Binding of legal opinion of an appellate administrative body

Abstract

This thesis concerns quite a narrow subject, the binding of a legal opinion of an appellate administrative body. This principle is enshrined in Section 90 paragraph 2 subsection b) of Administrative Procedure Code, i.e. in a provision concerning a decision of an appellate administrative body. Binding legal opinion is linked with a cassational way of deciding, which indicates a type of decision which resides in sole annulment (revocation) of a challenged administrative decision and returning the case for new consideration.

The first chapter maps an evolution of anchoring issued principle in legal regulations of administrative procedure effective in Czech lands. Furthermore, it discusses a binding legal opinion in relation to remedial principles. The thesis highlights the negative tendency of overusing the cassational way of deciding by appellate administrative bodies, on the contrary, it also points out situations that disallow administrative bodies to use it. First chapter also presents some possible characters of issued legal opinions, which mainly means to what exactly is the administrative body that issues the new proceedings. This is connected to possible defects of challenged decision for which they are revoked.

Second chapter is about measure and extend of boundness of issued legal opinion, and especially about situations that can allow a breach of this binding opinion. Binding legal opinion shall be subsumed to a category of binding cassational decisions, which can be, regarding to their nature, breached. Via analysis of Supreme Administrative Court’s case law and literature regarding this topic, disputable situations that would allow the breach of the binding legal opinion are listed and discussed. These are, for example, the change of applicable law, finding about new facts in the case or an enunciation of a different legal opinion by another authority that tops an appellate administrative body with its reasoning and position. Author is trying to consider and reflect the fact that administrative bodies of the first instance are often burdened with these difficult situations, demanding high legal reasoning from them.

Following chapter is devoted to the analysis of the consequences of arbitrary breach of the binding legal opinion by administrative bodies of the first instance. First obvious aftermath is a damage compensation according to a special law, if incurred. Moreover, this chapter discusses possible disciplinary offences, whereas a special attention is dedicated to an
interesting nuance between legal regulations of disciplinary offence of government employee and officials of territorial self-governing units.

In the last chapter, nuances of relations between the administrative bodies are discussed. Clash of the independent deciding and binding legal opinion is firstly demonstrated on judicial appellate proceedings, following by detailed analysis of an independent deciding of administrative body and subordination of administrative bodies within the appellate procedure. To get a comprehensive view at the whole problem, the thesis discusses also relations between administrative bodies and courts as well as administrative courts and Supreme Administrative Court, for the rules and mechanisms dominating relations between these authorities can often be useful for mechanisms applying for appellate procedure.

Key words: administrative body, legal opinion, cassation