Abstract


In this dissertation I address the principle of subsidiarity of the Administrative Procedure Code, in particular I address the issue of current, previous and future application of the general rules of administrative proceedings in certain administrative proceedings and other procedures of the administrative bodies. This topic, which is close to my profession, is seen from the practical as well as from the theoretical point of view. The Czech administrative proceedings are analysed in both aspects de lege lata and de lege ferenda.

In introduction of this dissertation I describe basic terms relevant for definition of the mutual relation between legal acts. I emphasize mainly the possible meaning of the term subsidiarity and particularly its meaning expressed by the rule lex specialis derogat legi generali. I also address other terms such as reference, analogy etc.

Assessment of the application and subsidiarity of the Administrative Procedure Code is not limited to the current legal framework, but covers also applicability of the principle of subsidiarity of the Administrative Procedure Code in the past. It is necessary discuss the previous legal framework according to the Administrative Procedure Code of 1928, 1955 and 1960. I try to address also historical view taking into account the text of the previous laws and doctrine. As a follow-up to the historical developments, the basic grounds for the adoption of the current Administrative Procedure Code are stated and the way in which the historical circumstances affected the current administrative proceedings and other procedures in the public administration is described.

Subsequently I deal with the Administrative Procedure Code itself, its application and its relation to other laws. I address cases of full application of the Administrative Procedure Code, cases of subsidiary application and finally cases of no application. In this context it is necessary to stress the importance of some provisions of the Administrative procedure Code providing for its subsidiary application, namely Articles 1(2) and 180, or in view of application of the basic principles also Article 177. With reference to case-law I conclude that it is not possible to exclude the Administrative Procedure Code without application of any other law and the Administrative Procedure Code or some of its provisions must be always applied in case of performance of the public administration and there is no other rule in place. I point out several references to the Administrative Procedure Code in separate laws which are outdated or inaccurate and therefore of low usefulness.
Subsidiarity of the Administrative Procedure Code can not be assessed solely from the perspective of the Administrative Procedure Code as such, therefore it is necessary to describe the full or supportive application of its particular parts which relate not only to administrative procedure but also to basic principles of activities of administrative bodies, further activities in public administration, public contracts, measures of general nature or complaints.

Taking those parts into account I also address various controversial issues with regard to the assessment of certain procedural steps e.g. in the field of issuance of statements, certificates, consents, binding opinions or registrations. Such analysis determines which part of the Administrative Procedure Code is to be applied, namely whether parts two and three dealing with “formal” administrative proceedings or part four, dealing with other, less formal procedure.

I do not limit the work to the description of the current or previous legal framework, but I add also some de lege ferenda thoughts, regarding the possible fine-tuning of the Administrative Procedure Code and other laws.

Subsidiarity of the Administrative Procedure Code can not be seen only from the perspective of the wording of the Administrative Procedure Code. Hence I also focus on procedural provisions in other laws in order to demonstrate the principle of subsidiarity of the Administrative Procedure Code. In particular I concentrate on procedural provisions of the Tax Administration Act, the Misdemeanours Act, the Building Act and of the State Control Act as well.

It is stated that in some cases the procedural variations in special laws may be of importance. This is the case of special parties to the proceedings, competence of administrative authorities, time limits for a decision, or a special form of submission or decision which enable to cater for particularity of a procedure in question. Additional possibilities of cessation of proceedings, announcement of decision, abolition of suspensory effect of appeal in case of necessity or even abolishing of certain rights of appeal might be justified.

In other cases the process deviations are not justified, such as in case of basic proceeding principles, official language, letter of request, prejudice, delivery, representation, pledge, moment of initiation of proceedings, form of submission or decision, etc. These unjustified deviations are also dealt by this dissertation with the aim to reveal them, assess and to recommend their retention or abolishing with regard to homogeneity and internal consistency of the legal order.
Further expected development of legal framework in these areas is outlined with regard to current legislative process. The confrontation with foreign legal frameworks, especially with Slovak, German and Austrian legal framework, is carried out. Next months or years will indicate the real development of administrative procedure, whether redundant procedural deviations will be on the decrease and whether administrative procedure in the Czech Republic will be one day thanks to the full application or wider subsidiarity of the Administrative Procedure Code clearer and better unified than today.

**Keywords:** subsidiarity, the Administrative Procedure Code, administrative procedure, public administration, reference, process deviations