

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

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QUESTIONNAIRE ON ECONOMIC SECTORAL REGULATION IN EUROPEAN UNION COUNTRIES

I. Scope and purpose of economic sectoral regulation

1. Economic sectoral regulation mainly focuses on sectors submitted to European Union' secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in your country?

Indeed, besides transport, energy, postal activities, electronic communication and audiovisual media, there are some other economic sectors that are subject to regulation in the Czech Republic. Here are some examples:

pharmaceutical industry is regulated by the State Institute for Drug Control subordinate to the Ministry of Health;

banking sector, financial market are regulated by the Czech National Bank which is the central bank of the Czech Republic and the supervisor of the Czech financial market;

food industry and agriculture are regulated by the Czech Agriculture and Food Inspection Authority which is a state administration body subordinated to the Ministry of Agriculture responsible for supervision of safety, quality and labelling of foodstuffs;

mining industry is regulated by the Czech Mining Office, a state administration body which regulates exploration and development, delivers a prospector's licence before engaging in exploration for minerals, supervises safety of work etc.

2. Is the whole set of European Union' secondary legislation for economic sectoral regulation transposed into national law and/or practically implemented?

Generally speaking, practically the whole set of European Union' secondary legislation for economic sectoral regulation is implemented into the Czech law. In the following we mention some examples of EU sectoral directives that were transposed:

postal services – European legislation was transposed to the Postal Services Act no. 29/2000 Coll. by the Act No. 221/2012 Coll.;

energy – directives of the European Parliament and of the Council no. 2004/8/EC, no. 2005/89/EC, no. 2006/32/EC, no. 2009/28/EC, no. 2009/72/EC, no. 2009/73/EC were transposed to the Act No. 458/2000 Coll. on the Conditions of Business and State Administration in Energy Industries and Changes to Certain Laws (the Energy Act);

transport – directives of the European Parliament and of the Council no. 2012/34/EU, no. 2004/49/EC, no. 2004/50/EC, no. 2007/58/EC and no. 2007/59/EC were transposed to the Act no. 266/1994 Coll. on rail system.

electronic communication - directives of the European Parliament and of the Council no. 1999/5/EC, no. 2002/19/EC, no. 2002/20/EC, no. 2002/21/EC, no. 2002/22/EC and no. 2002/58/EC and the directive of the Commission no. 2002/77/EC were transposed to the Electronic Communications Act No. 127/2005 Coll.;

audiovisual media – the Council for Radio and Television Broadcasting is regulated by these Directives of the European Parliament and the Council: no. 2010/13/EU, no. 2002/19/EC, no. 2002/20/EC, no. 2002/21/EC, no. 2006/114/EC and no. 2005/29/EC transposed to the Broadcasting Act No. 231/2001 Coll.

However, there are some directives that have not been transposed in time or they have been, but not correctly. This concerns for instance Commission Directive 2012/48/EU of 10 December 2012 amending the Annexes to Directive 2006/87/EC of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and Commission Directive 2012/49/EU of 10 December 2012 amending Annex II to Directive 2006/87/EC of the European Parliament and of the Council laying down technical requirements for inland waterway vessels which have not been implemented in time.

Furthermore, Directive 2001/14/EC of the European Parliament and the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification was transposed incorrectly. On 23rd November 2010 under Article 258 TFEU the Commission brought an action against the Czech Republic. On 11th July 2013 the ECJ declared that by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4(1), 6(2), 11 and 30(5) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, as amended by Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004, the Czech Republic has failed to fulfil its obligations under those provisions.

3. Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly? If not, what are its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?

Besides the stated aims of economic sectoral regulation such as introducing competition in sectors where there is State monopoly, implementing an internal market, defining universal service obligation, consumer protection, there are some others that can be found for instance in explanatory notes to relevant acts. This covers market regulation or fiscal reasons, gain of financial means and arrival of developed management and know-how that are connected with privatization.

