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Use of judgments of the European Court of Human Rights at Slovak administrative judiciary

ABSTRACT- Article answers the question of why and how the case law of the European Court of Human Rights affects a decision of Slovak courts and public administration authorities. In light of the jurisprudence of the European Court of Human Rights further analyzes cover administrative punishment, the right to a fair trial in the proceedings of the offense and appropriate justification of administrative decisions and administrative courts in administrative justice. At the same time the author states the specific decision of the European Court of Human Rights with a substantial impact for the analyzed area.

KEYWORDS - Slovak administrative judiciary, the administrative punishment, European Court of Human Rights.

Use of judgments of the European Court of Human Rights at Slovak administrative judiciary

SOMMARIO. 1. Introduction – 2. Why judgements of the European Court of Human Rights have influence for Slovak courts and public authorities – 3. How judgements of the European Court of Human Rights are influencing Slovak courts and public authorities – 3.1. The administrative punishment – 3.2. The right to a fair trial and the proceedings for an offense under settled case-law of the European Court of Human Rights – 3.3. Adequate justification of administrative decisions and decisions of administrative courts in administrative justice – 4. Summary of the relevant case law of the European Court of Human Rights

1. Introduction

The Slovak Republic since 1918 was the part of the common state of Czechoslovakia. The Constitution of Slovak Republic (no. 460/1992 Coll.) was approved on 1 September 1992. Czechoslovakia was splited for the Czech Republic and the Slovak Republic on 1 January 1993 and Slovak Republic since 1 January 1993 is an independent state¹. The Slovak Republic since 1 May 2004 is a member state of the European Union and since 1 January 2009 with a currency Euro. The highest authorities of the Slovak Republic are the National Council of the Slovak Republic (the legislative body), President, Government, Constitutional Court of the Slovak Republic². Public administration is carried out as **state**

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¹ The first law of the independent Slovak Republic was Act No. 1/1993 Collection of Laws. Collection of Laws is the official document, which contains normative legal acts of the highest legal force.

² The National Council of Slovak Republic, President and Government are based in Bratislava, the Constitutional Court of the Slovak Republic is based in the Košice city.

administration at central level (Ministries in the number 13³ and other central bodies of state administration in the number 11⁴) and in local level (79 districts) and as **self-government** (2933 municipalities, 138 cities and eight higher territorial units)⁵. Public administration in the Slovak Republic⁶ and its decisions and procedures are under "observation" of administrative courts. Legal anchoring of administrative justice is a guarantee for the protection of subjective rights of natural persons and legal entities⁷. In fact it is the continuation of the tradition of administrative justice in the Slovak Republic since with effect from 1 July 2016 in the Slovak Republic, there is a separate procedural norm for administrative justice, contained in Act No. 162/2015 Z.z. The Administrative Judicial Procedure Act⁸, regulating the powers and

³ In the Slovak Republic are following ministries, in which the head is a member of Government: Ministry of Economy, Ministry of Finance, Ministry of Transport, Construction and Regional Development, Ministry of Agriculture and Rural Development, Ministry of Interior, Ministry of Defence, Ministry of Justice, Ministry of Foreign and European Affairs, Ministry of Labour, Social Affairs and Family, Ministry of Environment, Ministry of Education, Science, Research and Sport, Ministry of Culture, Ministry of Health.

⁴ In Slovakia are also these other central state administration bodies: Government Office, Antimonopoly Office, Statistical Office, Office of Geodesy, Cartography and Cadastre, The Nuclear Regulatory Authority, Office of Standards, Metrology and Testing, Bureau for Public Procurement, Intellectual Property Office, Administration of the State material reserves, National Security Office, Office of the Deputy Prime Minister for Investment and Computerization.

⁵ Population of the Slovak Republic on the date 31.03.2016 was 5,427,917 people.

⁶ According to the Constitution of the Slovak Republic *Slovak Republic is a democratic and legal state.*

⁷ More to the judicial protection of individuals and legal entities before public administration in monography: SEMAN TIBOR, *Preskúvanie činnosti verejnej správy v správnom súdnictve. (Observation of the public administration in administrative justice.)* Košice, University of P. J. Šafárik in Košice, 2006.

