Czech Republic

The Alternative Dispute Resolution in Administrative Matters

CZECH REPUBLIC

Introductory questions

1. How do you define alternative procedures? How do you distinguish them from jurisdictional procedures and arbitration procedures?

Alternative procedures refer to any means of settling disputes outside of the courtroom. The most important difference between alternative procedures on one side and jurisdictional and arbitration procedures on the other side is the fact that in alternative procedures the involved parties have to come to an agreement whereas judge and/or arbitrator settles disputes authoritatively even against the will of a party/parties.

2. Do alternative procedures such as those defined above exist in your country? If no alternative procedures exist in your country, do you plan to create such procedures? Can you articulate your current thinking in this domain?

Yes, such alternative procedures, namely arbitration (usually classified as one of alternative procedures as well) and mediation, are regulated by the Czech law (Act No. 216/1994 Coll., on Arbitration and on Arbitration Rulings Enforcement, and Act No. 202/2012 Coll., on Mediation).

I. The goals and the scope of alternative procedures

1. With what objectives are these procedures deployed? What advantages and benefits are expected to result from them?

Above all alternative procedures are supposed to be faster and cheaper compared to jurisdictional procedures. As they are less formal, they should not be so stressful to parties. Besides this they should help to maintain good relationships between business partners as they seek for an agreement.

2. Are alternative procedures used in your country in administrative matters? Since when? What factors contributed to their development and what is the proportion of administrative disputes that are resolved each year by such procedures?

In the Czech Republic when we talk about alternative procedures we think typically of private law matters (commercial law, family law).

However, we can find some administrative procedures that could be considered as alternative means of settling disputes. At this point we would like to note that according to Art. 2(3) of the Constitution: "*State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law.*" Thus public authorities can undergo only those procedures to which they are entitled to by the law. Firstly, it concerns satisfaction of a participant after his filing an action with a court having jurisdiction over administrative cases pursuant to Art. 153 of the Code of Administrative Procedure (No. 500/2004 Coll.), according to which a public authority can satisfy a participant by changing or quashing its decision or by declaring its nullity. Secondly, pursuant to Art. 124 of the Code of Tax Procedure (No. 280/2009

Coll.) a tax authority can satisfy a participant in the framework of review proceedings during proceedings before an administrative court.

As for state employees, the Act on State Service (No. 234/2014 Coll.) counts with union organizations being established at public authorities and with collective negotiating pursuant to the Act No. 2/1991 Coll.

When it comes to public procurement, disputes between parties interested in a public contract award and the contracting entity may be solved by the Office for the protection of competition (Act on Public Procurement, No. 137/2006 Coll.).

Pursuant to Art. 141 of the Code of Administrative Procedure, a public authority can be called upon to decide on some administrative disputes with several participants who have a disagreement among each other. For instance, this is the case of the Czech Telecommunication Office or the Energy Regulatory Office who decide disputes between services suppliers and their receivers.

There are some other theoretically possible alternative procedures in administrative matters, this time between individuals being parties to administrative proceedings. As an example, we can mention administrative infractions against the coexistence of citizens (bodily harm or limitation of minorities rights) and the use of mediation.

We do not have required statistics.

3. Do rules restricting recourse to alternative procedures in administrative matters exist in your country? In your opinion, what are the types of litigation for which these procedures would not be appropriate?

Yes, as stated in the previous answer, we could name at least Art. 153 of the Code of Administrative Procedure and Art. 124 of the Code of Tax Procedure.

As for inappropriate litigations, the Code of Administrative Procedure forbids explicitly the abovementioned procedure pursuant to Art. 153 if the new decision (the satisfying one) would change rights and obligations of other participants, except cases where these participants agree with it.

4. Do instruments organising the use of administrative procedures in administrative matters exist in your country? If so, are these instruments legally binding (hard law/soft law)?

Yes, there is the Code of Administrative Procedure and the Code of Tax Procedure, both of them are legally binding, they represent hard law.

