



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: Slovenia



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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 judiciary in the Republic of Slovenia consists of two courts, the Administrative Court of the Republic of Slovenia (hereinafter referred as the Administrative Court) and the Supreme Court of the Republic of Slovenia (hereinafter referred as the Supreme Court). The Supreme Court is superior to the Administrative Court. Slovenian Supreme Court is uniform but has different legal divisions, one of it being also an administrative division. The Supreme Court adjudicates at its seat in Ljubljana. The Administrative Court has its seat in Ljubljana. Besides it also has three branch offices (in Celje, Nova Gorica, Maribor).

Adjudication in an administrative dispute at the first instance is carried out by the Administrative Court, unless otherwise stipulated by law.

The Supreme Court adjudicates on appeals against the decisions of the Administrative Court and decides on extraordinary legal remedies (revisions, in some cases also on reopening of a case). In some cases the Supreme Court acts as a court of first instance, eg. the Supreme Court decides on the legality of acts issued by electoral bodies for election in the National Assembly, the National Council and the President of Slovenia. The Supreme Court also decides in a referendum dispute regarding the appeal against the National Electoral Commission's report on the referendum result.

- 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 court	
Number of courts	1	1	
Number of judges	29	7	

- 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.

891 (plus 9 constitutional judges)

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	yes	yes	

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

The amount of the court fee before the Administrative Court is EUR 148. In social affairs disputes the court fee before the Administrative court is EUR 41.

The amount of the court fee before the Supreme Court is EUR 164.

- c. 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)?

The amount is flat. The same applies to both instances.

- d. 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?

The petitioner shall pay the fee at the same time as filing the petition (with a fee stamp or by bank transfer). If he does not fulfil his duty to pay the fee, the court shall give him additional time period at least 15 days. If the petitioner does not fulfil his duty to pay the fee in the additional time period, the court shall discontinue the proceedings.

The same applies to both instances.

- e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

Exempt from the duty to pay the fee are the public authorities (the State), disabled people's organisations in proceedings which aim to achieve the purpose for which the organisation was founded and in proceedings linked to disability discrimination.

Exempt from the duty to pay the fee are proceedings concerning the free legal aid, the petitions for exemption, postponement, or payment in instalments the court fees and the appeal against decisions on this petitions, objections against the payment order for court fees payment, the appeal procedure against the decisions on this objections, the appeal against the decisions to withdraw the proceedings due to the presumption of the withdrawal of an action or legal remedy based on the unpaid fee, and in administrative disputes concerning the recognition of international protection under the law governing international protection.

The same applies to both instances.

- f. Are non-governmental organizations exempt from the duty to pay the fee?

There is no special regulation that would generally exempt non-governmental organizations from the duty to pay the court fee. The same applies to both instances. For disabled people's organisations and for charities see the answer above (e).

- g. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

Yes, a petitioner may be exempt from paying a court fee. Besides there is also the possibility to request postponement of paying the court fee or to request payment the court fee in instalments. The same applies to both instances.

The exemption from paying a court fee may be full or partial. The exemption is granted if the financial situation of the petitioner justifies it. Before deciding on the matter, the court assesses the financial situation of the petitioner and financial situation of petitioner's family members, value of the subject of proceedings and the number of persons, to whom the petitioner is obliged to give the support payment. The same applies to both instances.

- h.** 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?

In general, the court shall return the fee to a person who was not obliged to fulfill the duty to pay the court fee. The court also returns overpayment of a court fee and returns a court fee paid for a court act that was not performed. The same applies to both instances.

The petitioner who has paid the court fee for a subordinate claim, which was not decided, has the right to demand the return of the court fee. The petitioner who has paid the court fee for legal remedy also has the right to demand the return of the fee if the petitioner succeeded and there is no duty of the other party or other participants in the procedure to reimburse the petitioner the court fee. The same applies to both instances.

Depending on the circumstances, the court fee can be returned fully or partially. The fee is fully returned to a petitioner who was not obliged to pay the court fee. If the petition was granted, the court shall return the court fee in full. If the proceeding was discontinued (e. g. in case of the withdrawal of the petition), the court shall return the fee partially (2/3). This applies to both instances.

