

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

The idea for total and thorough administrative jurisdiction arises in Bulgaria in 1905, when the Eighth Meeting of the Bulgarian jurists took place. The decisive step for establishing of the Supreme Administrative Court was made in May, 1907. The congress of the Progressive-Liberal Party adopted a programme, which contained the idea of establishing such an institution. The Administrative Jurisdiction Act was published in Official Gazette, issue 74, dtd. April, 3, 1912. The Supreme Administrative Court was established according to that law. The Supreme Administrative Court had jurisdiction on all claims against administrative acts of public authorities as far as they were not excluded by law.

By amendment of the Administrative Jurisdiction Act made in 1915 and 1922, the powers of the Supreme Administrative Court were limited, but in the period 1924-1928 a series of laws had been enacted, according to which the administrative jurisdiction was restored, enlarged and improved. The Supreme Administrative Court acquired independent regulation by the Ordinance-Law dtd. November, 12, 1934.

The constitution of the Republic of Bulgaria of 1947 did not preview judicial control on the administrative acts, as a result of which the Supreme Administrative Court was closed in 1948 according to the People Courts Structure Act.

The Seventh Grand National Assembly in 1991 by enacting art.125 of the Constitution restored the Supreme Administrative Court, which is one of the main guarantor of the democratic and legal state. In reality, the Supreme Administrative Court has started functioning since December, 1, 1996.

28 administrative courts were established in 2007 after the Administrative Procedure Code entered into force.

2. Purpose of the review of administrative acts

The challenge has as its aim to defend the rights and the legal interests of the interested persons and to restore the infringed legitimacy at issuing of administrative acts. The observance of the normative hierarchy among the different legal sources is aimed when the administrative acts are challenged.

The administrative acts may be challenged on their lawfulness at the court. The citizens and organizations which are directly and immediately affected by the act, have the

right to challenge the administrative acts, including the prosecutor when exercising the functions of the public prosecutor's office on observing the legitimacy.

3. Definition of an administrative authority

According to the Administrative Procedure Code an administrative authority is the authority which is part of the executive power as well as any authority which has administrative prerogatives empowered on the basis of the law.

4. Classification of administrative acts

The administrative acts are:

- individual
- general
- normative

An individual administrative act is an explicit act of volition or act of volition expressed with an action or non-action of an administrative authority or other authority or organization empowered to do that by law, which act establishes rights or obligations or immediately affects rights, liberties or legal interests of individual citizens or organizations, as well as the refusal such act to be issued.

An individual administrative act is also the act of volition which declares or asserts rights and obligations which have already originated.

An individual administrative act is also the act of volition for issue of a document which is of importance for recognition, exercise and lapse of rights and obligations, as well as the refusal such document to be issued.

The refusal of the administrative authority to act or to refrain from a certain action is also *an individual* administrative act.

General administrative acts are those which have single legal action and which establish rights and obligations or with which rights, liberties or legal interests of indefinite numbers of persons, are affected, as well as the refusals such acts to be issued.

Normative administrative acts are the bylaw administrative acts, which contain administrative rules, they refer to indefinite and unlimited number of addressees and they have multiple legal action. The normative administrative acts are issued on the application of laws or bylaw normative acts of a higher degree.

I – ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

The individual and the general administrative acts may be challenged in administrative way at the higher administrative authority. The lawfulness and the expedience of the administrative act may be challenged by a complaint. The administrative acts issued by authorities, which have no higher than them, are not subject to challenge in administrative way, as well as the acts of:

- the President of the Republic and the Chairman of the Parliament,
- the Council of Ministers, the Prime Minister, deputy prime-ministers, ministers and heads of other institutions and authorities which are immediately subordinate to the Council of Ministers,
- the Head of the Bulgarian National Bank and the Chairman of the National Audit Office
- the Supreme Judicial Council
- the district governors
- those for which the special law previews challenge directly at the court

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

The administrative jurisdiction in Bulgaria is realized by the judges in the administrative courts and in the Supreme Administrative Court. The judges from the first-instance administrative courts consider all administrative cases except those for which the law previews that they are subject to the Supreme Administrative Court jurisdiction.

As per the Constitution of the Republic of Bulgaria, the Supreme Administrative Court effects supreme judicial supervision on the exact and uniform application of the laws in the administrative jurisdiction.