For example in the field of postal activities, the main aim of amendment to the Post Services Act was to transpose the Directive 2008/6/EC (the Third Post directive) leading to completion of European post market liberalization, i.e. to cancel remaining part of the monopoly and to cancel other legal and economic barriers defending the entrance to the post market. Currently, there has to be provided the minimal range of post service to the public in appointed quality and in accessible price throughout the Czech Republic.

4. Is economic sectoral regulation an *ex ante* control, aimed at defining obligations for companies in the regulated sectors *a priori*, or an *ex post* control, aimed at upholding competition provisions in case of infringement ?

The economic sectoral regulation is both *ex ante* and *ex post* control. It is aimed at defining obligations for companies in the regulated sectors (for companies with the big trade power – duty not to discriminate and transparency, duty to comply with rules for appointing prices of services; for all companies - connected with interests and rights of consumers) as well as at upholding competition provisions in case of infringement. Mostly, it is allowed to practise activity or to run a business only in terms of the license which is awarded by the independent regulatory body. When the law or the license is breached, the regulatory body can take some corrective measure, impose a fine or deprive the license.

	<i>Ex ante</i> control	<i>Ex post</i> control
Postal activities	everyone can provide post services in terms of the license awarded in selection procedure	in case of breaching the law or the license the Czech Telecommunication Office is empowered to impose sanction
Energy	running business in energetic branch in the Czech Republic is	the Energy Regulatory Office can impose sanction or corrective

	possible only in terms of the license awarded by the Energy Regulatory Office	measures, in case of breaching duties stipulated by the law the Energy Regulatory Office is empowered to abolish the license
Transport	railway transport – it is permitted to provide the railway in the terms of an official permission, in case of providing the state or regional railway it is necessary to have a certificate of safety awarded by a railway office	this office is competent to nullify this permission – when duties are breached
Audiovisual media	the Council for Radio and Television Broadcasting is empowered to grant or change licenses for the operation of radio and television broadcasting	in case of breach of license the Council is empowered to impose sanctions - corrective Measures – the Council shall grant a grace period to remedy the breach of license or law, withdraw of licences for the operation of radio and television broadcasting and cancel decisions on registration to operate retransmission, impose a fine
Electronic communication	duties for companies with big trade power (e. g. duty to allow access to nets) and duties for all companies (e.g. right to a contract, services of an operator, services of distress call, transfer of numbers)	The Czech Telecommunication Office imposes duties of non-monetary performance, imposes, collects and enforced fines.

5. Has the implementation of an economic sectoral regulation prompted the emergence of competition in the relevant sectors? Did new entrants manage to fit in regulated markets? If not, why?

Yes, the implementation of economic sectoral regulation has prompted the emergence of competition in the relevant sectors, but the liberalization of the market is gradual.

Post offices – The state-owned company Czech Post is currently the only holder of postal license obtained under transitional provisions of Postal Services Act which consists of providing postal services in the whole country. In 2017, when this license expires, the first selection procedure which will enable other companies to gain this license and thus end the State monopoly will take place. As far as regional postal services are concerned, there is already a competition and we can find numerous entities providing this kind of service.

Energy – The market of energy opened gradually from 2002 to 2007. The access to nets is regulated which means that everybody who fulfills technical conditions has the right to access nets and to realize stipulated trade with energy. The prices are determined by the regulatory body and are publicly declared.

Transport – The originally state-owned company, the State railway monopoly, Czech railways was transformed into a joint-stock company. Although the State is so far the only owner of its shares, there is already a competition. Two railway companies, RegioJet and Rapid express, have recently entered the market. As shown in the last question dedicated to relevant case-law, sometimes new entrants have to face inconveniences such as, for instance, abuse of dominant position by the above-stated Czech railways.

6. Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?

Post services - The Czech Post is still a state-owned company although its privatization has been discussed.

Electronic communication - in 2005 a Spanish operator Telefonica bought State stock shares in the Czech telecommunication company named the Czech Telecom whereby its privatization has begun.

Transport

Railway transport

The joint-stock company Czech Railways was established in 2003 as one of successor companies of the original state-owned company. The State owns 100 % of its stock and exercises its shareholder rights through the Steering Committee. According to the company's statute stock can be assigned only with consent of the Czech Government.

