
REVIEW OF THE DECISIONS OF THE NATIONAL BANK OF SLOVAKIA WITHIN THE SYSTEM OF ADMINISTRATIVE JUSTICE IN THE SLOVAK REPUBLIC

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Annotation. The National Bank of Slovakia is the public authority which supervises the financial market in the Slovak Republic. A part of its supervisory competences is the right to impose sanctions. The article focuses on sanctioning in the supervised sector - financial intermediation and financial advisory. **The aim of the paper is also to provide information about the system of the revision of valid decisions of the National Bank of Slovakia.** These are being reviewed within administrative justice. Courts in the administrative justice act on protection against decisions which are not in accordance with the law. Based on an action the legitimacy of the decision is being reviewed.

Keywords: administrative justice, National Bank of Slovakia, financial intermediation, financial advisory.

INTRODUCTION

The National Bank of Slovakia is in charge of the financial market supervision. The supervised sector on which we focus belongs to financial intermediation and financial advisory. Financial intermediation and financial advisory as areas fit in to financial law which belongs to public law. According to the subordination theory the relationship of superiority and subordination characterize this structural unit, while in private law the principle of equality is being applied.¹ The formal theory sees the difference between public and private law in the will of legislator. Both theories are reflected in the regulation of financial intermediation and financial advisory. In this segment the National Bank of Slovakia is granting licenses for performing financial intermediation and financial advisory. **The valid legislation also enables the National bank of Slovakia to impose duties in the field of financial intermediation and financial advisory. This reflects the will of the legislator that the National bank of Slovakia as a representative of public power should dominate.**

¹ Lazar, J. a kol.: *Občianske právo hmotné I*. Bratislava : IURA EDITION, 2010, s. 9.

The use of public power is mainly visible in the area of sanctioning. By imposing a sanction a new duty arises, it is a detriment which is included in the sanction.²

THE DIAPASON OF SANCTIONS

Sanctions represent a sort of individual administrative act creation of which is necessary in practice, as they punish subjects which carry out a business, without taking their legal obligations into account (respectively taking them into account insufficiently). In this way they commit hybrid administrative offenses which can be perpetrated by an entrepreneurial natural person and also a legal entity.³ Drawing responsibility for administrative offenses is an integral part of public administration.⁴

As mentioned above, the domination of the central bank is manifested in the area of sanctioning, representing a tool for the effective performance of the bank's supervisory function.⁵ If there is a breach of regulation specific feature of which is enforcement, it is possible to use state constraint under legal terms.⁶ There is a variety of sanctions which can be used by the National Bank of Slovakia. The respective sanction depends on the seriousness, extent, duration, consequences and the nature of the ascertained deficiencies.

If the National Bank of Slovakia ascertains deficiencies in the activity of subjects performing financial intermediation or financial advisory⁷ consisting in not complying with the conditions or obligations arising from the decisions issued by the bank or in not complying with or evading the provisions of the Act No. 186/2009 Coll. on Financial Intermediation and Financial Advisory and on amendments and supplements to certain laws as amended (hereinafter „Act”) or if the National bank of Slovakia ascertains that financial intermediation or financial advisory is pursued by a person which has not been entered in the Register or granted the license to pursue such activity under Article 18 of the Act, the bank may⁸,

² Prášková, H.: *Základy odpovědnosti za správní delikty*. Praha : C. H. Beck, 2013, s. 18.

³ Vrabko, M. a kol.: *Správné právo hmotné. Všeobecná část*. Bratislava : C.H.Beck, 2012, s. 301.

⁴ Průcha, P.: *Správní právo. Obecní část*. 8. vydání. Brno-Plzeň : nakladatelství Doplněk a vydavatelství a nakladatelství Aleš Čeněk, 2012, s. 385.

⁵ Balko, L., Babčák, V. a kol.: *Finančné právo*. 2. vydanie. Bratislava : EUKÓDEX, 2009, s. 656.

