



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative
Courts**

Berlin, 13 May 2019

Answers to questionnaire: Serbia



Seminar co-funded by the «Justice » program of the European Union

ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg
(Higher Administrative Court Berlin-Brandenburg)

Questionnaire

Introduction

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which “filters”, for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12th to 14th May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states’ Supreme Administrative Courts. It shares this objective with the closely linked seminar taking place in Dublin on 25th and 26th March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge’s daily work.

I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

In Republic of Serbia there is one singleinstance Administrative Court with its Seat in Belgrade and three Court Units in: Nis, Kragujevac and Novi Sad. There is no appeal allowed against Administrative Court decisions. Administrative Court has territorial jurisdiction over the territory of the Republic of Serbia.

There is only possibility for extraordinary legal remedy declared against decisions of the Administrative Court. According to the Article 49 of the Law on administrative disputes, the party and the competent public prosecutor may file a motion to review a court decision with the Supreme Court of Cassation against final decisions of the Administrative Court.

b) Does your SAC also serve as a first instance court?

No. Panel specialized in administrative matters of the Supreme Cassation Court which decides on declared extraordinary legal remedies against decisions of the Administrative Court ruled in the administrative disputes.

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter?
- depending on the importance of the case?
- depending on a choice by the plaintiff (alone) or the parties (by agreement)?
- depending on other criteria?

I.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

It's not possible to provide exact answer, due to fact that in Republic of Serbia Supreme Court of Cassation in administrative matter has jurisdiction to decide on declared extraordinary legal remedies against decisions of the Administrative Court ruled in the administrative disputes. Bearing in mind stated, moguće dati tačan navedeni odgovor, jer u Republici Srbiji Vrhovni kasacioni sud u upravoj materiji postupa samo razmatrajući vanredna pravna sredstva izjavljena na odluke Upravnog suda donetim u upravnom sporu. S tim u vezi, dajemo podatak o primljenim predmetima specijalizovanog upravnog veća Vrhovnog kasacionog suda i Upravnog suda.

U 2017. godini specijalizovano upravno veće Vrhovnog kasacionog suda primilo je 675 predmeta. U 2018. godini specijalizovano upravno veće Vrhovnog kasacionog suda primilo je 569 predmeta.

U 2017. godini Upravni sud je primio 21.741, dok je u 2018. godini primljeno 25.426 predmeta.

2. a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?

We do not have such data.

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

We do not have such data.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

Supreme Court of Cassation, upon motion to review court's decision, reviews the contested decision only within the limits of the motion. Supreme Court of Cassation shall dismiss an unpermitted or untimely motion, or a motion that was submitted by an unauthorised person, in a ruling. According to the Article 55. of the Law on Administrative Disputes in a judgment, the Supreme Court of Cassation shall reject the motion, or uphold it as founded. In a judgment upholding the motion, the Supreme Court of Cassation may reverse or modify the court decision against which the motion has been filed. In the event that the Supreme Court of Cassation reverses the court decision, the case shall be returned to the Court whose decision was reversed, and that Court shall be obliged to carry out all procedural actions and to discuss the issues specified by the competent Court.

The Administrative Court shall examine the legality of the disputed administrative enactment within the limits of the request contained in the petition, but is not bound by the reasons provided in said petition.

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law?
- the deliverance of single case justice?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

Article 30. of the Law on organization of courts prescribes that Supreme Court of Cassation shall decide in administrative matter in administrative cases: upon request for reconsideration of a court decision, upon request for reconsideration of a final decision of a misdemeanor court, upon request for the protection of legality in misdemeanor cases, in cases of conflict of jurisdiction, at the request for extraordinary review of a court decision, at the request

for extraordinary review of a final misdemeanor decision, at the request for protection of legality and upon appeal.

