

Abstract

The relationship between constitutional and administrative justice might be defined as very close. In many fields of their jurisdiction, including the judicial review of legal regulations, there is no strict line of demarcation. Contrary to the control of constitutionality of laws that unambiguously belongs to constitutional courts, the judicial review of legal regulations other than laws (secondary legislation) may be under certain circumstances performed also by administrative justice.

Pursuant to the Article 87, paragraph 3, letter. a) of the Constitution of the Czech Republic, a law may stipulate that in respect of repeal of legal regulations, which are in violation of the law, rulings shall be issued by the Supreme Administrative Court in place of the Constitutional Court. Notwithstanding the foregoing, such constitutional delegation has not been applied till now and mentioned review of secondary legislation still belongs to constitutional justice.

The major objective of this study is to analyse specifics, advantages and imperfections of secondary legislation review performed by administrative courts.

In the first part, the thesis focuses on historical development of models of administrative justice (with special attention to judicial review of legal regulations) and also mentions related judicial matters falling within the competence of administrative courts - in particular decision on conflicts of competence between administrative authorities and/or territorial or professional self-governing bodies and review of measures of a general nature.

The thesis then describes concrete examples of judicial review in some Central European countries where the control of lawfulness of secondary legislations falls within the competence of administrative courts. In particular, the author provides comparison of systems in Germany, Poland and Slovakia where the administrative courts are entitled to review legal regulations of local and regional self-government.

The sixth chapter contains history of administrative control of legal regulations in Czech justice - i.e. incorporation of mentioned Article 87, paragraph 3 to the Czech Constitution and attempts of its realization, and a text of Code of Administrative Justice proposed by the government in 2001.

In conclusion, the author analyses the relevant expert discussion related to potential

delegation of control of secondary legislation to Supreme Administrative Court and summarizes all positive and negative aspects of such delegation, including de lege ferenda suggestions that reflect relevant international praxis.