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

No, the petitioner cannot be imposed to pay a deposit before the proceedings commence. The same applies to both instances.

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

No, frivolous petitions are not penalized. The same applies to both instances.

- k.** 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?

There is no official analysis based on empirical studies. Compared to court fees in other Slovenian court proceedings the court fees in administrative dispute are rather low and therefore we can conclude the administrative dispute is quite accessible for the petitioners.

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?

Yes, the court can adjudicate the compensation of costs of proceedings to the participant. If the court in an administrative dispute renders a decision on a right, obligation or a legal benefit (full review), it shall apply the provisions of the Civil Procedure Act, where the rule that costs follow the event applies. The party shall always bear the costs incurred through their own fault, as well as those costs incurred by any chance occurrence affecting the party. If the court granted the action and annulled the administrative act contested in the administrative dispute, or established the illegality of the contested administrative act, the lump sum of costs shall be reimbursed to the plaintiff with respect to the performed procedural actions and the method in which the administrative dispute was processed, in compliance with the rules issued by the Minister responsible for justice. The determined amount shall be paid by the defendant. If the court dismisses or rejects the action or if a stay of the proceedings takes place, each of the parties shall bear their own costs related to the procedure.

Decisions regarding the costs of proceedings, rendered by the Supreme Court, depend on the success of the party (the provisions of the Civil Procedure Act, where the rule that costs follow the event applies).

- 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)?

Although the conditions described in answer to question a. are fulfilled, the compensation of costs of proceedings to the public authority cannot be adjudicated, if its participation in proceedings falls under the scope of common official activity of the public authority. It means for example that the costs of legal representation are not reimbursed, because it is considered that the activity may be carried out by the personnel of the public authority. Rarely, if the participation of public authority in the proceedings does not fall under the scope of common official activity, the court adjudicates the compensation of costs to the public authority.

The same applies to both instances.

- 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?

No.

- d.** 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?

There are no specific areas of administrative law where different rules would apply.

- e.** 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)?

The amount of the costs of legal representation (by an attorney) in the first instance procedure is defined in Rules on the reimbursement of expenses to plaintiffs in administrative disputes. When the court adjudicates at a session, the amount of the costs is EUR 285, otherwise 385 EUR.

The amount of the costs of legal representation (by an attorney) in the second instance procedure is defined by a tariff. It depends upon the value of the dispute.

IV. Representation

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

Instance	I.	II.	III.
Representation	No ¹	Yes ²	

¹Representation by a legal professional in front of the court of first instance is not obligatory. If a party decides for representation, only a lawyer or any other person who passed the state exam may act as an attorney.

No

Yes

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

Yes, the court may appoint an attorney upon a request of a participant. The same applies to both instances.

- c.** What are the forms and conditions of free legal aid? Please explain for all instances.

In Slovenian legal order legal aid shall mean the right of an eligible person to the full or partial provision of the funds necessary to cover the costs of legal assistance and exemption from the payment of the costs of judicial proceedings. The petitioners may apply for legal aid at any stage in the proceedings. Granted legal aid shall include the costs of court proceedings incurred after the date of lodging the application for legal aid, as well as payment for legal assistance that has not yet been provided by the date of lodging the application for legal aid. The process of adopting a decision on an application for legal aid shall include a determination of the financial circumstances of the applicant. Besides, the conditions considered in the procedure for deciding on the granting of legal aid shall include all circumstances and facts on the matter in relation to which the applicant has lodged an application for legal aid, in particular that (i) the matter is not clearly unreasonable and that the applicant's prospects for the successful conclusion of the matter are fair and, consequently, it is reasonable to institute proceedings or participate in them or file legal remedies in the proceedings or file responses to such and (ii) the matter is important for the applicant's personal and socio-economic situation or the expected outcome of the matter is of vital importance for the applicant or the applicant's family.

The same applies to both instances.

