

DENISA SKLÁDALOVÁ<sup>1</sup>, SÁRA HRUBEŠOVÁ<sup>2</sup>, TOMÁŠ SVOBODA<sup>3</sup>

## Access to Czech Administrative Courts – Bottlenecks in Access to Justice\*

**Abstract:** The right of access to a court is subject to certain limitations. While a number of these limitations may be created deliberately, in line with the function of the administrative justice system (e.g. restrictions on review by the higher courts, others may be more or less unintended consequences of the design of the administrative justice system (or application of relevant rules or case law). The article attempts to present possible forms of these limitations and tries to outline some of the main “bottlenecks” in the access to judicial protection in the context of Czech administrative justice. These limitations can be regarded mainly as formal and informal, and their recognition can result in increasing the efficiency of the functioning of judicial protection, in particular by simplifying procedural regulation in relation to the ongoing societal and technical changes.

1 Denisa Skládalová, Masaryk University, Department of Administrative Studies and Administrative Law, Faculty of Law, Brno, Czech Republic and Supreme Administrative Court of the Czech Republic. e-mail: skladalova@mail.muni.cz, <https://orcid.org/0000-0002-4261-3564>.

2 Sára Hrubešová, Masaryk University, Department of Administrative Studies and Administrative Law, Faculty of Law, Brno, Czech Republic and Supreme Administrative Court of the Czech Republic. e-mail: hrubešová@mail.muni.cz.

3 Tomáš Svoboda, Masaryk University, Department of Administrative Studies and Administrative Law, Faculty of Law, Brno, Czech Republic. e-mail: tomas.svoboda@law.muni.cz, <https://orcid.org/0000-0002-2197-8214>.

\* The paper was prepared at Masaryk University as part of the project “Twenty Years of Modern Administrative Justice” No. MUNI/A/1479/2022 funded by the special purpose support for specific university research provided by the Ministry of Education of the Czech Republic in 2023.

**Keywords:** Administrative Justice, Access to Court, Fair Trial, Procedural regulation, Drafting a Petition, Court Communication, Court Accessibility, Court Capacity, Simplification.

## Introduction

The right of access to a court is one of the key elements of the rule of law. However, it is not (and probably cannot<sup>4</sup>) be an absolute right. The path to a decision on the merits is typically conditioned by the fulfilment of a number of different requirements imposed on the applicant by the legislation. These requirements serve as limitations on access to a court, but in the real world the courts' capacities are limited as well. Such restrictions are therefore permitted assuming they are *reasonable*. This means, in particular, that they have a legitimate aim, are proportionate, and do not impair the very essence of the right of access to court. However, that does not mean that *all* the requirements meet the following criteria. Some of the limitations may appear to be substantiated, but a closer look may reveal the opposite is true.

Likewise, and more importantly, some of the limitations may not appear to be limitations on access to justice at all. In this sense, these limitations can be *formal* but also *informal* (and difficult to identify). Some of these limitations may be a result of the (inadequate) functioning of the administrative justice system, others may be a manifestation of its (inadequate) organisation.

Some restrictions can create unintended “bottlenecks” in access to administrative courts. While a number of these bottlenecks may be created deliberately, in line with the function of the administrative justice system (e.g. restrictions on review by the Supreme Administrative Court, which fulfils a specific

---

<sup>4</sup> At the very least, there is a risk of *abuse* of the right of access to the courts; e.g., in the Czech justice system, one person has 1,500 court cases pending (!), but the courts refuse to grant him free legal aid on this basis (see judgment of the SAC of 23 February 2023, No. 2 As 9/2023–10).

role), other may be more or less unintended consequences of the design of the administrative justice system (and/or application of relevant rules in case law).

The aim of this paper is to outline the basic limitations on access to Administrative Courts (which may constitute unreasonable “bottlenecks”) that, from our perspective, create, co-create or pose a risk in the context of administrative justice in the Czech Republic.

### **Formal Limitations**

Today, more than twenty years after the Czech Code of Administrative Justice (CAJ)<sup>5</sup> entered into force, we believe that applicants should not have to face major problems on their way to judicial protection. Only exceptionally is access to the court unlawfully denied. That does not mean, however, that the applicants’ journey to the judicial review is always smooth, simple, predictable and efficient.

As the European Court of Human Rights (ECtHR) case-law suggests, some rules and legal institutions (such as time constraints, court fees, access to legal aid, rules regulating standing, etc.) can be applied in various ways, meaning they can be either legitimate or unreasonably restrictive. However, the fact that in the vast majority of cases the legislation does not impose illegitimate obstacles (resulting in denial of access to justice) does not preclude that there are no opportunities for improving the effectiveness of the administrative court proceedings’ legal framework.

When it comes to limitations of access in the *formal sense*, they can be understood as a variety of procedural rules (see above) as well as the overall legal set-up of the system of administrative justice (in terms of the forms of protection provided). As far as the overall set-up is concerned, its attributes may be the relationship of administrative justice to public administration (e.g. the extent to which an administrative court can correct administrative decisions or *de facto* decide instead of administrative authorities) or the concept of a system of means of protection of rights - actions in administrative justice.

