solely on the ground of text analysis, but teleological argumentation becomes necessary, the rule of law together with other values helps the proper interpretation of statutory laws. However, the post-communist countries with the legacy of extreme legal formalism, find their way to using legal principles on regular ba-

34 The CCC argued by the number of complainants compared to the total number of aggrieved individuals, even though this was not the main argument. Such argument is strange, as the principle of proportionality does not (and may not) associate the balance of two conflicting interests with a requirement of a certain number of interferences or percentage of cases which should bring on proportionality check.

sis in argumentation of ordinary (including administrative) courts and administrative authorities with difficulties. The article shows that both the Czech Constitutional Court and the Czech Supreme Administrative Court case law encourage the (regional) administrative courts to use rule of law and teleological argumentation instead of pure linguistic approach.

The rule of law is a multidimensional legal principle with its elements existing as independent principles applicable to different extent to each of the powers in state – the legislative, executive and judicial powers. Focusing on the rule of law's requirements on administrative authorities, some principles have greater importance while some must be put aside. Due to the Czech understanding of rule of law being affected by the German legal science, two sub-principles, the principle of legality and the principle of proportionality were chosen for the analysis as most important. Judgements of the Czech Constitutional Court and the Czech Supreme Administrative Court dealing with these principles as interpretation guidelines for administrative authorities were analysed.

It was shown through this analysis that principles of legality and proportionality are used by both courts in their argumentation on ordinary basis. They require both - administrative authorities to carry out all administrative activities in conformity with these principles - and regional (administrative) courts to apply these principles as control mechanism for review of such administrative activities. The formalistic approach, literal linguistic interpretation is deprecated. Both the CCC and the SAC promote the view that any court is not absolutely bound by exact wording of a legal provisions. Courts may and must deviate from purely linguistic interpretation in situations when it is required for serious reasons by the purpose of the statutory law or by any of the principles that are grounded in legal order conform to the Constitution as semantic unit.

Regional courts apply these principles commonly when reviewing specific types of administrative activities – as it was demonstrated on the cases dealing with zoning plans which often result in interference of a public interest with individual rights and interests. Therefore the proportionality test is carried out on regular basis.

The CCC and SAC case law on legality and proportionality are mostly mutually supportive and consistent. However, it was shown that the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities may be viewed differently by the SAC and CCC. Therefore, the principles continue to be developed due to exchange of opinions.

However, as the judicial control over administrative authorities is a key element of rule of law, these discussions should only lead to subtle refinement of boundaries of judicial control and should not lover the already achieved level of human rights protection provided by administrative justice. However, much too wide control may cause not only breach of the principle of sepa-

ration of powers but also congestion of courts. Further, prolongation of the proceedings and the time period during which the complainant is awaiting the final court's decision may be another negative consequence. Thus, this exchange of opinions could be a beginning of a discussion regarding a possible means of administrative justice relieve while keeping the top standard of rights protection.

5 Conclusion

It may be concluded that the case law arguing through rule of law and namely principles of legality and proportionality expanded significantly over the past sixteen years of the Supreme Administrative Court's existence. Regarding the binding nature of principles and necessity of leaving formalistic and purely linguistic interpretation in favour of teleological approach both courts, the CCC and SAC, come to the same conclusions. General tendency to move from purely linguistic interpretation to interpretation through values including the rule of law in legally difficult cases is shown in the analysis. Most of the analysed cases prove that the formalistic interpretation has been strongly criticised by both the Constitutional and the Supreme Administrative Court.

Practically, this means that the regional administrative courts together with administrative bodies should pay attention to the reasoning of their decision. Mainly in difficult cases they should not restrict themselves to a purely linguistic interpretation which might grow into formalistic approach. Their interpretation needs to consider using teleological method of reasoning and to take into account the principle of rule of law.

The CCC and SAC case law on legality and proportionality are mostly mutually supportive and consistent. Still, different perception might be distinguished in specific cases. Especially, opinions on the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities might vary and the case law contributes to debate thereon. Therefore, the principles continue to be developed due to exchange of opinions between the Supreme Administrative Court and Constitutional Court. However, the already reach level of human rights protection should not be challenged in these discussions.

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