There is a public prosecutor's office at the Supreme Administrative Court, which is managed by the deputy of the Chief Prosecutor.

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

The disputes concerning the administrative acts are considered by the administrative courts.

The general courts have no jurisdiction on administrative cases. In spite of that principal rule, there are legal exceptions which derogate the general rule that claims against administrative acts are considered by the administrative courts, and these exceptions regulate special cases when the general courts have jurisdiction on administrative cases. As an example one may point out art. 14, par. 3 of the Agricultural Land Ownership and Use Act, as per which the decisions of the municipal agricultural office are appealed within 14 days at the regional court (first instance court in the system of the general courts), and as per the general rules the judgement of the regional court is subject to appeal in front of the Supreme Administrative Court as second instance.

Look at the answer to question 6.

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

As per art.119 of the Constitution of the Republic of Bulgaria the jurisdiction is realized by the Supreme Cassation Court, Supreme Administrative Court, the appellate, district, military and regional courts, and special tribunals may be established by law.

The issue, challenge and execution of administrative acts, as well as the challenge in judicial way of bylaw normative acts are regulated by the Administrative Procedure Code. The Code plays the role of a codification of the judicial proceedings on administrative cases.

As per the Judiciary System Act all administrative cases are considered by the administrative court at first instance except those for which the law refers jurisdiction to the Supreme Administrative Court.

The Bulgarian legislation contains special provisions regulating the challenge of the administrative acts. So, as per art.120, par. 1 of the Public Procurement Act each decision, action or non-action of the contracting authorities in the awarding procedure up to the signing of the public contract or the framework agreement, concerning its lawfulness, is subject to appeal at the Commission for Protection of Competition. Analogous jurisdiction of the Commission for Protection of Competition is previewed in art. 83, par. 1 of the Concessions Act, as per which each decision, action or non-action of an authority, of the commission

which organizes the procedure for granting concession or of an officer in that procedure, is subject to appeal concerning its lawfulness at the Commission for Protection of Competition.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

The disputes in connection with the administrative acts are considered by the administrative courts.

10. Internal organization of the administrative courts

The administrative courts in Bulgaria are 28 as per the administrative –territorial districts of the country. The administrative court comprises judges and at the head of it is the chairman. Specialized in different matters departments may be established at the administrative court according to the decision of the General Assembly of the judges of the administrative court and these departments are managed by the chairman or his deputies. The administrative cases in the administrative courts are considered by one judge, except in the cases when the law previews anything else.

The Supreme Administrative Court has jurisdiction over the whole territory of the Republic of Bulgaria and has its seat in Sofia. It consists of judges and is managed by a chairman. The Supreme Administrative Court comprises two colleges, in which there are divisions. The deputies of the chairman side by side with the chairman manage the colleges. The Supreme Administrative Court sits in chambers of three, five, seven judges or General Assembly of the colleges.

D. JUDGES

11. Status of judges who review administrative acts.

A judge in the administrative court, administrative manager and deputy of the administrative managers except the chairman of the Supreme Administrative Court are appointed, promoted, downgraded, transferred and dismissed by a decision of the Supreme Judicial Council.

The judges, during holding their office, may not be members of Parliament, mayors or municipal councilors; they may not occupy any position in state or municipal authorities as

well as in the institutions of the European Union; they may not carry out any commercial activity and they may not be shareholders, managers or to participate in supervisory and managing committees or in the board of directors or control boards of commercial companies, co-operative companies or legal entities of non-profit aim carrying commercial activity, except participating in professional organizations of judges, prosecutors and examining magistrates; to receive consideration for carrying out activity as per a contract or on the basis of employment as an officer with a state, municipal or public organization, commercial company, co-operative company, legal entity of non-profit aim, physical person as one-person merchant, except lecturer's activity, participation in working out projects for normative acts assigned by the Parliament or by the authorities of the executive power, participation in the staff of election commissions for holding elections for members of Parliament, for the President, for members of the European Parliament on behalf of the Republic of Bulgaria and for local municipal authorities, as well as for exercise of copyright and for participation in international projects, including those financed by the European Union; to carry out non-regulated profession or other paid professional activity; to be members of political parties and coalitions, of organizations of political purpose, to carry out political activity, as well as to participate in organization or carry out activities which might affect their independence; to be members of trade-unions outside of the judicial system.