---

<sup>5</sup> Act No. 150/2002 Coll., Code of Administrative Justice.

In the Czech Republic, as a result of the Austrian administrative tradition, the courts are *strictly separated* from the public administration and their role is exclusively to control the public administration, not to exercise it. For this reason, the Czech administrative courts never rule *ex officio*, but always on the basis of a motion (an action, proposal, complaint, etc.). However, this traditional paradigm can be problematic when the rights of vulnerable individuals who are unable to defend their rights themselves (or their representatives) are affected. As the Czech ECtHR judge K. Šimáčková aptly points out, “the most unjust judgments are those that could not have been delivered.”<sup>6</sup>

Therefore, Czech Administrative Courts cannot be fully described as “an ally of the individual against the state”, in the way that, for example, the ombudsperson institution could.<sup>7</sup> Nevertheless, we do not consider this arrangement to be a major shortcoming, as it can be corrected by some of the elements of the administrative justice, especially by an elaborate system of free legal aid. Whether such a system exists, however, is another matter (see below).

### Formal Requirements

T. Mullen points out that an individual has access to justice when there are effective remedies available for them to vindicate their rights and advance their legally recognised interests. In a narrow sense, access to justice can be identified with the existence of remedies and an individual’s ability to use them. Mullen, however, identifies more with the broader notion that an individual should be able to make practical use of the remedies without undue difficulty. This means that it is necessary to consider the cost or other possible obstacles to effective use of remedies.<sup>8</sup>

---

6 <<https://jinepravo.blogspot.com/2011/06/nejnespravedlivejsi-rozsudky.html>>.

7 As the Czech variant of this institution – the Public Defender of Rights – can act on its own and is generally much less formalised and more accessible for vulnerable individuals, but unsurprisingly has much less powers than administrative courts.

8 Tom Mullen, “Access to justice in administrative law and administrative justice” in *Access to Justice: Beyond the Policies and Politics of Austerity*, eds. Ellie Palmer et. al. Oxford, Portland 2016, 70.

But at the same time, as already stated above, the right of access to a court is not absolute and may be subject to legitimate restrictions. Generally, these restrictions will not be incompatible with international fair trial standards as long as they do not impair the very essence of the right, it pursues a legitimate aim, and there is a reasonable relationship of proportionality between the means employed and the aim to be achieved.<sup>9</sup> In this respect, states may enjoy a margin of appreciation.<sup>10</sup> If the restrictions become disproportionate, they may create barriers to access to justice.

For the purposes of this paper, we divide the procedural rules concerning access to a court into two “phases”. The first consists of *drafting a petition* (mostly an administrative action or a cassation complaint), the second of *communicating* with the court until the final decision is issued. Naturally, a third (or fourth) phase can also be considered, which refers to the actual decision on the merits (and, if necessary, to its execution). These stages are basically the same for the proceedings before the regional courts and for the proceedings on the cassation complaint as an extraordinary appeal, which is decided by the SAC. Proceedings differ in a number of sub-aspects, but in both cases, applicants may face problems in formulating the application, communicating with the court or accessing legal aid, etc. In terms of the focus of this paper, however, the first two phases are relevant, as they relate to the applicant’s interaction with the court, which may or may not result in a decision on the merits.

The applicant’s aim is to obtain a decision on the merits as quickly, efficiently and inexpensively as possible. There are also other subjects (stakeholders) whose position can be examined, such as the administrative authority or even the legislator. However, the mission of the administrative justice system (as is understood in the Czech law) is to primarily protect the public subjective rights of individuals. There are two “main actors” in this relation-

---

<sup>9</sup> *Waite and Kennedy v. Germany*, Application no. 26083/94, Judgment of the ECtHR of 18 February 1999, para 59; *Kart v. Turkey*, Application no. 8917/05, Judgment of the ECtHR of 3 December 2009, para 79.

<sup>10</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Folke Bernadotte Academy (FBA), *Handbook for Monitoring Administrative Justice*. Warsaw, 2013, 47, <<https://www.osce.org/files/f/documents/1/3/105271.pdf>>.

ship – the applicant and the administrative court; the quality of their interaction is therefore essential. Or, in other words, it is the *user perspective* that is critical to redesigning unsatisfactory procedural regulations.<sup>11</sup>

### Drafting a Petition

When it comes specifically to the phase of case initiation, the OSCE Handbook for Monitoring Administrative Justice suggests several criteria. These include reasonable time to initiate proceedings, effective and equal access to a court or accessibility of legal assistance and legal aid.<sup>12</sup>

We must also take into account that court proceedings are not free. However, the question is whether administrative court proceedings are expensive to the extent that judicial protection is becoming unavailable. We believe that this is not the case in the Czech administrative justice. The cost of court proceedings (Article 57(1) CAJ) includes the court fee and the rest of the costs (in particular the costs of legal assistance and legal aid). The entire cost of the legal proceedings after the end of the proceedings shall be paid by the losing party (penalty function). However, at the beginning of the proceedings, the obligation to pay the court fee lies with the applicant.

