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Declaration of nullity – a fundamental defect of an administrative decision (not only in the Czech Republic)

Summary

This article focuses on the defect of an administrative decision occurring when a decision does not comply with the binding legal requirements. Several types of defect may be distinguished, of which the one that results in a declaration of nullity is the most serious. An invalid decision may be defined as non-existing or having a legally immaterial effect of an action of an administrative body. From the legal point of view an invalid decision is non-existent and as such does not lead to any legal consequences. Neither is an entity obliged to respect, observe or follow an invalid decision.

In this article, the essence and nature of an invalid decision and the reasons for invalidity are analysed based on actual cases. The process leading to a removal of a non-existent decision from the legal sphere is also discussed. Since an invalid decision does not exist and cannot be reversed or repealed, the only procedure left is declaration of its nullity. The analysis focuses on establishing when the nullity of a decision may be declared by administrative bodies, and when such declaration requires a court decision. Legal consequences of an invalid decision being enforced and the harm caused thereby are also discussed.

The above issues are analysed primarily with regards to the Czech Republic although the aim of the article has also been to present solutions adopted in some other European states. Some major deficiencies concerning the invalidity of administrative decisions in the Czech Republic have been identified as well, followed by some *de lege ferenda* postulates.

Keywords: administrative decision – invalidity of an administrative decision – reasons for the invalidity of an administrative decision – declaration of the invalidity of an administrative decision