ORGANIZATIONAL ARRANGEMENT OF AN ADMINISTRATIVE AUTHORITY AS A PREREQUISITE TO A DUE ADMINISTRATION OF COMPETENCE (PRESENTED ON THE COUNCIL FOR RADIO AND TELEVISION BROADCASTING)¹

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POUPEROVÁ, Olga. Organizational Arrangement of an Administrative Authority as a Prerequisite to a Due Administration of Competence (presented on the Council for Radio and Television Broadcasting). *International and Comparative Law Review*, 2013, Vol. 13., No. 2, pp. 51–65. DOI: 10.1515/iclr-2016-0070.

Abstract: Within the structure of public administration there exist administrative authorities with a relatively standardized external and internal organizational arrangement but also administrative authorities which, with regard to their specific competences and other aspects, important during the adoption of the establishing Act by the Parliament, are attributed an exceptional position. In the Czech Republic such case is represented by the Council for Radio and Television Broadcasting.

The paper focuses on those problematic aspects of the decision-making process of the Council for Radio and Television Broadcasting that ensue from its organizational arrangement. A certain specific organizational system of an administrative authority may become a source of shortcomings and cause that a decision of an administrative body will fail the judicial review and eventually bring about additional expenses for both the participating addressees of public administration as well as the public administration itself.

Keywords: administrative authority, administrative body, collegiate body, the Council for Radio and Television Broadcasting

I. Introduction

Within the structure of public administration there are administrative authorities with a relatively standardized external and internal organizational arrangement (e.g. ministries) but also administrative authorities which, with

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- 1 The paper was presented at the international Bratislava Legal Forum 2013 taking place at the Komenský University in Bratislava, Slovak Republic, from 10th October to 11 October 2013.
 - 2 POST-UP CZ.1.07/2.3.00/30.0004. This project is co-financed by the European Social Fund and the state budget of the Czech Republic.

regard to their specific competences and other aspects, important during the adoption of the establishing Act by the Parliament, are attributed an exceptional, hardly comparable, position. In the Czech Republic, such case is represented by the Council for Radio and Television Broadcasting (further referred to as the "Council").

The Council as an administrative authority was established by Act No. 231/2001 Coll. on Radio and Television Broadcasting and on Amendment to Other Acts (further referred to as "Broadcasting Act") (Section 4, subsection 1).³ It executes competence specializing in administration of radio and television broadcasting and audio-visual media services on demand⁴ in the statewide territory. Further to the conflict over competence between the Council and the Czech Telecommunication Authority the Council was qualified by the Constitutional Court⁵ and subsequently also by the law⁶ as a *central administrative authority*.

Despite the fact that the Council is a central administrative authority, there is no permissible remonstrance⁷ nor any other administrative law remedy against its decisions. The sole defence available to a party is thus an action filed with an administrative court (compare Section 66 of the Broadcasting Act).

Taking into account the existing decision-making activity of the Council and consequential reviews of administrative courts we can identify two (potentially) "risky" organizational aspects that could become a source of shortcomings and consequently the reason for a decision to be proclaimed illegal and dissolved by an administrative court. Such aspects include: 1) the collegiate character of the Council⁸ and 2) the existence of the Office of the Council for Radio and Television Broadcasting (further referred to as the "Office of the Council").

- 3 Compared to previous regulation in which the Council of the Czech Republic for Radio and Television Broadcasting, the predecessor of the current Council, was not expressly granted the status of an administrative authority. Compare Section 1 subsection 1 of the Act No. 103/1992 Coll. on the Council of the Czech Republic for Radio and Television Broadcasting.
- 4 Audiovisual media services on demand further referred to as "AVMS on demand") regulated by Act No. 132/2010 Coll. on Audiovisual Media Services on Demand; compare POUPEŘOVÁ. Audiovizuální mediální služby na vyžádání (Audiovisual Media Services on Demand), *Právní rozhledy*, no., p. 350-356.
- 5 Ruling of the Constitutional Court, Constitution 52/04, available at <http://nalus.usoud.cz/Search/Search.aspx>. Compare POUPEŘOVÁ. O. Ústřední správní úřady – formální, nebo materiální pojetí? (Central Administrative Authorities - Formal or Informal Conception?), *Právník*, 2012, no. 1, p. 67-77.
- 6 Chapter III, Article 1 of Act No. 302/2011 Coll. amending Act No. 483/1991 Coll., on the Czech Television, as amended, and some related acts.
- 7 It is possible to file a remonstrance against a decision issued by a central administrative authority, a minister, minister's secretary, or a chief clerk of another central administrative authority of first instance. (Section 152 subsection 1 of the Code of Administrative Procedure).
- 8 The Code of Administrative Procedure state the term "collegial body" (Section 134 of the Code of Administrative Procedure), as it may be considered misleading, I prefer the term

