Abstract

The aim of this thesis is to explore the institute of administrative judiciary in the Czech Republic and the Republic of Poland using the comparative method. Its purpose lies in proving traditional similarity of administrative judiciary in both countries which potentially allows mutual influencing in different areas of legislation, application of law and jurisprudence. The work is divided into nine parts.

In Chapter 1 of this thesis the author focuses on defining the concept of administrative judiciary, how it is comprehended in both analysed countries, its purpose and function. In this part administrative judiciary is distinguished from other forms of judicial reviews of public administration and it is outlined here which of these forms cannot be considered as a part of administrative judiciary. Administrative judiciary is formally characterized as judicial procedure (in technical meaning) whose purpose lies in the control over public administration and protection of civil rights.

In Chapter 2 the author describes the development of administrative judiciary in both countries. A special significance in this matter is given to the Austrian tradition of administrative judiciary that was adapted by Czechoslovakia and Poland when both sovereign states came into existence on the territory of the former Austro-Hungarian Empire. The first change of direction in the Polish administrative judiciary was made under Prussian and French influence. After the Second World War administrative judiciary was replaced with prosecution control in both countries. Unlike Czechoslovakia where there were only professional discussions being held in late 60s, Poland continuously struggled to restore administrative judiciary and they finally succeeded in 1980. Thanks to this fact Poland entered the process of transformation in 90s with restored administrative judiciary in function while in Czechoslovakia the restoration was a result of democratic changes. The author further describes the development in 90s until the last reform in both countries from 2002.

In the following parts of the thesis the author focuses on current legislation. Chapter 3 of this thesis has been devoted to describing the basics of administrative judiciary from the point of view of constitutional, international and European law. As a matter of fact, due to the fact that both countries are members of the European Union and the Council of Europe, the foundations of administrative judiciary in both countries from the point of view of international obligations can be described as nearly the same. However, the constitutional regulations indicate a different development in the process of accepting new democratic laws in the 1990s. The rapidly legislated Constitution of the Czech Republic does not address many issues concerning functioning of administrative judiciary or leaves them open for interpretation (the scope of court control, organisations, relation to constitutional judiciary, legal means etc.). As a consequence, freedom for lawmakers emerges how or even if particular aspects of administrative judiciary will be altered or not. As a comparison, the Constitution of the Republic of Poland does embrace these details as it was accepted after a long-lasting social debate and with an already long-term, successfully existing Supreme Administrative Court of the Republic of Poland. To illustrate an example, the Polish constitutional order guarantees the right to appeal against the first instance administrative court of law whereas the Czech law in this respect follows standards of the international law which does not provide such a right.

Chapter 4 of this thesis embraces a discussion on legislation concerning the institution of court in administrative judiciary. Constitutional foundations of the institution and the character of the administrative judiciary system are both scrutinized in this part of the thesis. Moreover, the author examines separately the legislation of lower tiers of this system as well as legislation of higher administrative courts with a special focus on the judge as well as other professionals and the structure of the court itself. The description ends with a presentation of instruments for the judiciary to become uniform. The aim of the author is to prove which assets an independent functioning of administrative court system, separated both from the public administration and from the fair courts (unified administrative judiciary), might bring.

Chapter 5 of this thesis has been devoted to the comparison of power and court jurisdiction in the administrative judiciary. First of all, the issue has been addressed in which cases administrative courts in the Czech Republic and the Republic of Poland are allowed to make decisions. It might appear to be arising from the regulations that the protection from public administration is a broader term in the Republic of Poland than in the Czech Republic. However, the latest practice of the Supreme Administrative Court in the Czech Republic makes the difference become a blur. This part of the thesis also outlines other areas which are entrusted to the administrative courts in both countries, such as decision making in jurisdictional disputes, election judiciary, and disciplinary (criminal) judiciary. Differences between both countries in the above mentioned fields of law have been discussed. Regulations concerning local authority of regional courts of law have been scrutinized in subsequent sections of this chapter. Finally, the author of this thesis describes ways of solving jurisdictional disputes between administrative and civil courts. At this point, the Czech Republic system is based on the tradition of the interwar legal regulations, which bore a close resemblance to the Polish regulations at that time. The comparison shows that the Czech regulations are more suitable in this field of analysis.

Chapter 6 of this thesis comprises of the basic characteristics of proceedings in the administrative courts. The author concludes from his comparative analysis that the current Czech system emphasizes the particular role of administrative courts to protect (public) subjective rights of legal persons whereas the Polish regulations highlight the importance of controlling the scope of activities of public administration. The aforementioned differences are to be observed in such fields as independence of the first instance administrative court in areas of the scope as well as causes for legal actions, more extensive range of legal actions authorization by prosecuting bodies, an ombudsman as well as social organizations. In fact, it is the role of public prosecutor and ombudsman that has been addressed in the thesis as one of the most significant points. In this part of analysis, the author also discusses and compares non-standard proceedings in the administrative judiciary, which have been marked as alternative ways of solving disputes. The result is supposed to be proving effectiveness and

authorization of public prosecution bodies as well as existing ways of alternative disputes' solving, which ought to be extended according to the present author.

Chapter 7 of this thesis has been devoted to legal remedies in the administrative judiciary proceedings. At this point, it is more than anywhere else visible that the Republic of Poland had experience related to administrative judiciary as soon as in the Interwar period and the Polish law following the resumption of administrative judiciary in the year 1980 provided for the possibility to serve legal remedies as well as to take advantage of other legal means. The result thereof is a more extensive possibility to assert these means in the Polish administrative court prosecution which give a legal person a wide protection of his rights and follow the European trends in a more accurate way.

In Chapter 8 of this thesis, the issue of administrative court in the material sense has been addressed, i.e. independent controls of administrative judiciary run by bodies which are now formally arranged as the executive power (public administration), performing however in the court position in a material sense (independent administrative tribunals). In both countries one can come across bodies which relate to the independent administrative tribunal. However, none of them fulfil suitable criteria to be considered as such. Advantages of establishing such bodies are highlighted in this part of the thesis.

In the last Chapter of the thesis, the author focuses on casuistry and the place of administrative judiciary in the system of power sharing. It appears as a modern trend to subordinate the administrative activity bodies, which are traditionally beyond the court control (the president of the republic, chambers of parliament) to the review of administrative courts. For the time being, the Czech administrative courts of law review such activities whereas the Polish administrative courts of law stick to the conservative approach, whereby their legal control is rejected. The author does not want to take sides or favour any of the aforementioned approaches and stands for submitting these activities to the constitutional law.

The conclusion of the thesis comprises of a summary of all chapters presented by the author.