- d.** Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

Yes, the right to free legal aid belongs to a party who complies also with the conditions (regarding financial situation of the petitioner) for being exempt from the duty to pay judicial fee. Still, both procedures are separated and the petitioner has to lodge the request for exemption from the duty to pay judicial fee and the right to free legal aid separately.

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)?

No, there are not.

- b.** Are there any final administrative acts of a public authority which are not reviewable at all?

No, there are not.

²In the appeal procedures and in the procedures of extraordinary legal remedies, a party may perform procedural actions only through a counsel who has passed the national bar exam.

c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

No, there is not.

d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

No, there are not.

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)?

Yes. The administrative judiciary is authorised to decide on electoral disputes and on some referendum disputes, particularly relating to the voting right.

The Administrative Court decides on local electoral disputes. Powers to decide on other electoral disputes are divided among the Administrative Court, the Supreme Court and the Constitutional Court.

In referendum disputes, the Administrative Court decides on appeals against the National Electoral Commission decision that rejected a complaint the petitioner lodged due to alleged irregularities in the work of electoral committee or due to alleged irregularities in the work of district electoral commissions. The Supreme Court decides on appeals against the National Electoral Commission's report on the referendum result. The Constitutional Court with its decision no U-I-191/17 of 25 January 2018 established that judicial protection of voting right in referendum matters is not regulated consistent with the Constitution. The National Assembly must remedy the unconstitutionality and therefore it is very likely the referendum dispute arrangement will be soon amended.

Besides, administrative judiciary is also authorised to adjudicate on the legality of individual acts and actions with which authorities have encroached on the human rights and fundamental freedoms of an individual, unless a different form of judicial protection has been guaranteed (the so called subsidiary administrative dispute).

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	No	Yes	

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?

The Supreme Court selects cases in the legal review procedure (extraordinary legal remedy). A selection is not a matter of its full discretion. In line with the valid legislation a legal review shall be allowed provided a decision on a legal issue which is significant to ensure of legal protection, a uniform application of law and further development of law through case-law can be expected to result from the decision of the Supreme Court. The legal review shall be permitted in the following cases in particular: i) in case of a legal issue in respect of which there is a discrepancy between the decision of the court of second instance and the case-law of the Supreme Court; ii) in case of a legal issue in respect of which the case-law of the Supreme Court does not yet exist, or is not uniform; iii) in case of a legal issue in respect of which the case-law of the Supreme

Court is not uniform. The Supreme Court shall decide on admission of a legal review on the basis of a motion of the party for admission of a legal review.

- c. Is the power to select cases restricted to certain fields of law? Please give details.

No, it is not. However it is stipulated, that a request for revision may not be lodged in disputes against the acts of the election bodies for the national or local elections.

- 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.

No, it does not.

- 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?

At first the case is assigned to a judge of the Supreme Court. The judge is a member of an ordinary chamber which consists of 3 judges. This chamber has to decide whether the case will be selected. If the case gets selected, the chamber decides the merit of the case. The lower court (Administrative Court) does not participate in that selection.

- 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?

Yes, a formal decision (the decree on admission of a legal review) is delivered to the petitioner. The main reason for such delivery is that a legal review of final judgement has to be filed by the parties at 15 days from service of decision of the Supreme Court about admission of a legal review.

- g. Is the court obliged to give reasons when it decides not to select a case?

No, the court is not obliged to give reasons in such 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.

Administrative Court has no power to select cases.

- i. 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.

Administrative Court has no power to select cases.

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

No, it does not. The rule “first come, first served” applies with the exception of cases with fixed time limits for a final decision (e. g. elections) and preferential cases (e. g. international protection).

The same applies to both instances.

VII. Other measures

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

There are no special measures, which would simplify or restrict access to the court. However, it is worth mentioning that the State Attorney's Office has the possibility to bring an action to court where an act is being infringed to the detriment of the public interest.

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).

Instance	I.	II.	III.
Case load 2016	5315	888	/
Cases decided 2016	4920	897	/
Case load 2017	6515	738	/
Cases decided 2017	5225	817	/
Case load 2018	6084	695	/
Cases decided 2018	5770	680	/