Air transport

The Czech Airlines is a joint-stock company since 1992. It was only in March 2013 that the Czech Republic stopped being the only owner of the company and the Government of the Czech Republic approved the sale of 460 725 Czech Airlines shares, representing a 44 % stake in the company, to Korean Air.

Audiovisual media - the Czech Television and the Czech Radio are special legal entities, public law establishments, created by a statute.

Energy - in the field of energies, all important state-owned companies have been privatized, however, the State still owns a part of shares which could be subject to privatization in the future.

Before privatization itself, most of state companies were transformed into joint-stock companies whose shares were subsequently offered for sale.

Gas industry

In 2002 the Czech Government privatized the gas monopoly Transgas and shares in 8 regional distribution companies including the infrastructure by selling majority of stocks to the German company RWE. Since the privatization took place, the Government does not have a direct influence on gas companies from the position of owner. Gradually with the liberalization of the gas market even the State influence on gas pricing decreased. Nevertheless, the State influence remained in the field of distribution which may be considered as a natural monopoly. The infrastructure both transport and distribution has been privatized.

Electricity

Similarly to two previous energy sectors, electricity was privatized as well. Originally state-owned company ČEZ (Czech Energetic Enterprises) was at first transformed into a joint-stock company and then a part of its shares has been bought by private companies or individuals. However, the State remained the majority owner of the shares (cca 70 %). Currently the Czech electricity market is fully liberalized except natural monopolies such as transport and distribution where price regulation prevails.

Oil industry

In the 90s, refineries were restructured in order to become more attractive for minority foreign investors. In the rest of the sector the State maintained its dominance concentrated in the concern Unipetrol of which only minority shares were sold. The real privatization took place in 2005 when the State sold 63 % of its shares in Unipetrol to a Polish company PKN Orlen and thus lost its dominant position. Thereby the state influence is low, except for the infrastructure which is strategic from the safety point of view and where the Government has an exclusive control.

7. Which economic sectors would you like to address more specifically in terms of regulation?

II. Organisation of economic sectoral regulation

8. Is economic sectoral regulation implemented by one or several independent authorities? If so, on what grounds was this choice made and how is this independence guaranteed?

There are several regulation authorities independent of the Government. Each of them is focused on a different economic sector. The way in which members of regulation authorities are appointed and recalled should guarantee the independence of the regulation bodies. The relevant legislation states strict conditions under which (and in no other cases) a member can be recalled (e.g. serious breach of duties or long absence at office).

For instance, members of the Czech Telecommunication Office are appointed and/or recalled by the Government at suggestion of the Ministry of Industry and Commerce; members of the Council for Radio and Television Broadcasting are appointed and recalled by the Prime Minister at the suggestion of the Chamber of Deputies of the Parliament; the president of the Energy Regulatory Office is appointed and/or recalled by the President of the Republic at the suggestion of the Government.

In contrary, in transport sector there is not an independent regulatory office. It is regulated by administrative offices and the Ministry of transport. This ministry is a promoter of the Czech railways corporation, its subsidiary company the Czech railways Cargo and manages the state organization the Railway infrastructure administration. It is impossible for the Ministry to be an independent body. Furthermore, it is the office where the head of it is a member of the Government of the Czech Republic.

Currently, a new regulatory office for transport is discussed. It might be represented by the already existing Energy Regulatory Office (it could regulate water as well) or by completely new office, only for transport regulation.

Alternatively, for instance, food industry and agriculture are regulated by the Czech Agriculture and Food Inspection Authority, a state administration body subordinate to the Ministry of Agriculture. It is a state authority responsible for supervision of safety, quality and labelling of foodstuffs.

9. Are these authorities independent of the regulated economic sectors? If so, how is this independence guaranteed?

In order to assure regulation authorities' independence of the regulated economic sectors, any proceedings they participate in is meant to be transparent. To achieve this, all the competences of regulatory bodies are clearly defined in laws, e.g. license proceedings.