12. Recruitment of judges in charge of review of administrative acts

The selection and the appointment of the administrative judges are made on the basis of their academic and professional qualification. Only a Bulgarian citizen may be appointed for a judge and they should correspond to the following requirements:

- to have graduated University – specialty “Law”;
- to have passed the required training and to have acquired juridical qualification;
- not to be sentenced on prison for willful crime, no matter if rehabilitated;
- to possess the necessary moral and professional qualities which correspond to the Ethical Code of the judges, prosecutors and examining magistrates;
- not to suffer from psychiatric diseases;

Minimum 8 years legal practice is required for a person to be appointed in the administrative court as a judge, while for a judge in the Supreme Administrative Court the minimum requirement is 12 years legal practice. Judiciary System Act does not set limits referring the former professional practice of the candidate for a judge – he may have worked

as a magistrate (judge, prosecutor or examining magistrate), state officer in different fields of the state authorities, legal advisor, lawyer, public notary, bailiff, etc.

The chairmen of the administrative courts and their deputies are appointed for a period of five years with the right to be appointed second time.

The appointment of the judges in the administrative courts, which functioning started on March, 1, 2007, was made after appearing at a contest. That was the first general contest held with us, for appointment of all the 268 administrative judges. As per the Judiciary System Act a centralized contest is held for the appointment of junior judges, junior prosecutors and junior examining magistrates in the judicial authorities, as well as in the cases of the primary appointment of the magistrates.

The contest is centralized and it is announced as per the decision of the Supreme Judicial Council, which decision is promulgated in Official Gazette, it is published in one central daily newspaper and on the Internet site of the Supreme Judicial Council. The contest is held by contest commissions, which staff is defined by names with a decision of the Supreme Judicial Council. The contest has written and oral phase, the written phase being anonymous and represents a solution of a case falling within the respective legal field, in that case in the field of the administrative law.

The vacant positions in the courts, which fall out of the defined 20 per cent, are announced by the Supreme Judicial Council and these positions are occupied after holding a contest, which is carried out via certification. Judges, who have the required practice for the respective unoccupied position may participate in the said contest, applying documents at the Supreme Judicial Council. The Commission on the proposals and certification of judges, prosecutors and examining magistrates in the Council carries on the certification of each candidate who fulfills the requirements for occupying the announced free position. The chairman of the Commission brings to the Supreme Judicial Council a justified statement, which summarizes the results of the certification for each separate candidate. The Supreme Judicial Council makes a ranking list according to the results of the certification and adopts a decision for promotion or transfer of a judge according to the sequence in the ranking list, up to the moment the positions are occupied.

The President of the Republic appoints and dismisses the chairman of the Supreme Administrative Court for a period of seven years and the proposal is made by the Supreme Judicial Council and the chairman can not be elected for a second time. The proposals for candidates may be made by no less than one fifth of the members of the Supreme Judicial Council, as well as by the Minister of Justice. The Supreme Judicial Council takes the

decision for election of a candidate with majority of two thirds of the members by secret voting. When at the first voting there is no candidate for whom more than two thirds of the members of the Supreme Judicial Council have voted, the election continues for the two candidates who have acquired most of the votes. The President may not refuse the appointment or the dismissal in case of second proposal made by the Supreme Judicial Council.

13. Professional training of judges

The maintenance and the improvement of the qualification of the magistrates is carried out by the National Institute of Justice.

The education of the magistrates is of two types: compulsory course for initial education of the candidates who have won the contests for junior magistrates, immediately after taking the position and current education, which is realized in courses for improving the qualification of the acting magistrates.

The judges pass compulsory course for improvement of their qualification at the initial taking of the position in the judicial system during the first year after taking the position.

Current education of acting magistrates is carried out in the National Institute of Justice in courses for qualification for all the magistrates on basic themes or priority themes because of enacted changes in the legal system. The main accent is on the changes of the laws and the practice due to the accession to the European Union. The Supreme Judicial Council may decide that certain courses are obligatory for the judges, the prosecutors, the examining magistrates and the court officers in case of promoting in position, appointing of an administrative manager and specialization.