II. The Council for Radio and Television Broadcasting is a collegiate body

The term “collegiate body” refers to a body whose normative expression of will, supposed to have external effect, is formed on the basis of expression of will of individuals who are members of the collegiate body.⁹ Compared to the chairperson of a monocratic authority, the chairperson of a collegiate body is in a different position, for he or she does not dispose of decisive influence upon the formation of the expression of will of the college but has a role of the *primus inter partes*.¹⁰ During the decision-making procedure members of the college play a “collegial game” - they pursue their own idea of a legally and politically correct solution to a particular issue while limited not only by norms valid for a given body but also by ideas or assumed ideas of their colleagues.¹¹

In fact, collegiate arrangement is not unique not only within the domain of public administration, but also within the framework of bodies with decision-making authority across the three branches of state power in general.¹² The principle of collegiality was introduced into public administration following the example of courts but it is also intrinsic to legislative bodies (the representative element) and to bodies which do not formally belong to the classical triad of state power. Within state administration the collegiate character is considered a manifestation of independence and thus it is peculiar to independent administrative authorities. Within self-government it demonstrates the authority to autonomous administration of own affairs.

“collegiate body” in this paper.

- 9 Compare e.g. MAYER, H et al. Fachwörterbuch zum Öffentlichen Recht, p. 270. HENDRYCH, D. Správní věda: Teorie veřejné správy (Administrative Science: The Theory of Public Administration), p. 103.
- 10 HOETZEL, J. Úřad veřejný. (Public Authority). In: Slovník veřejného práva československého (Dictionary of Czechoslovak Public Law), p. 103.
- 11 “The Collegial Game” in relation to court decisions is treated by e.g. MALTZMAN, F., SPRIGGS II., J. F., WAHLBECK, P. Crafting Law on the Supreme Court: The Collegial Game. Cambridge.
- 12 E.g. in relation to the Czech National Bank (Bank Council of the CNB) and to some extent in relation to the Supreme Audit Office (Board of the Supreme Audit Office, compare in more detail e.g. POUPEROVÁ, O. Nejvyšší kontrolní úřad (The Supreme Audit Office). In: Kontrolní mechanismy fungování veřejné správy (Control Mechanisms within Public Administration), p. 233 et seq.

The Council is one of the so-called independent administrative authorities^{13,14} in which we observe the tendency to arrange them, the same as courts, as collegiate bodies¹⁵ for it is assumed that the decision of a college is more difficult to manipulate (by representatives of political as well as business lobby) and that a college provides for a balance in argumentation and it eliminates possible excessive conceptions related to regulation. The principle of collegiality increases objectiveness and legitimacy of a decision and it is of high importance especially in case a decision of an authority is to a large extent based on the use of administrative discretion and interpretation of vague legal concepts.

The basic procedural elements of proceedings before a collegiate body are laid down in general terms by the Act No. 500/2004 Coll., Code of Administrative Procedure (Section 134, as part of special provisions on proceedings before an administrative body)¹⁶, some other particularities are laid down in the Broadcasting Act.

“The collegiate character of an administrative body has ... profound influence only on its ‘inner’ functioning and it manifests itself mainly through the necessity of a certain mechanism controlling internal decisive methods (especially the rules of vote transforming individual will of a number of authorised persons of these bodies into administrative will of a collegiate body as the only and unified entity holding authoritative powers) nevertheless, that does not change the fact that “outwardly”, i.e. especially if communicating with a party to the proceedings, the given body manifests itself and shall act as one entity.”¹⁷

In terms of formation of the final expression of will regarding a decision on an issue that was a subject of proceedings held by the Council (i.e. formation of the operative part of the decision), considering the mechanisms set by law and

13 At times referred to as an “absolutely independent administrative authority”. Compare SLÁDEČEK, V. *Obecné správní* (General Administrative Law), p. 301 et seq. However, no administrative authority can have absolute independence as every administrative authority will be dependent at least financially (its activity must be covered in some way - in the Czech context most probably from the national budget) and in terms of its creation (must be established with the participation of another state body). The concept of independent administrative authorities as such and its conflict with Article 67 of the Constitution of the Czech Republic has been left untreated in this paper.