5. If your State is a member of the European Union, how was the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters transposed into national law?
Caution! This question is only asked insofar as the said directive can weight on "administrative" matters with your domestic law.

The Directive 2008/52/EC was transposed into the Czech law by the abovementioned Act on Mediation.

II. The stakeholders in alternative procedures

1. What categories of natural or legal persons have recourse to alternative procedures? Can all legal persons governed by public law use them?

In general, in the Czech Republic alternative procedures are mostly used in private law matters (civil law, commercial law, family law) open to any natural and/or legal persons of private law. Pursuant to Art. 2(3) of the Constitution: "*State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law.*" Thus legal persons governed by public law, if we understand them as state authorities, can undergo only those procedures to which they are entitled to by the law. For more, see the previous answers.

2. Can the parties to an administrative dispute entrust the conducting of a mutual agreement procedure to a third party? What role is this third party called upon to fulfil?

Generally, there is an administrative procedure in which a public authority decides on rights and duties of an individual. Public authority is not a party to a dispute, it is a subject that rules authoritatively. However, there are administrative disputes with several participants who have a disagreement among each other and public authority is called upon to decide on it. For instance, this is the case of the Czech Telecommunication Office or the Energy Regulatory Office who decide disputes between services suppliers and their receivers. Although it is not very common, it is not excluded that these two opposite participants (supplier and customer) do not choose the abovementioned Offices to settle their dispute but they opt for a mediation for example. A mediator seeks to lead the parties to an agreement but the mediator never decides the case on their own.

3. Do standards regulating the activity of these third parties exist in your country (required qualifications, continuing vocational training, remuneration, deontology etc.)? Do authorities with responsibility for the supervision of compliance with these standards exist (public bodies, professional organizations, non-profit organizations – possibly operating under license, etc…)?

Yes, for instance the Act on Mediation regulates since September 2012 the activity of mediators who have to meet qualification requirements, pass a special exam and get registered in the List of Mediators. They are supervised by the Ministry of Justice. The remuneration is on the agreement between the mediator and their clients.

4. Can the administrative courts invite or oblige parties to litigation brought before them to pursue an alternative procedure? Can the administrative court entrust a mediation mission to a third party?

No, the administrative courts of the Czech Republic do not have this competence.

5. Can the administrative court itself conduct mediation proceedings? In your opinion, what are the advantages and drawbacks of a mutual agreement procedure conducted by a judge? In what types of litigation does the direct intervention of a judge appear most appropriate?

No, the judge cannot be an arbitrator or a mediator in settling a dispute [Art. 80(5)b of the Act on Courts and Judges, No. 6/2002 Coll.]. Thus neither courts can have this role. Purely theoretically, the basic advantage could be experiences of the judge in settling disputes including their legal knowledge. But at the same time, their learnt style of work could be the main drawback because they may tend to decide the case on their own without participation of the parties and without seeking their mutual agreement.

III. The procedures of alternative procedures

1. Can you detail the different alternative procedures applicable in administrative matters in your country? How do the parties choose between the various alternative procedures available?

As stated above, in the Czech Republic, it is not very common to use alternative procedures in administrative matters. Nevertheless, we can track some institutions that could be considered as

alternative procedures (satisfaction of a participant pursuant to Art. 153 of the Code of Administrative Procedure and Art. 124 of the Code of Tax Procedure), or in some administrative disputes parties could choose an alternative procedure such as mediation for instance (administrative infractions against the coexistence of citizens).

Moreover, some disputes may be decided by public authorities instead of bringing an action before a court (the Czech Telecommunication Office or the Energy Regulatory Office) that is not an alternative procedure in the strict sense, but it is a way how to avoid courts and it concerns administrative matters as it is an administrative procedure.

As for state employees, the Act on State Service counts with union organizations being established at public authorities and with collective negotiating pursuant to the Act No. 2/1991 Coll.