Although it can be said that regulation authorities are in general independent of the sectors they regulate, from time to time we can hear critical voices pointing out lack of the discussed independence (for instance, a non-governmental organization "CZ Biom" doubted independence of Energy Regulatory Office for its standpoint against subvention of renewable energy sources and in favour of conventional sources of energy).

10. Do these authorities have a regulatory power? If so, is it a general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?

Yes, these authorities do have a regulatory power. According to Article 79 Paragraph 3 of the Czech Constitution Ministries and other administrative authorities have a regulatory power but they need to be empowered by a statute in every case, so they do not have a general regulatory power. Most often statutes delegate on them regulatory power concerning fee/price determination etc.

For example, the Czech Telecommunication Office adopts by-laws (to implement the Post services act and/or the Act on electronic communications) and special kind of administrative acts (measure of generality) which is a mixture of an individual and a normative act.

The Energy Regulatory Office adopts legislation to regulate, negotiate and control prices in energy industry. It adopts statutory instruments to the Energy act and to the Act on energy resources support.

The same regulatory power has the Ministry of transport.

11. Do these authorities take part in drafting the relevant legislation for regulated sectors, through notice procedures for instance?

Yes, regulation authorities can draft relevant legislation. Legislation rules of the Government stipulate that ministries and/or other central State administrative bodies can elaborate a draft. The latter is subsequently submitted to the Government before a proposal of the law is elaborated. If a member of the Government is entrusted with co-ordination and information role, the appropriate central State administrative body cooperates with this minister. A draft consists of a review of laws and regulations this draft deals with, an assessment of current legal regulation, the way this proposal should be implemented to the legal order, a supposed economic and financial range and impact of proposed regulation on equality of men and women. After this, the draft is put to the electronic library and a deadline for comments is set. The draft revised in compliance with comments is sent to the Government for hearing. Once the draft is approved by the Government, the relevant ministry or the central State administrative body works out the bill. Commented and revised drafted bill is sent to the Government for hearing. The approved Government's bill is supplied with an explanatory note.

For instance, the Czech Telecommunication Office submits propositions of acts to the Ministry of Industry and Commerce and co-operates with the Ministry on its preparation.

12. Do these authorities have a sanctioning power toward companies of the regulated sectors? If so, what kind of sanctions can they adopt and under which procedure? Do these procedures guarantee compliance with provisions of article 6 §1 of the CPHRFF?

Yes, these authorities do have a sanctioning power. In general, they are empowered to impose some corrective measures or fines and withdraw a license or permission, all of this in the framework of administrative proceedings under Act No. 500/2004 Coll. Code of Administrative Procedure, if not stated otherwise by a special law (e.g. the Post Services Act, the Act on Electronic Communication, the Energy Act).

Regulatory bodies' decisions are subject to judicial review before civil or administrative courts (see the question 16) so we can say that procedures on sanctions guarantee compliance with the right to a fair trial stipulated in article 6 section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This was achieved thanks to amendments of the Czech legislation. By the end of 2002 administrative justice was regulated by the fifth part of the Code of Civil Justice and was abolished by the decision of the Czech Constitutional Court (31st December 2002, no. Pl. ÚS 16/99). The new legislation consisting of the Code of Administrative Justice and the fifth part of the Code of Civil Justice provides a broader judicial review of administrative acts.

13. Is every economic sector regulated by a specific authority, or are there some authorities exercising their powers in several sectors?

There are several regulatory offices in the Czech Republic. In general we can conclude that every regulated economic sector has its own regulatory body, for instance, broadcasting is regulated by the Council for Radio and Television Broadcasting or the Energy Regulatory Office regulates the whole energy market, however in the future it could be a regulatory body for several economic sectors as its competence in transport sector instead of the Ministry of transport is discussed. There are some other regulation authorities that supervise more than one sector, e.g. the Czech Telecommunication Office is a regulatory office for electronic communications and for post services.

14. How are economic sectoral regulatory authorities' competences articulated with those, when appropriate, of a transverse authority in charge of assessing compliance to competition law?

