

CHAPTER 5

SOURCES OF ADMINISTRATIVE LAW I.

As said before, administrative law is the section of public law which governs the organisation, powers and actions of public administration. It is therefore a law that is related to the practice of public administration which is the detailed and practical implementation of the policies of central government aimed at the running of the state. Sources of administrative law refer to the legal rules that govern the public administration, functions and powers of the administrative bodies or resolve administrative law problems.

Sources of administrative law are nowhere fully or exhaustively listed. Sources of administrative law create an important part of the legal order of the Czech Republic and are assorted in a pyramidal-type structure where the lower levels of the pyramid have to be compatible with the higher ones. The hierarchy of sources of administrative law is based on constitutional and doctrinal principles, sometimes explicitly mentioned in laws, explained by the legal doctrine and followed and practised by administrative bodies and case-law.

The structure of sources of administrative law are as follows:

Normative sources of administrative law:

- international treaties approved by the Parliament and ratified by the President of the Czech Republic
- the Constitution of the Czech Republic (hereinafter referred to as “CCR”) and other constitutional laws, including the Charter of Fundamental Rights and Freedoms, adopted by the Parliament
- laws (ordinary statutes, statutes) adopted by the Parliament
- Senate’s legislative measures
- secondary derived legislation adopted by the government, ministries and other state administration bodies, i.e. governmental orders, ministries’ regulations, regulations of other state administration bodies, and by territorial self-governing units, i.e. municipal and regional orders
- secondary original legislation adopted by territorial self-governing units, i.e. municipal and regional generally binding regulations

Non-normative sources of administrative law:

- internal regulations and statutory regulations

Since the Czech Republic's accession to the European Union, EU law (primary law, secondary law, i.e. regulations, directives, decisions etc.) also became part of the legal order of the Czech Republic and so a source of administrative law.

International treaties ratified under Art. 10 CCR take precedence over laws. This means that in the case of conflict between a provision of a law and a provision of an international treaty adopted under Art. 10 CCR, the latter shall prevail. The most important treaty in this category is the Convention for the Protection of Human Rights and Fundamental Freedoms drafted by the Council of Europe.

Constitutional laws are legislative acts of the highest legal force. They are passed by a special majority being necessary in both Chambers of Parliament and with the agreement of both chambers (the concurrence of three-fifths of all Deputies and three fifths of all senators present – Art. 39 (4) CRR). There is a plurality of constitutional laws (i.e. not a single constitutional document) and all the constitutional laws form the so-called constitutional order of the Czech Republic (Art. 112 CCR). The most important constitutional laws in the area of administrative law are: Constitutional Act no. 1/1993 Coll., the Constitution of the Czech Republic, Resolution no. 2/1993 Coll. of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the constitutional order of the Czech Republic, Constitutional Act no. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of State Administration, Constitutional Act no. 110/1998 Coll., on the Security of the Czech Republic, and Constitutional Act no. 347/1997 Coll., on the Creation of Higher Territorial Self-Governing Units etc.

Laws are the universal form of legislative decision making adopted by the Parliament. For a law to be adopted, the simple majority of the present members in the Chamber of Deputies and the simple majority of present senators (i.e. simple majority in both houses) are required (Art. 39 (1) and (2) CCR). In the legislative process leading to the adoption of a law, the political will of the Chamber of Deputies is decisive. If, in the course of this legislative procedure, the Senate rejects a bill, the Chamber of Deputies can uphold the bill and pass it against the will of the Senate by an absolute majority of all Deputies (Art. 47 CCR). The same goes for the veto of the President of the Republic, which can also be overturned and the bill approved by an absolute majority of the all the Deputies (Art. 50 (2) CCR). Special sort of laws are consent laws, for the adoption of which is basically required the concurrence of the will of both chambers, i.e. the Chamber of Deputies cannot overturn the negative vote in the Senate. These types of laws are provided in Art. 39 (3) CCR and Art. 40 CRR (by absolute majority and qualified majority respectively) and include issues such as electoral laws, laws concerning the principles of dealings and relations of both chambers, movements of troops

or declaration of war. The following laws belong to the category of administrative law: Act no. 128/2000 Coll., on Municipalities, Act no. 129/2000 Coll., on Regions and Act no. 131/2000 Coll., on the Capital City of Prague, Act no. 500/2004 Coll., Code of Administrative Procedure, and Act no. 150/2002, Code of Administrative Justice etc.

