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ACA EUROPE

Seminar organized by the Federal Administrative Court of Germany and ACA-Europe

ReNEUAL I –

Administrative Law in the European Union

"Single Case Decision-Making"

Cologne, 2 – 4 December 2018

Answers to questionnaire: Czech Republic

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ACA-Seminar
ReNEUAL I – Administrative Law in the European Union
Single Case Decision-Making

2. - 4. December 2018

Verwaltungsgericht Köln (Administrative Court Cologne)

Questionnaire

Introduction:

National legal orders and European Union law are in many fields closely linked. Both underlie mutual influences. The jurisdiction of the European Court of Justice is not only relevant and binding as the interpretation and application of European Union law is concerned. Also, its jurisdiction partly affects the interpretation and application of national law. This phenomenon can be observed e.g. in the law of administrative procedure or of administrative court procedure.

On the other hand, European Union law is founded on the national jurisdictions of the member states. From an optimistic point of view it ought to be an essence of the best the national legal orders have to offer. In this line of thinking the European Court of Justice considers the national legal orders as source of inspiration in determining the general principles of European Union law which traditionally, i.e. before the Charter of Fundamental Rights came into force, were the sole source of fundamental rights within the jurisdiction of the European Court of Justice (cf. ECJ Case 4/73 (Nold), ECLI:EU:C:1974:51, p.507-508). Accordingly, the European Court of Justice has deducted many procedural rights in administrative procedure from the national legal orders.

It is in the interest of the member states that the relationship between European Union law and the national legal orders remains one of mutual interchange, better: a dialectic process. It would be contrary to the common European project, if it degenerated into a one-way-street. Recently, there have been two proposals which try to implement this process by developing a European administrative law. These proposals are not directed at modifying the national laws of administrative procedure. Their purpose is to establish for a first time a general codification of administrative procedural law binding for the institutions of the European Union, particularly the Commission.

The ReNEUAL draft is a project which has mostly been promoted by European scholars with expertise in European Union law, in various national legal orders as well as in comparative legal studies (http://www.reneual.eu/index.php/projects-and-publications/reneual-1-0). Yet, several legal practitioners, i.a. judges from several member states, have also contributed. The ReNEUAL draft is available in English, French, German, Italian, Polish, Romanian and Spanish. For the purpose of this questionnaire, Book III (Single Case Decision-Making) is attached as a file in English. You will find links to other language versions on the ReNEUAL-website: http://www.reneual.eu/index.php/projects-and-publications/.

The second draft is a resolution adopted by the European Parliament in 2016 on a proposal for a regulation for an open, efficient and independent European Union administration (EP-No. B8-0685/2016 / P8_TA-PROV(2016)0279). It was inspired by the ReNEUAL draft. Although the Commission reacted rather sceptically in October 2016, the proposal is still on the agenda of the European Parliament. The proposal is also attached as a file; more language versions are accessible through the European Parliament's website: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0279+0+DOC+XML+V0//EN#BKMD-8

The seminar to be held in Cologne aims at further investigating into the national legal orders in order to assess their principles more profoundly and on a wider scale. The purpose is to achieve a better understanding of the specific approaches of the national legal orders, to discover similarities and/or differences in order to promote the dialectic process mentioned above and thus both contribute to a better understanding of the principles of the European legal order derived from the essence of the member states' legal orders and enable a mutual learning process as well between national legal orders among themselves as between the national legal orders and the European Union's legal order.

As the seminar cannot investigate the national administrative laws of the member states in their entireties the seminar has to limit its scope: first, to single case decision-making as the probably most typical form of action of the administration. Other forms of action, especially administrative rulemaking, pose another variety of questions which could make it worthwhile dedicating another seminar to this topic. Second, the seminar focuses on two important areas of administrative procedure, which are covered by the first two parts of the following questionnaire. The first is dealing with the legal position of different categories of (potential) parties to administrative proceedings (I.), the second with the administrative determination of facts and discretionary powers (II.). The last part contains a small case study in which these areas of administrative procedural law play a decisive role (III.). This sequence is, of course, not meant to prejudice the order of answering.

The first part deals with the questions of who is or can become a party to administrative proceedings before an administrative authority (not before an administrative court!) and of what rights and/or obligations might follow from being a party to administrative proceedings. The second part centres on the question of how administrative authorities determine the facts on which to found their decisions. Although here, too, the main focus is on the proceedings before administrative authorities, this part also makes reference to proceedings before administrative courts. In this regard it deals with the administrative courts' review of administrative decisions having in mind that there might be different standards of review concerning the establishment of the facts and concerning the application of substantial law.

Wherever you consider it appropriate, it would be helpful if you not only described your national legal order, but also compared your national legal order with the relevant provisions of the two drafts mentioned before. For this purpose the questionnaire makes reference to single provisions of these two drafts in order to facilitate the links.

I. Parties to Administrative Proceedings: Categories and Legal Positions

1. a) Are the following categories of parties to administrative proceedings for single case decision-making recognized in your legal order:

addressees of onerous administrative acts

Addressees of onerous administrative acts are parties to administrative proceedings for single case decision-making situation when the decision should establish, change or revoke their rights or duties. Or the decision will declare existence or not existence of right or duty of the parties. These are main parties to Administrative proceedings. Secondary parties participate in proceeding if their rights or duties could be directly affected by the ruling of the administrative authority.

Section 27 Code of Administrative Procedure

(1) Participants in proceedings (hereinafter referred to as a "participant") shall be persons as follows:

a. Applicants and other persons concerned in proceedings to deal with an application to whom the decision of an administrative body will apply due to their privity of rights or duties

b. Persons concerned in proceedings established by virtue of office, whereby the decision shall be to create, alter or abolish their rights or duties or determine that they do not possess a respective right or respective duty

(2) Participants shall also be other persons concerned as far as their rights or duties may be directly prejudiced thereby.