⁶ Prášková, H.: *Základy odpovědnosti za správní delikty*. Praha : C. H. Beck, 2013, s. 17.

⁷ Those are an independent financial agent, financial adviser and an applicant.

⁸ Article 39 of the Act.

- impose, on the independent financial agent or other financial adviser, measures to remove and eliminate the ascertained deficiencies,
- impose a penalty which cannot exceed the amount two hundred thousand Euros (EUR 200,000.00),
- restrict or suspend the independent financial agent or the financial adviser from the pursuit of the activity within some of the respective sectors,
- withdraw the respective license under Article 18 of the Act from the independent financial agent or the financial adviser or restrict the license in relation to some of the respective sectors,
- impose, on an applicant, a penalty which cannot exceed the amount twenty thousand Euros (EUR 20,000.00),
- impose, on the person pursuing financial intermediation or financial advisory in conflict with legislation, without registration or without the respective license under Article 18 of the Act, a penalty which shall not exceed the amount two hundred thousand Euro (EUR 200,000.00) and an obligation to terminate the unlicensed activity.⁹ The sanctions may be imposed separately or concurrently and repeatedly. The procedure of the first instance is handled by the Financial Market Supervision Unit of the National Bank of Slovakia. The Banking Board of the National Bank of Slovakia is in charge of the second instance procedure, when a natural person or legal entity appeals against the sanction. The second instance procedure issues the final decision. The legitimacy of valid decisions of the National Bank of Slovakia may be reviewed by courts under the Act No 99/1963 Coll. Code of Civil Procedure as amended (hereinafter „Civil Procedure Code“)¹⁰, for the examination of such decisions is within the competence of the Supreme Court of the Slovak Republic (hereinafter „court“).

OVERVIEW OF SANCTIONING BETWEEN THE YEARS 2011-2014

The rationale of sanctions lies in the fact that ensuring the validity and efficiency of regulation is only possible, if their violation will be pursued and to a sufficient extent actually sanctioned.¹¹ Thanks to the website of the National Bank of Slovakia and the publication of

⁹ Article 39 of the Act.

¹⁰ This Civil Procedure Code has been valid and effective in the time of the editorial deadline.

¹¹ Bitter, S.: *Die Sanktion im Recht der Europäischen Union*. Berlin : Verlag Springer, 2011, s. 1.

reports about the Financial Market Supervision Unit¹² of the National Bank of Slovakia¹³ we can see the evolution of sanctioning in the field of financial intermediation and financial advisory. In the following we provide a short overview between the years 2011-2014. **In the year 2011**, 167 first instance decisions entered into force, in one case a fine has been imposed, 145 licenses had been withdrawn and 21 proceedings had been terminated.¹⁴ **The year 2012** is characterized by the continuation of the "cleansing" of the market from subjects which do not comply with the conditions set by the new legislation. In this year 298 instance decisions entered into force¹⁵, of which 262 decisions imposed a fine, 5 licenses had been withdrawn and 31 proceedings had been terminated.¹⁶ Compared with the year 2011 we can see a move from withdrawing licenses to imposing penalties. **Since the year 2013** the statements of valid first instance decisions, containing sanctions, are being published on the website of the National Bank of Slovakia.¹⁷ In terms of sanctioning we can observe that the legal awareness of subjects has in comparison with previous years increased, since the sanction with the most serious legal consequences - withdrawal of the license to operate has been granted 7 - times.¹⁸ The Financial Market Supervision Unit of the National Bank of Slovakia has issued 123 decisions, of which 114 had been a fine, in one case a fine and measures to remove and eliminate the ascertained deficiencies and in one case the license has been suspend from the pursuit of the activity within some of the respective sectors.¹⁹ **In the year 2014**, the Financial Market Supervision Unit of the National Bank of Slovakia has issued 125 sanctions, which represents a slight increase compared to the previous period, a fine was imposed 102 - times and 23 proceedings had been terminated.²⁰

A valid sanction should lead to reflection and also to actions that should be taken inside the subject to ensure reforms. A decision imposing a sanction is directly affecting the obligation of a natural person or legal entity.

