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Preventing Harm: Interim Protection as an Aspect of Effective Judicial Protection**

Abstract

Interim protection, together with other fair trial guarantees, helps to achieve the effective protection of rights in administrative justice proceedings. Under the Czech Code of Administrative Justice, interim protection is represented by two instruments, namely interim measures and suspensive effect. They have in common that they both protect the applicant from the risk of harm of considerable intensity. The decision on interim protection is a solution to the conflict between the applicant's interest in prompt and effective protection against the contested act, on the one hand, and, on the other, the requirement to protect legal certainty, the stability of legal relations and the acquired rights and good faith of the other parties. The paper aims to cover the purpose and role of the institutes of interim protection in administrative justice, focusing on the substantive condition of imminent harm. In order to achieve this, it analyses a sample of decisions by the Supreme Administrative Court granting interim protection between 2019 and 2021. Analysis of the case law shows that five main categories can be distinguished in which the Supreme Administrative Court usually finds the imminent harm to be sufficiently serious. These relate to cases concerning foreign nationals (usually third-country nationals seeking residence or asylum), disproportionally high fines or tax obligations, withdrawal of driving licence, removal of constructions and disclosure of information requested through the Act on Free Access to Information.

Keywords: interim protection, interim relief, preliminary protection, suspensive effect, interim measure, administrative justice

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I The Role and Importance of Interim Protection

The purpose of administrative courts is to provide protection to public subjective rights. However, there might be situations in which merely filing an administrative action is not sufficient for the effective protection of the applicant's rights. The effects of the contested act (typically an administrative decision) may pose such a serious threat to the applicant that even a possible future success on the merits would be more or less irrelevant. Moreover, since most Czech administrative courts are chronically overburdened, success on the merits is more likely to come later rather than in time. The average length of proceedings before regional administrative courts was 511 days in 2021; proceedings before the Supreme Administrative Court (SAC) in 2021 lasted on average 277 days.[1]

For cases where the applicant cannot afford to wait that long for the final resolution of the dispute, the legislation provides (the possibility of) interim protection. The rule is that, at least in the majority of cases, neither administrative action nor cassation complaint has *ex lege* suspensive effect. Act No. 150/2002 Coll., the Code of Administrative Justice (CAJ), offers two instruments for obtaining interim protection, the preliminary measure and suspensive effect. Both can be granted on the applicant's proposal; in the case of preliminary measures solely on the basis of a proposal.

This paper focuses on the issue of interim protection in Czech administrative justice and its case law. However, the main aspects of interim protection are similar through different jurisdictions and different branches of law, thus allowing for comparison.

Why is interim protection of rights in administrative justice a topic worthy of attention? Although many authors emphasise the importance of interim protection, especially in the context of EU law[2] or concerning protection of human rights,[3] this topic does not receive much attention in Czech administrative justice or theory. This contrasts with its importance for the addressees of public administration, since interim protection can be considered as one of the aspects of the right to effective and timely court protection.[4] The issue of

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1 Czech Judiciary 2021: (2022) Annual Statistical Report 128–135, <https://justice.cz/documents/12681/719244/Ceske_soudnictvi_2021.pdf/37d8da17-4fee-4001-a473-fdb840f78936> accessed 30 August 2022. For SAC data, see response to the request for information of 28. 3. 2022 (2022) <https://www.nssoud.cz/informace-pro-verejnost/poskytovani-informaci/poskytnute-informace/detail/informace-poskytnuta-28-3-2022> accessed 30 August 2022.

2 See, i.a., Dimitrios Sinaniotis, *The Interim Protection of Individuals before the European and National Courts* (Kluwer Law International 2006).

3 See, i.a., Eva Rieter, Karin Zwaan (eds), *Urgency and Human Rights. The Protective Potential and Legitimacy of Interim Measures* (Springer 2021).