14 Justification and analysis of its independence is a structured topic. Compare e.g. POUPEŘOVÁ, O. *Několik poznámek k návrhům na zrušení Rady pro rozhlasové a televizní vysílání* (Comments on the Proposal to Dismiss the Council for Radio and Television Broadcasting). In: *Správní právo*, 2013, no. 7-8.

15 Although there are administrative authorities that are considered independent but at the same time organized as monocratic authorities. In the Czech Republic it is e.g. the Energy Regulatory Office or the Czech Statistical Bureau.

16 For more detail see VEDRAL, J. *Správní řád: komentář* (The Code of Administrative Procedure: A Commentary), p. 1013 et seq.

17 Judgement of the Supreme Administrative Court from 16th April 2010, Ref. No. 7 As 11/2010-139, available at <http://www.nssoud.cz/Uvod/art/1>.

the Rules of Procedure of the Council, one should not expect any problem. The formation of expression of the Council's will is based on votes given by its members, the vote of any of the thirteen members of the Council being of the same importance. The law provides for the quorum limit (Section 8, subsection 1 of the Broadcasting Act) and quorum for a valid adoption of a decision (Section 8, subsection 2 of the Broadcasting Act).

According to provision in Section 8, subsection 4 of the Broadcasting Act, the Council shall follow Rules of Procedure. As to the decision-making process, the Rules of Procedure lay down that the Council shall make a resolution through voting, the same standing for all decisions for which the law prescribes the announcement to parties to the proceedings through delivery (with two exceptions stated in Section 3 subsection 1) of the Rules of Procedure). The resolution is thus the only form through which the Council as a collegiate body can express its decision to parties to the proceedings, the public and other public bodies.¹⁸

The Rules of Procedure of the Council also specifies by whom and how a draft resolution of the Council shall be filed (Section 6, subsection 10) and lays down the right to a dissenting opinion (Section 6, subsection 11). The right to a dissenting opinion is very unique in the domain of public administration. It usually relates to courts, for the most part with those of higher instance,¹⁹ which may also be considered a quasi judicial element.

The point that is not expressly treated by any act or the Rules of Procedure is the consequential phase - reasoning the Council's decision. This is quite interesting, if we consider that even in a decision taken unanimously any member of the college can have a different reason to have voted in a certain way and not in another. The problem then is to reason the decision of the college as a whole convincingly. This aspect, as mentioned above, is not a specificity of the Council and not even the administrative authorities but it is also dealt with in connection with the justification of verdicts by court panels.

In relation to judgments of the Supreme Court of the United States of America majority and plurality opinions are distinguished. We speak about plurality opinion when the majority decides on the result but neither of the reasons brought forward by each individual judge gets a majority support.²⁰ Studies prove that cases with plurality opinions occur mostly in hard cases with constitutional dimension, deciding on civil rights and fundamental freedoms.²¹ This dimension

18 Compare judgement of the Supreme Administrative Court from 7th February 2013, Ref. No. 7 As 101/2012, available at <http://www.nssoud.cz/Uvod/art/1>.

19 In the Czech Republic the right to a dissimilar standpoint is laid down in Section 14 of Act No. 182/1993 Coll. on Constitutional Court for judges of the Constitutional Court and in Section 55a of Act No 10/2002 Coll. of the Code of Administrative Justice for judges of the Supreme Administrative Court.

20 Compare e.g. SPRIGGS II, J.F., STRAS, D. R. Explaining Plurality Decisions, p. 515-570.

21 Compare e.g. CORLEY, C.P., SOMMER, U., STEIGRWALT, A., WARD, A. Extreme Dis-

often relates to decisions of the Council as well. Further studies²² show that the decision-making procedure within the college is, among other things, a question of strategy.²³ The occurrence of pluralist opinions and their extent is to a certain measure influenced by non-legal aspects, including the nature of individuals that make up the college, or the prevalence of dominant persons who are able to give reasons that persuade others or persons who are open to compromises etc.