First, attention will be focused on the court fees. In addition to the above-mentioned penalty function, the purpose of court fees is to prevent court overloading, by filtering out frivolous litigation, and to pay for court operating costs (fiscal function).<sup>13</sup> The court fee is currently CZK 3 000 (aprox. 120 EUR) for an administrative action and CZK 5 000 (aprox. 200 EUR) for a motion to annul an act of a general measure or part thereof.<sup>14</sup> The court fee even for a cassation complaint (extraordinary appeal) is the same the court fee for a motion to annul an act of a general measure. This rate has been the same since 2011. We *do not*

11 As, e.g., Margaret Hagan points out: <<http://www.openlawlab.com/2015/11/18/the-legal-system-needs-to-be-redesigned-by-normal-people-for-normal-people/>>.

12 Cf. *Handbook for Monitoring Administrative Justice*.

13 Robert Waltr, “§ 1, Subject of court fees” in Robert Waltr et. al., *Zákon o soudních poplatcích. Komentář*, 2nd ed. Praha, 2012, 1.

14 See item 18(2) of the Annex to Act No. 549/1991 Coll., on Court Fees.

see such fees as discouraging. Firstly, the fees are set at a fixed amount, which is often lower than the average court fee in the civil court proceedings, which is set as a percentage (usually 5% of the amount sued for). Secondly, potential applicants may benefit from the institution of exemption from court fees (so-called “right of the poor”). Generally, the cumulative effects of recent inflation in the Czech economy made the fixed court fees lower. However, we believe that introducing an increase during the unfavourable economic situation would be unwise.

An important factor that has an impact on the entire procedure and can influence it from the outset is the precise and comprehensible wording of the proposal (see below). As regards the precision of the proposal, mention may be made of the issue of the choice of the type of action.

From this point of view, we consider the setting of individual types of actions in the CAJ to be rather problematic. On the one hand, from its reform in 2003, it operates with a presumption of a protection against potentially all forms of exercise of public authority within the public administration<sup>15</sup> (with the exception of administrative sub-statutory rule-making, which is subject to review by the Constitutional Court). This system therefore distinguishes between the *decision* of administrative authorities, their *inaction*, unlawful *interference*, and *act of a general measure*.<sup>16</sup>

This system works reliably in the case of administrative acts the nature of which is straightforward, thus the majority of cases. However, this is not always the case of “atypical” administrative acts. We consider it generally problematic when the person affected by such an act is *de facto* confronted with the question of its qualification for the purpose of administrative justice proceedings. Meanwhile, in the earlier case law, it was held that the choice of the wrong type of action led to the denial of judicial protection.<sup>17</sup>

---

15 Cf. Articles 65 to 87 and 101a to 101d CAJ.

16 As specific act standing on the borderline between individual and normative acts, which is inspired, in particular, by the German category of administrative acts known as “general measures” (*Allgemeinverfügung*).

17 For more details, see Tomáš Svoboda, and Denisa Skládalová, “The Qualification of Action in Administrative Justice and its Perils – the Czech Experience”, *Adam Mickiewicz University Law Review*, no. 14. 2022: 281–295.

Fortunately, subsequent case law of the Constitutional Court (CC) and the Supreme Administrative Court (SAC) has led to the conclusion that choosing the wrong type of action does not lead to the rejection of the application (and denial of justice) anymore, since the court must inform the applicant of the wrong type of action and give them the opportunity to amend the application.<sup>18</sup> However, we do not consider this to be an ideal solution, as the unclear definition of the types of action leads to inefficiencies on the part of both applicants and administrative courts. At the very least, amending the application leads to a prolongation of the proceedings.

In our opinion, particularly the SAC case law seems to have (more or less) failed to set clear boundaries between the types of action (in particular between an action against a decision and an unlawful interference, which in both cases may constitute formalised acts of authority differing only in some formal characteristics). The greater degree of difficulty in initiating administrative court proceedings is also acknowledged by the CC, which considers that the initiation of proceedings before administrative courts is currently more difficult than in other types of judicial proceedings.<sup>19</sup>

From our point of view, this problem may represent a limit on access to the administrative courts. It will be a limit affecting a smaller number of persons, but which is nonetheless significant. This is particularly relevant in the case of vulnerable individuals, such as in pension or other social agendas. Moreover, we believe that the number of atypical administrative acts in the Czech administrative procedure is rather *increasing*. This is partly a manifestation of the legislator's efforts to avoid standard procedures (which are often slow) and partly a result of, for instance, simplistic implementation of EU law.

### **Communicating with the Court**

The drafting of the application to initiate proceedings is followed by a phase in which the applicant communicates with the court with varying intensity until the final decision is issued. In this phase, the court firstly reacts to any defects

---

<sup>18</sup> Svoboda, and Skládalová.

<sup>19</sup> Resolution of the CC of 14 August 2019, No. II. ÚS 2398/18.



in the application, provides the applicant with information about the proceedings and advises them of their procedural rights. In proceedings before regional courts, the possibility of a court hearing is added. The applicant may request access to the file or request information on the state of the proceedings. The common denominator of these actions is the interaction between the applicant (or their representative) and the court.