14. Promotion of judges

The judges may be promoted on their place in a higher rank and salary if high qualification and perfect fulfillment of the official duties are proved, and if they have occupied the respective or equal to that position for more than three years and they correspond to the service requirements set by the law. A judge who corresponds to these requirements, may apply for promoting in a higher rank and salary, the proposal being made by the administrative manager, personally by the interested judge or by more than one fifth of the members of the Supreme Judicial Council to the Commission on proposals and certification. The promoting of the judges in a higher rank and salary is made after certification. The

seniority of the judges is defined depending on their leading function or administrative position taken in the respective court; if the rank is equal – the duration of service in the respective judicial authority; if the rank and the position are equal – depending on the duration of the service as a judge.

15. Professional mobility of judges

The chairman of the Supreme Administrative Court may send a judge from one administrative court to another administrative court in case the position of a judge in an administrative court is free or in case the judge is not in a position to fulfill their duties and that judge can not be substituted by a judge of the same court. The same possibility is previewed when the position of a judge in the Supreme Administrative Court is not occupied or the judge is not in a position to fulfill their duties, and in these cases the chairman of the Supreme Administrative Court may send to that position a judge of an administrative court with a duration of juridical practice more than 12 years. When sending judges to another administrative court the following rules should be observed: a judge may not be sent in another administrative court for more than three months during one calendar year without his prior written consent, pregnant women and mothers of children less than three years old may not be sent to another administrative court without their prior written consent; for the period during which the judge is sent to occupy a higher position than their own, they receive the respective higher salary.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

The administrative acts may be challenged by a claim of the interested persons or by a protest of the prosecutor.

The administrative acts may be challenged at the court concerning their lawfulness on the following causes:

- lack of jurisdiction;
- not following the established form;
- material infringement of the rules of administrative procedure;
- contradictions with the material legal rules;
- discrepancy with the legal aim.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

As per the Judiciary System Act the court should inform the Supreme Cassation Court or the Supreme Administrative Court when it finds out that a law is contradictory to the Constitution of the Republic of Bulgaria, while the prosecutors and the examining magistrates inform the Chief Prosecutor. The Constitution of the Republic of Bulgaria previews that the Constitutional Court acts on the initiative of at least one-fifth of the members of the Parliament, the President, the Council of Ministers, the Supreme Cassation Court, the Supreme Administrative Court and the Chief Prosecutor. When establishing discrepancy between the law and the Constitution the Supreme Cassation Court or the Supreme Administrative Court stays the proceedings on the case and bring the matter to the Constitutional Court. The ombudsman may seise the Constitutional Court with claim for establishing the discrepancy of the law with the Constitution in case the law infringes the rights and liberties of the citizens.

18. Advisory functions of the competent bodies

The courts have no consulting functions.

19. Organization of the judicial and advisory functions of the competent bodies

Look at the answer to question 18.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

As per the Constitution of the Republic of Bulgaria the Supreme Administrative Court realizes supreme judicial supervision for the exact and uniform application of laws in the administrative jurisdiction.

The General assembly of one of the colleges or the college of the Supreme Administrative Court passes an interpretative judgement in case of contradictory or incorrect practice. In case of contradictory and incorrect practice between the Supreme Cassation Court and the Supreme Administrative Court, the Judiciary System Act regulates the possibility the general assembly of the judges of the respective colleges of the two courts to pass joint interpretative decree.

A request for passing an interpretative judgement may be made by the chairman of the Supreme Cassation Court, the chairman of the Supreme Administrative Court, the Chief Prosecutor, the Minister of Justice, the ombudsman and the Chairman of the High Bar Council. The interpretative judgements and the interpretative decrees are binding for the judicial and executive authorities, the authorities of the local municipal self-governance, as well as for all authorities that issue administrative acts. The acts issued in connection with the interpretative judicial activity are published on the Internet site of the Supreme Administrative Court. Each year the court publishes bulletin with the interpretative judgements and decrees issued during the year.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

There are no preliminary conditions for access to the courts. The administrative act may be challenged at the court without making use of the possibility for it challenge in administrative way, except in the cases previewed in special laws. As per the Administrative Procedure Code the courts are obliged to consider and settle in coincidence with the law and within reasonable term any claim brought to them. The courts can not refuse jurisdiction due to the fact that there is no legal rule on the basis of which the claim to be settled.