Although it is not anything uncommon to make decisions within a college, we can still notice certain particular aspects in relation to the decision-making process of the Council. Firstly, decisions are made by a relatively numerous college (the Council counts 13 members) which is not very usual within the judiciary and in a group of 13 persons it may be difficult to bring forward a compact reasoning of a decision which is based on a highly subjective assessment of some phenomena with which the law connects legal consequences (e.g. assessment of *balanced and objective information or danger and serious affection to the physical, mental or moral development of minors*, see Section 31 - 32 of the Broadcasting Act). Secondly, decisions of the Council are subjected to a strict judicial review. To compare, e.g. the Constitutional Court of the Czech Republic (composed of 15 judges) decides very rarely in a plenum of all judges²⁴ and further, the decisions of the Constitutional Court are not subjected (on a national level) to any review, i.e. in case of a non-accurate or unconvincing reasoning of a decision of the Constitutional Court there is no threat of “sanctioning” in the form of dissolution of a decision.

Let me just briefly mention the problem of exclusion for bias in a central administrative authority which is organized as a college. In some situations it is just their unique competence that can become an obstacle in deciding on a matter.²⁵ This can happen in a situation in which such number of members of the college is excluded for bias (Section 8 subsection 3 of the Broadcasting Act) that the administrative authority is rendered inquorate. In that case there would be no other administrative authority that could decide on the given matter.²⁶

sensus: Explaining Plurality Decisions on the United States Supreme Court, p. 4-5, 13, 17. SPRIGGS II, J. F., STRAS, D. R. Explaining Plurality Decisions, p. 527.

- 22 Although they provide an analysis of the decision-making process in court panels, by analogy, they can as well be applied to the decision-making process in collegiate administrative bodies.
- 23 Compare SPRIGGS II, J.F. STRAS, D. R. Explaining Plurality Decisions, p. 528 et seq.
- 24 Compare Section 11 subsection 2 of Act No. 182/1993 Coll. on the Constitutional Court.
- 25 In monocratic central administrative authorities the Code of Administrative Procedure exclude the application of the institute of exemption of person in authority from the hearing and the decision-making process (Section 14 subsection 6 of the Code of Administrative Procedure)
- 26 By analogy, let me remind the case the Constitutional Court of the Slovak Republic was intentionally rendered incapable of action by the means of purposeful filing of complaints. See ECHR, case of Harabin v. Slovak Republic, Application No. 58688/11, available at www.echr.coe.int.

III. The Office of the Council for Radio and Television Broadcasting is not an administrative authority

The Office of the Council is a body of the Council, which performs the tasks regarding professional, organizational as well as technical support of the activities of the Council and its activities are financed from the budget of the Council (Section 11 subsection 2 of the Broadcasting Act). The Office of the Council is therefore not an administrative authority (has not been established as an administrative authority by any Act²⁷) and has no autonomous competences and thus it cannot act as an administrative body within the meaning of Section 1 subsection 1 of the Code of Administrative Procedure. While the function of a member of the Council is a public function (Section 7 subsection 1 of the Broadcasting Act) and as such each member must meet the requirements set by the law and is limited by incompatibility,²⁸ employees of the Office of the Council are “mere” employees of the State.

Judicial review revealed several problems connected with the organizational arrangement of the Council or directly ensuing from it. Firstly, they concern the issue of “competences” of the Office of the Council, or the question what exactly is or is not the “professional, organizational and technical support of the activities of the Council”. Here, let me mention the issue of giving evidence and producing a written form of a decision made by the Council. (III.1) Secondly, we deal with the issue of the running of a subjective time limit, from its beginning (what is the moment the Council gets a legally relevant information on breach of law?) till its end, which is important mainly due to the extinguishment of liability for an administrative wrong. (III.2)

1) Powers of the Office of the Council

In proceedings regarding administrative wrongs of broadcasters or providers of AVMS on demand the Council often makes a decision using an audiovisual record of a programme as an evidence material. The procedural question how to pursue the course of action was successively addressed in different cases by three different panels of the Supreme Administrative Court, each having a different legal opinion on the issue.²⁹ The ambiguity regarded the following questions: What kind of evidence is watching an audiovisual record? Is it necessary to produce evidence during the sessions of the Council college? If not, and the

27 Compare a contrario Article 79 Section 3 of the Czech Constitution.

28 The Act even limits the activities of persons close in relation to members of the Council. Compare Section 7 subsection 12 of the Broadcasting Act.