The applicant does not have to be represented by an attorney in the proceedings before a regional court, unlike in the proceedings before the SAC. If the applicant is not represented in the proceedings and does not have legal training or previous relevant experience, they are likely to find it more difficult to interact with the court. However, many of the mentioned examples are also relevant for legal professionals, as they do not always specialise in administrative law. However, we believe that problems are more likely to arise during drafting of the petition itself.

Proceedings before administrative courts (with the exception of hearings, which are not as widely used in practice) consist of written pleadings. An important role is therefore played by the delivery of documents (its promptness and efficiency), clarity of the information provided (whether the applicant is able to understand the information communicated to them by the court) and extent of the duty to instruct (whether the court's procedure in the proceedings is transparent and predictable for the applicant, whether the applicant understands how to remedy any defects in the pleadings or to comply with other obligations imposed on them). Generally, we could ask how to make these steps easier and more convenient for applicants (simplify them or even eliminate the redundant ones).

### **Physical Accessibility**

The foundation of access to the courts can be considered to be the setting of the relevant procedural rules and their application, but at the same time it is a complex *socio-legal issue*. It is certainly not sufficient to analyse the applicable legis-

lation; also relevant are the various practical obstacles that those applying to the courts have to overcome. We refer to these restrictions as *informal limitations*.

In this sense, Halliday and Scott<sup>20</sup> distinguish between ‘practical’ barriers to the use of administrative justice mechanisms, such as cost, procedural complexity, ignorance, and physical accessibility (further referring to Adler and Gulland, 2003) and ‘attitudinal’ barriers such as scepticism, fatigue, faith in the rectitude of rules, and satisfaction (Cowan and Halliday, 2003). An inherent part of the right of access to a court is the physical accessibility of court buildings and the availability of information about court hearings. Unjustified restrictions on access to court premises, lack of publicity of hearings, inaccessible venues, insufficient courtroom space or unreasonable conditions of entry into the courtroom have been said to hinder physical access to the court and violate the requirements of Article 6(1) of the European Convention on Human Rights.<sup>21</sup>

We believe that the Czech administrative justice system generally meets the requirements for physical accessibility. Access to the court is guaranteed constitutionally not only in the sense of the establishment of judicial bodies (mainly in the form of the *right to enforce their rights in accordance with a prescribed procedure before an independent and impartial court and, or in specified cases, before another body*<sup>22</sup>) but also, for example, by a constitutional requirement that their proceedings be made public, or at least that the judgments be delivered in public.<sup>23</sup> However, the territorial distribution of the courts as well as the physical accessibility of buildings for people with disabilities may be matters for debate.<sup>24</sup>

---

20 Simon Halliday, and Colin Scott, “Administrative Justice” in *The Oxford Handbook of Empirical Legal Research*, eds. Peter Cane, and Herbert Kritzer. Oxford, 2010.

21 <<https://www.osce.org/files/f/documents/1/3/105271.pdf>>.

22 Article 36(1) of the (Czech) Charter of Fundamental Rights and Freedoms.

23 According to Article 96(2) of the (Czech) Constitution, “proceedings before the court are oral and public; exceptions are provided for by law. The judgement shall always be delivered in public”.

24 Cf. Eliška Mocková, “Přístup ke spravedlnosti podle článku 13 Úmluvy o právech osob se zdravotním postižením. Lépe už to nejde?” in: *Lidé s postižením jako „nová menšina“ – právní výzvy a souvislosti*, eds. H. CH. Scheu, and Z. Durajová. Praha, 2021.

There are no specialised administrative courts in the Czech Republic; instead, regional courts exercise the agenda of the administrative courts through specialised chambers or single-judge benches. Surprisingly, however, these regional courts are not organised at the level of Regions as territorial self-governing entities in the Czech Republic. There is therefore a *disproportion* between the number of regional courts (8) and the number of regions (14). This problem is, however, satisfactorily solved by the offices of the regional courts in regions where regional courts are not situated. The regional courts are therefore generally present in the regional capitals. The aforesaid is an older problem of the organisation of the judiciary and some other agencies, which was taken over from the communist state (pre-1989) and has not yet been reformed. Nevertheless, the definition of the local jurisdiction of the regional courts and self-governing regions is somewhat misleading.

The only specialised administrative court in the Czech Republic is the SAC (with its seat in the second largest city, Brno). This court did not originate unproblematically. Despite the constitutional presumptions of 1993, it was not created until 2002, together with the reform of the procedural regulation of administrative justice. However, since its creation, the functioning of the SAC can be considered successful, perhaps even too successful.

### **Capacity Issues**

One of the informal bottlenecks of administrative justice could also be its capacities, which do not correspond to the actual “demand”. The SAC is sometimes described as a “victim of its own success,”<sup>25</sup> since during the twenty years of its functioning the number of cases brought before the court has risen

---

<sup>25</sup> As J. Baxa, the former SAC president and current CC president, described the situation in 2019: “We are a bit of a victim of our own success, of the public’s trust in our decision-making. Unfortunately, we are forced to deal with often very trivial cases that we have solved repeatedly in the past, but we are asked to make the same decision again and again.”(<<https://advokatnidenik.cz/2019/10/01/spravni-soud-resi-i-banalni-pripady-je-tak-pretizeny-rika-baxa/>>).

sharply (from approx. 2000 cases in early 2010s to more than double in late 2020s). However, this judicial body is still the same in terms of its basic parameters. It is made up of roughly the same number of judges (10 chambers consisting of usually three judges each, plus some judges on temporary assignment) and operates in the same premises, which do not allow for an easy increase in its capacity.