⁸ Into effective of the Administrative Judiciary Procedure Code it has been judiciary governed by Act No. 99/1963 Coll. Code of Civil Procedure, as amended, who was

jurisdiction of the administrative court seized and decisive in administrative justice, as well as the procedure of an administrative court, the parties and other persons in administrative justice. Despite the fact that the proceedings in the administrative courts to pay court fees, everybody has access to the courts, as there are exemption from court fees. And costs generally borne by the party of legal proceedings, which was unsuccessful⁹. Administrative courts, which are the ordinary courts of the Slovak Republic¹⁰, in administrative justice, However, in terms of the European Union, Slovak courts adjudicate not isolation, but following the **jurisprudence of the European Court of Human Rights**. Therefore, it is undisputed that the jurisprudence of the European Court of Human Rights can also be useful, and also helps especially when dealing with the practice of public administration. Public authorities exercise the power in their activities and are thus exposed to the possibility of a judicial review. Judicial review of activity of public administration under which it is not only the decisions as an individual administrative act, but also

Czechoslovak law. On some problems in the administrative judiciary in accordance with the then statutory provisions see SEMAN TIBOR, *Niektoré otázky preskúmania právoplatných rozhodnutí v správnom súdnictve na základe žaloby podľa druhej hlavy piatej časti Občianskeho súdneho poriadku. (Some of the questions the review of final decisions in administrative justice in an action under the second head of Part Five of the Civil Procedure Code.)* In *Správne súdnictvo a jeho rozvojové aspekty. Zborník príspevkov z vedeckej konferencie, Trnava 7. - 8. marec 2011. (The administrative judiciary and its development aspects. Proceedings of the scientific conference, Trnava 7 to 8 March, 2011.)* Bratislava, Ikarus, 2011.

⁹ About the problems on legal fees for the proceedings in the administrative courts see SEMAN TIBOR, *Zodpovednosť za trovy konania v správnom súdnictve (aktuálne otázky). (Responsibility for the costs of administrative justice (current issues).)* In *Zodpovednosť za výkon verejnej moci s osobitným akcentom na normy správneho práva. Zborník príspevkov z medzinárodnej vedeckej konferencie. (The responsibility of public authorities, with particular attention to the rules of administrative law. Proceedings of the international conference.)* Košice, University of P. J. Šafárik in Košice, 2005.

¹⁰ According to the Slovak Constitution, courts are independent and impartial bodies.

processes, actions, omissions, etc., must be seen in the context of the decision-making activities of the European Court of Human Rights. Not only the courts but also administrative authorities are bound by decisions of the European Court of Human Rights.

2. Why judgements of the European Court of Human Rights have influence for Slovak courts and public authorities

In terms of public administration activity, it is possible to discern that despite the clarity of the text of the Act, public authorities or the courts in reviewing acts of the public authorities may not have identical views on the interpretation by, or applied legislation¹¹. The case law of courts in the sense indicated is an important guideline for public administration authorities¹². Judgments by a judicial authority can be divided into three groups:

1. the judgments of the Supreme Court of the Slovak Republic¹³,
2. the judgments of the Constitutional Court of the Slovak Republic¹⁴,
3. the judgment of the European Court of Human Rights¹⁵.

¹¹ More on the organization of public administration in Slovakia: SEMAN TIBOR, *Správne právo hmotné. Všeobecná časť II. (Administrative Law. General Part II.)* Košice, University of P. J. Šafárik in Košice, 2006.

¹² More about the impact of national case law of the administrative courts for public administration see SEMAN TIBOR, *Zdokonaľovanie verejnej správy, správne súdnictvo (úvahy teoreticko-praktické). Improvement of public administration, the administrative justice (theoretical and practical consideration)*. In *Acta Facultatis Iuridicae Universitatis Comenianae*. Volume 20, number 1/2000, 107-114.

¹³ The case-law in administrative justice is generated at the various stages of the judicial system, the most significant may be considered case-law of the Supreme Court of the Slovak Republic.

¹⁴ The Constitutional Court of the Slovak Republic is the body protecting the constitutionality and is the highest judicial authority in the Slovak Republic.

¹⁵ Decisions of the courts of the European Union and the decision of the European Court of Human Rights are rated to the sources of administrative law.

The case law of all appointed by the judicial authorities is not only important for public authorities, but also the administrative courts, acting in administrative justice.

If the analysis of the case law of the ordinary courts, must be regarded as the most important case law of the Supreme Court of the Slovak Republic, and for the following reasons:

- the Supreme Court is the highest authority in the system of general courts,
- the Supreme Court has a top position in the hierarchy of national ordinary courts¹⁶,
- the Supreme Court is the only court with a nationwide general scope¹⁷,
- its independence and impartiality enshrined in the Constitution of the Slovak Republic¹⁸,
- it operates independently of other state bodies¹⁹.