4 Susana de la Sierra, 'Provisional Court Protection in Administrative Disputes in Europe: The Constitutional Status of Interim Measures Deriving from the Right to Effective Court Protection. A Comparative Approach' (2004) 10 (1) European Law Journal 42–60. https://doi.org/10.1111/j.1468-0386.2004.00202.x

suspensive effect can be seen as 'perhaps the greatest debt that the administrative justice system owes to the truly real and effective protection of the subjective rights of individuals'[5].

Courts make decisions on interim protection under time pressure (within a 30-day time limit) and often with rather insufficient information. Concerning the timeliness of delivering interim protection decisions, there are no data available. The CAJ does not attach any consequences to the expiry of the 30-day time limit. However, from the author's personal experience as a law clerk at the SAC, the court meets the deadline in the vast majority of cases.

Decisions on interim protection are excluded from judicial review on the grounds of their temporary nature or are subject to a very limited review in proceedings before the Constitutional Court. The absence of judicial review means there is no mechanism for unifying case law on interim protection. This can lead to potential inconsistency and contradictions in the decision-making practice of regional administrative courts and the SAC.

Attention is focused primarily on decision on the merits. However, as mentioned, the practical importance of interim protection for the applicant can be even higher than the decision on the merits itself. Examples can be found across the entire agenda dealt with by administrative courts: whether cases in the field of law on foreign nationals or environmental law, construction law or tax law. If the applicant is exposed to a threat of harm that is difficult to remedy or compensate, a decision granting interim protection may indeed be preferable to granting the action itself. This applies especially in situations where the annulled decision has already been implemented and the interference with the rights or interests defended by the applicant is irreparable. This is all the truer in view of the average length of proceedings before administrative courts.

Requirements for effective judicial (and thus interim) protection arise not only from national legislation, but also from Council of Europe recommendations and EU law. Of particular note is *Recommendation No. R (89) 8 of the Committee of Ministers to Member States on Provisional court Protection in Administrative Matters*.[6] According to the Recommendation No. R (89) 8, protection can be sought not only after an action has been brought, but also prior to challenging the administrative act, if there is a case of urgency or where an action has been brought against an administrative act which does not have in itself any suspensive effect and has not yet been decided (Article 1 Paragraph 1). This requirement

[5] Lukáš Hlouch, 'Význam a smysl správního soudnictví v vztahu k veřejné správě' in Soňa Skulová, Lukáš Potěšil et al., *Prostředky ochrany subjektivních práv ve veřejné správě – jejich systém a efektivnost* (C. H. Beck 2017, 391–400) 393.

[6] Recommendation No. R (89) 8 of the Committee of Ministers to Member States on Provisional court Protection in Administrative Matters <https://rm.coe.int/16804f288f> accessed 30 October 2022.

is not met by the CAJ, since the law makes granting interim protection conditional on filing an action on the merits.[7]

Recommendation No. R (89) 8 is followed by *Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts*. This sets out five default categories of principles for judicial review. It conceives interim protection as one aspect of *effective* judicial protection. The court should have the power to order grant interim protection pending the outcome of the proceedings (Principle 5.d), which is intended to ensure that the court can suspend the implementation of the contested act if its implementation would place the applicant in an irreversible situation. The interim measures may include total or partial suspension of enforcing the contested administrative act. This will enable the court to restore the factual and legal situation which would prevail in the absence of the administrative act or to impose appropriate obligations on the administrative authority.[8] As mentioned, interim protection granted in proceedings before national administrative courts can have an EU dimension as well. The principle of effective judicial protection (enshrined in Article 47 Charter of Fundamental Rights of the European Union) entails the *right to an effective remedy*. In cases involving EU law, national courts must provide the possibility of immediate and provisional judicial protection when this is necessary in order to make legal protection effective.[9] Interim protection therefore plays an important role in ensuring the full effectiveness of a judgment to be given on the existence of the rights claimed under EU law.[10]

If the administrative court decides on interim protection in cases involving an element of EU law, it must consider the requirements arising from it. The decision must respect the principles of equivalence, efficiency and effective judicial protection, as well as the right to an effective remedy and to a fair trial. The obligation to have regard for the requirements of EU law is particularly relevant in the context of decisions concerning the protection of the environment (where EU law is manifested through the requirements of international law, namely the Aarhus Convention), in asylum cases or in cases concerning residence permits.