There is a co-operation between the Czech competition authority (the Office for the Protection of Competition) and sectoral regulatory bodies such as Energy Regulatory Office or Czech Telecommunication Office. For instance, Czech Telecommunication Office has recently discussed its auction of frequency spectrum to a new mobile operator in order to act in line with competition law in the matter of an alleged unauthorized subsidy.

In general we can say that sectoral regulation and competition law are applied in a parallel way. There are differences between them as far as their aims, the way they exercise a control, tools they use or their institutional position are concerned. While sectoral regulation is primarily focused on *ex ante* control, competition law rather controls *ex post*. Competition policy emphasizes consumers' welfare, whereas for example energy policies strive for competitiveness, security of supply and sustainability.

It happens that one company is controlled by both sectoral regulator and competition authority. In these cases question of relation between their competences may arise. Pursuant to Article 97 of Code of Administrative Procedure it is the Supreme Administrative Court which decides on conflict of competences of administrative bodies.

This was, for instance, the subject matter of the decision of the Supreme Administrative Court of 18th December 2007, no. Komp 3/2006-511. The energy company RWE as a plaintiff, brought an action against two defendants, the Energy Regulatory Office and the Office for the Protection of Competition. Both offices prosecuted the aforementioned company for excessive prices whereby, according to the plaintiff, the principle *ne bis in idem* was breached. The Supreme Administrative Court did not agree with the plaintiff's objection that the company was tried twice for the same offence, here for having set natural gas prices leading to disproportionate advantages for the plaintiff. According to the Court, Energy Regulatory Office is a price control body for energy sectors. As such, it is entitled and obligated to impose a fine on those sellers who abused their economic power and breached price laws if their non-justified profit exceeded a given amount of money. Contrary to this, OPC supports and protects competition, and to achieve that, it shall levy a fine to competitors abusing their dominant position. The Court made a distinction between the first prosecution led by Energy Regulatory Office and the second executed by OPC. Energy Regulatory Office sanctioned the plaintiff for not respecting justified profit margins when setting prices and thus obtaining disproportionate economic profit. OPC sanctioned the plaintiff for obstructing competition via price and other conditions. Despite the fact that prices set by the plaintiff were examined by both authorities, Energy Regulatory Office and OPC, there was no conflict of competences according to the Supreme Administrative Court as the competition authorities inspected some other conditions as well, not only prices.

III. Judicial review of economic sectoral regulatory authorities' decisions

15. Are all economic sectoral regulatory authorities' decisions subject to judicial review? If not, which decisions are not subject to such checks and why?

In general, it can be said that all economic sectoral regulatory authorities' decisions are subject to judicial review. The Code of Administrative Justice explains "administrative authorities' decision" in an extensive way as an act whereby the person's rights or obligations are created, changed, nullified or bindingly determined. It happens that there is judicial review even of those administrative acts which are not designated as such by issuing administrative body but pursuant to the aforementioned definition of judicial review by administrative courts those acts fulfil conditions and are subject to judicial review. Nevertheless, there can be administrative decisions that are excluded from judicial review because they do not meet requirements of the cited definition. It concerns decisions that are, for instance, of a provisional nature, or which regulate the administration of proceedings before the administrative authority.

16. Which system of jurisdiction is competent to verify these decisions? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?

In the Czech Republic, an administrative authority decision can be verified by a civil jurisdiction, or by an administrative jurisdiction, it depends on the kind of prejudiced rights. Private law matters fall within civil jurisdiction (typically: decisions of expropriation). Public law matters are subject to judicial review before administrative jurisdiction.

This mechanism is established on two levels: procedural and institutional.

The procedural one is laid down in the Code of Civil Justice (for issues of private law) and the Code of Administrative Justice (for administrative law issues). Both procedural codes provide the possibility to reject an action brought before a non-competent court, i.e. an administrative action before a civil court and a civil lawsuit before an administrative court. In such a scenario, the courts of both jurisdictions are obliged to keep the petitioner advised of the competent court. At the same time, if the petitioner follows that advice and submits accordingly the petition to the competent court, the time limit for filing the action is deemed to have been observed.