¹² The Financial Market Supervision Unit of the National bank of Slovakia is in charge of the first instance procedures.

¹³ <http://www.nbs.sk/sk/publikacie/publikacie-dohladu/sprava-o-cinnosti-udf>

¹⁴ http://www.nbs.sk/_img/Documents/_Dohlad/ORM/Analyzy/UDF_vyroky_pravoplatnych_a_vykonatelnych-rozhodnuti_2011_web_3.pdf

¹⁵ http://www.nbs.sk/_img/Documents/_Dohlad/ORM/Analyzy/vyroky_rozhodnuti_UDF_za_rok_2012_web.pdf

¹⁶ http://www.nbs.sk/_img/Documents/_Dohlad/ORM/Analyzy/SC-UDF_2012_web.pdf

¹⁷ <http://www.nbs.sk/sk/dohlad-nad-financnym-trhom-prakticke-informacie/vyroky-pravoplatnych-rozhodnuti>.

¹⁸ http://www.nbs.sk/_img/Documents/_Dohlad/ORM/Analyzy/SC-UDF_2013_v4_web_s_titulkou.pdf

¹⁹ http://www.nbs.sk/_img/Documents/_Dohlad/ORM/Analyzy/SC-UDF_2013_v4_web_s_titulkou.pdf

²⁰ http://www.nbs.sk/_img/Documents/_Dohlad/Makropolitika/SC-UDF_2014_web_2.pdf

ADMINISTRATIVE JUSTICE

The provisions of the fifth Chapter of the Civil Procedure Code applies to the cases when a natural person or legal entity claims that the decision and procedure of an administrative authority had curtailed his or her rights and requests courts to review the lawfulness of such decision and procedure. As mentioned above, a valid individual administrative acts issued by the National Bank of Slovakia imposing sanctions can be revised within administrative justice. Administrative justice enables every person which feels harmed, to call the court as an independent authority to carry out a procedure in that the administrative authority will no longer have an authoritative position, but will be a party with the same rights as the person whose rights the proceedings concern.²¹ Administrative justice is carried out by specialized chambers of general courts on the level of regional courts.²² As stated above, valid decisions of the National Bank of Slovakia are examined in accordance with the fifth Chapter of the Civil Procedure Code, called Administrative Justice; the Supreme Court of the Slovak Republic is the competent court for the procedure. The idea of administrative justice is based on the material understanding of a legally consistent state requiring the judicial power to control public administration.²³

Where a natural person or legal entity claims that his or her rights or legally protected interests were affected, there exists the right to seek inquire by way of the procedure of administrative **justice whether law has been properly applied.**²⁴

Judicial review through administrative justice is possible when certain conditions are fulfilled. First of all, the existence of a decision by an administrative authority is necessary. This decision is creating, changing or withdrawing the rights and obligations of natural person or legal entity, or is considering rights, legally protected interests or duties.²⁵ The natural person or legal entity claims to have been abridged of his or its rights by a decision of an administrative authority.²⁶ It is also being required that the decision of the authority has

²¹ Ševčík, M. a kol.: *Správne právo procesné*. Bratislava: EUROUNION, 2009, s. 190.

²² Zavadská, E.: Osud správneho súdnictva na Slovensku (Aktuálne problémy) In *Právny obzor*, roč. 95, 3/2012 s. 280.

²³ Števček, M., Ficová, S. a kol.: *Občiansky súdny poriadok. II diel. Komentár. 2. vydanie*. Praha : C. H. Beck, 2012, s. 949.

²⁴ Košičiarová, S.: *Správny poriadok. Komentár*. Šamorín : Heuréka, 2013, s. 316.

²⁵ Ševčík, M. A kol.: *Správne právo procesné*. Bratislava: EUROUNION, 2009, s. 190.