The particular form of interim relief is a matter for national legislations. However, as Prechal and Pahladsingh note, the principles of equivalence and effectiveness must be respected, as well as requirements stemming from effective judicial protection and Article 47 of the Charter of Fundamental Rights. The European Court of Justice (ECJ) case law also

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[7] See Article 38(1) CAJ, according to which, 'where an application for the initiation of proceedings has been made (…)'. In the case of suspensive effect, the condition for initiating proceedings is not expressly laid down by CAJ. Courts and the literature, however, derive it from the wording of Article 73 CAJ. See Jan Jirásek, '§ 73 [Odkladný účinek žaloby]' in Tomáš Blažek et al., *Soudní řád správní. Online komentář* (C. H. Beck 2016).

[8] Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dba26> accessed 30 October 2022.

[9] Case C-213/89 R *(Factortame Ltd) v Secretary of State for Transport*, EU:C:1990:257; Case C-416/*10 Jozef Križan and Others v Slovenská inšpekcia životného prostredia*, EU:C:2013:8.

[10] Case C-416/10 *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*, EU:C:2013:8.

provides some indications as to the conditions to be fulfilled in interim relief actions, such as a sense of urgency or a *threat of serious and irreparable damage* to the applicant seeking relief. This means that 'the application of a decision pending the preliminary proceedings may have irreversible consequences'.[11] According to the ECJ case law,

> the argument that harm is, by definition, irreparable because it falls within the scope of fundamental freedoms cannot be accepted since it is not sufficient to allege infringement of fundamental rights in the abstract for the purpose of establishing that the harm which could result would necessarily be irreparable.[12]

Infringement of certain fundamental rights (such as prohibition of torture, inhumane or degrading treatment or punishment) is liable to give rise by itself to serious and irreparable harm. Nevertheless, it is still for the party seeking an interim measure to set forth and establish the likelihood of such harm occurring in its particular case.[13]

II Interim Measure and Suspensive Effect in the Czech Code of Administrative Justice

1 Interim Measure (Article 38 CAJ)

The aim and purpose of a preliminary measure is to adjust the circumstances of the parties in exceptional cases, where the continuation of the existing state of affairs *(status quo)* or, on the other hand, their change threatens serious harm, on a provisional basis. Compared to suspensive effect, the use of interim measures in Czech administrative justice is much less frequent. As of 31. 12. 2021, the total number of decisions on interim measures (i.e. both granting and rejecting them) amounted to just over 5% of the total number of decisions on suspensive effect. The explanation for this might be that suspensive effect is largely used in proceedings concerning an action against an administrative decision and in cassation complaint proceedings. These are by far the most frequent types of proceedings.

If the court grants the interim measure, it orders the other party to do something *(facere)*, refrain from doing something *(omittere)*, or endure something *(pati)*. Recently, the most frequently imposed obligation (in the context of cassation proceedings) is the obligation of the administrative authority to tolerate the applicant's (who is a foreigner

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[11] Sacha Prechal, Aniel Pahladsingh, 'Urgency and Human Rights in EU Law: Procedures Before the Court of Justice of the EU' in Eva Rieter, Karin Zwaan (eds), *Urgency and Human Rights. The Protective Potential and Legitimacy of Interim Measures* (Springer 2021, 37–63) 46. https://doi.org/10.1007/978-94-6265-415-0

[12] Order of the President of the Court, Case C 43/98 P(R), *Camar Srl v Commission*, EU:C:1998:166.