The case law of the Constitutional Court of the Slovak Republic is important as the importance of state authority, and also because, in relation to administrative justice is applicable case law and its irreplaceable. In terms of the impact of the case law of the Constitutional

¹⁶ In the Slovak Republic are the Slovak Supreme Court, county courts at number 8 and district courts at number 54 and the Specialized Criminal Court. The Supreme Court of the Slovak Republic is the court of the exceptional position by the Constitution of the Slovak Republic, because its Article 143, paragraph 1 shall read: "*The judicial system consists of the Supreme Court of the Slovak Republic and other courts*".

¹⁷ It regards the aspects covered by the Supreme Court of the Slovak Republic for the whole territory of the Slovak Republic.

¹⁸ Article 141 paragraph 1 of the Slovak Constitution reads: "*The Slovak Republic is exercised by the judiciary independent and impartial courts*".

¹⁹ Article 141, paragraph 2 of the Slovak Constitution reads: "*Judiciary is performed at all levels separately from other state bodies.*"

Court of the Slovak Republic on administrative justice can be regarded as the most important characteristics of the Constitutional Court of the Slovak Republic:

- it is an independent judicial body protecting the Constitution²⁰,
- it has a unique position in relation to the alleged violation of fundamental rights or freedoms or human rights and fundamental freedoms²¹,
- its decisions are under national law in principle definitive²²,

The case law of the European Court of Human Rights is particularly significant in the following respects:

- finding a violation of the European Convention on Human Rights and fundamental freedoms²³,
- judgements is binding for the Slovak Republic as a State Party to the European Convention on Human Rights and Fundamental Freedoms²⁴,

²⁰ Article 124 of the Slovak Constitution reads: *"The Constitutional Court of the Slovak Republic is an independent judicial body for protection of constitutionality"*.

²¹ Article 127 paragraph 1 of the Slovak Constitution reads: *"The Constitutional Court decides on complaints of natural persons or legal persons objecting violation of their fundamental rights or freedoms or human rights and fundamental freedoms resulting from an international treaty which the Slovak Republic has ratified and promulgated by the law if on protection of these rights and freedoms, not decide another court"*.

²² Article 133 of the Slovak Constitution reads: *"The decision of the Constitutional Court can not appeal this does not apply if the decision authority of an international organization set up by the application of an international treaty binding the Slovak Republic, establishment of the Slovak Republic to the proceedings before the Constitutional Court to re-examine already adopted the decision of the constitutional Court"*.

²³ Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms reads that to ensure the fulfillment of commitments undertaken by the High Contracting Parties in the Convention and its protocols establishing the European Court of Human Rights. It shall function on a permanent basis.

²⁴ On February 21, 1991 in Madrid has been signed on behalf of the Czech and Slovak Federal Republic of the Convention for the Protection of Human Rights and Fundamental

- the importance of the case law of the Court is underlined by the fact that the Slovak Republic is also from 1 May 2004 to the Member States of the European Union.

3. How judgements of the European Court of Human Rights are influencing Slovak courts and public authorities

Administrative courts and public authorities have an advantage in that the jurisprudence of the European Court of Human Rights often gives them clear answers to questions that would otherwise dealt with inconsistently, t. j. there would be greater or smaller differences in decision-making and processes. Divergent practices in legal application and legal enforcement activities should not be regarded as positive in the rule of law, where priority is legal certainty.

Positive impact in adjudicating in administrative justice and the impact on the public administration bodies can be illustrated by the following case-law of currently applicable in the Slovak administrative judiciary.

3.1. The administrative punishment

The administrative punishment is certainly one of the most important and sensitive areas in the Slovak Republic²⁵. Protection of human rights in the

Freedoms, agreed in Rome on 4 November 1950. The announcement of the signing of the Convention was published in the Collection of Laws under number 209/1992 Coll. The Slovak Republic, the Convention is binding and in connection with the Additional Protocol (No. 3, 5 and 8) and other contractual documents on the Convention downstream.

