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# Czech Administrative Law – Legal regulation of procedure language in administrative proceedings

*Motto: Public administration is a service for the public.*

Rules of Administrative Procedure are undoubtedly among the most important legal regulations that the Czech administrative law deals with and in the area of administrative procedure it is the essential regulation. Regarding the importance of rules of administrative procedure I fully agree with V. Mikule who wrote among others: *Rules of Administrative Procedure as a legal instrument regulating proceedings before public authorities has a similar role in a democratic state as Rules of Court Procedure: it regulates certain ways of the exercising of the public power (pursuant to Article 2, Paragraph 3, Constitution, the public power may only be exercised by ways stipulated in legislation) and it is even more important because of the increasing complexity of the social life which is linked with an ever increasing frequency of public law regulations that people come into contact with in their lives.*<sup>1</sup>

Since January 1, 2006, new Rules of Administrative Procedure have been effective in the Czech Republic. My article is focused on the question of procedure language in administrative proceedings.

Whereas the old Rules of Administrative Procedure – i.e. in the Czech Republic the legendary Act No 71/1967, Coll. – did not have a regulation of the procedure language in administrative proceedings, the new RAP already have this urgently needed institute. The absence of a general regulation of procedure language led to the situation when this institute was repeatedly (and it is necessary to say that not always uniformly) regulated by special provisions. The uniform regulation must be taken as a step towards making the whole legal regulation more transparent and towards strengthening legal certainty, i.e. a movement in the right direction.

The Act No 500/2004, Coll., Rules of Administrative Procedure, stipulates that proceedings are conducted and documents are made in the *Czech language*. However, there has been a breakthrough in the domain of Czech in adminis-

trative proceedings made by the provision that parties to the proceedings<sup>2</sup> may conduct their case, and documents may be submitted, also in the *Slovak* language. The exceptional legislative position of Slovak is due to the long-term common historical traditions of Czechs and Slovaks and also due to the language proximity which contributes to the general understandability of the Slovak language in the Czech territory. The special position of Slovak is nothing new in Czech procedural regulations, for example the Act No 337/1992 on administration of taxes and fees stipulates in Section 3 that *before the tax administrator the proceedings are held in Czech or Slovak languages. All written petitions are submitted in Czech or Slovak and documentary evidence must be accompanied with an official translation from one of these languages.*

In future, however, Slovak might present certain difficulties, especially to younger workers in the state administration. Here it is worth noting that children nowadays have difficulties in understanding Slovak (for example, in Slovak films) as they have not experienced the common state of Czechs and Slovaks. It is possible that for those potential workers in the state administration some language courses will be necessary that would help them understand parties to the proceedings conducting their case in Slovak.

<sup>2</sup> Parties to the proceedings pursuant to the (new) rules of administrative procedure are:

- a) in application proceedings the applicant and other affected persons to whom the decision of an administrative authority must apply because of the unity of rights or duties with the applicant;
- b) in proceedings by virtue of office the affected persons for whom the decision is supposed to constitute, to change or to abolish a right or a duty or to declare that they have or do not have a right or a duty.

Parties to the proceedings also include other affected persons if they may be directly affected by the decision in their rights or duties.

Parties to the proceedings also include persons determined by a special law. Unless the special law stipulates otherwise they have the position of parties to the proceedings pursuant to Paragraph 2, except for the situation when the decision is supposed to constitute, to change or to abolish a right or a duty or to declare that they have or do not have a right or a duty; in that case they have the position of parties to the proceedings pursuant to Paragraph 1.

<sup>1</sup> V. MIKULE: Nový správní řád je konečně na světě (New Rules of Administrative Procedure are finally here), Právní zpravodaj č. 9/2004, C. H. Beck, Prague, 2004

It is also worth noting that despite the fact that the Rules of Administrative Procedure apply in the whole territory of the Czech Republic the knowledge of Slovak is not homogeneous, of course – the further one recedes from the Czech-Slovak border the lower that knowledge usually is<sup>3</sup> even if there is probably a smaller number of proceedings conducted and documents submitted in Slovak there. At the theoretical-legal level I can imagine that if “our” two languages have diverged even more in future (I mean in dozens of years) and the Slovak language have become non-understandable for most citizens of the Czech Republic, it would be necessary to amend the Rules of Administrative Procedure again, i.e. Slovak would lose its *privileged* procedure status. Another piece of this “Czech-Slovak” mosaic is the legislative fact that the Act No 500/2004, Coll., is based on certain principles included in its introductory sections and in this context it seems to me fitting to note the principle from Section 4, Paragraph 1, Rules of Administrative Procedure, that *public administration is a service for the public*.<sup>4</sup> *Anyone who fulfills duties resulting from the power of an administrative authority is obliged to treat the affected persons politely and to accommodate them within his limits.* In my opinion a genuine effort to understand a party conducting his case in Slovak may be one of the right ways to come up to the principle laid down in the above mentioned Section 4, Paragraph 1, Rules of Administrative Procedure.