29 The fourth panel (judgement from 29th May 2008, Ref. No. 4 As 36/2007, 30th May 2008, Ref. No. 4 As 35/2007, from 30th June 2008, Ref. No. 4 As 37/2007, from 10th July 2008, Ref. No. 4 As 38/2007; second panel (judgement from 26th November 2008, Ref. No. 2 As 59/2008); sixth panel (judgement from 22nd January 2009, Ref. No. 6 As 16/2008 and Ref. No. 6 As 0/2008); available at <http://www.nssoud.cz/Uvod/art/1>.

evidence may be produced off session, is it necessary to take the act of producing evidence down on record? This is followed by a subquestion whether the procedure of producing evidence is to be performed by the Council itself (i.e. by members of the Council in person) or whether it is possible to substitute watching an audiovisual record at the Council session with an analysis provided by the Office of the Council. The legal opinion on this procedural aspect was finally authoritatively unified by an expanded panel of the Supreme Administrative Court.³⁰

According to the expanded panel the act of watching an audiovisual record is regarded as producing of evidence by examination. Taking into account the right to a fair process, guaranteed by Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms,³¹ the Supreme Administrative Court inferred that giving evidence by the means of watching an audiovisual record must be carried out during the oral hearing, and if, exceptionally, carried out off oral hearing, on the basis of a subsidiary application of the Code of Administrative Procedure, it concluded that a member to the proceedings has still the right to be present at the act of producing evidence (Section 51 subsection 2 of the Code of Administrative Procedure) and a report of the proceedings is necessary (Section 18 of the Code of Administrative Procedure).³²

Having considered the nature of examination as the means of proof which is based on immediate observation and perception of facts, the expanded panel inferred that the Council, as a collegiate body composed of members who have a duty to perform their function in person, is bound to produce the evidence by watching an audiovisual record by itself, i.e. that members of the Council are bound to watch the record of a programme “with their own eyes”.³³ Therefore, evidencing must be carried out by a body that has a decision-making power granted by law, i.e. by the Council as a collegiate administrative authority itself.

The next case dealt with the question whether the Council is allowed to authorize the Office of the Council to add “routine” data to the operative part of the decision. The Council as a college decided by vote on a particular offence and on the sanctioning of its offender but it did not vote on the deadline for payment

30 Ruling of the expanded panel of the Supreme Administrative Court from 3rd April 2012, Ref. No. 7 As 57/2010, available at <http://www.nssoud.cz/Uvod/art/1>.

31 When deciding on an administrative wrong committed by a broadcaster or an AVMS on demand provider, in simple and general terms, under the terminology of the European Convention, the Council decides on a *criminal charge*, as the European Court for Human Rights, pursuant to autonomous interpretation doctrine, interprets “criminal charge” used in Article 6 of the European Convention extensively in that it includes, or can include accusation of an administrative wrong. In more detail compare e.g. MOLEK, P. *Právo na spravedlivý proces*. (Right to a fair trial.), p. 50-64.

32 Ruling of the expanded panel of the Supreme Administrative Court from 3rd April 2012, Ref. No. 7 As 57/2010-87, 88, 89, available at <http://www.nssoud.cz/Uvod/art/1>.

33 Ruling of the expanded panel of the Supreme Administrative Court from 3rd April 2012 Ref. No. 7 As 57/2010-88, available at <http://www.nssoud.cz/Uvod/art/1>.

of a fine, on the account number where the fine was to be paid and on counting the expenses arising from administrative proceedings. The resolution adopted by the Council on its session and the subsequent written copy of the decision (or more precisely the operative parts) thus were not the same.

This was qualified by the Supreme Administrative Court as an error in proceedings resulting in illegality of the administrative decision. The court concluded that “the operative part contained in the written form of an administrative decision which is delivered to parties to the proceedings, must exactly correspond with the resolution of the Council adopted through voting. Any discrepancy would result in rendering the decision of the Council illegality because the decision in a different form had never been adopted by the Council and therefore it cannot be considered an expression of will of the collegiate body... The Council as an administrative body is bound to formulate the operative parts of its decisions in compliance with law.”³⁴ Amending the resolutions of the Council by the Office of the Council, even if it meant only adding routine data or technicalities was evaluated by the Supreme Administrative Court as an inadmissible interference in the decision-making activity of the Council. “If the Council as a collegiate body consisting of persons upon whom the law makes relatively strict demands (Section 7 of the Broadcasting Act) adopts a resolution at its session that comprises an operative part, the Office of the Council, as a *de facto* service organization assuring a smooth operation of the Council, is not competent to interfere in the operative part of the administrative decision in any way.”³⁵

Therefore, in this case too it stands that only a body with legally accredited competence to make an administrative decision can formulate operative part of the decision and is not allowed to delegate such competence upon another body if the law does not expressly specify so.