²⁶ Article 247 (1) Civil Procedure Code.

become valid.²⁷ It cannot be a decision of a public authority which is excluded from judicial review.²⁸

Parties of the process are the plaintiff and the defendant. The plaintiff is a natural person or legal entity claiming that rights were affected by a decision and procedure of a public authority. The defendant is the administrative authority deciding in the last instance. The court action must be filed within two months of service of the last instance's decision, unless a special law provides otherwise. A failure to submit the action within the mentioned period cannot be forgiven. When reviewing whether the decision is legal or not, the court considers the facts which were given at the time of the decision's release. The court may proceed with the admission of evidence which is necessary for the revision of the contested decision.²⁹

When examining the accordance of the decision of the administrative authority with law, the court shall consider only those defects in the proceedings before the administrative authority, which may affect the legality of the contested decision.³⁰

If the court, after examining the decision and procedure of the administrative authority to the extent and for the reasons stated in the action, concludes that the decision and the procedure of the administrative authority is in accordance with the law, then it issues a judgment that the action is dismissed.³¹

The Court annuls the contested administrative decision and when necessary also the administrative decision of the first Instance and returns the case to the administrative authority for further proceedings if, after examination of the decision and procedure of the administrative authority and within the limits of the action, the concludes that:

- The administrative decision is based on an error of law matter,
- The facts underlying the administrative decision are contrary to the evidence in the file,
- Facts that were found out, are not sufficient to consider the case,
- Decision is not reviewable for lack of clarity or for lack of reasons,

²⁷ Article 247 (2, 3) Civil Procedure Code.

²⁸ Article 248 Civil Procedure Code.

²⁹ Article 250i (1) Civil Procedure Code.

³⁰ Article 250i (3) Civil Procedure Code.

³¹ Article 250j (1) Civil Procedure Code.

- In procedure of the administrative authority had been such a defect that could affect the lawfulness of the contested decision.³²

The administrative authorities are bound by the legal opinion of the court.

CONCLUSIONS

The Civil Procedure Code lays down the procedures applied by the courts and the parties in civil proceedings with a view to ensuring fair and just protection of the rights and legitimate interests of the parties, and promoting compliance with the laws, fulfilment of duties and respect for the rights of citizens. In civil proceedings the courts hear and decide disputes and other legal matters, enforce execution of the decisions that had not been complied with voluntarily, and generally prevent violations of the rights and legally protected interests of natural and legal entities and the abuse of rights to the detriment of such entities. Civil proceedings give a guarantee of lawfulness and contribute to its strengthening and promotion. Every person has the right to seek judicial protection of his right that has been threatened or violated. The fifth Chapter of the Civil Procedure Code deals with administrative justice. Although a legal definition of administrative justice absents in the law of Slovakia, we can characterize this legal institute as an invocation of an independent court which will decide about the legitimacy of a decision of a public authority. Based on a complaint, the court in administrative justice reviews the lawfulness of decisions made by and procedures applied by the administrative. A complaint is being filed by a natural or legal entity. The courts shall not review decisions made by administrative authorities that do not have nature of decisions about the right or duty of natural or legal entity, but this is not the case of decision issued by the National Bank of Slovakia imposing sanctions in the field of financial intermediation and financial advisory. These sanctions influence the activities of a natural or legal entity and therefore can be reviewed within administrative justice. Sanctions represent a sort of individual administrative act which creation is necessary in practice, as they punish subjects which carry out a business, without taking their legal obligations into account (respectively taking them into account insufficiently). The National Bank of Slovakia is in charge of the financial market supervision. The sector of financial intermediation and financial advisory belongs under the supervision.

³² Article 250j (2) Civil Procedure Code.