22. Right to bring a case before the court

Physical persons, legal entities and organizations have the right to challenge the administrative act.

The prosecutor may also bring a protest against the administrative act.

23. Admissibility conditions

The claim is admissible if the person has legal interest in the challenge, the claim has been lodged within the term set by the law and it is against and act that has not been withdrawn and it is subject to challenge. Other conditions for admissibility of the claim – there should not be judgement on the case which has come into force or brought case at the same court between the same parties involving the same cause.

The citizens and the organizations (including legal entities) which rights, liberties and legal interests are infringed or are threatened to be infringed by the individual administrative act or for whom obligations arise on the basis of the act, have legal interest in challenging the act.

The same requirement for availability of legal interest in the challenge is the prerequisite for the admissibility of the claim against the general administrative acts.

The citizens, organizations and authorities whose rights, liberties or legal interests are infringed or may be infringed by a bylaw normative act or if obligations arise on the basis of the latter, have the right to challenge the bylaw normative act.

The prosecutor may bring a protest against an individual or general administrative act executing his functions for observance of law in the administrative procedure and the prosecutor starts the administrative proceedings on challenge of the act when he estimates that is necessary due to important state or public interest. As per the Administrative Procedure Code the prosecutor may bring protest against bylaw normative act.

24. Time limits to apply to the courts

The individual administrative acts may be challenged within 14 days from their notification. The silent refusal or the silent consent may be challenged within one month after elapsing the term within which the administrative authority had to pass the act. The request an act to be declared invalid may be brought at any time without any time limits.

The general administrative acts may be challenged within one month from the date of notification for their issue or within 14 days from the separate notifications to the persons who have participated in the proceedings in front of the administrative authority.

The bylaw normative acts may be challenged without time limit.

When the prosecutor has not participated in the administrative proceedings, he may challenge the individual and the general administrative act up to one month after their issue, The protest against a bylaw normative act is not time limited.

25. Administrative acts excluded from judicial review

The acts of the Parliament and of the President of the Republic, the acts for exercising legislative initiative as well as the inner-authority acts are not subject to judicial control according to the Administrative Procedure Code except in the cases when they affect rights, liberties or legal interests of citizens and legal entities. The administrative acts with which

directly is realized the foreign policy, the defense and the security of the country are not subject to judicial challenge, except the cases when the law previews something else.

26. Screening procedures

The court assesses the admissibility of the claim before it is considered in the merits, but that assessment is not done in separate proceedings.

In case the court establishes that the claim or the protest are procedurally inadmissible, the court does not consider them and terminates the proceedings on the case. The adjudication for termination of the case is subject to appeal with a private appeal within 7 days after notification it to the parties.

Look at the answer to question 23.

27. Form of application

The claim or the protest is lodged in written form.

The claim is brought written in free form in Bulgarian language and it should contain the name of the court to which it is addressed, individualizing data about the claimant, data about the act that is challenged, what is the illegal essence of the act, what is the request, evidences which the claimant has at their disposal, as well as the evidences they would like to be collected. The claim should be signed.

The requirements for the contents of the prosecutor's protest are analogous.

28. Possibility of bringing proceedings via information technologies

At the present moment there is no possibility to bring a claim in electronic way. The parties may be summoned by the e-mail pointed by them. Electronic documents signed with universal electronic signature may be presented at the court.

The information about the cases, including minutes of the proceedings, adjudications, judgements, is accessible on the Internet site of the Supreme Administrative Court and the administrative courts.

29. Court fees

The following fees are to be paid on claims against administrative acts:

- the legal entities of non-profit aim and the physical persons, who are not merchants pay 10 leva (5 euro)

- the legal entities, except those of non-profit aim, the physical persons – merchants in the sense of the Commerce Act –pay 50 leva (25 euro)

These fees are gathered in a half value for cassation appeals.

30. Compulsory representation

The parties are not obliged to present themselves with a proxy at the administrative court. If more than 10 persons with equal interests, who are not presented by a proxy, participate in the case, in order to facilitate the proceedings, the court may oblige the parties within a reasonable term to appoint a proxy among them. If they do not appoint a proxy, the court may denominate ex officio a common procedural representative.