[13] Order of the Vice-President of the Court, Case C-390/13 P(R), *European Medicines Agency (EMA) v InterMune UK Ltd and Others*, EU:C:2013:795.

seeking residence or asylum) stay in a detention centre and to provide them with basic material security until the final outcome of the cassation proceedings.[14] The second most frequent category of imposed obligations consists of an order that the other party shall refrain from certain conduct. A wide range of possibilities can be anticipated here. These include an obligation to refrain from proceeding with a tax enforcement, auctioning the applicant's property, intervening over advertising facilities or loading material on a specified piece of land.[15]

The conditions for issuing an interim measure (which must be satisfied cumulatively) are as follows:

1. an application initiating proceedings before the court (an administrative action or a cassation complaint);

2. an application for an interim measure;

3. a need to adjust the parties' circumstances provisionally because of the threat of *serious harm*;

4. a statement by the other parties to the proceedings on the application for an interim measure; however, only if the court finds it necessary.

Serious harm is an interference with the public subjective rights of a party which constitutes such a fundamental disturbance that the party cannot be fairly required to bear it, even temporarily. At the same time, serious harm can be understood as such interference with legal sphere of third parties (other persons) or interference with a public interest.[16] However, in the case of interim measures, the CAJ does not expressly require that the imminent harm be weighed against the harm that could be caused to other persons by granting the requested measure, nor does it consider any possible conflict with the public interest. In its decisions on interim measures, the SAC therefore does not assess these aspects.

2 Suspensive Effect (Article 73 CAJ)

Suspensive effect – generally speaking and in simplified terms – serves the same purpose as interim measures. However, its functioning is substantially different. It is clear from the nature of the institute that it suspends (any) effects of the contested administrative or judicial decision (or both simultaneously), or parts thereof (i.e. its individual statements).

The procedural conditions for granting suspensive effect are as follows:

1. pending court proceedings on an action or a cassation complaint;

2. an application by the person entitled (in cassation proceedings, the administrative authority can apply for suspensive effect as well);

3. a statement by the other parties to the proceedings or third persons who may be affected by the decision.

[14] E.g. SAC Resolution No. 3 Azs 28/2020-73.

[15] E.g. SAC Resolution No. 4 Afs 146/2020-60 or SAC Resolution No. 6 As 6/2017-75.

[16] SAC Resolution No. Na 112/2006-37.

There are two more substantive conditions that must be met. These are:

1. a threat of harm *disproportionately greater* than that which may be caused to other persons by granting suspensive effect;

2. an absence of conflict with an important public interest.

These conditions constitute a certain scheme by which the court assesses the application for suspensive effect. If the applicant does not establish a threat of qualifying harm, the court no longer considers the question of conflict with the public interest. To be successful, the applicant must satisfy three sub-steps of the substantive part of the scheme outlined above. It must allege with sufficient specificity and, where appropriate, substantiate the imminent harm (1), which the court must find to be sufficiently serious (2) and at the same time not contrary to an important public interest (3).

The applicant is expected to make a sufficiently specific and individualised allegation that they will suffer harm within the meaning of Article 38(1) or Article 73(2) CAJ as a result of the contested decision. In order for suspensive effect to be granted, the claim must include an explanation of what that harm consists of and an indication of its extent and intensity. Administrative courts are not called upon to establish or prove the grounds for granting interim protection on the applicant's behalf. To be successful, the applicant not only needs to state the threatened harm but also, where possible, provide evidence of it (e.g., contracts, accounting records or bank statements). However, full clarification of the applicant's circumstances is not a prerequisite for an application for interim protection to be well founded.

III Harm

In the context of decisions on interim protection, harm can be considered in two ways. First, there is harm *to* the applicant, for which they seek interim protection. On the other hand, there is harm that may arise as a result of ranting interim protection to others (third persons). As a result of interim protection being granted, such third persons might suffer damage and face additional costs. This risk of harm caused *by* interim protection must also be considered, having regard to the general principle of proportionality. However, this paper focuses on the first category of harm, since this is the focal point of decision-making and is thus relevant case law on interim protection.

