Panel 1: Measures to Restrict Access to Administrative Courts

The Greek Example

(SAC stands for Supreme Administrative Court - the Greek Council of State)

While in Berlin the focus was on procedural tools and jurisprudential approaches which open access to the Greek SAC as an element of its democratic tradition, the focus here in Brno will be on ways to restrict access in cases where there is evidence that there is an abuse of procedure (penalization of frivolous petitions) or when the object of the dispute is not of great monetary value so as to allow a judgment by the administrative courts of second instance and finally by the SAC as a court of revision (monetary limits to appeals before ordinary administrative courts).

Rules on the penalization of frivolous petitions

1. [SAC Art. 36 para. 4 of Code of Procedure before the SAC (presidential decree 18/1989) as modified by Laws 2479/1997, 3226/2004, 3900/2010, 4274/2014]: If the application is manifestly inadmissible or unfounded the SAC has the power by law to multiply up to 20 times the amount of fee required. The initial provisions of the Code of Procedure of the SAC spoke for the doubling of the fee or the tripling of the special fee to be paid when the applicant loses a case that he brought to a hearing although it was previously rejected with a decision made with proceedings in camera; these provisions have been deemed to have exhausted their purpose and have been replaced by Article 8 of Law 3900/2010 (and subsequently by Article 21 of Law 4274/2014) which is considered to be of general application (SAC Decision 3224/2015). Even though state parties and public law bodies are exempted from the obligation to pay fee, the said provision applies to public and private parties alike for reasons of equality of arms (SAC Decisions 2155/2015, 2086-2088/2015 all reached in plenum).

The SAC used many times the above-mentioned powers in order to “punish” applicants who insisted on bringing cases to trial which were previously answered by the Court in the same systematic way and even with plenary judgments that acquired great publicity (Decisions 4624/2013, 3314/2013) / who were found to act illegally and kept coming back to the Court seeking a different judgment (Decisions 3596/2014, 3607/2014, 2519/2015) / who made an application to the Court without contesting the fact that they acted illegally (Decision 2881/2015) / who obtained previously a rejection from the Court on the same case (Decision 2235/2018) / who presented false documents before the Administration and were condemned by the criminal courts but applied also to the SAC using the same documents (Decision 450/2014) / who applied to the Court in their capacity as an association the constitutive goals of which did not give standing for the filing of the application (Decision 3352/2013 in plenum) / who challenged an information (non) paper of the Administration only to cause a trial on an environmental issue which they could not otherwise bring to trial (Decision 243/2015).

Possibility for a stronger blame - SAC Decisions 4257/2015, 4194/2015: Here the SAC made use of the
provisions of the Civil Procedure Code on actions before the Court made in bad faith (which may be applied mutatis mutandis in the procedure before the SAC on the basis of Article 40 of the Code of Procedure of the SAC) to impose a monetary penalty of 800 euros on the Greek State and in favor of the Lawyers’ Social Security Fund, for insisting on going to trial with an inadmissible case which was previously rejected in camera.

2. (SAC - Art. 14 of Law 4446/2016): The SAC has the power to multiply the costs adjudicated on the defeated party if his writ exceeds a reasonable length, taking into consideration the legal issues posed.

3. (SAC – Article 39 para. 1 last period of Code of Procedure before the SAC 18/1989 as added with Law 4055/2012): If the party that loses the case has contributed with concrete actions to a delay in the trial of the case, then he has to bear triple the costs of the trial of the winning party. This provision applies for private-law and public-law bodies and the Greek State alike. In the latter case the (non) timely transmittance of the administrative file of the case accompanied by the answer of the Administration to the petition, are particularly taken into account.

   SAC Decision 354/2014: The fact that the applicant had not appointed an attorney to appear before the SAC for the trial of a case that it finally lost (non-payment of an engineering study by a Greek Municipality) can not be deemed to cause an obstruction in the trial of the case, since the applicant (the municipal body) authorized its petition before the trial by presenting a written decision to proceed to trial taken by the pertinent municipality committee.

4. Also administrative courts have the power to multiply by 5 the costs of the trial of the party that insists to go to trial with a case that he previously lost in camera (Article 126A para. 9 of the Code of Procedure of Administrative Courts). Administrative courts also have the general power to double the amount of fee forfeited if the application to the court was manifestly inadmissible or ill-founded (Article 277 para. 10 of the Code of Procedure of Administrative Courts).

5. (Article 46 of the Code of Procedure of Administrative Courts – Law 2717/1999): If the losing party has failed to include in his initial writ of application a description of the different legal issues raised with his application, then he is subject to being burdened with triple the costs of the trial. If he wins the case, his costs may be forfeited.

6. The administrative courts have also the power to adjudicate 100-500 euros to the detriment of the party that has requested the postponement of the trial of his case, by way of a separate recorded decision, as long as the opposing party has filed a specific request (Article 135 para. 5 of the Code of Procedure of Administrative Courts). They have the same power against the Administration if it has failed unjustifiably to submit timely to the court the administrative file of the case (Article 129 para. 3 of the Code of Procedure of Administrative Courts).