It is evident that it might be difficult to determine whether a decision of an administrative authority in a given case is a public or private law issue. Questions relating to the distinction between private and public law and the so-called legal “dualism” are among the most complex legal issues. Disputes might arise between the administrative and civil courts as to competence, be it a positive competence dispute (i.e. both jurisdictions claiming to be competent) or a negative one (i.e. both denying their competence).

The task of resolving these types of disputes has been assigned to a special judicial body – a judicial panel – created by Act No. 131/2002 Coll., on Deciding Certain Conflicts of Competence. The panel consists of 6 judges, appointed for 3 years: the Chief Justice of the Supreme Court appoints three of them to the panel from among the Justices of the Supreme Court; the other three are appointed by the Chief Justice of the Supreme Administrative Court from among the Justices of the Supreme Administrative Court. The panel decides which jurisdiction is competent to hear the case in question. This means in practice that the panel will decide whether the administrative authority’s decision is one of private or public law. The decision of the special panel is binding on all courts involved in the dispute.

Apart from the justice system there is the Constitutional Court as the court for the protection of constitutionality. It is authorized to adopt decisions regarding the constitutional complaints against the final decisions (*inter alia*) of courts, which adopted the decisions in administrative or civil justice. From the point of view of the compliance with the Constitution of the Czech Republic and the Charter of Rights and Freedoms it is thereby authorized to vacate the decisions of the Supreme Administrative Court which adopted these decisions as the court of cassation, but also as a court of a single instance, or the decisions of the Supreme Court.

The review of decisions of the national competition authority (Office for the Protection of Competition) is undertaken by administrative jurisdiction.

17. Which kind of legal recourse is open against these decisions? What are the relevant legal proceedings in this matter?

It is possible to file an action with the court, administrative or civil, depending on whether it concerns private law or public law matters as described in the previous question. To do this, it is inevitable to exhaust ordinary remedies offered by the process of the administrative procedure (appeal, remonstrance, objections, protest, complaint).

In both civil and administrative jurisdictions, there are some ordinary and extraordinary remedies.

In civil branch of justice, there is possibility of lodging an appeal as an ordinary remedy to a higher instance. Against the decisions of courts of appeal, there is at disposal of plaintiff extraordinary appeal to the Supreme Court. Against any judicial decision that cannot be challenged by an appeal any more (decisions of the first and

of the second instance) other two types of extraordinary remedies exist: re-opening of the proceedings (for factual defects) and nullity plea (for procedural defects).

In administrative branch of justice, the regional court's decision can be challenged by a cassation complaint with the Supreme Administrative Court.

As mentioned in the previous question, all the decisions of civil and administrative courts can be challenged with the Constitutional Court by a constitutional complaint.

18. Which control does the judge exercise on these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decisions does he have limited control? In contrast, for which kind of decisions does he exercise thorough control?

In both civil and administrative jurisdictions, if the action is justified, the courts exercise judicial review of administrative decisions both on questions of law and of fact (except for proceedings on cassation complaint with the Administrative Supreme Court which is an extraordinary remedy against decisions of regional courts as administrative courts of the first instance).

However there are two basic differences between these two branches of jurisdictions.

Firstly, they differ in the way they deal with challenged administrative decisions.

Civil courts, if they do not agree with challenged administrative authorities' decisions, they deliver their own judgements which replace administrative decisions.

Contrary to this, if the administrative court revokes a decision, it simultaneously declares that it returns the matter to the defendant (authority) for further proceedings.

The administrative court revokes a decision as unlawful or for procedural faults. The court also revokes the contested decision as unlawful if it finds that the administrative authority exceeded the legally defined bounds of discretionary power, or abused it.

The only exception where even an administrative court can rule instead of administrative authority as civil courts do is in case of penalties. If the court decides on a complaint against a decision whereby the administrative authority imposed a penalty on account of an administrative delict, the court may, if there are no causes for the revocation of the decision but the penalty imposed was apparently unreasonably large, either waive the penalty or decrease it within lawful limits, if such a decision can be made on the basis of the facts from which the administrative authority started and which the court may have supplemented through its own evidence in nonessential ways and if such a procedure was proposed by the complainant in his or her complaint.