The applicant's claims in the application for granting interim protection must show that the adverse consequence which they fear in connection with the enforcement of the contested decision would pose substantial harm to them. According to the SAC case law, the impeding harm must be *serious* and *real*, not *hypothetical* or *trivial*.[17] Only harm of a certain intensity can justify an exception to the rule that neither an administrative action nor a cassation complaint have suspensive effect by virtue of law. It is also described by the

[17] SAC Resolution No. 2 Afs 193/2015-62.

SAC case law as an 'intensive interference with the applicant's intimate sphere, their property rights or other (especially constitutionally guaranteed) subjective rights'.[18] Significant harm will be caused if it is no longer possible to reverse the effects caused by enforcement of the contested decision, even though the applicant succeeded on the merits. Injury will also be significant if the consequences of the contested decision (although reversible or remediable) are of such a nature as to cause the applicant serious difficulties or significant disruption to their life, functioning or activities.[19]

Its interpretation of what constitutes *serious harm* was put forward by the SAC in many cases. It is seen as interference with the applicant's legal sphere which (either in itself or as part of a more complex unlawful procedure) constitutes 'such a fundamental interference with that sphere that the party cannot fairly be required to endure it, even temporarily'.[20] Serious harm may also be a set of acts by the administrative authorities, which could not individually be regarded as such harm but if in their totality and having regard to their temporal continuity, targeting and cumulative negative effects, they amount to an intense interference against the applicant.

Any decision on the application for interim protection is closely linked to the specific facts of the case and allegations made by the applicant. Individual decisions therefore to some extent defy generalisation. A number of sub-factors may contribute to the conclusion on intensity of the harm. Because of this, the conclusions of the case law on interim measures and suspensive effect cannot be adopted mechanically. The idea of creating lists of cases in which suspensive effect is to be granted (and when it is not) was rejected by the administrative courts themselves.[21] The CAJ gives the court a wide margin of discretion, which must take into account all the particularities of the case in question. However, considering the volume of the relevant case law, it is nevertheless possible to trace some rather typical situations when the harm is seen as significant enough.

This paper evaluates the decisions of the SAC granting interim protection between years 2019 and 2021. The sample consists of all SAC decisions in given time period in which the court granted suspensive effect to the cassation complaint. All SAC decisions are freely available online.[22] In 2019, the SAC granted suspensive effect in 93 cases; in 2020, suspensive effect was granted in 107 cases; in 2021, suspensive effect was granted in 93 cases. Consequently, the five categories below can be distinguished in the selected sample. These are the most frequently occurring cases, meaning there were also a number of different 'unclassified' cases in the sample. The focus is on decisions in which the SAC

[18] SAC Resolution No. Na 112/2006-37.
[19] SAC Resolution No. 6 Afs 73/2014-56.
[20] SAC Resolution No. Na 112/2006-37.
[21] SAC Resolution No. 10 Ads 99/2014-58.
[22] See https://vyhledavac.nssoud.cz/, category 'details of the document and procedure', statement 'suspensive effect: granted'.

granted suspensive effect or imposed an interim measure as to determine which type of harm *is* sufficiently serious.

It needs to be noted that the representativeness of the chosen sample of decisions is limited by the time period chosen and also by the fact that the reviewed sample consists only of SAC decisions (and not also the decisions of the regional courts).[23] The CAJ does not make any distinction in the sense of different requirements for the intensity of the alleged harm in proceedings before regional administrative courts and the SAC (for example, such as that in cassation proceedings, the harm must be alleged to be even more serious, since it is an extraordinary remedy). For this reason, the conclusions of the SAC case law should be applicable to proceedings before regional administrative courts. In practice, however, potential inconsistencies in the assessment of intensity of imminent harm in the case law of regional courts and the SAC might arise.

The conclusions drawn below represent a set of decisions from the period in question, with specific decisions (resolutions) chosen as examples, as these conclusions are mostly repeated in dozens of resolutions each year. Upon categorization, the following five categories represent typical situations when serious harm is usually found.