Senate's legislative measure is a special type of legislation with the force of law (Art. 33 CCR). Its purpose is to keep the legislative power of the Czech Republic operational even when the Chamber of Deputies is dissolved. When such a situation arise (arises), the Senate is empowered to adopt legislative measures concerning matters which cannot be delayed and which would otherwise require the adoption of a law. It is meant as an interim and conditional legislative form, as legislative measures of the Senate must be approved by the Chamber of Deputies at its first meeting after the election. If they are not approved, they cease to be in force.

KEY TERMS

accession (to the EU)	přistoupení (k EU), vstup (do EU)
adopt	přijmout
bill	návrh zákona
bounds	meze
case-law	judikatura
Chamber of Deputies	Poslanecká sněmovna Parlamentu ČR
concurrence	souhlas, souběh
consent law	zákon vyžadující souhlas obou komor
constitutional law	ústavní zákon
constitutional order	ústavní pořádek
decision	rozhodnutí
directive	směrnice
dissolve	rozpustit
governmental order	nařízení vlády
implement	provádět
interim	prozatímní
internal regulation	vnitřní předpis
international treaty	mezinárodní smlouva

law (ordinary statute, statute)	zákon
legal order	právní řád
ministry regulation	vyhláška ministerstva
municipal generally binding regulation	obecně závazná vyhláška obce
municipal order	nařízení obce
other administrative body regulation	vyhláška jiného správního úřadu
ratify	ratifikovat
regional generally binding regulation	obecně závazná vyhláška kraje
regional order	nařízení kraje
Senate	Senát Parlamentu ČR
Senate's legislative measure	zákonné opatření Senátu
statutory regulation	statutární (stavovský) předpis

EXERCISES

I. Answer the questions:

1. How are conflicts between international treaties ratified under Art. 10 CCR and laws solved?
2. What is the hierarchy of sources of administrative law based on?
3. What are the requirements for a law to be adopted?
4. Is there a special type of legislation? If so, what is its purpose?
5. Can you name three Acts that are related to administrative law?
6. Can you draw a pyramid depicting the hierarchy of sources of administrative law?

II. Cross out the incorrect phrases:

- a) Normative sources of administrative law are: international treaties, the Constitution of the Czech Republic, rules of the administrative courts, Senate's legislative measures, secondary regulatory legislation, secondary derived legislation, secondary original legislation.
- b) Non-normative sources of administrative law are: internal regulations, fiscal regulations, self-government regulations, statutory regulations.

III. Translate the Czech words in brackets into English:

1. Administrative law is the practical _____ (provádění) of the policies of central government.
2. The concurrence of the will of both chambers is required for the _____ (přijetí) of consent laws.
3. The purpose of Senate's legislative measure is to keep the legislative power of the Czech Republic operational even when the Chamber of Deputies is _____ (rozpuštěna).
4. International treaties are _____ (schváleny) by the Parliament and _____ (ratifikovány) by the President of the Czech Republic.
5. Senate's legislative measure is meant as an _____ (prozatímní) and conditional legislative form.

IV. Fill the gaps with the right phrases:

the Constitution of the Czech Republic; the Chamber of Deputies; secondary derived legislation; Chambers of the Parliament; the Charter of Fundamental Rights and Freedoms; secondary original legislation

- a) Constitutional laws are passed by a special majority being necessary in both _____.
- b) In the legislative process leading to the adoption of a law, the political will of the _____ is decisive.
- c) _____ is adopted by territorial self-governing units.
- d) _____ can be referred to as "CCR".

V. Try to remember or look up answers to the following questions:

1. What year did the Czech Republic join the EU?
2. Which countries joined the EU along with the Czech Republic?
3. What Senate's legislative measures were adopted in the past?
4. Can you give an example of a presidential veto? What was the President's reasoning?