²⁵ The term "administrative punishment" is discussed in detail in the work SEMAN TIBOR: *K pojmu správneho trestania. (The concept of administrative punishment.)* In *Aktualne problémy práva w Republice Slowackiej i Rzeczypospolitej Polskiej - miedzynarodowa konferencja naukowa. 19-21 kwietnia 2004 r. Rzeszów (Current problems of law in the*

administrative punishment has its basis in international documents. Each State has individually broken down unlawful acts. The system of administrative offenses²⁶ fall within the area of administrative law in the Slovak Republic. So it is built outside the realm of criminal law as an independent legal sector. The Slovak Republic has its own breakdown of administrative offenses. This is a breakdown by type of perpetrator (natural person or legal entity), is taken into account that the administrative offense was committed to doing business, it reflects intent or negligence, or it can be a strict liability. Also it may also be administrative process offenses and administrative disciplinary offenses²⁷. Currently, there is no doubt that the protection of human rights provided in the criminal law area also affects the administrative punishment, although this included within the scope of public administration. In accordance with the case law of the European Court of Human Rights should be the terms "criminal charge" and "rights and obligations of civil nature" regarding the scope of the applicability of Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, must be interpreted independently from the definition in the

Slovak Republic and the Republic of Polish - International Scientific Conference. 19-21 April 2004. Rzeszow), MITEL, 2005.

²⁶ The application of the law is important in the field of administrative offenses. About some problems related to administrative offenses see SEMAN TIBOR: *Aplikácia ustanovení o lehotách na uloženie sankcie za správny delikt. (Application of the provisions on deadlines for the imposition of a penalty for an administrative offense.)* In: *Zborník príspevkov z medzinárodnej vedeckej konferencie, konanej dňa 7. decembra 2007 na Právnickej fakulte v Košiciach. (Proceedings of the international conference, held on 7 December 2007 at the Law Faculty in Košice.)* Košice, Equilibria, 2008.

²⁷ In the Slovak Republic are professional chambers, which bring together people by occupation. They include lawyers, notaries, doctors, pharmacists and many others. For infringements law (disciplinary offenses), the Chamber may impose sanctions. See more SEMAN TIBOR: *Preskúmanie disciplinárnych opatrení profesijných komôr súdom. (Verification of disciplinary measures professional chambers by courts.)* In *Acta Iuridica Cassoviensia*, number 23/2000.

national legal systems of the Member States of the Convention²⁸. Considering the above case law, national courts and then they can take a position on relevant issues stemming from administrative legal area. If we realize that Slovak legislation administrative punishment is too complex and fragmented in a number of laws, only the area of offenses (administrative misdemeanors) has a separate procedural norms, clearly positive can be evaluated case-law of the Supreme Court of the Slovak Republic, which states: *"Given that administrative offenses fall into the category of criminal charges under Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should be in the absence of special legislation on Administrative Punishment for continuing administrative offense, the by analogy apply the rules for sentencing for a continuing offense, enshrined in the Criminal Code"*²⁹. The cited text is noticeably affected by the cited text of the decision of the Supreme Court of the Slovak Republic jurisprudence of the European Court of Human Rights, which shows that the term "criminal charge" should be interpreted autonomously from its definition in national law of the Member States of the Convention.

Binding nature of law for all is the basis of law state. This means that the state authorities, local government authorities, as well as every individual must act as established law. The provisions of Article 1, paragraph 2 of the Constitution, the Slovak Republic pledged that recognizes and observes universally binding rules of international law, international treaties by which it is bound, and its other international obligations. In the light of Article 154c of the Constitution of the Slovak Republic is the Convention for the Protection of Human Rights and Fundamental Freedoms

²⁸ See, *eg.* Judgment of the European Court of Human Rights dated 27 June 1968 in the case of Fritz Neumeister (born 5/19/1922) against Austria (ECHR, Neumeister v. Austria case).

²⁹ Judgments of Supreme Court of the Slovak Republic 8S□/18/2011, 8S□/22/2011, 8S□/23/2011, 8S□/24/2011.

(promulgated under number 209/1992 Coll.). It is a part of the Slovak legal system and takes precedence over laws if they provide a greater scope of constitutional rights and freedoms. According to Article 6, paragraph 1, first sentence, of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law to decide on his civil rights and obligations or of any criminal charge against him. In the case law of the European Court of human rights should be "criminal charges concepts" and the "rights and obligations of civil nature" regarding the scope of the applicability of Article 6 paragraph 1 of the Convention, interpreted independently of their definition in national law of the Member States of the Convention³⁰. Therefore, punishment for administrative offenses (offenses, administrative offenses of legal persons and administrative offenses of natural persons - entrepreneurs) must be subject to the same regime as criminal penalties for offenses. In this respect, it should be interpreted and all guarantees provided to the accused of the offense, still relevant to him who is to be affected for infringements national law qualified as an administrative offense. The boundaries between criminal offenses for which the court imposes punishment, and administrative offenses for which the penalty is imposed administrative authorities are determined expression of the will of the legislature and are not justified by natural law principles. In Article 6, paragraph 1, first sentence of the Convention mentions the "legitimacy of any criminal charge", it is therefore necessary to provide guarantees and rights enshrined in the Criminal Code and Criminal Procedure Code, not only accused of a crime, but also the entity against which it exerted administrative legal responsibility. In this regard, it is possible to point to the Committee of

