

SHRNUTÍ

(RESUMÉ)

This diploma work takes an interest in the problem of judicial administration. Its main theme is the question whether and what way it can be encroached on the independence of courts via the execution of judicial administration.

The existence of independent judiciary is the essential part of a democratic legal state. For that reason the principle of the independence of courts and judges is laid down in the constitutional regulations such as the principle of division of power which is connected with it. Judiciary must be separated from the other two branches of the state power in order to prevent from encroaching on ruling by the other powers and this way to reaching the main assignment that should be kept by judiciary, which means to guarantee independent, impartial and well-deserved decision of legal conflicts.

It is the obligation of the state to create such a quality system of guarantees to reach this goal. At the same time the state must guarantee the work of courts from the material, financial, personal side and the way of work at the court and also provide surveillance of decent executing the judiciary. These particular activities striving for working judiciary are the main content of judicial administration. Judicial administration involves all activities that are not its execution of judiciary, consequently the judicial decision, but they are connected with judiciary. There are administration activities that are usually made by the organs of the executive power in the system of state power. Certainly there is a problem whether it is possible to proceed also in relation to judiciary so whether judiciary can be managed by the executive power, which is otherwise in the mechanism of state power separated from the judicial power and so the execution of judicial administration by the executive power brings the danger of pressure on its judicial decision via execution of administration activities.

Therefore the subject of discussions is how much this system is satisfactory. On one side there is an opinion, the execution of judicial administration is one of the brakes in the system of division of power and so it is essential condition for keeping equality between the

single power. On the other hand the opponents of this solution draw attention to specification of judicial administration from ordinary state administration and to the impossibility of laying claim of common principles of executive power to the relation to judicial power, which must be independent, but not only if we speak about judicial decision, but also about the execution of judicial administration, otherwise the judiciary could not be independent indeed. These opponents are the supporters of what is called „judge autonomy“, who demand either judiciary to be managed by itself or to take over partly some authorities of the organs of executive power in the area of judicial administration

The work takes an interest in searching advantages and disadvantages of both the systems, the judge autonomy and the model of the administration of courts made by the executive power. The author after the introduction, in which he concentrates on a general expression of judicial administration, subject matter of its activity and its position in the system of the state power, especially from the point of view asserting the principles of the division of power and independence of judicial power, at first deals with the judge autonomy. In this part he tries to find advantages of this system but also the danger and difficulty which the gaining ground of the judge autonomy could bring, mainly the danger in full non-controlling of judicial power. That is the reason why the judge authority isn't realised on the original meaning, but it is modified the way the state power is left the certain control of the judicial power either by the possibility to influence the composition of the highest organ of judicial administration by nominating their own candidates or the part of the judicial administration is affected by executive power.

The further and the most extensive part of the diploma work deals with the second variant of judicial administration, it means the execution of judicial administration by the organs of the executive power. This way of judicial administration is explained based on detailed analysis of the contemporary law adjustment of judicial administration in the Czech Republic. In the Czech Republic this model is being used. This model, which is in the law of courts and judges, and it is the main source of this area, is signified as the state administration of courts. Judicial administration in the Czech Republic is built up hierarchically arranged relations of the signal organs of judicial administration, on whose top there is the Ministry of Justice, which has the position of the central organ of state administration in this area. The Ministry practises the state administration directly and also

through presiding and vice-judges. Just the position of the court officials (presiding and vice judges) is very interesting because they cumulate two offices and at the same time they still stay judges who ought to decide independently and impartially, and so they must be removed from any influence of other state power. And what is more they are the organs of the state administration of courts and they are subordinated to the Ministry of Justice, which means to the organ of executive power in all things of judicial administration. There is a question, to what degree it is possible to split up the execution of the office of a judge and a judicial office when it is practised by the same person. It is the reason why a big space in the work is given to the particular position of presiding and vice judges of courts, also the Judicature of the Constitutional Court of the Czech Republic is reflected, and the followed-up changes in the law adjustment, which were caused.

Although the model of judicial administration is not exercised in the Czech Republic, it is possible to find some features of the draft in the contemporary law adjustment, even if in limited extent. There are the councils of judges working at the single courts. The councils are composed of the judges and they express their ideas about the questions of judicial administration connected with the court the judges work for. However their conclusions are not legally binding and they have advisory character, they give the judges a possibility to become involved in judicial administration. In the future their role could be increased because in the Czech Republic the discussion about the reform of judicial administration has been running for a long time. There could be a passage to the model of the judge autonomy at least in limited extent when besides the Ministry there mainly could be the Supreme Council of Judges composed of judges that could take over the part of their competence in the sphere of judicial administration.

But the optimal searching model of judicial administration is shown not to be so easy. Evidently there is no completely ideal system. The diploma work shows each of drafts has their gaps and disadvantages. It is necessary to search such a solution that brings the least danger for independence of the judicial power, but which at the same time keeps checking mechanisms against non-controlled position of the judicial power in a state.