(3) Participants may also be persons stipulated by a special law. In the absence of provision to the contrary, they status shall be that of participant under subsection (2) unless the decision shall be to create, alter or abolish their right or duty; in such a case their status as participant shall be that under subsection (1).

applicants of beneficial acts

Applicants of beneficial acts are parties when the administrative proceeding began with their application as said in section 27 subsection (1) of Code on Administrative Procedure.

other individuals (please differentiate, in its case, further, e.g. between individuals claiming subjective rights, concrete legal interests, factual interests, individuals as members of the general public)

Other individuals can be parties to Administrative proceedings. The general definition of secondary party in the Code of Administration Procedure is that any individual (or legal person) can become party to the administration proceedings if their rights or duties can possibly be directly affected by the decision of the administration authority [section 27 subsection (2)]. If they are not party according to the general definition in the Code of Administrative Procedure, as mentioned above, they could became party according to specific legislation in other acts. These acts define specific types of administration proceedings. If individuals claims the right to participate to administration proceeding, the authority should decide whether they are party or not, until this decision, they are treated as parties.

Section 28 of the Code of Administrative Procedure

(1) Should any doubts occur, a person who asserts his being a participant may be considered to be such until the contrary is proved. Whether or not the person is a participant shall be shown in a resolution issued by the administrative body and the resolution shall be officially notified only to that person whose participation in proceedings is being considered; other participants shall be in-

formed of such notification. The procedure under the first sentence shall not preclude further consideration of and adjudication on the merits of the case.

General public is in some cases allowed to file a comment or complaint to administrative proceedings. The possibility to file a comment or complaint must be specified in a special act concerning concrete proceeding.

For example, in the Act on Environmental Impact Assessment, the general public can file a comment, in following-up administrative procedure within 30 days period.

Section 9c of the Act on Environmental Impact Assessment

(1) General public can in following-up proceeding file comments to intention. The comments can be applied within 30 days period since notification of information according to section 9b paragraph 1 on the official notice board....

associations or non-governmental organisations (e.g. environmental, consumer,…) (please indicate, in its case, details and/or specific requirements)

Associations and non-governmental organisations can be parties to administrative proceedings if they fulfil demands given by the general definition in section 27 of Code of Administration Procedure. Legal persons must choose one individual who should be making actions in the administrative procedure on their behalf.

In some administrative proceedings (specified in concreted acts) the associations or non-governmental organisations can be party to the proceedings if it complies with specific criteria, e.g. it must exist for some time, and it must have enough supporters or members. For example, if the environmental association wants to become a party in following proceeding according to Environmental Impact Assessment Act, it must exist for at least three years or have signature list with signatures of 200 supporters.

Another example can be proceedings according to Act on Conservation of Nature and Landscape. In this proceedings civic associations can became parties, if they provide notice of their participation to the administrative authority. The civic association must have as main mission according to their statutes conservation of nature.

other administrative bodies

Other administrative bodies can be parties to administrative proceeding if their rights or duties should be affected by the decision, or if particular act defines the administrative bodies as parties to the administrative proceedings. A specific individual appointed by concrete legal act acts on behalf of the administrative body. As mentioned below in section 85 of the Building Act, or in section 7 of Act on Integrated Prevention.

Section 7 of Act on Integrated Prevention

(1) *The participants in procedure to issue an integrated permit shall always include:*

a. The operator of the installation

b. The municipality, in whose territory the installation is or is to be located

c. The region, in whose territory the installation is or is to be located....

b) Are the categories of parties to administrative proceedings defined

- in a general codification (i.e. Code of Administrative Procedure,…),

The general categories of parties are defined in the Code of Administrative Procedure. Other parties might be defined in specific acts.

- by reference to other codifications (e.g. Code of Court Procedure,…),

by reference to other codifications are defined specific parties, who are eligible to participate in particular types of administrative proceedings.

Section 27 subsection (3) of Code of Administrative Procedure

- by customary law

not applicable

- by jurisprudence

Courts can interpret acts and with this interpretation broaden or narrow the group of potential participants to administrative proceedings.

- in another way (please explain)

There is no other way how to define categories of parties other than by legislation or interpretation of acts.

In comparison with the EP proposal, in the Czech Code of Administrative Procedure, there are two general groups of parties, primary and secondary one. These two groups have almost identical rights and duties. Otherwise the definition is similar like in the EP proposal; party is natural or legal person whose rights and duties can by affected by the decision of administrative authority. The Czech Code also gives chance to participate in proceedings to third persons who claim that they should be party.

The ReNEUAL draft has quite similar definition of party as the Czech Code, as it considers as party addressee, and other person who are adversely affected by the decision. It also considers as party everybody who requests to be involved in the procedure. In Czech code this participation on request can be revised by the authority and the status of party can be denied. The Czech Code of Administrative procedure does not constitute role of interested public as such, but according to the Code the definition of party can be in sectoral acts.

(cf. Art. 4 (f) EP-Res.; Art. III-2 (3) and (4), III-25 ReNEUAL)

2. a) Do (sectorial) pieces of legislation establish additional categories of parties to administrative proceedings or do such pieces of legislation modify the general categories? In this case, please give examples!