³⁰ See, *eg.* Judgment of the European Court of Human Rights dated 27 June 1968 in the case of Fritz Neumeister (born 5/19/1922) against Austria (ECHR, Neumeister v. Austria case).

Ministers Recommendation no. R (91) to Member States on administrative sanctions approved by the Committee of Ministers on 13 February 1991 at the 452nd meeting of the Ministers (recommended to member governments that in the law and practice are subject to principles arising from this recommendation). Regarding the scope of this recommendation, it indicates that it applies to administrative acts which impose penalties for conduct that is contrary to the applicable rules, whether of fines or other criminal law measures regardless, or they have a financial or other nature. These kinds of sanctions are considered to be administrative sanctions. Well, according to the Principle. 6 of this recommendation is necessary in the context of administrative proceedings for administrative penalties, in addition to the guarantees of a fair administrative procedure under Resolution (77) 31³¹ and firmly established safeguards in criminal proceedings.

3.2. The right to a fair trial and the proceedings for an offense under settled case-law of the European Court of Human Rights

Proceedings on the offense is, according to settled case-law of the European Court of Human Rights (ie. The Strasbourg case law), fundamentally proceedings on criminal charges. Administrative authority in proceedings for an offense must respect *the procedural rights of the accused of the offense*, the basic principles of administrative procedure and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees *the right to a fair trial*.

The principles of a fair trial (court proceedings and, by the case law of the European Court of Human Rights, also administrative proceedings) in particular:

1. the principle of "equality of arms",

³¹ It is the Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities (Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies).

2. "the contradictory of process",
3. "right to personal presence at the court proceedings" ³²,
4. "ban of self criminalization"³³.

These principles should be respected by public authorities in administrative proceedings and subsequently for judicial review of their application must take into account the administrative courts in administrative justice³⁴.

According to settled case-law of the European Court of Human Rights *it is not critical classification of the offense on administrative offenses and criminal offenses in national legislation*³⁵. In all cases which can be subsumed under the concept of "cause-criminal" must have the person against whom the proceedings the possibility of claiming the right to a fair

³² In a democratic and rule of law to act in the absence of a person accused of a crime or accused of an offense is possible only in exceptional cases, usually in the case of absence of the will of the person against whom it is held.

³³ Nobody is obliged to accuse himself of having committed unlawful acts, and nobody is obliged to testify against himself.

³⁴ The importance of administrative judiciary, anchored in the Constitution of the Slovak Republic, see SEMAN TIBOR, *Správne súdnictvo v nadväznosti na článok 142 Ústavy Slovenskej republiky. (The administrative judiciary according to article 142 of the Constitution of the Slovak Republic.)* In, *20 rokov Ústavy Slovenskej republiky - I. ústavné dni, I. zväzok. Zborník príspevkov z medzinárodnej vedeckej konferencie konanej 3. - 4. októbra 2012. (20 years of the Constitution of the Slovak Republic - I. Constitutional days, Volume I. Proceedings of the international conference held on 3 to 4 October 2012)*. Košice, Pavol Jozef Safarik University in Kosice, 2012.

³⁵ For example, in judgments Kadlubec against Slovakia and Lauko against the Slovak Republic (decisions of 2 September 1998), about a right to review the decision on the penalty by a misdemeanor court, the European Court of Human Rights the decision based in particular on Act of Minor Offences, which is addressed to all citizens. The sanctions that were imposed in these cases (fines in the amount of SKK 1,000 and SKK 300), the European Court of Human Rights considered for repressive sanctions. European Court of Human Rights concluded that it is a criminal case (in criminal matters) and notwithstanding the relatively low penalties.

trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Each of the above principles of a fair trial has a specific reflection in application of law.

