



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Serbia



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



ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno
(Supreme Administrative Court Brno)

Questionnaire

Introduction:

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

Administrative Court is one single instance court with special jurisdiction and its Court Seat in Belgrade and three Court Units – in Novi Sad, Nis and Kragujevac. Administrative disputes falls under jurisdiction of the Administrative Court, which provides also protection of electoral right, provides international legal assistance within its jurisdiction and performs other duties in accordance with a law. There is no appeal allowed against Administrative Court decisions. Administrative Court has territorial jurisdiction over the whole territory of the Republic of Serbia.

Supreme Court of Cassation as the highest court in the Republic of Serbia and has Criminal department, Civil department, Department for protection of the right to a trial held within a reasonable period of time and Case Law Department. Within the Civil department there is panel specialized in administrative matters which decides on declared extraordinary legal remedies against decisions of the Administrative Court ruled in the administrative disputes.

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)

Instance	I.	II.	III.
Name	Administrative Court	Supreme Administrative Court	
Number of courts	1	1	
Number of judges	50	2	

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

Within this Panel two administrative judges are in charge of it and supplemented by one judge from Civil Department.

Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.

II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee			

- b. If you answered *yes*, what is the amount of this fee (in euro)?

In the Administrative Court fees is approximately from 3 euro to 20 euro, while the double court fees is paid in the Supreme Cassation Court for extraordinary legal remedy, for a decision given by the court upon extraordinary legal remedy the triple fee for the judgment of this tariff number, unless if it is rejected by that decision or if the lower court decision is abolished in which case the fee is not paid.

Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

Already answered in b).

There is no special fee.

- c. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

Already answered in a).

- d. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?
- e. Are non-governmental organizations exempt from the duty to pay the fee?
- f. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?
- g. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

- h. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

Article 152 of the Law on Civil Procedure prescribes that if a party proposes presentation of evidence, he/she is obliged, upon order of the court, to deposit the amount required to cover the costs.

The Court will give up from presenting the evidence if the amount required to cover the costs is not paid within the time limit determined by Court. In that case the Court, taking into consideration all circumstances, according to its conviction to appreciate the importance of the fact that the party has failed to pay the amount required to cover costs.

- i. Are frivolous petitions penalized? Please explain how and under what conditions.

No.

- j. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

The extremely low fees in the Administrative Court allow all citizens to lodge a lawsuit in an administrative dispute.

III. Costs of proceedings

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

Provisions of Article 67 of the Law on Administrative Dispute prescribe that in an administrative dispute the court shall decide on the costs of the dispute., and Article 66 prescribes that the costs of administrative dispute shall mean the costs incurred during or in relation to the dispute.

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

If it is a party who succeeded in an administrative dispute. An award of costs in the administrative dispute depends on success in administrative dispute.

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

Provisions of Articles 66 and 67 of the law on Administrative Disputes regulate costs of proceedings, but pursuant to Article 74 of the Law on Administrative Dispute provisions of the law regulating civil procedures shall be accordingly applied to the issue regarding the settlement of administrative disputes not regulated by this law, so in some situations it may be decided not to incur costs by applying Law on Civil Procedure.

Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

- d. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

Costs of representation by lawyer are regulated by the tariff for attorneys.

IV. Representation

- a. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner			
Representation of opposing party			

Before the Administrative Court a party do not have to be represented by a legal professional, while before the Supreme Cassation Court, if extraordinary legal remedy (motion to review a court decision is submitted by natural party, he/she have to be represented by a legal professional/attorney.

- b. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

The Law on Free Legal Aid was enacted in the Republic of Serbia, but is implementation starts on 1 October 2019.

- c. What are the forms and conditions of free legal aid? Please explain for all instances.
- d. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

V. Exclusions and immunities

(Note: If you answer yes to any question in this section, please provide details.)

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?
- b. Are there any final administrative acts of a public authority which are not reviewable at all?
- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?
- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?
- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

VI. Selection by lower and higher jurisdictions

- a. Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases			

In the Republic of Serbia there is only one single-instance Court, whose decisions are legally binding and Supreme Administrative Court decides on extraordinary legal remedies.

- b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?
- c. Is the power to select cases restricted to certain fields of law? Please give details.
- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.
- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

Panel specialized in administrative matters of the Supreme Court of Cassation decides without holding an oral hearing in cases where is filed extraordinary legal remedy on decisions of the Administrative Court rendered in the administrative dispute.

Administrative Court as a rule is holding a hearing while deciding in all cases, but there are exceptions when Court may decide without oral hearing. The Court shall decide without holding an oral hearing only if the subject of the dispute is such that it clearly does not require direct hearing of the parties and separate establishment of the facts, or if the parties expressly agree to this. The Court is obliged to state in particular the reasons why it did not hold an oral hearing. However, according to the Law on administrative disputes, Article 34, the hearing is also mandatory if two or more parties

with opposing interests are participating in the administrative proceeding, as well as when the Court is establishing the state of the facts for the purpose of adjudicating in full jurisdiction. In these cases oral hearing shall be held and there is no possibility of resolving the case without holding an oral hearing.

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

Are there conditions for the Court to decide in an administrative dispute without holding an oral hearing, the panel of judges decides on it and the reasons for such a decision must be given in the reasoning of its decision.

- g. Is the court obliged to give reasons when it decides not to select a case?
- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

Upon request to review a court decision the Supreme Cassation Court may examine decision regarding the violation of the rules of the procedure, which could have impact to the decision of the case, and in case of revocation of court decision that case is returned to the court whose decision was abolished, and that court is obliged to carry out all procedural actions and to discuss the issues referred by the competent court.

Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

No.

- i. Does a judge determine the order of the cases to decide?

Law on judges in Article 24 prescribes that cases are allocated to a judge according to a schedule that is independent of personality of parties and circumstances of the legal matter.

Cases are entrusted to a judge on the basis of the court schedule of tasks, pursuant to the Court Rules of Procedure, according to the order determined in advance for each calendar year, exclusively on the basis of the designation and the number of the case file.

No one has the right to establish panels of judges and allocate cases by passing the work schedule and the order of receiving the cases.

Article 25 of this Law prescribes that derogation from the order of the receiving of cases is possible only due to a justified preclusion of a judge, pursuant to the Court Rules of Procedure.

In accordance with the Court Rules of Procedure, a case may be taken from a judge: if it is due to his/her prolonged absence necessary to act in case which is urgent by law its substance; if the efficiency functioning of the Court is jeopardized; if he/she was issued a final disciplinary sanction due to a disciplinary offence for unjustified prolonging of procedure, as well as in other situation prescribed by law.

Cases that were taken away from Paragraph 2 of this Article shall be allocated to other judge in accordance with the Court Rules of Procedure.

VII. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

No.

VIII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security)

Adm. Court. Supreme Cassation Court

Instance	I.	II.	III.
Case load 2016	21548	13047	
Cases decided 2016	19265	12457	
Case load 2017	21741	17589	
Cases decided 2017	19184	17682	
Case load 2018	25426	13838	
Cases decided 2018	18662	13129	