**Setting monetary limits to the appeal before the administrative courts**

1. Monetary limits apply only to the appeal procedure before the administrative courts in cases where the
courts exercise full jurisdiction, decide on the merits and remedy the loss of the claimants by granting them a benefit or monetary compensation or by recognising a particular right belonging to them or a particular legal relationship governed by law. Such cases include taxation, social security, the execution of public contracts, compensation claims against the state and public-law bodies etc. There are no monetary limits set for the appeal before the SAC because the SAC deals only with appeals in judicial review cases which aim to the annulment of illegal administrative (in)action.

2. As was judged as early as 1995 (SAC decisions 3621, 3622/1995 taken in plenum) and was repeated with standard jurisprudence (see e.g. SAC 316/2019), the right to judicial protection enshrined in Article 20 para. 1 of the Greek Constitution does not guarantee the right to appeal in all cases. The legislator is not prohibited to restrict, abolish, impose or modify monetary (and other) limits on the appeal to a court of second instance, even retroactively, that is, also on appeals already filed. This is not considered to violate any other general principles of procedural law (like the one stating that the right to appeal is judged according to the law in force at the time of the issuance of the decision of the court of first instance), as long the law setting or modifying the monetary limits contains an express transitional provision as to its retroactive application (SAC decisions 3407/2001 and 2659/2008 taken in plenum).

3. The relevant provisions for the appeals before ordinary administrative courts can be found in Article 92 of the Code of Administrative Courts Procedure. There it is stated that monetary disputes that do not exceed 5000 euros are not subject to appeal. This limit is set to 3000 euros for social security and salary disputes. The object of the dispute is determined with reference to the disputed monetary amount at the stage of the appeal (without surcharges or interest) which does not necessarily coincide with the amount adjudicated with the decision of the court of first instance (Article 10 of Law 3659/2008 following standard previous jurisprudence of the SAC). Only regarding the disputed monetary amount, as set after the court of first instance has decided, enjoys the party who lost his case partially or wholly the right to appeal against the decision of the court of first instance (SAC 2821/2015). For example, in tax disputes, the monetary limit is determined differently for the state and for the private applicant. When the tax authority files the appeal, the monetary object of the dispute is equal to the difference between the amount of tax determined by the Administration and the amount actually owed as judged by the administrative court of first instance. When the tax-payer files the appeal, the monetary object of the dispute is equal to the difference between the amount of tax owed according to the declaration of the tax-payer and the amount owed as set by the court of first instance. If the object of the dispute is divided into different, separate and independent amounts, then the monetary limit is determined in accordance with each one of these amounts. In the year 2007 the SAC in plenary session changed its previous jurisprudence (SAC Decision 1756/2007 taken in plenum) and ruled that even if the tax authority imposes different (Code of Books and Records) fines with one act, then the monetary limit of the appeal is determined according to the amount of each one of the fines taken separately and not as a total sum of the fines imposed. When different administrative acts are challenged with one writ or when several applicants gather in one writ, then the monetary object of the dispute is determined according to each one of the acts or the individuals applicants unless there is a case of joint and several liabilities (now Article 2 of Law 4446/2016). All monetary limits for the appeal to the administrative courts of second instance may be adjusted with presidential decrees according to the statutory authorization provided by Article 92 para. 5 of the Code of Procedure of Administrative Courts.
4. If a case goes finally to the SAC by way of application for revision, the question of whether or not the decision of the court of first instance was subject to appeal, is examined by the SAC on its own motion (SAC Decision 2714/2015 and standard jurisprudence).

5. In cases where there is a separate claim for interest to be paid, the monetary object of the dispute that determines if the case is subject to appeal, is determined according to the amount of the main dispute as set by the decision of the court of first instance. The requested interest is considered as an ancillary claim, the inability to calculate the exact amount of which does not affect the determination of the monetary object of the main dispute (SAC Decision 2757/2013 taken by the plenary session of the 6th senate). In cases where only the amount of interest is disputed, this will normally not meet the monetary limit to appeal, because the disputed sum is usually focused on the difference in the applicable interest rate or to the time period concerned (SAC Decision 2700/2015 following standard jurisprudence).

6. There are cases where an appeal can be lodged irrespective of the statutory monetary limit. Such cases include appeals on the grounds of: lack of jurisdiction or competence of the court of first instance / illegal composition of the court that issued the appealed decision / periodical payments / greater economic consequences for tax payers on whom Code for Books and Records fines have been imposed (Article 10 of Law 3659/2008 – this may occur, for example, when the same applicant has several pending cases on the same tax matter before the same administrative court) / the fact that the deductible tax loss exceeds the amount of 15000 euros (Article 19 of Law 3900/2010) / clash of the decision of the court of first instance against the decision of another court that rules on a matter of taxation of inheritance with the same legal and factual basis even if it concerns a different tax payer (Article 25 of Law 4509/2017).

7. As regards tax and custom duties cases with a monetary object, the appellant must deposit until the day of the trial 20% of the tax owed as set by the court of first instance unless the execution of the decision of this court is stayed with a separate interim decision of the court of appeal.

While rules on the penalization of frivolous petitions and also monetary limits to the appeal are initially designed to ease the case load of the Court, by enforcing compliance with decisions of the courts on previously decided cases, they ultimately serve also to enhance the authority of the Council of State as a Supreme Administrative Court and of its jurisprudence.

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