The case-law of the European Court of Human Rights shows that the principle of equality of arms requires that each process side has been given a reasonable opportunity to present its case under conditions that do not place it significantly less favorable position than that in which the defendant³⁶. The principle of equality of arms, so that each party to a proceeding should have equal opportunity to present his case and none of them may be major benefit in relation to the other, apply in civil proceedings and also in checking the legality and procedures of public administration by the court. This principle must be reflected in the process, in order to be a fair process. Article 6, paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms establishes minimum rights for criminal charges³⁷. According to the letter d) of Article 6 paragraph 3 of this Convention, accused of a crime he has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. According to settled case-law of the European Court of Human Rights it is not critical classification of the offense on administrative offenses and criminal offenses in national legislation³⁸. In all cases which can be subsumed under the concept of "a criminal nature" must be a person against whom action is being taken, the possibility of claiming the right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

³⁶ Komanický c. Slovak Republic, judgment of 4 June 2002, § 45th.

³⁷ Rights of the accused (of criminal acts) has be applied in offences process based on Minor Offences Act.

³⁸ For example, in judgments Kadlubec against Slovakia and Lauko against the Slovak Republic (decisions of 2 September 1998).

The right to contradictory of process means that the procedural parties must be given an opportunity not only to present all the evidence needed to make their proposal to succeed, but also to get acquainted with all the other evidence and arguments which have been presented with a view to influencing the court's decision, and comment on them³⁹. Adversarial procedure, inter alia, includes the right of an accused of an offense to be present during questioning of witnesses, but in particular the right of the accused of the offense put questions to him. The right of an accused of an offense is enshrined in the Law on Administrative Procedure, which is a subsidiary procedural rules in relation to the Act on Offences relating to proceedings for infringement. The provision of § 33 paragraph 1 of the Law on Administrative Procedure is worded as follows: *“The party and the person concerned has the right to propose evidence and amendments and to put questions to witnesses and experts at the hearing, and local recognisance”*. This rule of conduct enshrined in the form of dispositions legal standards with legal force of law must be respected and the proceedings on misdemeanors. Otherwise, it was a serious breach of the law followed a must revoke a decision that precedes an illegal practice.

The extensive case law exists not only of ordinary courts, including the Supreme Court of the Slovak Republic, as well as the Slovak Constitutional Court and the European Court of Human Rights:

“If the General Court did not allow in the appeal process the other party to comment on the substance of appeal brought by the applicant, and General Court does not make any room for taking the other party opinion, violated the principles of a fair trial (adversarial proceedings)”⁴⁰. The right of any party to be heard is important for the administrative process and process of courts.

³⁹ Komanický c. Slovak Republic, judgment of 4 June 2002, § 46th.

⁴⁰ Finding of the Constitutional Court of the Slovak Republic, III. ÚS 183/2010 of 29 June 2010.

“The decision of the court (including the decision of the court of administrative justice) must be preceded by a procedure matching the guarantees of a fair trial in accordance with the relevant provisions of the Constitution of the Slovak Republic and relevant international treaties on Human Rights and Fundamental Freedoms (...), in particular the guarantees contained in the principle of equality of arms and the right to an adversarial procedure”⁴¹. Procedurally in the indicated direction is normed in procedural rules. These are in the public administration in Administrative Procedure Act (no. 71/1967 Coll., Act of administrative proceedings, as amended), and in administrative justice Act. 162/2015 Z.z. The Administrative Justice Act.

“Article 6 paragraph. 1 of the Convention guarantees everyone the right to bring an action for their civil rights and obligations to the court. Thus interpreted Article includes the right to a court, which includes the right of access to justice. To this was added the guarantees provided for Art. 6 paragraph. 1 of the Convention regarding the organization and composition of the court and the conduct of the proceedings. all this in the summary establishes the right to a fair hearing”⁴². The right of access to court is fully reflected in the right of judicial review of decisions and actions of public authorities administrative courts in administrative justice. The Administrative Procedure Code regulates different categories of actions which can claim protection in administrative justice.

“The right to a fair hearing implies the principle of equality of arms, adversarial principle, the right to attend the hearing, the right to justify judicial decisions and other requirements of a fair trial”⁴³.

⁴¹ Finding of the Constitutional Court of the Slovak Republic, I. ÚS 230/2003 of 31 March 2004.

⁴² The decision of the European Court of Human Rights on 21 February 1975, Series A no. 18, p. 18, § 36th.

⁴³ Finding of the Constitutional Court of the Slovak Republic, III. ÚS 199/2008.