For example, may a local authority in the Czech Republic<sup>5</sup> make an administrative decision in the *Slovak language*? As mentioned above, pursuant to the Rules of Administrative Procedure parties to the administrative proceedings may conduct their case in Slovak and documents may be submitted in Slovak. However, this only applies to the parties to the administrative proceedings and not to the administrative authorities (or clerks).

For the sake of completeness we should add that persons working in a local authority must, among others, have a command of the *procedure language*, i.e. the Czech language, pursuant to the Act No 312/2000, Coll., on clerks of territorial self-governing units.

Pursuant to Section 16, the new RAP, documents made in a foreign language (i.e. another language than Czech and Slovak) must be submitted by the procedure participant in both the original wording and the officially verified translation into Czech unless the administrative authority notifies the procedure participant that such a translation is not required. The law provides the administrative authority with the possibility that such a *notification* may also be made on its official notice board and for an indefinite number of procedures in future. In the eyes of the administrative law the above mentioned notification is not a decision or ruling but the so-called informal communication of the administrative

authority and it may concern either all its future procedures (without limitation) or only certain ones within its power.<sup>6</sup>

Any person declaring that he/she does not have the command of the language in which the procedure is conducted has right to an *interpreter* registered in the register of interpreters whom he/she has to hire *at his/her own expenses*. Here the Rules of Administrative Procedure help accomplish Article 37, Paragraph 4, Bill of Fundamental Rights and Freedoms, i.e. the regulation of the highest legal force. In the above mentioned article the Bill of Fundamental Rights and Freedoms sets forth that the person who declares that he/she does not have the command of the language in which the procedure is conducted has right to an interpreter. It should be noted that this right is even recognized for a person with no citizenship, i.e. the so-called stateless person.

As the popular saying goes, and not exclusively among lawyers, the money is in the first place so let us ask a question: Who pays for the costs of an interpreter in administrative proceedings? In the proceedings for an application the applicant, who is not a citizen of the Czech Republic, hires an interpreter at his own expenses.<sup>7</sup> This rule does not contravene the Bill of Fundamental Rights and Freedoms as this constitutional document does not establish a duty of the state (or administrative authorities) to meet the above mentioned costs. Nevertheless, I agree with the opinion of J. Vedral, a co-author of the RAP, that in the case of proceedings conducted *by virtue of office (ex officio)*, i.e. in proceedings started by an administrative authority the costs for an interpreter is to be met by the administrative authority itself.<sup>8</sup> Therefore we have to make a strict distinction between *ex officio* proceedings and proceedings started by the applicant; in the latter case the costs for an interpreter are met by the applicant himself/herself – *the person who is not a citizen of the Czech Republic*.

Another legal exception from the duty of meeting costs for an interpreter is Act No 325/1999, Coll. on asylum. We may say briefly about the specific asylum procedure that the participant to the procedure has the right to use his/her native language or a language he/she is able to understand. For this purpose the Ministry of Interior of the Czech Republic provides him/her with an interpreter *free of charge* for the whole duration of the procedure. The participant is entitled to invite an interpreter whom he/she wishes at his/her expenses.<sup>9</sup> The remuneration for the interpretation and meeting the costs connected with it is stipulated in an agreement between the Ministry of Interior and the respective interpreter. The amount of the remuneration and the related costs is not allowed to go beyond the level established in Act No 36/1967, Coll., on experts and interpreters.<sup>10</sup>

However, let us return to the regulation of the administrative procedure. A citizen of the Czech Republic who is a

<sup>3</sup> Even if there are exceptions, for example, there is a relatively large Slovak minority in the capital of Prague.

<sup>4</sup> The introductory sentence was kindly used by the author as a motto of this article.

<sup>5</sup> For example, when the clerk is a Slovak living and working in the Czech Republic.

<sup>6</sup> Comp. Vedral, J.: Rules of Administrative Procedure – Commentary, Bova Polygon, Praha, 2006, p. 146. The author gives an example of limitation to the procedure pursuant to the Building Act.

<sup>7</sup> Comp. Section 16/Para 3, Act No 500/2004 Coll.

<sup>8</sup> Comp. Vedral, J., op. cit. (2006), p. 147.

<sup>9</sup> Comp. Section 22, Act No 325/1999 Coll.

<sup>10</sup> Comp. Section 35, Act No 325/1999 Coll.

member of an ethnic minority<sup>11</sup> living traditionally and in the long term in the territory of the Czech Republic – see *Act No 273/2001 Coll. on rights of members of ethnic minorities and on changes of some other Acts* – has right to bring a petition and to use the language of his/her ethnic minority before an administrative authority. But it should be noted that in that case the costs of interpreting and translating are met by the *administrative authority*, not by the participant – *a member of an ethnic minority*.

Here it is necessary to note one problem resulting from the EC law. As F. Křepelka rightly pointed out in a paper on the use of languages of EU member states before Czech administrative courts<sup>12</sup> *the same rights* are generally given by the EC law to citizens of other EU states as to the natives. As for the use of languages before authorities and courts this principle was upheld by the Court of Justice with, among others, the judgment in *Bickel v. Franz*.<sup>13</sup> If the Poles in the Czech territory have right to use their language before administrative authorities and courts then the same right belongs to the Poles who are citizens of the Polish Republic, at least pursuant to the EC law. However, the Czech Rules of Administrative Procedure recognizes that right *only* for citizens of the Czech Republic. (So not for the above mentioned Polish citizens – this might present a problem in future.)