31. Legal aid

Legal assistance consists in securing free of charge defense by a lawyer.

Legal assistance on administrative cases is granted when, on the basis of the presented documents by the respective competent authorities, the court establishes that the party has no means to pay the lawyer's fees. The court makes its estimate taking in mind: the income of the person or the family; the status of the property, certified by a declaration; status of the family; health status; employment; the age and other established circumstances.

32. Fine for abusive or unjustified applications

No fines are levied, but the party, in whose favour the judgement has been passed, has the right to get the expenses.

B. MAIN TRIAL

33. Fundamental principles of the main trial

As per the Constitution the courts secure equality and adversarial conditions to the parties in the judicial proceedings. The considering of the cases is public, except if the law previews otherwise.

34. Judicial impartiality

As per art. 117, par. 2 of the Constitution of Republic of Bulgaria, the judicial power is independent. The judges realizing their functions are subordinate only to the law. So that the

impartiality of the judges to be guaranteed when considering the cases, one may not be a judge on the case if:

- they are a party on the case or together with any of the parties on the case he is subject to the relationship in question or another connected relationship;
- they are a spouse or a direct relative with no limitations, collateral relative up to the fourth branch or relative by marriage up to third branch with any of the parties on the case or with his proxy;
- they live together as a family with a party on the case or with its proxy;
- they have been a representative, respectively a proxy of a party on the case;
- they have taken part in passing a judgement in another instance or he has been a witness or an expert in the case;
- referring to that person there are obstacles which arise reasonable doubt in his impartiality.

In case some of the above said causes are available, the judge is obliged to make a challenge. Each of the parties may require the removal after the cause for the removal has emerged or has become known to the party. The request for challenge is considered by the court, at which the case is pending.

Look at the answer to question 11, as well.

35. Possibility to rely on the new legal arguments in the course of proceedings

The first instance court is not limited with considering only the causes exposed by the challenger, but on the basis of the presented by the parties evidences, the court should control the lawfulness of the challenged administrative act referring all the causes for repeal of the act. The correspondence of the administrative act with material law is established towards the moment of the issue of the act.

In case of cassation complaint, the Supreme Administrative Court considers only the defects of the judgement pointed in the appeal or in the protest. The cassation court controls ex officio the validity, the admissibility and the correspondence of the challenged judgement to the material law. Evidences for certifying events which are not connected with the cassation cause, are not admitted in the cassation proceedings. The Supreme Administrative Court estimates the application of the material law on the basis of the facts established by the first-instance court in the appealed judgement.

36. Persons allowed to intervene during the main hearing

The court constitutes the parties ex officio. The challenger, the authority which has issued the administrative act as well as all interested persons are parties on the case when individual administrative act is challenged.

The challenger, the authority which has issued the general administrative act, respectively the bylaw normative act, are parties on the case when general administrative acts or bylaw normative acts are challenged. The persons that benefit the challenged administrative act may enter into the proceedings side by side with the administrative authority up to the beginning of the oral pleadings at any stage of the case. Every person who has legal interest, may join the challenge or may enter the proceedings as a party side by side with the administrative authority up to the beginning of the oral pleadings at any stage of the case, without having the right to request repeating of the carried out procedural actions.

The prosecutor takes part in the administrative proceedings in the cases previewed in the Administrative Procedure Code or in other laws. He may enter into already going on administrative proceedings and when he assesses that is forced by an important state or public interest.

37. Existence and role of the representative of the State (“ministère public”) in administrative cases

The prosecutor controls the observance of the lawfulness in the administrative proceedings. He has the right to take actions for repeal of illegal administrative and judicial acts through bringing a protest, to start or enter into already going on proceedings and when he assesses that is necessary because of important state or public interest. The prosecutor takes part in the administrative proceedings when that is previewed by law, giving statements (for example when bylaw normative acts are challenged and in the cassation appeal). He exercises the rights vested to him by the law as per the rules set for the parties on the case.

38. Existence of an institution or a person with a role analogous to the French "Commissaire du gouvernement"

Look at the answer to question 37.

