

Decision, Unlawful Interference and Failure to Act under the Code of Administrative Justice and Types of Administrative Actions

SUMMARY

This thesis deals with the concepts of decision, failure to act and unlawful interference by which administrative authorities may unlawfully interfere in subjective public rights; and with types of legal actions that may be used to resist these acts and/or delays by administrative authorities, as well as the relationships between those and the possible choice. According to lawmakers, the introduction of different types of actions was intended to ensure that nobody was deprived of the right of access to court. This undoubtedly increased individual procedural guarantees; however, there still might have been cases where a lawsuit was dismissed solely on procedural grounds – i.e., choosing the incorrect type of action, as courts applied the doctrine of strict inadmissibility. The Supreme Administrative Court has reacted to this and, together with the Constitutional Court of the Czech Republic, overcame this doctrine. The primary objective of this thesis is to analyse how the current case law regarding the choice of action type is applied, whether it actually leads to the intended goal in all cases and whether there might be room for an overall review of the administrative justice system.

The thesis is divided into six chapters. In the first chapter, I discuss the concept of decision and its defining features as defined by the Code of Administrative Procedure. In the second chapter, I discuss the concept of failure to act as defined by the Code of Administrative Procedure, pointing out that the concept is narrower than stated in the Code of Administrative Procedure or other legislation. In the third chapter, I focus on the concept of interference as defined by the Code of Administrative Procedure and demonstrate its defining features on concrete examples from the case law of administrative courts. The fourth chapter deals with the procedural legal regulation of the protection of public subjective rights, mentioning also the original regulation and reasons leading to its abolition. The fifth and principal chapter is where I describe the interrelations between the different types of action and present the aforementioned doctrine of strict inadmissibility of the types of actions, including the reasons it was applied by courts. Consequently, I analyse whether the Supreme Administrative Court's intervention has completely knocked down this doctrine, or whether it is still being applied to some extent. I also focus on the procedural aspect of the issue and, taking into account recent case-law, I examine what type of procedure courts ought to use when instructing the plaintiff on the incorrect choice of action type and consequences thereof. I critically apply the courts' obligation to instruct on the incorrect choice of action type to two recent cases (professional examination and measures introduced to prevent the spread of covid-19). Lastly, in the sixth and final chapter, I ponder different

solutions to the problems I have defined, and describe the advantages and disadvantages of the possible introduction of a general administrative action. I also consider whether the legislation and the Constitutional Court's decision-making practice regarding constitutional complaints may serve as inspiration for a general administrative action. I conclude the thesis with a summary of the issues and critical reflections.

I can already at this point infer that the doctrine of strict inadmissibility of different action types has been overcome, which I welcome since it is clear that this doctrine could have deprived individuals of their right to judicial protection. Instead, the court must instruct the plaintiff on what the correct action type is and show them the correct way to get to the desired result. However, the question remains whether the currently applicable rules really provide courts with the implements necessary to efficiently ensure the protection of public subjective rights. I attempt to give an answer to this question in my thesis, while also leaving space for further discussion that may lead to alterations *de lege ferenda*.

Key Words

administrative justice, types of administrative actions, decision, unlawful interference, failure to act