This has led to a gradual overburdening of the SAC. In this context, some organisational measures have been taken (e.g. increasing the number of law clerks) and some legislative changes have been made to restrict access to the SAC.<sup>26</sup> Overall, however, there is a clear disproportion between the number of judges in the Czech Republic. While the total number of judges in 2022 reached approx. 3000, the number of judges assigned to the regional courts' administrative sections is (long-term) approx. 150. This is clearly less than in, e.g., Austria, which is comparable in population size.<sup>27</sup>

This also corresponds to the prolongation of proceedings before administrative courts, which are the slowest in the Czech justice system. This can be illustrated again by the data from the SAC. While the average length of proceedings before this court was 195 days in 2019, it was 243 days in 2020 and 277 days in 2021.<sup>28</sup> It should be added, however, that this result was also influenced by the specific agenda that this court has dealt with during the COVID-19 pandemic. Nevertheless, this confirms the general conclusion that the workload of the administrative courts in the Czech Republic is exceeding their capacity.

---

26 For more detail, see Lukáš Potěšil, "Restriction of access to the Supreme Administrative Court to reduce its burden (via expanding the institution of inadmissibility of a cassation complaint in the Czech Republic)", *Institutiones Administrationis. Journal of Administrative Sciences* 1, no. 1. 2021: 74–81.

27 <[https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover\\_und%20text\\_the%20austrian%20judicial%20system\\_neu.pdf?forcedownload=true](https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover_und%20text_the%20austrian%20judicial%20system_neu.pdf?forcedownload=true)>.

28 <<https://www.nssoud.cz/informace-pro-verejnost/poskytovani-informaci/poskytnute-informace/detail/informace-poskytnuta-28-3-2022>>.

### Knowledge of Availability

As an informal limitation of the administrative justice system, we also consider the awareness of those affected by public administration about the availability of judicial protection, or more precisely, its absence. While this awareness cannot be truly estimated without empirical research, it can be pointed out that the administrative authorities in the Czech Republic are not obliged to advise that protection against their decisions or other acts is provided by the administrative courts. In the case of such instructions, the administrative courts have held that *redundancy does no harm*;<sup>29</sup> thus, advising about the possibility of judicial review is permissible. However, it is not legally required.

This may, however, create inequality between the persons affected, where some of them will be encouraged to bring an administrative action, but some will not. At the same time, there is no connection between the optional advice of the administrative authority and the time limits in administrative justice. Thus, if there is an incorrect instruction, which is trusted by the person affected, this does not extend the availability of judicial review (the result can therefore only be a compensation claim). We do not consider this to be ideal, or rather, we believe that the availability of judicial review should be subject to the duty to instruct by the administrative authorities. A possible counter-argument, however, is that it may be difficult for the administrative authorities to give the correct instructions as to the type of action that can be used as a defence (as this is sometimes difficult even for the courts).

In general, however, the Czech Republic does not clearly communicate the availability of the protection provided by the administrative courts. This is reflected, e.g., in the poor quality of the websites of the general judiciary (including the administrative judiciary – [www.justice.cz](http://www.justice.cz)) and the generally lower levels of digitalisation of governance (which is perceived by many as inadequate).

---

<sup>29</sup> Judgement of the SAC of 12 January 2006, No. 1 As 3/2005–45.

## Potential for Simplification

We believe that the rules governing proceedings before administrative courts should be *as simple, clear and user-friendly as possible*. Individuals must have a clear and practical opportunity to challenge an act affecting their rights. In particular, in administrative court proceedings, the applicant is required to qualify the contested act of the administrative authority in order to choose the appropriate type of action.

However, the shortcomings in access to justice can serve as an indicator of the potential for simplification. The academic literature has so far focused primarily on simplification in the field of administrative proceedings,<sup>30</sup> but the concept of simplification as such can also be applied to proceedings before administrative courts. As was mentioned above, the Czech administrative courts are rather slow, the search for solutions that will speed up and simplify the process is therefore substantiated.

According to G. F. Ferrari, simplification represents the *balance* between constitutional principles and values and can be described as repositioning various principles and values without modifying the underlying method resulting from modern legal culture. In other words, to simplify means to rethink the relationship<sup>31</sup> – in this case, (mainly) between the citizens and the administrative courts.

The aim of simplification strategies should be to minimise costs while maximising access to courts. In other words, if the regulation is simple enough to navigate without legal representation, it is unnecessary to spend significant amounts of money on attorney services. Speed of the proceedings plays an important role and can be seen as another way of minimising the costs. However, speediness is not the only goal. A simplified procedure should result in

---

30 See, e.g., special issue of the journal *Administrative Sciences* (Polonca Kovač, and Dacian C. Dragos, eds., *Administrative Sciences*, special issue – *Simplification of Administrative Procedures – in Search of Efficiency, Public Interest Protection and Legitimate Expectations*. 2022).