Sectoral pieces of legislation specify particular parties to specific types of administrative proceedings. The two main categories (which have almost the same rights in proceedings) the main party and secondary party remains the same. The specific pieces of legislation specify who else could be party to the proceedings if the individual or association does not comply with general definition of party in administrative proceeding. They can also have its own enumerative definition of parties, and in this proceeding the Code on Administrative Proceeding will be used subsidiary or not at all (e.g. Act on Environmental Impact Assessment or Building Act).

b) If such additional categories are established and/or such modifications are provided for, what is the rationale of such additions and/or modifications?

The main reason to have additional categories or more specific definition of participants in administrative proceeding is that the general definition can be in some cases too extensive or too narrow. On the other hand, in some administrative proceedings are specific parties required, and those cannot possibly be covered by the general definition in Code of Administrative Procedure. Some specific acts have their own enumerative list of participant.

3. As far as the parties are not parties by law (e.g. addressees or applicants), how can the different categories of (potential) parties actually become parties to administrative proceedings?

   - Is a request of the party required?
   - Is a decision of the administrative authority admitting the party required?
   - Is the administration obliged to qualify potential parties ex officio?

   If someone (individual or legal person) is not considered as a party according to the administrative authority or Code of Administrative Procedure, and the person claims to be entitled to have rights as a party, the administrative authority must consider the person as a party until the authority decides otherwise or when there is no doubt about the participant to be or not to be a party. So the decision is not required, and the party is automatically considered as party with all rights and duties, until the opposite proven, unless there exist no doubt about groundlessness of the request. Section 28 of the Code of Administrative Procedure

4. a) Are administrative authorities obliged to identify third parties entitled to participate or potentially interested in administrative proceedings?

If the administrative proceeding commences ex-officio, the administrative authority is obliged to notify all parties, who are known to him. When the proceeding commence with application, the applicant should name all parties who are known to him.

Section 47 of Code on Administrative Procedure

(1) An administrative body shall be obliged to notify, without unreasonable delay, all known participants of the commencement of proceedings.

(2) An administrative body shall be obliged, without unreasonable delay and as soon as it becomes aware of such persons, to inform anyone who becomes a participant after the commencement of the proceedings that the proceedings are in progress unless this is a person who has himself joined the proceedings.

(3) The notification of the commencement of proceedings may also be published on the official notice board of the respective administrative body in addition to methods determined in subsections (1) and (2).

Section 45 of Code on Administrative Procedure

"....an applicant shall also be obliged to name other participants know to him..."

b) Is the administrative authority obliged to announce the beginning of administrative proceedings to (potential) third parties to enable their participation?

The administrative authority is obliged to announce beginning of administrative proceedings to parties who are considered as a party according to the Code of Administrative Procedure or other specific acts. In some cases can the proceeding begin with public notice. For example when the proceeding should have more than 30 parties, than it will begin 15 days after the public notice were published on the official notice board.

Section 144 of Code on Administrative Procedure

(1) Proceedings with a large number of participants shall be proceedings with more than 30 participants unless a special law provides otherwise.

(2) *Participants in proceedings with large number of participant may be notified of commencement of proceeding by a public notice. The proceedings shall commence upon the lapse of the time-limit set in the public notice, the time-limit may not be shorter than 15 days from the day of its posting on the official notice board.*

According to the Act on Conservation of Nature and Landscape civic association (whose main task is protection of nature and landscape) can ask the administration authority to be informed about all administration proceedings concerning protection of nature and landscape. Than the authority has a duty to inform this civic association about beginning of proceedings concerning an above mentioned topic.

Section 70 of the Act on Conservation of Nature and Landscape

(1) The protection on nature under this Act shall be carried out with the direct participation of citizens, through their civic associations and voluntary groups or organisations associated with the nature conservation authorities.

(2) Civic association or its division, the main mission of which, according to its statutes, is conservation of nature, provided that it is a legal entity, (hereinafter referred to as a "civic association") shall be entitled to demand that the respective state administrative bodies inform it, in advance, of all the intended interventions and initiated administrative proceedings that could involve the nature and landscape protection interests protected under this Act....

According to the Building Act the administration authority is obliged to announce beginning of proceedings to other administration bodies which can be affected by the decision.

c) Are there any consequences, if the (potential) party does not make use of its right to participate in the administrative proceedings? Does your legal order provide for a foreclosure of the exercise of the party's rights (preclusion regulation), particularly with regard to later court proceedings (ability to challenge the final decision, legal standing in this regard)?

If the party does not make use of its right to participate in the administrative proceedings, than the party looses a right to make submissions and more importantly a right to appeal against the decision. Usually the party is given exact period of time, in which it should made a submission to the authority.

Who claims that his rights and duties were harmed in preceding administrative procedure, and have used all possible remedies, can file a petition against decision reached in the preceding procedure. So even if the party does not make use of its rights to participate in administrative proceeding, but was entitled to, can the party use remedy actions in front of administration court.

By missing the time period the party can for example loose right to present evidence. But also the administration authority can prolong the time period given to party, but only if the length of period is in discretion of the authority.

Section 39 of Code of Administration Proceeding

(1) An administrative body shall determine a reasonable time-limit for a participant to carry out an act unless the law provides otherwise and if such determination is necessary. Determining the time-limit may not be to the prejudice of either the purpose of proceeding or the equality of participants. The resolution on the time-limit shall be notified only to those to whom it is addressed, or to a person directly concerned thereby.

(2) The time-limit may be reasonably extended by an administrative body upon the request of a participant and under conditions stipulated in subsection (1)

5. If individuals / organisations / other public authorities are not admitted as parties to administrative proceedings by the competent authority on their request, what are the legal consequences?

a) Are they entitled to direct court actions against the administrative decision to not admit them as parties to the administrative proceedings? Are (only) original parties (parties by law) to the administrative proceedings entitled to do so?