It may seem that the revision of valid decisions of the National Bank of Slovakia through administrative justice weakens the independence of the central bank. The source, a key fact which supports the existence of the legal institute of administrative justice is that by issuing an individual administrative act the public authority exercises public power. Therefore the examination of such act by an independent judicial power is necessary. When the legislator creates legal relations arising from public law that are applicable individually, i.e. not to anyone, but to an individual subject that is the bearer of sovereign power, it is necessary that the real decision-making processes are subject to an independent review from the side of the judicial power.

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SLOVAKIJOS NACIONALINIO BANKO SPRENDIMŲ PERŽIŪRĖJIMAS ADMINISTRACINIO TEISINGUMO SISTEMOJE SLOVAKIJOS RESPUBLIKOJE

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Santrauka

Slovakijos nacionalinis bankas yra valdžios institucija, prižiūrinti finansines rinkas Slovakijos Respublikoje. Banko priežiūros funkciją efektyviai įgyvendinti leidžia jo įgaliojimai taikyti sankcijas. Straipsnyje analizuojamas sankcijų taikymas finansinio tarpininkavimo ir finansinio konsultavimo sferose, pateikiami konkretūs statistiniai duomenys apie šių sankcijų taikymą 2011-2014 metais. Jeigu Slovakijos nacionalinis bankas nustato finansinio tarpininkavimo ar finansinio konsultavimo veiklą vykdančių subjektų veiklos trūkumus, tai yra, jei ši veikla neatitinka nacionalinio banko nustatytų sprendimų ar neatitinka ar išvengia įstatymo dėl finansinio tarpininkavimo ir finansinio konsultavimo

Nr. 186/2009 Coll. ar šių teisės aktų pakeitimų ir papildymų, arba jei yra nustatyta, kad minėta veikla užsiima asmenys, neįregistruoti Registre ar neturintys licencijos užsiimti tokia veikla, bankas gali imtis priemonių, kad būtų pašalinti minėti trūkumai, taip pat paskirti baudą, apriboti arba sustabdyti nepriklausomo agento ar finansinio konsultanto veiklą atitinkamuose sektoriuose, panaikinti licenciją ar apriboti licenciją tam tikroms veiklos sritims, taip pat pritaikyti asmeniui, kuris teikia finansinio tarpininkavimo ar finansinio konsultavimo paslaugas neįregistravęs veiklos ar be licencijos, nuobaudą ir įpareigoti tą asmenį nutraukti nelicencijuotą veiklą. Pirmąją instanciją šiuos klausimus sprendžia Nacionalinio Slovakijos banko finansinių rinkų priežiūros skyrius. Antrąją instanciją šias bylas nagrinėja nacionalinio Slovakijos banko bankų taryba, jei fizinis ar juridinis asmuo, kurio atžvilgiu priimtas sprendimas, pateikia apeliaciją. Antrąją instanciją priimtas sprendimas yra galutinis. Slovakijos nacionalinio banko sprendimus gali peržiūrėti administracinės justicijos teismai pagal Slovakijos civilinio proceso kodeksą, ši sprendimų peržiūra detalai aptariama straipsnyje. Administracinė teisena – tai teisena, kurios metu sprendžiama apie valdžios institucijų priimtų teisės aktų teisėtumą. Gali atrodyti, kad galiojančių Slovakijos nacionalinio banko sprendimų peržiūra silpnina šio banko nepriklausomumą, tačiau reikia pabrėžti, kad priimdamas individualų teisės aktą, nacionalinis bankas vykdo valdžios funkcijas. Dėl šios priežasties yra būtina nepriklausoma teisminė šios funkcijos vykdymo priežiūra. Kai valdžios institucija vykdo įgaliojimus konkreto asmens atžvilgiu, tai yra suverenų galių konkreto asmens atžvilgiu vykdymas, taigi būtina, kad šie poveikį asmeniui darantys sprendimai būtų peržiūrimi nepriklausomos teisminės valdžios.

Pagrindinės sąvokos: administracinė teisena, Slovakijos nacionalinis bankas, finansinis tarpininkavimas, finansinis konsultavimas.

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