When it comes to the jurisdiction of the Supreme Court outside of the trial, it provides uniform application of the laws and equality of the parties in court proceedings, reviews the application of laws and regulations and the work of the courts, appoints judges to the Constitutional Court, provides an opinion on a candidate for President of the Supreme Court of Cassation, and performs other competences specified by law.

5. a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

Supreme Court of Cassation doesn't have jurisdiction as first instance court.

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

I.

6. a) Is there a separate constitutional court in your country?

Yes. Article 166 of the Constitution of the Republic of Serbia stipulates that The Constitutional Court shall be an autonomous and independent state body which shall protect constitutionality and legality, as well as human and minority rights and freedom. The Constitutional Court decisions are final, enforceable and generally binding.

b) Does the SAC in your country serve as a constitutional court?

No.

c) In how far does your SAC consider constitutional law, especially fundamental rights?

Supreme Court of Cassation has no jurisdiction when it comes to the consideration of constitutionality. Article 35 of the Rulebook on the Organization and Operation of the Supreme Court of Cassation defines, among other, that session of the department provides initiatives to the Session of all the Judges for the creation of proposals for assessing the constitutionality and legality of laws and other general enactments and considers other issues decided by the Session of all the Judges.

In Administrative Court, according to the Article 196 of the Court Rules of Procedure, if, during deliberations, the panel finds that a law or other applicable regulation should be modified, it shall draft a proposal and submit it to the president of the department to which this panel belongs. If the panel finds that a legal opinion should be established on the legal issue it is resolving so that uniform application of regulations can be ensured, it shall inform the de-

partment president about this and suspend the work on the case until the matter has been discussed at a department session or session of all judges.

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

Yes. Article 170. of the Constitution of the Republic of Serbia constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

Already answered.

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

Ne.

II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?

If an applicant for extraordinary legal remedy is natural person he/she must lodge a motion before the Supreme Court of Cassation by lawyer/attorney.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

Yes, he/she has to be lawyer/attorney.

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

No.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

If they have proper authorization or they are authorized by law to represent.

e) Are there specific (different) rules for representatives of administrative authorities?

No.

2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

There is no appeal. Motion to review a court decision which is filed to the Supreme Court of Cassation and the motion shall include the information about the Court decision whose review is being proposed, the information about the submitter of the motion, as well as the reasons for and the extent of the proposed review. The motion may be submitted when such action is envisaged by law, in cases where the Court was deciding in full jurisdiction and in cases in which the appeal was excluded from the administrative proceeding.

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

The motion to review final decision of the Administrative Court may be submitted when such action is envisaged by law, in cases where the Court was deciding in full jurisdiction and in cases in which the appeal was excluded from the administrative proceeding.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

Republic of Serbia is not member state of the EU, therefore Supreme Court of Cassation cannot refer to the ECJ for a preliminary ruling under art. 267 TFEU.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

Every party in the administrative dispute and public prosecutor may file a motion to review court decision to the Supreme Court of Cassation.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

Yes. Against the decision on a request for deferral of enforcement of the administrative act (as type of interim measure), as well as against decisions of Administrative Court rendered in administrative matters where two instance administrative procedure is ensured.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

There is no appeal.

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

Already answered. Filters are conditions for filing a motion for review Administrative court's decision: when such action is envisaged by law, in cases where the Court was deciding in full jurisdiction and in cases in which the appeal was excluded from the administrative proceeding.

b) If there is a preliminary assessment, please give details:

- Which court decides (lower court or SAC)?
- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?
- If the SAC decides, is there a specific procedure of admittance before the SAC? Please give details!
- If the lower court decides (in a negative way), can the SAC still admit a case?
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?

There is no preliminary assessment procedure.

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

There are no special rules for certain fields of law.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

/.

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

There are no two instances. In Republic of Serbia there is only one single instance court and panel specialized in administrative matters of the Supreme Court of Cassation.

f) Are there specific requirements in certain fields of law?

No.

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

/.

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q.