2) Running of a subjective time limit

Laws under which the Council imposes sanctions for administrative wrongs specify a subjective preclusive time limit. In case of an administrative wrong under Act No. 132/2010 Coll. on Audiovisual Media Services on Demand the time limit within which the Council is bound to initiate administrative proceedings is one year (Section 13 subsection 4 of Act on AVMS on demand); in case of an administrative wrong under Act No. 40/1995 Coll. on Regulation of Advertising, in order to prevent the extinguishment of liability, a competent body must initiate administrative proceedings within two years (Section 8b of Act on Regulation of Advertising). If dealing with an administrative wrong under the Broadcasting Act, a fine must be imposed within the time limit of one year (Section 61

34 Judgement of the Supreme Administrative Court from 7th February 2013, Ref. No. 7 As 101/2012-35, available at <http://www.nssoud.cz/Uvod/art/1>.

35 Judgement of the Supreme Administrative Court from 7th February 2013, Ref. No. 7 As 101/2012-36, available at <http://www.nssoud.cz/Uvod/art/1>.

subsection 1 of the Broadcasting Act). All three acts also lay down an objective time limit which specifies a framework for the running of the subjective time limit. According to all three above mentioned acts the determining factor for the beginning of the subjective time limit is the day on which a competent administrative body (i.e. the Council in the cases stated above) got to know about the breach of duty (or more precisely about an administrative wrong). In this case too the issue of the running of subjective time limit was subsequently treated by three different panels of the Supreme Administrative Court.

The third panel of the Supreme Administrative Court stated that “the term to get to know about a breach of duty under the established case law of administrative courts regarding the determination of subjective preclusive time limits does not mean that in that particular moment it is set for certain that the breach of duty occurred but it is sufficient that there is a reason to believe it did. The process of giving evidence that a breach of duty occurred and proving who is liable for it is the subject of administrative proceedings.”³⁶ The Court denied that the moment of getting to know about a breach of a legal duty could be identified with the moment the Council obtained e.g. a complaint, as according to the Court it is unacceptable that the beginning of running of the time limit be conditioned by subjective attitudes of councilors which the law cannot take hold of. Delivery of a complaint is not connected with any initial assessment consisting in a qualified preliminary evaluation of an issue. According to the third panel it is necessary to connect the beginning of a time limit with the moment a competent administrative body concludes that there exists a reason to believe that a breach of law had occurred, that is mainly with the moment of initiation of administrative proceedings. In connection with a collegiate body that means the day on which a session that adopted a resolution on the initiation of administrative proceedings was held.³⁷

The fourth panel expressed a similar viewpoint on the matter. In its opinion the beginning of the running of a time limit must not depend on non-objectivizable circumstances and it stated that “for the imposition of a sanction the moment of getting to know about a breach of duty as the beginning of the subjective preclusive time limit ... must be based on objective facts i.e. for example on the day a competent body decided on the initiation of due proceedings or the day it expressed in another sufficient manner recorded in the file its reasonable belief that a breach of law had taken place.”³⁸

36 Judgement of the Supreme Administrative Court from 22nd October 2009, Ref. No. 3 As 15/2009, available at <http://www.nssoud.cz/Uvod/art/1>.

37 Judgement of the Supreme Administrative Court from 22nd October 2009, Ref. No. 3 As 15/2009, available at <http://www.nssoud.cz/Uvod/art/1>.

38 Judgement of the Supreme Administrative Court from 22nd December 2009, Ref. No. 4 As 16/2009, available at <http://www.nssoud.cz/Uvod/art/1>.

The issue of the running of a subjective time limit for the imposition of a sanction³⁹ was then treated by the seventh panel of the Supreme Administrative Court: "The beginning of a subjective preclusive time limit ... is given by the moment of getting to know the factual circumstances to the extent that allows a preliminary legal assessment that a breach of law as such took place."⁴⁰ Nevertheless, in this case the expiration of the preclusive time limit was evident and the time limit had already been over, even if counted from the day the Council decided on the initiation of administrative proceedings in the given matter.