31 Giuseppe Franco Ferrari, “Simplification and Consent in Administrative Action: A Comparative Perspective”, *Bocconi Legal Studies Research Paper Series*, no. 3126763. 2018.

fair rulings, while being transparent for all stakeholders. It can be expected that simplification for one group of stakeholders may introduce additional complexity for another.<sup>32</sup> For example, the introduction of a specific type of duty to instruct (e.g. on the choice of the type of administrative action) places the burden on administrative court judges. In addition, they must assess, on initial acquaintance with the application, whether the applicant is pursuing their objective with the correct procedural instrument. If necessary, the judge has to be proactive and *de facto* provide the applicant with legal aid.

As R. Zorza points out, when considering simplification one must first take stock of existing efforts.<sup>33</sup> It has been acknowledged that the current rules on proceedings before administrative courts already contain some simplifying elements. These include priority of delivery via data-mailboxes (not ordinary mail), *de facto* limitation of the ordering of hearings, introduction of the digital court file, etc. The use of single-judge adjudication and the recent extension of the institution of inadmissibility of a cassation complaint in the context of the reduction of SAC overburdening can also be seen as a simplification strategy. On the other hand, in the CAJ there are no specific simplified types of court proceedings, unlike in civil or criminal court proceedings in the Czech legal system.

Zorza suggests that the complexity of procedure is often driven by underlying substantive complexity. The adjudication process is even more complicated when the legislature or appellate courts add sub-rights.<sup>34</sup>

But possibilities for simplifying administrative court proceedings are somewhat limited compared to administrative proceedings, as the courts must guarantee an independent and impartial review (therefore the constitutional limits for simplification are generally higher). The point of judicial review is to protect the (public) subjective rights of the applicant, and any potential limita-

---

32 Richard Zorza, "Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation", *Drake Law Rev.*, no. 879. 2013.

33 Zorza.

34 Zorza.

tions to these rights in judicial proceedings must be considered with the utmost caution. We therefore see potential for simplification in the following three areas: 1. *streamlining processes within the court*, 2. *streamlining communication with applicants*, 3. *establishing uniform and clear rules for the formulation of pleadings*.

In respect of the first area, in particular, the practice of courts using templates for simple writs or procedural resolutions could be mentioned. However, there is still room for simplification. For example, this could be done by using software or even AI to generate these simple documents automatically. However, while private sector lawyers are eager to incorporate AI into their practice, there are no official efforts to use AI in the Czech judiciary yet. The Ministry of Justice has pointed out that AI systems could perhaps significantly improve the efficiency and quality of court proceedings. At the same time, they pose risks to the rights of individuals, whose protection is the main focus of those proceedings.<sup>35</sup> These opportunities are therefore still remote.

When it comes to *streamlining communication with applicants*, another aspect that can be broadly classified as simplification is the simplification of language. A movement advocating simpler and more comprehensible language, the use of which would lead to the creation of more accessible legal texts, is on the rise in the Czech Republic. The topic of legal writing is popularised by both the SAC judges and authors focusing on this area.<sup>36</sup> The ombudsperson institution also addresses the issue. However, the vast majority of legal texts are written in a standard style and therefore there is great potential for simplification of the language used. This is not, of course, specific to the administrative judiciary – quite the contrary.

It is for the applicant to formulate the points of an action with sufficient precision because the definition of the points of action predetermines the judicial review. An administrative act challenged by an action cannot be re-

---

35 <<https://advokatnidenik.cz/2021/10/06/umela-inteligence-v-justici-nejvyssi-prioritou-jednotlivce/>>.

36 See, e.g., Bryan A. Garner, *Legal Writing in Plain English*, 3rd ed. Chicago, 2023.



viewed on the basis of either overly general points of appeal<sup>37</sup> or on the basis of more detailed points of appeal which are, however, incomprehensible.<sup>38</sup> We believe that the administrative courts should treat incomprehensible and unrelated points of appeal as the so-called *rudiment* of points of appeal. They should therefore invite the applicant to remove the defect of incomprehensibility and to strip the claim of the parts that are not relevant.<sup>39</sup> Or, more generally, the courts should not be formalistic.

Another step to streamline communication between the court and the party could be the introduction of a QR code payment of court fee. The replacement of stamps with electronic stamps is being considered. Electronic stamps should also allow instant payments using QR codes.<sup>40</sup> We believe that payment by QR code could become the most common way of paying court fees (today the most common is payment to a bank account).

We can also mention the possibility of holding court hearings online. The legislation today allows the use of videoconferencing equipment in court hearings, in particular in relation to ensuring the presence of a party or an interpreter at the hearing or to conduct the examination of a witness, expert or party.<sup>41</sup> However, in this respect, the current legislation anticipates the participation of one particular person in court by means of a videoconferencing device, rather than the conduct of the entire court session remotely. At present, we are still a long way from the concept of “online justice”.

---

37 Judgment of the SAC of 20 December 2005, No. 2 Azs 92/2005–58, or judgment of the SAC of 14 February 2006, No. 1 Azs 244/2004–49.