All parties, who consider themselves as a party, have a right to be treated like a party and have all rights and duties until is the opposite proven or when there is no doubt about their right to or not to participate in the proceeding. Parties have a right to appeal against a decision of an administrative authority to superior authority.

b) In contrast, do the parties not admitted to the administrative proceedings have to wait for and then challenge the final administrative decision claiming a procedural defect in not admitting them?
Parties not admitted to the administrative proceedings do not have to wait until the end of proceedings, because the refusal of their admission is decision and against this separate decision, a remedy is possible. On the other hand, if they are not admitted as a party, they can still appeal against the decision if the party supposed to be participating, and the final decision was not notified to the party (section 84 of the Code on Administration Proceedings)

c) Can the competent authority remedy any omission to admit a party?
There is possibility that the same administrative authority can commence review procedure on proposal from one party. The administrative authority must approve the proposal without any limitation and other parties' rights and duties must not be harmed by this decision. Otherwise must make the decision higher authority.

6. a) Do all categories of parties to administrative proceedings enjoy the same procedural rights:
- to be heard (orally or in writing),

According to the Code of Administrative Procedure have all parties right to be heard or file a proposal to the administrative authority.

Section 36 of the Code on Administration Proceedings

(1) Unless the law provides otherwise, participants shall be entitled to propose evidence to by produced and to make other motion during the whole course of proceeding until a decision is issued; the administrative body may declare by resolution when the deadline is for such motions and proposals.

(2) Participants shall possess the right to express their view in the proceedings. The administrative body shall provide the participants with information on the proceedings if they so apply and unless the law provides otherwise.

(3) Unless the law provides otherwise, participants shall be enabled to express their view with respect to the grounds of the decision before the decision is issued....

- to be advised by the competent authority concerning the relevant procedural rights,

According to general principles in Code of Administrative Procedure, advise the administrative authority all affected subjects about their rights and duties.

Section 4 subsection (2) Code on Administration Proceedings

(2) An administrative body shall, in relation to its actions, provide any person concerned with reasonable advice on his rights and duties where necessary with respect to the nature of an act and the personal situation of the person concerned.

- to submit documents,

all parties in administrative proceedings can submit documents and other written proposals to the administrative authority

- to have access to the file, including documents submitted by other parties,

All parties have access to the whole file. Only exemption can be made about secret information. Parties can also make photocopies of the file.

Section 38 subsection (1) Code on Administration Proceedings

(1) Participants and their representatives shall have the right to inspect their file even if the decision on the merits of their case has become legally effective

- to call witnesses or to initiate other gathering of evidence,

Parties have the same rights to support their claim by suggesting evidence to the administrative authority. The suggestions from parties are binding for the administrative authority. The administrative authority must consider each suggestion of party and evaluate the importance of suggestion to the proceedings.

- to be provided with a copy of the final decision,

The final decision is a part of a file, and all parties can make photocopies of documents in the file. The final decision can also be notified in written form to parties, if they have not given their right to notify the decision up.

- to file a claim in the administrative proceedings?

An injured party in the misdemeanour proceeding can claim a compensation. Otherwise all parties in administrative proceedings can file a petition to the administrative authority.

b) Or do different categories of parties to the administrative proceedings have different rights? If so, please provide information about the most important differences!

There are small differences in rights of the main and secondary party in administrative proceedings. For example, the right to suggest publicity of the administrative proceedings, only the main party can make a suggestion to allow access to oral hearing for public.

Another difference is that the administrative proceedings begin when the administrative authority notify main party about the proceeding.

When the administration proceedings begin ex-officio, the administrative authority can interrupt the proceedings, among other options, only on demand from the main party.

When a higher authority decides about inaction of the administrative authority and assigns the proceedings to another authority, then the higher authority notifies only the main parties.

(cf. Art. 9, 11, 14, 15 EP-Res.; Art. III-15, III-23, III-24 ReNEUAL)

7. Is there a political or academic discussion concerning any kind of reform with regard to the participation rights of third parties to administrative proceedings in your country? Are there recent legislative proposals concerning the participation rights of third parties to administrative proceedings?

There is no actual discussion concerning reform of definition of parties in the Code of Administration Procedure. Frequently discussed topic is whether environmental and civic associations should be given the same rights as the parties, especially in procedures regulated in the Building Act.

8. What is the most important and most recent case law of your court relating to the status of third parties to administrative proceedings and their procedural rights therein? Please identify up to three cases and provide some information about the content and relevance of the judgements!

Case No. 9-As 222/2014

This judgement refers to the right of a third party to bring an action against a final decision of an administrative authority. In this particular case, the third party was not informed about the administrative proceedings and therefore it could not take part in the proceedings. As consequence, it could not appeal against the final decision. The third party was pointing out that the final decision could not enter into force, because it was not lawfully notified to all parties, which is one of the conditions. The court stated that the third party cannot object effect of the final decision because it was not properly notified to him. Once is the final decision published it cannot be changed by the authority without appeal or other remedies. But the third party can appeal against the final decision even if the party was not participating in the administrative proceeding. In this case, the third party which was not participating in the proceeding was entitled to appeal against the final decision within 30 days from moment the third party became aware of the decision, but it must be within one year from publication the decision.

Case No. 4-As 13/2013

In this case the court confirmed right of third person, who claims right to be party of administration proceeding, to appeal to an administrative court against decision of an administrative authority to refuse his right to participate in the proceedings.