When it comes to public procurement, disputes between parties interested in a public contract award and the contracting entity may be solved by the Office for the protection of competition (Act on Public Procurement).

2. Do administrative appeals, mandatory prior to referral to the administrative court, exist in your country? Do optional such appeals exist? How are they organized? Does the lodging of an administrative appeal modify the conditions governing the filing and review of subsequent recourse to the court? For example, can the parties present arguments, not produced during a prior administrative appeal, before the administrative court?

Yes, in the most of cases there are obligatory administrative appeals that represent an inevitable condition for lodging of an administrative appeal. There are no optional ones. The Czech administrative courts only review the conduct of administrative authorities and if they do not agree with it, they can quash administrative decisions and refer it back to the administrative authority. Participants cannot present new arguments before the courts.

3. What are the general principles regulating alternative procedures (adversarial principle, impartiality, rules of confidentiality, time limits, etc…)? How much autonomy do parties have with regard to the organization of the deployment of an alternative procedure?

As general principles we could name: optional character, impartiality, confidentiality, principle "win-win". Parties choose the third person who leads their alternative procedure and decides on the course of the alternative procedure.

4. Does the initiation of an alternative procedure allow the suspension or interruption of periods of limitation? And of time limits for judicial appeals?

Pursuant to Art. 647 and Art. 654 of the Civil Code (No. 89/2012 Coll.) periods for limitation of actions (right is still there, but on the objection of debtor judge cannot award the claim) as well as for lapse of claim (the termination of a right) do not start, neither continue during the alternative procedure.

5. Can the court intervene, even partially, during the course of an alternative procedure? If so, in what way?

Generally the courts do not intervene in alternative procedures. On the demand of parties they can only validate their agreement resulting from the alternative procedure. But in the case of satisfaction of a participant as stated above, courts intervene, they determine time limits in which the administrative authority has to decide on satisfaction. If the administrative authority does not act within this limited time, the court continues in judicial proceedings.

IV. The efficacy of alternative procedures

1. Do you consider that alternative procedures are faster and/or less costly than court procedures? Can you provide a quantitative comparison?

Yes, alternative procedures are faster and less expensive. For instance, an average time of mediation stands for 3 months compared to several years in case of court proceedings.

2. What is the proportion of administrative disputes that are definitely resolved by alternative procedures? What are the factors in success, or failure?

We do not have such data.

3. What is the legal standing of an agreement reached by means of an alternative procedure? Can such an agreement be referred to the administrative court for approval?

When talking about satisfaction of a participant pursuant to the Code of Administrative Procedure and/or the Code of Tax Procedure, these institutions end in ordinary administrative decisions that, as being in favour of the participant, cannot be reviewed anymore.

Agreement achieved in mediation may be sued as any other agreement before civil courts. To put more weight on it, such an agreement can be approved by a civil judge or by a notary as a notarial deed, both are execution titles, i.e. on the petition courts can order their enforcement.

Arbitration ruling is automatically an execution title, so it can be enforced by courts.

As for disputes between suppliers and consumers settled by regulatory bodies, as stated above, these are terminated by administrative decisions that are subject to administrative courts review.

4. What instruments and procedures are available to the parties in the case of a violation of the agreement reached by means of an alternative procedure, potentially approved by the administrative court?

As partly said in the previous answer, it depends on the nature of the "agreement" resulting from the alternative procedure. With regard to this, parties can 1) bring the action for performance of the agreement, 2) submit a motion for an order to execute the agreement, or 3) challenge the decision before administrative courts.

5. Do you consider it necessary to further develop alternative procedures in your country? Why? In what form?

With regard to the fact that many courts are overwhelmed with the workload, alternative procedures seem to be a solution of this. We are witnesses of expansion of alternative procedures. As a proof serves the Act on Mediation and proposed amendment to the Act on Consumer Protection (No. 634/1992 Coll.) whereby an alternative procedure (similar to mediation) between the entrepreneur and its client led before the Czech Trade Inspection Authority should be introduced.