1 Obligation of Foreigners to Leave the Territory of the State

The harm that applicants in the field of law on foreign nationals face arises from the obligation to leave the territory of the Czech Republic against their will. Within this category, the harm can be categorised into several main subgroups. The harm may consist of interference with their family life (long-term separation from close persons and relatives), or with their private life (severing the ties of a fully integrated foreigner who has been living in the country for a long time, while lacking any background in the country of origin). Harm may be caused by fundamental health factors (serious health problems which prevent departure or a disease that is incurable in the country of origin and threatens to worsen). Harm may also be caused by exceptional economic factors (existential difficulties in the country of origin or significant lack of resources for returning to the territory of the Czech Republic in the event of the applicant's success).[24] In these cases, there is regularly an accumulation of several sub-aspects of harm. The obligation to leave the territory of the state often constitutes a fundamental and multifaceted interference in the life of the foreigner in all its spheres.[25]

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[23] The procedural decisions of regional administrative courts are not publicly available, although they can be obtained on request.

[24] SAC Resolution No. 6 Azs 325/2021-36.

[25] Such as the aforementioned interference with applicant's family and personal life (SAC Resolution No. 7 Azs 346/2018-28), disruption of their studies (SAC Resolution No. 5 Azs 84/2021-98) or working relationships and business activities (SAC Resolution No. 4 Azs 191/2020-23).

2 Disproportional Amount of Fine or Tax Obligation Imposed

Another group of frequently occurring cases is the harm that the applicant faces because of an administrative penalty (typically a fine) imposed on them or as a result of a tax obligation. In such situations, the applicant is obliged to pay a certain monetary amount, which will result in a serious interference with their financial situation. To grant interim protection, the amount must be disproportionate for the applicant or their activity, i.e., potentially causing an irreversible or even existential threat.[26] However, the SAC does not always require that this interference be a truly an existential threat – a 'mere' sufficiently strong interference may suffice.[27] The impact of a sanction or tax obligation may also affect other persons besides the applicant themself, such as persons to whom they provide services or care, or those dependent on their activities. These can be their family members, employees, students, or residents of a municipality.[28]

3 Withdrawal of Driving Licence

Applicants often seek interim protection because of an impending prohibition on practicing their profession. In most cases, this threat is linked to an administrative penalty of a driving ban. For the court to grant interim protection, there must be a risk of no longer working in a profession for which a driving licence is essential. The dependence on driving should be existential.[29] A mere reduction in comfort will not suffice.[30] The intensity of the harm is usually compounded by the allegation that the applicant will otherwise lose their job, which will jeopardise their livelihood or will have an impact on the fulfilment of their obligations to other persons.[31] Alternatively, the applicant may be using the vehicle to care for their dependents, such as elderly or ill family members. In doing so, the court will also consider the nature and seriousness of the offence committed by the appellant that led to the driving ban.[32]

4 Removal of Construction

The imminent removal of a construction is another case that appears relatively frequently in the SAC case law and usually constitutes significant harm. Such harm consists of the loss of investments in the construction and the additional financial and time expenses required to

[26] SAC Resolution No. 3 Ads 336/2017-34.
[27] SAC Resolution No. 2 Afs 131/2018-50.
[28] SAC Resolution No. 8 Ads 312/2021-33.
[29] SAC Resolution No. 6 As 29/2013-80.
[30] SAC Resolution No. 1 As 473/2020-32.
[31] The applicant is likely to be in the profession of a driver, a sales representative or an entrepreneur (SAC Resolution No. 3 As 286/2017-39 or SAC Resolution No. 7 As 321/2017-19).
[32] SAC Resolution No. 6 As 29/2013-80 or SAC Resolution No. 2 As 319/2018-24.

remove the construction. Removal will also result in the loss of the purpose and use of the construction. The situation will be more substantiated if the construction is intended for habitation and its removal would lead to complications in the applicant's housing situation or even to the loss of their shelter.[33]