The new RAP, as a procedural administrative regulation of a modern welfare state, guarantees procedural protection of seriously handicapped persons in order not to lessen their rights due to their worsened procedural position within administrative procedure because of their health condition. Specifically, the law stipulates that deaf persons must be provided with an interpreter of finger alphabet by the administrative authority pursuant to Act No 155/1998 Coll. on finger alphabet. The deaf persons are defined in Section 2 of the above mentioned Act as such persons that lost their hearing before the development of the spoken language and the degree and the form of their hearing handicap do not allow a full development of the spoken language, and further such persons that lost hearing later or that are hearing-impaired and consider

the finger alphabet their *primary* form of communication. The above mentioned finger alphabet is in the eyes of the law the Czech finger alphabet (ČZJ) and signed Czech.<sup>14</sup>

The deaf person that does not have command of the finger alphabet must be provided by the administrative body with the so-called *intermediator* who is able to make himself/herself understood with him/her by means of the *tactile language*. It is praiseworthy that the new RAP expressly mention the deafblind persons who were neglected in the Czech legal order for a long time.<sup>15</sup> The deafblind person will be provided with not an interpreter but an intermediary who is able to make himself/herself understood with him/her through the language for the deafblind.<sup>16</sup> (For example, Finger Alphabet or Lorm's Alphabet). An intermediary is appointed under the same conditions as an interpreter of sign language. The administrative authority makes a decision about appointing an interpreter or an intermediary and does not communicate it erga omnes but only to the affected persons.

## Conclusion

When comparing the quality of the legal regulation of procedure language in administrative proceedings and, for example, the regulation of “languages” in administrative judiciary – the Czech administrative courts still have to apply the outdated Section 18, Civil Procedure Code<sup>17</sup> despite the existence of relatively new Rules of Administrative Court Procedure – I come to the conclusion that the regulation in the Rules of Administrative Procedure is more elaborate and of higher quality despite the above mentioned partial drawbacks.

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<sup>11</sup> *Ethnic minority* is defined by law as a community of citizens of the Czech Republic living within the territory of what is now the Czech Republic who differ from the other citizens usually by their common ethnic origin, *language*, culture and traditions, who form a numerical minority within the population and at the same time manifest their will to be regarded as an ethnic minority for the purposes of common efforts at preserving and developing their own individuality, language and culture, and for the purposes of expressing and protecting interests of their historically established community. Pursuant to Act No 273/2001, Coll., a member of an ethnic minority is a citizen of the Czech Republic who acknowledges himself to be of a nationality different than the Czech one and expresses a wish to be regarded as a member of an ethnic minority together with other persons acknowledging themselves to be members of the same nationality.

<sup>12</sup> Comp. Křepelka, F.: The use of foreign languages before Czech administrative courts after joining the EU, *Správní právo* No 6/2007.

<sup>13</sup> Judgment C-274/96 of 24/11/1998, I-07637. A German tourist and an Austrian driver were taken to court in the bi-lingual Italian-German province of Trentino-Alto Adige (South Tyrol) for violating the prohibition of importing weapons and drunken driving. Both of them demanded the trial to be held in German. However, the Italian law in the province allows that only for members the local German-speaking minority. More details in Křepelka, F., op.cit. Footnote 9.

<sup>14</sup> ČZJ is the basic communicative means of the deaf in the Czech Republic. ČZJ is a natural and fully-fledged communicative system created by specific visual-gestural means, i.e. hand shapes, hand positions and movements, mimics, positions of the head and the upper part of the trunk. ČZJ has the basic attributes of a language, i.e. signs, system, double articulation, productivity, peculiarity and history, and its lexis and grammar are settled.

<sup>15</sup> See for example Kolman, P.: Deafblindness as a neglected problem, *Slovo daily*, 2/5/2000, Prague 2000.

<sup>16</sup> Here we may mention, for example, the method of the so-called Finger alphabet. There are one-hand and two-hand finger alphabets. In the Czech Republic the two-hand finger alphabet is mainly used. The person with a total loss of sight recognizes signing in his hand and if he/she has residual sight signing within his restricted visual field is used. Another communicative method is the so-called Lorm's alphabet – a hand-touch alphabet where individual letters of the alphabet are attached to individual places on fingers and the palm so it means actually to write individual letters of the alphabet on the palm, preferably the left one of the receiver. More details at <http://lorm.cz/cs/hluchoslepi>, run by LARM – Society for the Deafblind.

<sup>17</sup> This issue was thoroughly (and critically) dealt with by Křepelka, F.: *Užívání cizích jazyků před českými správními soudy po vstupu do Evropské unie* (Use of foreign languages before Czech administrative courts after joining the EU), *Správní právo* No 6/2007.

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