3.3. *Adequate justification of administrative decisions and decisions of administrative courts in administrative justice*

The European Court of Human Rights recalls that *judicial decisions should have adequately state the reasons on which they are based*⁴⁴. It is in the same way in administrative proceedings, in respect of infringement of the rights, interests protected by law or by imposing obligations individual administrative act. From an individual decision, without further need to see the case file must be clearly understood the reasons for the individual decision.

Court decisions in administrative justice must have adequate justification. *“The decision of the General Court must state sufficient grounds on which it is based”*⁴⁵. The grounds of public authorities, namely the administrative authorities and courts, including administrative courts, it must be clear what evidence evaluated in its specific factual findings as well as the fact that the relevant provisions of the Act applied in assessing the facts of the case, is not enough to findings of fact findings without proper justification, of which this finding of fact relied. They must keep what legal considerations made them decide. The requirements for a fair trial and the reasons for decisions pursuant to Article 46 paragraph 1 of the Constitution, the principle also to administrative justice realizing Article

⁴⁴ Likewise, the administrative decisions must be duly justified.

⁴⁵ See the Finding of the Constitutional Court of the Slovak Republic, No. III. ÚS 119/03 of 16 September 2003, which held that *“the fundamental right of the complainant under Art. 46 paragraph. 1 of the Slovak Constitution and Art. 38 par. 2 of the Charter of Fundamental Rights and Freedoms judgment has been infringed by decision of the Supreme Court of the Slovak Republic No. 6 SZ 98/02 of 27 November 2002”*, it annulled the judgment and referred the case back to that court to act in it again and decided. The Constitutional Court did not rule on factual accuracy or inaccuracy of the judgment in the main action, while also had finding that a breach of the abovementioned provisions of the Civil Procedure Code by the Supreme Court is also in breach of Article 51 paragraph 1 of the Constitution.

46, paragraph 2 of the Constitution⁴⁶. The Constitutional Court of the Slovak Republic clearly expressed that *"a part of the fundamental right to a fair trial is the right of a party to also justify judicial decision clearly and unambiguously gives answers to all the legal and factual relevant questions related to the subject of judicial protection, that previously claimed and defense against such an application"* (IV. ÚS 115/03). Protection of the principles of due process is reflected in the fact that the General Court answers the specific objections of the party as clearly and comprehensively provides the answer to all of the key legal and factual issues relevant related to the subject of judicial protection. The General Court does not give an answer to all the questions raised by the parties, but only those that are essential for business, or sufficiently explain the factual and legal basis of the decision, without going into all the details of the dispute raised by the parties. European Court of Human Rights recalls that judicial decisions should adequately state the reasons on which they are based. Article 6 § 1 of the Convention can not be interpreted as requiring a detailed answer to every argument, with the Court of Appeals, in rejecting an appeal may be limited to receipt reasons for the decision of the lower court (*García Ruiz v. Spain*, from 21 January 1999)⁴⁷. The conclusions of the ordinary courts should be adequately substantiated, must not be arbitrary⁴⁸. The Constitutional Court of the Slovak Republic expressed the need to adequately and convincingly justify judicial decisions⁴⁹. *"The part of the fundamental right to a fair trial (embodied in the fundamental right to judicial protection) in accordance with Art. 46 paragraph. 1 of*

⁴⁶ See the Finding of the Constitutional Court of the Slovak Republic No. III. ÚS 119/2003 of 16 September 2003.

⁴⁷ See the Finding of the Constitutional Court of the Slovak Republic No. I. ÚS 241/2007 of 18 September 2008.

⁴⁸ See for example the Findings of the Constitutional Court of the Slovak Republic No. I. ÚS 19/2002, I. ÚS 27/2004, I. ÚS 74/2005.

⁴⁹ See the Finding of the Constitutional Court of the Slovak Republic No. I. ÚS 241/2007 of 18 September 2008.