Case No. 2-As 8/2008

In this case the court had to decide, whether the administration authority, when refusing request of a third party to participate in an administration proceedings, is obliged to make resolution or not. The main problem was with word "in doubt" in the Code. As the court decided, when there is no doubt about participating of third party to administrative proceeding, than the authority does not have to make resolution. The doubts can be about particular person or interpretation of law. In this case was the doubt about interpretation of part from Building act, specific about the term "other rights". As result, the court decided when there is a vague term in the act, then there is doubt whether the third party can participate in administrative proceedings, and therefore the administrative authority must make resolution against which the third party can use remedies.

II. Determination of Facts and Discretionary Powers

1. a) **In administrative proceedings**, do administrative authorities have a general duty to carefully and impartially investigate the facts of the case ex officio in your jurisdiction (principle of investigation)?

In comparison with EP resolution and ReNEUAL, the Czech legal order – administrative law is very similar to proposed acts. The principles in EP resolution and ReNEUAL are stated in the Czech law and are required to be obeyed. Following questions are answered and described in accordance with the Czech law which as stated above applies rules corresponding to EU resolution and ReNEUAL.

In the Czech legal order, administrative authorities have a general duty to carefully and impartially investigate the facts of the case ex officio. The principle of investigation can be limited by provision of a special legal act: "An administrative body shall act in such a way that no one incurs unnecessary costs and persons concerned shall be burdened as little as possible. An ad-

ministrative body shall request documents form a person concerned only where provided by the law. Where it is practicable to obtain necessary data from central register kept by the administrative body itself and where the person concerned so request, the body shall be obliged to arrange for provision of the data." [Section 6(2) of Code of Administrative Procedure]

Provision of section 50(2) of Code of Administrative Procedure states: "An administrative body shall collect all grounds for the issuance of its decision. Unless the purpose of proceedings might be put at risk the administrative body may permit, upon a participant's request, that the participant shall collect the grounds in its stead. If there is no provision to the contrary in special law, participants shall be obliged to fully cooperate with the administrative body in collecting grounds for issuing its decision. [...]"

The administrative authorities have duty to investigate facts important for the protection of public interests. A special duty is also stated in the proceeding aimed at the imposition of a duty: "An administrative body shall be obliged to ascertain all circumstances important for the protection of the public interest. In proceeding aimed at the imposition of a duty by virtue of office the administrative body shall be obliged, with or without a motion, to ascertain all relevant circumstances advantageous or disadvantageous to the person upon whom the duty should be imposed." [Section 50(3) of Code of Administrative Procedure]

b) Are, in contrast, the parties to administrative proceedings generally obliged to present facts or evidence of their own accord (principle of party presentation)?

The parties are not generally obliged to present facts or evidence of their own accord [cf. Response to article II. 1. a)]. The principle of investigation prevails in administrative proceedings in the Czech legal order (principle of investigation). The principle of investigation is partially limited in appellate proceedings when the parties are entitled to present new facts and evidence only if they could not present these facts or evidence earlier.

"*New facts and new evidence proposed in the appeal or in the course of appellate proceedings shall only be taken into consideration if these are facts and evidence which could not have been produced earlier by the participants.*[...]" [Section 82(4) of Code of Administrative Procedure]

Nevertheless, in contentious proceeding, in the event that the administrative authorities solve disputes arising from public contracts and disputes from civil, family and business relations, the administrative authorities shall rely on evidence proposed by participants first.

"*Participants shall be obliged to propose evidence supporting their allegations. An administrative body shall not be bound by proposals of the participants; however, it shall always produce in evidence what appears to be necessary for determination of the issue.*" [Section 52 of Code of Administrative Procedure]

"*An administrative body shall, in contentious proceeding, rely on evidence proposed by the participants. Should the proposed evidence be insufficient for the determination of the facts the administrative body may produce other evidence. If the participants fail to require other evidence to support their respective allegation, the administrative body shall rely on the evidence already produced. The administrative body may also recognize identical allegations of participants to be factual binding.*" [Section 141(4) of Code of Administrative Procedure]

c) Do the rules for determining the facts distinguish between administrative proceedings initiated ex officio or by application?

As mentioned above [cf. response to article II. 1. a) and b)], in the Czech legal order principle of investigation prevails however, there is a bit difference between the proceedings initiated to aimed at the imposition of a duty by virtue of office and the proceedings initiated by an application. In the administrative proceedings ex officio aimed at the imposition of a duty, the administrative authority is obliged to ascertain relevant circumstances to the person upon whom the duty should be imposed.

d) Do the rules for determining the facts distinguish between facts which are favourable to the individual and others which are unfavourable to him?

No. This could be against the principle of an administrative discretion in weighing evidence (evidence and facts are weighing separately and in relation to each other).

"Unless the law provides that any of the grounds shall be binding on an administrative body, the administrative body shall evaluate all grounds, in particular, evidence under its discretion; it shall by prudent in taking into account all information revealed during proceeding including assertion of participants." [Section 50(4) of Code of Administrative Procedure]

e) Do different models of fact finding in administrative proceedings exist in your country with regard to different subject matters (e.g. ex officio administrative orders prohibiting or requiring specified actions of individuals, licensing of private projects on application, administrative sanctions, specific sectors of administrative law,…)?

Generally, the administrative authority collects all relevant facts and evidence by itself. In administrative proceedings ex officio, an administrative authority can ask participants to provide relevant evidence only where provided by the law and the purpose of proceeding might not be put at risk.

In administrative proceedings initiated by an application, the participant is supposed to provide all relevant documents, evidence and facts with application to prove his allegation or claim ["duty of allegation"; cf. 1. b) section 52 of Code of Administrative Procedure].
(cf. Art. 9 EP-Res.; Art. III-10, III-11 ReNEUAL)

2. If your jurisdiction provides for the duty of the competent administrative authority to carefully and impartially investigate the facts of a case:

a) Are the parties to administrative proceedings obliged to cooperate in the investigation (e.g. by providing documents or by answering questions)?