Later the object matter was addressed by the Constitutional Court which refused the tendency of the Supreme Administrative Court to identify the moment of getting to know about a breach of an administrative law duty with the initiation of administrative proceedings by stating that "the Council for Radio and Television Broadcasting is primarily an administrative body deciding on a collective basis, nevertheless it is not possible to derive the running of administrative time limits strictly from its sessions. This interpretation would e.g. make it difficult to deliver a remonstrance to the remonstrance commission within 15 days. Such cases are to be treated by an executive body, i.e. the Office of the Council in the case under consideration."⁴¹ At the same time the Constitutional Court reminded of the significance of time limits: "The purpose of the time limits is the diminishing of entrophy (vagueness) when specifying competences, setting a limit to the state of legal uncertainty and speeding up the decision-making process aiming at actual achievement of intended objectives. The purpose of the above mentioned preclusive subjective time limit is to urge the administrative body to take action - including finding information and evidence on who is liable for the breach of law - immediately after it is acquainted with the factual circumstances to an extent which enables a preliminary legal assessment whether a breach of law as such had taken place; that is valid with regard to the constitutional principle of legal certainty and the duty of an administrative body to decide without unnecessary delay."⁴²

Neither the Supreme Administrative Court nor the Constitutional Court have adjudicated expressly on the moment to be considered a start of the running of the time limit. Nevertheless, with regard to the purpose of a norm pro-

39 Under the no more valid provision in Section 8b of the Act on Regulation of Advertising (repealed by amendment No. 25/2006 Coll.), which provided for a one-year subjective time limit. A similar regulation is found in provision Section 61, subsection 1 of the Broadcasting Act, applied by the fourth panel of the Supreme Administrative Court in the above mentioned judgement.

40 Judgement of the Supreme Administrative Court from 16th April 2010, Ref. No. 7 As 11/2010, available at <http://www.nssoud.cz/Uvod/art/1>.

41 Ruling of the Constitutional Court from 11th January 2010, file No. IV. ÚS 946/09, available at <http://nalus.usoud.cz/Search/Search.aspx>.

42 Ruling of the Constitutional Court from 17th February 2010, file No. I ÚS 1898/09. Compare also ruling of the Constitutional Court from 11th July 2007, file No. II ÚS 192/2005, available at <http://nalus.usoud.cz/Search/Search.aspx>.

viding for a preclusive time limit, of which reminded the Constitutional Court as well, it can be inferred that in this case, compared to the situation described under ad) III.1 the Office of the Council shall be considered an integral part of the Council as an administrative authority and the subjective time limit for the initiation of administrative proceedings (in case of an administrative wrong under the Broadcasting Act or the Act on Regulation of Advertising) or imposition of a fine (in case of an administrative wrong under the Act on AVMS on Demand) runs from the day any member of the Council or an employee of the Office of the Council got acquainted with facts which indicate that an administrative wrong took place.⁴³

In connection with the extinguishment of liability for an administrative wrong under the Broadcasting Act the review concerned also the end of the preclusive time limit, i.e. the moment the Council as a collegiate body imposed a fine, or more precisely the moment the Council issued its decision. Both the Supreme Administrative Court and Constitutional Court came to an agreement on this point.

At the moment of issuing a decision there is no reason to distinguish between a monocratic and a collegiate administrative body. In this regard the Code of Administrative Procedure does not provide for any modification for collegiate administrative bodies (compare Section 134 of Code of Administrative Procedure) nor has it been treated by the Broadcasting Act as "lex specialis". A general rule for determining the moment of issuing a decision, is fully applicable on collegiate administrative bodies as well. The day of issue of a decision is then under Section 71, subsection 2 (a) of the Code of Administrative Procedure the day on which a copy of the written form of the decision was submitted for delivery, not the day the decision was agreed on by a collegiate body or the day the decision was drawn up.⁴⁴

IV. Conclusion.

If the Council decides upon an administrative wrong of a broadcaster or a provider of AVMS on demand, within the terminology of the European Con-

43 The Act on Regulation of Advertising which provided for preclusive time limit was amended and the present Act (in operation and effect), in Section 8b subsection 3 regulates the preclusive time limit for the initiation of administrative proceedings. Similarly, the preclusive time limit for the initiation of administrative proceedings is laid down in the Act on AVMS on demand (Section 13 subsection 4). Thus it is obvious that the moment of getting to know about a breach of duty and the moment of initiating administrative proceeding were not intended to be one and the same.