If the court revokes a decision, it may, depending on circumstances, also revoke the decision of a lower-level administrative authority which preceded it.

The legal position adopted by the court in the quashing judgement or a judgement declaring nullity is binding on the administrative authority in subsequent procedures.

If the court revokes a decision of an administrative authority in a matter in which the court itself produced evidence, the administrative authority includes the evidence among the grounds for a new decision in the subsequent proceedings.

Another difference between civil and administrative proceedings is that whereas before administrative courts the administrative authority whose decision is challenged is party to the proceedings, before civil courts it is not.

19. While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources consultation, etc.)?

Article 127 of Code of Civil Justice, binding for both civil and administrative courts, stipulates the following.

If the decision depends on consideration of facts requiring professional knowledge, the court asks a body of public power for its statement. If this is not sufficient because the case is too complicated, the court appoints an expert. The court shall examine the expert; the court may also order that the expert makes the report in writing. Where more experts have been appointed, they may elaborate a common report. Instead of examining an expert, the court may be in well-grounded cases satisfied by a written report of the expert.

The court may have the expert's report verified by another expert, by a scientific institute or by another institution.

In exceptionally difficult cases asking for a scientist' assessment, the court may appoint as expert a state authority, a research organisation, a university or an institute specialised in expertises.

The court may order that a participant or, as the case may be, also somebody else appears at the expert, gives him the necessary items, submits necessary explanation, submits to a medical examination or a blood test or does something or omits something if it is necessary for submission of the expert's report.

20. Which role does the administrative Supreme Court take toward these decisions? What are the major decisions of supreme administrative justice in economic sectoral regulation matters?

The Supreme Administrative Court is a court of cassation for the regional courts' decisions. Here are some recent judicial decisions related to economic sectoral regulation.

Transport:

- The Supreme Administrative Court ruled in the dispute between the railway company RegioJet and the Czech national competition authority (OPC), in its judgments, respectively of 16th, 23rd and 23rd January 2014, no. 1 Ans 12/2013, no. 1 Afs 86/2013 and no. 1 Afs 87/2013. The dispute concerned the administrative procedures before the OPC against another railway company, the Czech railways, tried for the abuse of its dominant position on the market. The Supreme Administrative Court, confirming judgments of the Regional Court in Brno, stated that RegioJet is not entitled to bring an action of protection against inaction of an administrative authority as the company is not the participant of the administrative procedure before OPC. Notwithstanding, the national competition authority should have not refused the company's request to inspect the file on the ground of lack of legal interest, as the company considers civil action for damages and this fact can constitute the legal interest.

Audiovisual media:

- The broadcasting company FTV Prima applied for a change of its license to the Council for Radio and Television Broadcasting. The company did not want to have an obligation to allow regional broadcasting providers to connect themselves and to provide them broadcasting times. As the Council decided after deadline, the Regional Court stated that there was a legal fiction of the Council's approval. However, the Supreme Administrative Court stated in its judgment of 14th September 2011, no. 6 As 21/2011, that the license change is possible only under condition that regional broadcasting providers agree to it. Otherwise FTV Prima has to allow the providers to be connected in a specific time regardless the broadcasting technology was changed.
- The Council for Radio and Television Broadcasting imposed a fine in the amount of 500 000 CZK to the Czech television for its coverage titled "Case of an abused little boy" during TV news on 18th

February 2005 at 7.15 p.m. According to the Council the Czech television breached the duty not to broadcast programmes which are able to endanger physical, psychical or moral development of children and adolescents from 6.00 a.m. to 10.00 p.m. In the above-stated programme the identity of the boy and of his parents was disclosed, which could have caused an impairment of the boy's position among his coevals and his further psychical development. The Supreme Administrative Court in its judgment of 24th October 2007, no. 3 As 61/2006, in line with the Regional Court, ruled that the provision applied by the Council is not appropriate as it concerns protection of viewers and not of people the coverage is about.