Yes, as mentioned above, parties/participants are obliged to cooperate in the investigation. Participants might provide relevant documents to prove their allegations or claims. Participants can refuse to cooperate in situations provided by law – if they could by their cooperation cause themselves or a person close to them to be subject to prosecution for a crime or administrative delict, if the participant is obliged to keep confidential information protected by a special law or if the participant could breach a duty of non-disclosure imposed or recognized by the state. For these reasons the party can refuse an interview, an examination or a submission of documents.

"A witness may not be asked questions about confidential information protected by a special law which he is obliged not to disclose unless he is released from such duty by competent authority." [Section 55(2) of Code of Administrative Procedure]

"A witness may not be interviewed if his testimony results in the breach of duty of non-disclosure imposed or recognized by the state unless he is released from such duty by a competent authority or by the person within whose interests the duty has been established." [Section 55(3) of Code of Administrative Procedure]

"Only a person who may by his testimony cause himself or a person close to him to be subject to prosecution for a crime or administrative delict may refuse to testify." [Section 55(4) of Code of Administrative Procedure]

b) What are the consequences, if a party to administrative proceedings does not comply with its duty to cooperate?

First possible consequence might be a failure to bear a burden of allegation and negative result in administrative proceedings either initiated by application or in proceedings aimed at imposition of a duty or sanction.

Secondly, in appellate proceedings, a party can present new facts or evidence only if these could not have been presented earlier: "*New facts and new evidence proposed in the appeal or in the course of appellate proceedings shall only be taken into consideration if these are facts and evidence which could not have been produced earlier by the participant. Should the participant claim that he was not permitted to carry out an act in the first-instance proceedings such act must be carried out along with the appeal.*" [Section 82(4) of Code of Administrative Procedure]

Thirdly, the participant can be imposed a fine.

"*An administrative body may decide that a procedural fine of the amount of up to 50.000 CZK will be imposed on one who seriously obstruct the course of proceedings as follows: a) he fails to appear upon a summon before the administrative body; b) he disturbs the order despite an earlier admonition; or c) he fails to obey the instruction of an official.*" [Section 62(1) of Code of Administrative Procedure]

Finally, the participant commits a crime if he gives false or incomplete testimony and consequently can be punished in criminal proceedings.

c) Are there differences in the duty to cooperate among different categories of parties (applicants, potential addressees of the final decisions, third parties)?

No. Every person charged with tasks resulting from the powers of an administrative body shall be treated in the same way.

"(1) In applying their process rights, persons concerned shall have an equal status. In respect of the persons concerned, the administrative authority shall proceed impartially and shall request all persons concerned to observe their process obligations equally.

(2) Where the equal status of persons concerned could be jeopardised, the administrative authority shall adopt measures to safeguard such status." [Section 7 of Code of Administrative Procedure]

(cf. Art. 10 EP-Res.; Art. III-13, III-14 ReNEUAL)

3. a) In the fact finding process, is the administrative authority in your legal order bound by strict procedural rules (e.g. demanding for a certain organisation) or is this process subject to discretion of the administrative authority?

The process is subject to discretion of the administrative authority. The principle of administrative discretion is limited by the law.

"*An administrative body shall execute its powers only for the purposes for which they have been entrusted by or upon the law, and within the scope determined thereby.*" [Section 2(2) of Code of Administrative Procedure]

b) Has the administrative authority broad discretion in evaluating the facts found in the administrative proceedings?

The administrative authority is bound by the law. It shall act in such way to ascertain the case status without unreasonable doubt in accord to the public interest.

c) Does your national legal order provide for rules concerning composite investigations, i.e. the collaboration of different administrative authorities (like establishing a responsible officer of one administrative authority) or the collaboration of different officers within one administrative authority, e.g. a hearing officer who may hold hearings with applicants (like asylum seekers) while another officer takes the final decision based on written reports of such a hearing officer?

Yes, this cooperation is one of consequences of the principle of good administration. The administrative authorities shall cooperate together and respect rights of the parties.

"*(1) Administrative authorities shall ensure mutual accordance of all acts carried out simultaneously and relating to the same rights or duties of a person concerned. The persons concerned shall be obliged to notify, without delay, administrative authorities of the fact that more these acts at various administrative authorities or other public bodies are being carried out simultaneously.*

(2) Administrative authorities shall cooperate with each other in the interest of good administration." [Section 8 of Code of Administrative Procedure]

4. a) Does your national legal order provide for specific rules of evidence for the fact finding in administrative proceedings?

No.

b) If this is the case, what are the most important principles?

c) If this is not the case, what other (general) rules apply?

Besides the principles mentioned above, administrative authorities shall apply the principle of legality [all evidence must be provided in legal way, for example the Czech legal order prohibits using a report on the provision of explanatory as an evidence, because this report is gathered before the proceeding is started; cf. section 137(4) of Czech Code of Administrative Procedure] and the principle of material truth.

d) What is the rationale for the model applied in your jurisdiction?

It might be the principle of good administration.
"Public administration is a service for the public. Any one person fulfilling the tasks implied by the powers of an administrative authority shall be obliged to behave in a courteous manner in respect to persons concerns and to respond to their needs as practicable." [Section 4(1) of Code of Administrative Procedure]

e) Are there any rules in your national legal order providing for the inadmissibility of certain evidence? If so, please give some details!