However, a number of other risks can be encountered in construction cases. In addition to the imposition of an obligation to remove the building, cases can be mentioned where the harm consists of the interruption of construction work, but also in its commencement or continuation. The interruption of construction work may give rise to additional costs for preserving the building and protecting it from damage, compensation costs for contractors or subsequent costs for repairing or replacing materials damaged by the deterioration of the unfinished building or for engaging new contractors.[34] Conversely, commencement or continuation of construction work will cause harm, particularly if there is a risk of irreversible damage to the landscape, the environment in general or a population of specially protected animal or plant species.[35]

5 Disclosure of Information Requested through the Act on Free Access to Information

The last category of recurring cases consists of those concerning freedom of access to information. Here, the administrative authority will typically seek suspensive effect on the grounds that, if the SAC does not grant it, they would have to provide the requested information. Publishing the information would take the case to a purely academic level, since already disclosed information cannot be withdrawn or otherwise restored.[36] In effect, the subject matter of the dispute would no longer exist. In such situations, there is a risk of harm to the persons about whose private circumstances the other party is requesting information.[37] A risk of violating business secrets or leaking otherwise classified information can also occur.[38]

IV Closing Remarks

This paper presented the background of interim protection decision-making in the context of Czech administrative justice, with a focus on the aspect of imminent harm. Although the substantive conditions for granting interim measures and suspensive effect differ, the

[33] SAC Resolution No. 10 As 343/2021-36.
[34] SAC Resolution No. 2 As 272/2020-49.
[35] SAC Resolution No. 7 As 400/2018-96.
[36] SAC Resolution No. 5 As 170/2019-18.
[37] SAC Resolution No. 6 As 188/2021-38.
[38] SAC Resolution No. 9 As 163/2020-26 or SAC Resolution No. 10 As 241/2021-21.

threat of harm of significant intensity is the common denominator of both kinds of interim protection.

In the examined sample of the SAC decisions in which the court has granted suspensive effect to a cassation complaint, several similarly occurring types of situations can be observed. It cannot be understood that all such applications are guaranteed to be successful. They are intended to serve instead as an approximation of the content of a vague legal concept of *imminent harm*, or more precisely, *disproportionately greater harm*.

First, these include cases concerning law on foreign nationals, which involve harm consisting of interference with the foreigner's private and family life as a result of the obligation to leave the territory of the Czech Republic. Another category relates to the allegedly disproportionate amount of a fine or tax liability, the payment of which would endanger the applicant's livelihood or business activities. There are also frequent cases of a loss of their driving licence, where the applicant fears loss of employment due to their existential dependence on driving. Cases in the field of construction law are characterised by the fact that the court must balance the harm imminent to the applicant against that threatened to other persons. Neither the removal of a building nor the termination or suspension of construction work constitutes an automatic ground for granting suspensive effect. On the contrary, the construction activity itself may be regarded as a detriment, for example, from the point of view of neighbours or as a detriment to the environment. The last group of cases is represented by disputes relating to freedom of access to information. Here, the SAC regularly grants suspensive effect to the cassation complaint by the administrative authority, as disclosure of the information would largely render judicial review meaningless.

Administrative courts have consistently emphasised the exceptional nature of interim protection, which should be treated rather cautiously. However, it must be noted that both the legislation and the case law is evolving towards a broader interpretation of the conditions for granting interim protection.[39]

In addition to the aspect of harm, the topic of interim protection invites a number of other intriguing questions. Does the success rate of proposals for interim protection correlate with the success rate on the merits of the cases? What about additional judicial protection against decisions on interim protection? What role does liability for injury caused by granting interim protection play? How do the relevant stakeholders assess the relevant legislation? To answer these questions, we must first properly acknowledge the role and importance of interim protection. After all, it is still true that *justice delayed is justice denied.*[40]

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[39] An analysis by the non-profit organisation Ecological Legal Service (*Ekologický právní servis,* now *Frank Bold*) from 2009 provides an overview of the case law at that time. Since then, substantial progress has been made towards allowing access to interim protection for applicants, mostly in construction and environmental protection cases.

[40] The quote is commonly attributed to William E. Gladstone, a British Prime Minister in the late 1800's.