44 Judgement of the Supreme Administrative Court from 22nd December 2009, Ref. No. 4 As 16/2009-89., in accord with judgement of the Supreme Administrative Court from 16th April 2010, Ref. No. 7 As 11/2010-139, available at <http://www.nssoud.cz/Uvod/art/1>, and finding of the Constitutional Court from 11th January 2010, file No. IV. ÚS 946/09 (17), available at <http://nalus.usoud.cz/Search/Search.aspx>.

vention it decides upon a criminal charge.⁴⁵ Besides the aspect of a fair process the decision-making procedure on administrative wrongs under the Broadcasting Act has other dimensions, constitutional as well as that of international law, because decisions by the Council in fact encroach on the right of free expression and the right to information (Article 17 of the Charter, Article 10 of the European Convention).

Considering the fact that the decision of the Council is reviewable in administrative justice, it is not necessary that administrative procedure carried out by the Council meets all requirements of a fair process in accordance with Article 6 of the European Convention,⁴⁶ nevertheless, with regard to the gravity of the matter decided upon by the Council, it should meet those requirements that are not excluded because of the nature of proceedings before an administrative body.

Collegiate arrangement may also be a potential source of lapse, nevertheless, on the other hand it is closely connected with the requirement of independence of the broadcasting regulatory authority⁴⁷ and, with regard to the nature of decision-making competence of the Council which is based mainly on the interpretation of rather vague legal concepts that are a part of legal norms defining the merits of administrative wrongs (for example objectivity, a vulgarism or a moral health⁴⁸) and the application of administrative discretion (deciding upon the amount to be paid for an administrative wrong but also on non-claimable licenses for terrestrial analogous radio broadcasting) the collegiate arrangement is thus more convenient.

One of the prerequisites to a due practice of an administrative authority (the Council in this case) is also a rational and clear organizational arrangement of the authority. Unsuitable or unclear organizational arrangement may be a source of ambiguity as to the scope of authority or particular functions of the body and thus cause further defaults under procedural (III.1) or substantive law (III.2).

45 In simple and general terms, the European Court for Human Rights, pursuant to autonomous interpretation doctrine, interprets “*criminal charge*” used in Article 6 of the European Convention extensively in that it includes, or can include accusation of an administrative wrong, when deciding whether a concrete matter (subject of hearing) should come under the scope of protection provided for in Article 6 it considers several other criteria and thus this conclusion is rather a generalizing and simplifying structured question. In more detail compare e.g. MOLEK, P. *Právo na spravedlivý proces*. (Right to a fair trial.), p. 50-64.

46 Compare the judgement of the European Court for Human Rights in *Albert and Le Compte v. Belgium* from 10th February 1983, complaint No. 7299/75 and 7496/76.

47 Compare recommendation of the Committee of Ministers of the Council of Europe (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector and the recommendation of Parliamentary Assembly of the Council of Europe No. 1147/1991 on parliamentary responsibility for the democratic reform of broadcasting (Article IV). Independence of bodies regulating television broadcasting is also treated in Audiovisual Media Services Directive 2010/13/EU.

48 See Sections 31-32 of the Broadcasting Act.

As stated above, while the Council is an administrative body, the Office of the Council is not an administrative body and the law does not entrust it with any autonomous competences, i.e. it cannot act as an administrative body under Section 1 subsection 1 of the Code of Administrative Procedure or Section 4 subsection 1(a) of the Code of Administrative Justice⁴⁹. From the point of view of procedural position the Council exclusively can be the subject of administrative proceedings. Competences entrusted to an administrative authority by the law can only be performed by this administrative authority itself. In case the authority with a given competence is a collegiate body, then the competence may only be performed by the college. If the law does not state that the college can delegate its competences upon someone else (e.g. its chairman or an auxiliary department), it shall perform the competences by itself. Other conclusion would be in conflict with Article 2 Section 3 of the Constitution and Article 2 Section 2 of the Charter of Fundamental Rights and Freedoms.

On the other hand, in case we deal with a norm which provides for a subjective preclusive time limit with the purpose to assure protection of rights and legal certainty of individuals concerned that their liability under administrative law lasts or has extinguished (not with a competence norm providing for authoritative power), the organizational part of the administrative authority shall be considered a constituent part of competent administrative authority and if anyone, be it only an employee of the Office of the Council, gets acquainted with a breach of legal liability it is as if the Council itself got such information.

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⁴⁹ Act No. 150/2002 Coll., Code of Administrative Justice.

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