Yes, the evidence gathered in illegal way shall not be considered in administrative proceedings [cf. response to question 4 a)]

(cf. Art. 9 (2) and (3), Art. 11 EP-Res.; Art. III-10 (2), III-15 ReNEUAL)

5. **In court proceedings**, who is responsible for the presentation and investigation of facts and evidence?

a) The court or the parties?

Courts decide as appellate authorities. Parties shall propose all known facts and evidence in administrative proceeding [cf. response to question 1 a)]. Courts decide on which proposed facts and evidence shall be produced.

"(1) The court decides which of the proposed evidence shall be produced; it may also produce other evidence.
(2) The court is bound by decisions of other courts on whether a crime was committed and who committed it as well as by a court decision on personal status. In all other matters the court forms its own conclusions; if, however, there has been a decision on them, the court shall proceed from it, or, where the decision on the matters is up to the court, it may oblige the party to initiate such a decision by the party's own motion." [Section 52 of Code of Administrative Justice]

b) Are there differences between the responsibilities of claimants and defendants or between individuals and administrative authorities?

Generally, no. Parties have equal status.
"The parties have equal status in the proceedings. The court is obliged to afford them the same possibilities to exercise their rights and instruct them in their procedural rights and duties to an extent necessary to avoid any detriment to the parties in the proceeding." [Section 36(1) of Code of Administrative Justice]

c) Is the administrative court free in the consideration of evidence or are there certain rules of evidence? In the latter case, please give details!

Yes. Court is bound by decisions of other courts on whether a crime was committed and who committed it.
"(1) The court decides which of the proposed evidence shall be produced; it may also produce other evidence.
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6. a) What is the general standard of control applied by administrative courts in regard to the fact finding of the administrative authority? Are there limitations in the scope of judicial control?

In general, the standard of control applied by administrative courts in regard to the fact finding of the administrative authority is quite wide. The judicial control is limited by the law, especially by constitutional provisions. Moreover, the administrative judicial proceeding is initiated by application.

b) Does your national legal order know standards of (limited) control in regard to complex factual evaluations comparable to the concept of technical discretion applied by the ECJ (see annex to this question below)?

The courts have discretional power and they provide protection to the individual public-law rights of both natural persons and legal entities in a manner specified by Code of Administrative Justice and under the conditions specified by Code of Administrative Justice and special law and make decisions in other matters provided by the law.

Administrative judicial proceeding could be divided into two parts. First, the courts (regional) decide on actions brought by parties of administrative proceedings. The parties can afterwards file a cassation complaint. Secondly, the Supreme Administrative Court decides on cassation complaints against the regional court decision and other cases (e.g. electoral matters – as presidential election, registration and dissolution of political parties and movements; positive and negative conflicts of competence between administrative authorities and/or territorial or professional self-governing bodies and disciplinary matters of judges, state prosecutors and enforcement agents).

To compare the annex to this question, the administrative courts in their jurisdiction decide on both whether the administrative authority's decision is legally and procedurally correct. Moreover, the Supreme Administrative Court ensures the unity and legality of the decisional practice (case-law) of regional courts and administrative authorities.

c) If this is the case, what are typical cases in which such a standard of reduced control is applied?

d) Are these cases qualified as a specific category of administrative discretion or are they subject to the general principles concerning discretionary powers of administrative authorities?

7. a) In your national legal order, are the procedural standards to be observed by administrative authorities in their fact finding the more stricter the more the administrative authorities are conceded substantive discretionary powers?

b) What is, as far as applicable, the rationale of reduced (substantive) controls exercised by the administrative courts?

c) Are administrative courts reluctant to interfere with material decision-making of administrative authorities?

d) Do they prefer to focus on procedural aspects?

e) Does your national legal order know prepositioned or anticipated expert opinions (e.g. in environmental law) to which a superior validity is conceded?

f) As far as the concept of technical discretion applied by the ECJ in regard to administrative decisions (or similar) is applied in your national legal order (cf. II.6.b)), can the reduced standard of control be regarded as a consequence of different institutional capacities of courts and administrative authorities?

To these questions, we cannot answer. The rules or procedural standards are maintained in constant conditions (cf. answers above).

8. Are there any constitutional provisions and/or principles governing the questions

a) of the determination of facts of a case by the administration,
b) of the possibilities of the administration to enjoy discretion therein and
c) of the standards of control to be applied by the administrative courts (e.g. a constitutional guarantee of effective judicial remedy, a strict duty of administrative bodies to comply with legal requirements)?

The Czech legal order contains constitutional provisions governing questions mentioned above. It contains right to lawful judge, right to due process, judicial protection, etc.

"*(1) Everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body.*
(2) Unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and basic freedoms listed in this Charter may not be removed from the jurisdiction of courts.

(3) Everybody is entitled to compensation for damage caused him by an unlawful decision of a court, other state bodies, or public administrative authorities, or as the result of an incorrect official procedure." […] [Article 36 of the Charter of fundamental rights and Basic Freedoms]

"*(1) Everyone has the right to refuse to give testimony if she would thereby incriminate herself or a person close to her.*
(2) In proceedings before courts, other state bodies, or public administrative authorities, everyone shall have the right to assistance of counsel from the very beginning of such proceedings.
(3) All parties to such proceedings are equal.
(4) Anyone who declares that he does not speak the language in which a proceeding is being conducted has the right to the services of an interpreter." [Article 37 of the Charter of fundamental rights and Basic Freedoms]

"*(1) No one may be removed from the jurisdiction of his lawful judge. The jurisdiction of courts and the competence of judges shall be provided for by law.*
(2) Everyone has the right to have her case considered in public, without unnecessary delay, and in her presence, as well as to express her views on all of the admitted evidence. The public may be excluded only in cases specified by law." [Article 38 of the Charter of fundamental rights and Basic Freedoms]

9. Is there a political or academic discussion concerning any kind of reform with regard to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts in your country? Are there recent legislative proposals concerning the discretionary powers of the administration and the corresponding reduced judicial control?