38 Judgment of the SAC of 8 March 2021, No. 5 As 113/2020–36.

39 It is only at the pre-decision stage that the administrative court is concerned with whether the action is admissible as a whole. It is not obliged to examine whether the pleas in law are also sufficiently specific, elaborate or convincing. It is the applicant’s task and, above all, their interest to ensure the quality of the pleading. If the application is argumentatively poor (incapable of rebutting the conclusions of the contested administrative act), the court is not obliged to inform the applicant of that fact, but is obliged to reject their application and, where appropriate, to declare it inadmissible in some part (see judgement of the SAC of 15 November 2021, No. 10 Afs 124/2021–42).

40 <[https://www.mfcr.cz/assets/cs/media/2023-05-19\\_Kolky-zprava-RIA-priloha.pdf](https://www.mfcr.cz/assets/cs/media/2023-05-19_Kolky-zprava-RIA-priloha.pdf)>.

41 See Article 102a of Act No. 99/1963 Coll., the Code of Civil Procedure.

In the case of *establishing uniform and clear rules for the formulation of pleadings* it can be considered problematic that some aspects of administrative justice are constructed essentially by case law. This means that knowledge of the text of the law (CAJ) may not always be sufficient, which again somewhat weakens the position of the applicants. These situations do not occur very often, but some are significant.<sup>42</sup> In these cases, the solution probably cannot be simplification, but rather an adequate addition of a case law conclusion to the text of the legislation.

However, simplification could be achieved, e.g., by the introduction of form filing, which can be found, for example, in ECtHR proceedings. Its guidelines include rules on both form and content of pleadings, including set structure or maximum length.<sup>43</sup> This can be partly achieved by the court inviting the applicant to shorten or rephrase their disproportionately lengthy submissions or rephrase them in order to make them more intelligible. Some SAC judges make use of this procedure, but it is done rather exceptionally and without explicit support in the law.

## **Conclusions**

Access to court is a fundamental aspect of the rule of law, although not an absolute right. The process leading to a judgment involves meeting various requirements set by the law, which act as restrictions on court access. These constraints are allowed as long as they are reasonable, proportional, have a valid purpose, and do not undermine the core essence of court access. However, not all requirements meet these criteria. Some restrictions might seem justified but reveal the opposite upon closer inspection.

---

<sup>42</sup> One such example is the so-called subjective admissibility of cassation complaints to the SAJ. While the CAJ provides for “objective inadmissibility”, this has not been sufficient in judicial practice. Therefore, case law has also deduced some other “subjective inadmissibility” conditions arising from the general parameters of judicial review or the role of the SAC. For more detail, see Lukáš Potěšil, *Kasační stížnost*. Praha, 2022, 87 et. seq.

<sup>43</sup> <[https://www.echr.coe.int/documents/d/echr/Guidelines\\_pleadings\\_communication\\_ENG](https://www.echr.coe.int/documents/d/echr/Guidelines_pleadings_communication_ENG)>.

These can be formal or informal. Some of these limitations arise from how the administrative justice system functions or how it is organised. Unintentional obstructions of access can emerge, causing “bottlenecks” in reaching protection by administrative courts. While some of these bottlenecks might be intentional and aligned with the administrative justice system’s role (e.g., SAC’s review restrictions), others result from the unintended consequences of the system’s design or the application of relevant legal rules. We believe two categories of limitations can be recognised – formal and informal.

With *formal* access-related criteria, the drafting of a petition is crucial. Court fees, although not excessively high, should not unduly inhibit access. Yet, the selection of action types for specific administrative acts poses challenges, creating inefficiencies in court initiation. Communication with the court is also important, and the provision of clear information, transparency in procedures, and practical guidance is pivotal for applicants, impacting the efficiency and fairness of proceedings. These challenges in court access necessitate empirical research to identify and rectify bottlenecks, ultimately aiming to simplify and enhance the process, guided by the user’s perspective.

*Informal* limitations affecting court access include both practical and awareness-related challenges. Practical barriers including costs, procedural complexity, ignorance, and physical accessibility, along with attitudinal barriers like scepticism and lack of faith in rules, can impede access. While the Czech system generally upholds physical access requirements, regional court distribution and the absence of specialised administrative courts present organisational disparities. The SAC has seen a surge in cases, potentially straining its capacity. Lengthened proceedings before administrative courts possibly indicate their expanding responsibilities exceeding capacity. On the other hand, administrative authorities lack the legal obligation to inform individuals about court protection possibilities, potentially leading to inequality.

The *simplification potential* in Czech administrative court proceedings encompasses three key areas. Firstly, processes within the court could be

streamlined, leading to time and money savings. Secondly, language simplification could improve the accessibility of legal texts and instructions for applicants. Lastly, establishing uniform rules for the formulation of application could enhance clarity and structure. Whether and when these changes will be reflected in proceedings before the Czech administrative courts remains a question.