II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

There is. Motion may be filed when such action is envisaged by law, in cases where the Court was deciding in full jurisdiction and in cases in which the appeal was excluded from the administrative proceeding. A motion may be filed for violation of the law, other regulation or general enactment, or a violation of the rules of procedure that could have affected the decision on the matter.

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

I.

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

Article 36 para. 2. of the Constitution of the Republic of Serbia defines that everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests, but Article 198. para. 2. prescribes that legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings, if other form of court protection has not been stipulated by the Law.

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

Against decisions of the Administrative Court may be filed only motion to review a court's decision to the panel specialized in administrative matter of the Supreme Court of Cassation only in context of Article 82 of the Law on Constitutional Court which defines that constitutional appeal may be filed against individual acts or actions of state authorities or organisations vested with public authority that violate or deny human and minority rights and freedoms guaranteed by the Constitution, when other legal remedies have been exhausted or are not prescribed or where the right to their judicial protection has been excluded by law.

Article 89. para. 2. of the Law on Constitutional Court prescribes that When in a procedure on a constitutional appeal the Constitutional Court determines that the challenged individual act or action violated or denied a human or minority right and liberty guaranteed by the Constitution, it will annul the individual act, or prohibit further performance, or order a certain action to be performed and order the detrimental consequences rectified.

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

The Republic of Serbia is in the process of reforming the administrative judiciary, including the introduction of a two-tier administrative judiciary, which in-

volves amending the Law on Court Settlement, the Law on Court Seats regarding the type and number of the new court network, the number of judges and also the Law on Administrative Disputes regarding the conduct of a two-tier administrative judiciary and the introduction of a regular legal remedy and a type of filter.

III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- other?

According to the Article 55. of the Law on Administrative Disputes, in a judgment, the Supreme Court of Cassation shall reject the motion, or uphold it as founded. In a judgment upholding the motion, the Supreme Court of Cassation may reverse or modify the court decision against which the motion has been filed. In the event that the Supreme Court of Cassation reverses the court decision, the case shall be returned to the Court whose decision was reversed, and that Court shall be obliged to carry out all procedural actions and to discuss the issues specified by the competent Court.

2. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

- cassation of the decision of the lower court and remitting the case back to the lower court?
- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- issue a legal opinion/authoritative interpretation of the law without connection to a single case?
- other?

Already answered.

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

A motion to review a court decision cannot be filed due to incorrect factual state determined by court.

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

Supreme Court of Cassation doesn't have function of the first instance court.

b) If not, what are the differences?

1.

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

There is no appeal. There is only motion to review a court's decision which may be filed to the Supreme Court of Cassation which shall decide if it's unpermitted, untimely motion, or a motion that was submitted by an unauthorised person, in a ruling and after that, upon its grounds.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

Supreme Court of Cassation decides upon a motion for the review of a court decision without holding an oral hearing.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

They have an effect in terms of harmonization of the jurisprudence in relation to cases with the same or similar factual and legal basis.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

It is necessary to keep track on the decisions of the Supreme Court of Cassation in order to harmonize the case law at all instances. **Article 55. para. 3. of the Law on administrative disputes prescribes that unless Supreme Court of Cassation reverses the court decision, the case shall be returned to the Court whose decision was reversed, and that Court shall be obliged to carry out all procedural actions and to discuss the issues specified by the competent Court.**

However, Law on administrative disputes doesn't regulate binding effect of the legal attitude/opinion of the Supreme Cassation Court. At the same time, A legal opinion adopted at the Session of all the Judges of a specific Department is binding for all the panels within said Department and that is regulated by the Rulebook on the Organization and Operation of the Supreme Court of Cassation.

b) If so, under which conditions can they deviate from a decision of the SAC?

c) Is the SAC bound by law to follow its own previous decisions?

d) If so, under which conditions can it deviate from its previous decision?

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

Judges of the Supreme Court of Cassation are bound by the decisions of the Session of all judges rendered in reviewing the application of laws and other regulations.