Right now, there is a political and an academic discussion concerning the extension of the concept of refusal for unacceptability to more cases (nowadays, it is possible to refuse a cassation complaint for unacceptability only in international protection cases if the subject matter of cassation complaint does not exceed the interest of the claimant). The Supreme Administrative Court decides more and more cases, which causes delays in proceedings and the extension of this refusal might simplify its activity.

10. What is the most important and most recent case law of your court relating to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts? Please identify up to three cases and provide some information about the content and relevance of the judgements!

This question is not the main subject matter in administrative cases. The Czech Code of Administrative Procedure and the Code of Administrative Justice provide clear rules of discretionary powers and determination of the facts. Last decision on discretionary power and determination is from 2014 and the court decided in accordance with the law.

III. Case Study

Initial Case:

Applicant A applies for a construction permit for the construction of a commercial building at a location on the edge of the built-up area of municipality M.

The competent administrative authority of the district (S – a state authority, not a municipal one) invites F, a farmer who owns the neighbouring piece of land, to express himself on A's application in a given time limit. S informs F that he will not be heard after the time limit has expired. F does not react.

S also consults M, which supports the project because it hopes for a better economic development.

O, a nature protection organisation, learns about the project from the local newspaper and asks S to be involved in the proceedings. O remarks that there have been sightings of red kites (*milvus milvus*, a species listed in Annex I of the Bird Protection Directive 2009/147/EC) at the designated location of the project. S does not reply to this, but internally consults the environment protection authority E (also a state authority). E explicates in its statement to the application, mostly relying on an expert opinion handed in by A as part of his application, that a population of red kites does existed in the concerned area, but from its scientific point of view of nature protection the project was scientifically justifiable because the known breeding areas were sufficiently distant from the designated location of the project and O had not brought forward anything concrete.

M changes its mind and decides to draw up a development plan for the area concerned which is supposed to provide for a residential area.

S issues the permit to A after a procedure without (other) defects and sends a copy to F and M, each containing an accurate instruction on the right to appeal to the administrative court within one month.

F is against the settlement of commercial companies in his vicinity. He thinks there are already enough commercial companies in the village and moreover he is afraid of facing disadvantages in managing his soil because of increasing traffic.

M, F and P, the president of the local "Association for Preserving the Traditions", who wants to defend the beauty of the homeland and thinks that A's project does not fit into the landscape, all bring actions before the competent administrative court against the permit. M also feels itself impaired in its exclusive municipal planning competence.

O learns only five months later, again from the local newspaper, that A received the permit and immediately refers to the competent administrative court. O argues that it should have been involved in the administrative proceedings. O points out that the risk for the red kite also was not justifiable because, very close to the designated location of the project, an eyrie had been found. The designated, up to now not built-up location constituted an important hunting ground for the red kite. If a construction was allowed

here, the breeding success of the local population of red kites would be seriously endangered. O submits an expert opinion of an internationally respected ornithologist which supports its allegations.

Questions:

1. How is the court going to decide on the objections of M, F and P?
   In the Czech legal system, the all the actions are going to be denied.
   M and F *as the parties to the proceedings must appeal against the decision (in this case the construction permit) at a superior administrative authority within the statutory deadline. Without the decision about the appeal they are not entitled to bring an action before a court.*
   P *as the president of a non-governmental organisation is neither the party to the administrative proceedings nor he is entitled to bring an action.*
   In conclusion, the parties should firstly appeal to the superior administrative authority and after that bring an action before the competent administrative court.

2. How is the court going to decide on the action brought by O? Is the mere fact that S did not involve O in the administrative proceedings going to help O's action to succeed? Supposing that this is not the case, how is the court going to assess the question of the risk for the red kite?
   O's *action is going to be denied because only parties and persons participating in the proceedings can make their acts.* ***O*** *was not the party to the previous proceedings.* ***S*** *was not obliged to involve* ***O*** *in the administrative proceedings.*

Modification:

Case like the initial case, but A now applies for a permit under pollution control law for the construction of a small wind farm (project according to Annex II of the Environmental Impact Assessment Directive 2011/92/EU) in the outskirts of M. M initially supports the project as in the initial case, but then decides to plan a commercial area which is supposed to include the designated location of A's project. E additionally explicates, based on the opinion handed in by A, too, that the risk of collisions of the red kite with the blades of the wind generators was negligible because of the distance of the known breeding areas from the designated location, whereas the opinion brought by O sees an unjustifiable risk because the designated location of the project constituted an important hunting ground of the red kite.

How is the court going to decide on the actions now?
As mentioned before, the protection of rights can be claimed in administrative justice provides only on the submission of a complaint and after the exhaustion of all appropriate remedial actions, if admissible under a special law. In this case, remedial actions were not exhausted, so the ***actions would be denied****.*

When deciding about the permit for construction of a small wind farm, the administrative authority is obliged to assess the environmental impact. According to the Directive and the Czech Act on the Environmental Impact Assessment, the public concerned has access to a review procedure before a court of law or another independent and impartial body established by law. ***O and E*** *would be the parties to the proceedings but* ***O*** *has to request the administrative authority to be involved in the proceedings as the party. Moreover, the time limit for filing the action is* ***two months*** *since the notification of the decision by being delivered its written copy.* ***Action would be denied****.*