*the Constitution and Art. 6 paragraph. 1 of the Convention is the right of a party to also justify judicial decision clearly and unambiguously gives answers all relevant factual and legal issues related to the subject of legal protection (eg. III. ÚS 209/04, III. ÚS 95/06, III. ÚS 260/06, III. ÚS 153/07)"*⁵⁰. The fundamental right to judicial protection under Article 46, paragraph 1 of the Constitution does not only lie in the power of each claim the protection of their rights in court. Also it includes the right to a certain quality of judicial proceedings defined procedural guarantees of a fair trial. This includes the requirement to respect the adversarial principle, the application of "equality of arms" and the right of a party to also justify judicial decision clearly and unambiguously gives answers to all the legal and factual relevant questions related to the subject of judicial protection to be in a particular case provided. The principle of justice contained in the law to a fair trial arising from Article 46 paragraph 1 of the Constitution requires the courts based their decisions on legally relevant and sufficient grounds corresponding to the particular circumstances of the matter under discussion. The factual and legal conclusions of the Court may be reviewed by the Constitutional Court if the conclusions drawn were manifestly unreasonable or arbitrary, and thus from a constitutional perspective unjustifiable and unsustainable and would have resulted in a violation of a fundamental right or freedom⁵¹. The apparent-justification or arbitrary judicial decisions concerning the findings of law may say generally if the Constitutional Court finds the interpretation and application of the rule of law by the Court which essentially denies the purpose and significance of applied legal standards, or if the grounds on which it is based court Decision absentia are obviously contradictory or deny rules of formal logic

⁵⁰ The Finding of the Constitutional Court of the Slovak Republic No. III. ÚS 305/2008 of 25 November 2008.

⁵¹ Mutatis mutandis the findings of the Constitutional Court of the Slovak Republic No. I. ÚS 13/2000, I. ÚS 139/2002, III. ÚS 180/2002, III. ÚS 271/2005, III. ÚS 153/2007.

and law, or if these reasons are obviously one-sided and, in extreme contradiction with the principles of justice⁵².

Pursuant to the requirements of Article 46 paragraph 1 of the Constitution and Article 6 paragraph 1 of the Convention is the responsibility of the courts give to the decision sufficient and relevant grounds on which it based its decision. This also applies to courts in administrative justice and for the administrative authorities. Court process legal standards and procedural rules of administrative law should be seen, implement and apply both in terms of the right to judicial and other legal protection, and the right to a fair trial under Article 46 paragraph 1 of the Constitution of the Slovak Republic, pursuant to Art. 6 ods. 1 of the Convention be interpreted and applied *with respect to the relevant case law of the European Court of Human Rights (eg. The judgment Garcia Ruiz v. Spain 21 January 1999, § 26)*, so that the court's decision must state sufficient grounds on which it is based. (*mutatis mutandis I. ÚS 56/01*)⁵³. The relevant provisions of the Constitution and the Convention relating to a fair trial, should be interpreted in such a way that the quality of the process must conform to the rights and obligations about that have been taking place. From the constitutional point of view and requirements arising from the protection of constitutionality, scope and method of judicial review of administrative act, it must be given a significant attention for administrative act to be adequately and convincingly justified, and thus to respect the decisions of the European Court of Human Rights.

⁵² See the Finding of the Constitutional Court of the Slovak Republic No. III. ÚS 305/2008 of 25 November 2008.

⁵³ See the Finding of the Constitutional Court of the Slovak Republic No. I. ÚS 238/2006 of 16 December 2008.

4. Summary of the relevant case law of the European Court of Human Rights

The paper pointed out the influence of the case law of the European Court of Human Rights on national decision-making activities of the general courts, including administrative courts acting in administrative justice. In this aspect is evident strong influence law of the European Court of Human Rights and the decision-making activities of the Constitutional Court of the Slovak Republic for activity of public administrative bodies⁵⁴. In the indicated context, decisions of the European Court of Human Rights with the most significant impact are these:

- Decision of the European Court of Human Rights on 27 June 1968 in the case of Neumeister. Austria (ECHR, Neumeister v. Austria case);
- Decision of the European Court of Human Rights on 21 February 1975, Series A no. 18;
- Decision of the European Court of Human Rights on 2 September 1998 in Case Kadlubec in. Slovak Republic;
- Decision of the European Court of Human Rights on September 2, 1998 in the matter of Lauko v. Slovak Republic;
- Decision of the European Court of Human Rights on January 21, 1999 in the matter of García Ruiz. Spain;
- Decision of the European Court of Human Rights on 4 June 2002 in Case Komanický in. Slovak Republic.

In conclusion, it must be noted that in terms of protection of subjective rights of natural persons and legal persons, the Slovak Republic's membership in the European Union and the decisions of the European

⁵⁴ For details on the issues of public administration and the administrative courts see the monograph SEMAN Tibor.: *Verejná správa v správnom súdnictve. (Public administration in administrative justice.)* Košice: University of P.J. Šafárik in Košice, 2016. ISBN 978-80-8152-424-0.

n. 2/2016

judicial authorities are highly beneficial for Slovak public authorities and Slovak courts.