One thing is certain, there is a need to respond to societal and technological changes. As R. Pomahač illustrates, “[t]he ideal picture of the administrative justice system used to be painted as a beautiful villa in a park, with lots of flowers and thick grass, untrampled by the footsteps of those heading to the courthouse. It’s a picture laden with nostalgia for the old days. The trial of simplification today often leads to proceedings without oral hearings and in many places are experimenting with electronic proceedings.”<sup>44</sup>

## References

- Ferrari, Giuseppe Franco. “Simplification and Consent in Administrative Action: A Comparative Perspective.” *Bocconi Legal Studies Research Paper Series*, no. 3126763. 2018.
- Garner, Bryan A. *Legal Writing in Plain English*, 3rd ed. Chicago, 2023.
- Halliday, Simon, and Colin Scott. “Administrative Justice.” In *The Oxford Handbook of Empirical Legal Research*, edited by Peter Cane, and Herbert Kritzer. Oxford, 2010: 469–491.
- Kovač, Polonca, and Dacian C. Dragos, eds. *Administrative Sciences*, special issue – *Simplification of Administrative Procedures – in Search of Efficiency, Public Interest Protection and Legitimate Expectations*. 2022.
- Mocková, Eliška. “Přístup ke spravedlnosti podle článku 13 Úmluvy o právech osob se zdravotním postižením. Lépe už to nejde?” In *Lidé s postižením jako*

---

44 Richard Pomahač, “Patnáct let inovovaného správního soudnictví – je čas na změnu?”, *Správní právo*, no. 1–2. 2018: 80.

- „nová menšina“ – právní výzvy a souvislosti, edited by Harald Christian Scheu, and Zuzana Durajová. Praha, 2021: 216–230.
- Mullen, Tom. “Access to justice in administrative law and administrative justice.” In *Access to Justice: Beyond the Policies and Politics of Austerity*, edited by Ellie Palmer et. al. Oxford, Portland, 2016: 69–104.
- Pomahač, Richard. “Patnáct let inovovaného správního soudnictví – je čas na změnu?” *Správní parvo*, no. 1–2. 2018: 72–85.
- Potěšil, Lukáš. *Kasační stížnost*. Praha, 2022.
- Potěšil, Lukáš. “Restriction of access to the Supreme Administrative Court to reduce its burden (via expanding the institution of inadmissibility of a cassation complaint in the Czech Republic).” *Institutiones Administrationis. Journal of Administrative Sciences* 1, no. 1. 2021: 74–81.
- Svoboda, Tomáš, and Denisa Skládálová. “The Qualification of Action in Administrative Justice and its Perils – the Czech Experience.” *Adam Mickiewicz University Law Review*, no. 14. 2022: 281–295.
- Waltr, Robert. “§ 1, Subject of court fees.” In Robert Waltr et. al., *Zákon o soudních poplatcích. Komentář*, 2nd ed. Praha, 2012.
- Zorza, Richard. “Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation.” *Drake Law Rev.*, no. 879. 2013: 845–881.
- <<https://advokatnidenik.cz/2021/10/06/umela-inteligence-v-justici-nejvyssiprioritou-je-ochrana-prav-jednotlivce/>>
- <<https://advokatnidenik.cz/2019/10/01/spravni-soud-resi-i-banalni-pripady-je-tak-pretizeny-rika-baxa/>>
- <<https://jinepravo.blogspot.com/2011/06/nejnespravedlivejsi-rozsudky.html>>
- <[https://www.echr.coe.int/documents/d/echr/Guidelines\\_pleadings\\_communication\\_ENG](https://www.echr.coe.int/documents/d/echr/Guidelines_pleadings_communication_ENG)>
- <[https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover\\_und%20text\\_the%20austrian%20judicial%20system\\_neu.pdf?forcedownload=true](https://www.justiz.gv.at/file/8ab4ac8322985dd501229d51f74800f7.de.0/cover_und%20text_the%20austrian%20judicial%20system_neu.pdf?forcedownload=true)>

<<https://www.nssoud.cz/informace-pro-verejnost/poskytovani-informaci/poskytnute-informace/detail/informace-poskytnuta-28-3-2022>>

<<http://www.openlawlab.com/2015/11/18/the-legal-system-needs-to-be-re-designed-by-normal-people-for-normal-people/>>

<<https://www.osce.org/files/f/documents/1/3/105271.pdf>>

*Waite and Kennedy v. Germany*, Application no. 26083/94, Judgement of the European Court for Human Rights of 18 February 1999.

*Kart v. Turkey*, Application no. 8917/05, Judgement of the European Court for Human Rights of 3 December 2009.

Resolution of the Constitutional Court of the Czech Republic of 14 August 2019, No. II. ÚS 2398/18.

Judgment of the Supreme Administrative Court of the Czech Republic of 23 February 2023, No. 2 As 9/2023–10.

Judgment of the Supreme Administrative Court of the Czech Republic of 15 November 2021, No. 10 Afs 124/2021–42.

Judgment of the Supreme Administrative Court of the Czech Republic of 8 March 2021, No. 5 As 113/2020–36.

Judgment of the Supreme Administrative Court of the Czech Republic of 14 February 2006, No. 1 Azs 244/2004–49.

Judgment of the Supreme Administrative Court of the Czech Republic of 12 January 2006, No. 1 As 3/2005–45.

Judgment of the Supreme Administrative Court of the Czech Republic of 20 December 2005, No. 2 Azs 92/2005–58.