39. Termination of court proceedings before the final judgement

The established proceedings are terminated when:

- the act is not subject to challenge or the challenge is out of the time-limits;

- the challenger has no juristic personality or he has no legal interest in the challenge;
- the challenged administrative act has been withdrawn or the challenge has been withdrawn or there is a waiver of the challenge;
- there is a judgement on the challenge which has entered into force or there is another pending case at the same court between the same parties and on the same cause;
- signing an agreement in front of the court.

40. Role of the court registry in serving procedural documents

If the claim is admissible, a copy of it is sent to the parties. The parties are summoned on the address on which they have been summoned for last time in the proceedings in front of the administrative authority, except if they have pointed out another address on the case. The other notices and papers on the case, as well as the copies of the judicial acts are handed in the same way. The parties who are duly summoned, are not served with further summons, except in the cases when the proceedings have been postponed in a close hearing or the further ongoing has been stopped.

41. Duty to provide evidence

The proceedings on administrative cases are competitive and each party should prove its statements with the respective evidences, but at the same time the administrative procedure differ with reinforced action ex officio. The challenger is to point out the evidences he would like to be collected and to present the written evidences which he has at his disposal. The administrative authority and the persons who benefit the administrative act have to prove the existence of the factual causes, pointed in the act, as well as the execution of the legal requirements for the issue of the act. The court points out to the parties the events which are of importance for considering the case and for which events no evidences have been presented.

The court is obliged to assist the parties for correcting formal mistakes and the vagueness of their statements and to point out that for some events which are important for the case the parties have not presented evidences.

The evidences which have been gathered in due form in the proceedings before the administrative authority, are in force in front of the court. The court may examine as witnesses the persons who have given information to the administrative authority and the experts, only in case the court finds out that it is necessary these persons to be heard immediately (directly).

If requested by the parties, the court may gather new evidences as well. Experts and examination or certification may be ordered ex officio.

42. Form of the hearing

The considering of the cases is carried out in open hearing, except when the law provides that the hearing should be close.

The court ex officio or on the request of any of the parties may order the considering of the case or only some actions to be held at close hearing, when:

- that is imposed by the public interest;
- that is imposed by the defence of the personal life of the parties, of the family or of the persons under custody;
- the case is connected with trade, production, intellectual property or tax secret, which public disclosure might infringe defensible interests;
- there are other well-grounded reasons.

43. Judicial deliberation

The meeting and the voting of the judicial chamber is headed by the chairman of the chamber and is conducted as secret. The judges are obliged to observe the secrecy of the meeting when passing the judgement. They have no right to express preliminary opinion on the assigned cases.

C. JUDGEMENT

44. Grounds for the judgement

The court sets up its judgement on the accepted by it as proved facts under the case and on the basis of the law. The judgement and the grounds (background) are prepared in written form.

45. Applicable national and international legal norms

The bylaw normative acts, the international treaties ratified in constitutional way, which are published and which have entered into force for the Republic of Bulgaria, as well as *acquis communautaire*, are applied. In case of contradiction among the normative acts, that of higher degree is to be applied.

The international treaties ratified in constitutional way, which are published and which have entered into force for the Republic of Bulgaria, are part of the internal law of the country. They have priority to those rules of the internal legislation which are contradictory to them.

46. Criteria and methods of judicial review

The first-instance court when controlling the lawfulness of the administrative act may:

- declare the invalidity of the challenged administrative act;
- repeal it partially or as a whole;
- amend it or
- reject the challenge.

When the matter is not referred to the discretion of the administrative authority, after declaring the invalidity or after repeal of the administrative act, the court passes a judgement in the merits. When the act is invalid due to lack of competence of the administrative authority or the essence of the act does not permit the matter to be settled in the merits, the court sends the file to the respective competent administrative authority with compulsory instructions on the interpretation and application of the law.

In the course of cassation appeal, the Supreme Administrative Court may keep the judgement in force or may repeal its challenged part if it is wrong. When repealing the judgement the Supreme Administrative Court passes a judgement in the merits, except in the cases when it establishes serious infringement of the procedural rules or the necessity of establishing of facts for the proof of which the evidences collected are not sufficient. In the latter cases the Supreme Administrative Court sends back the case for new considering by another chamber of the first-instance court. If the judgement is inadmissible, the Supreme Administrative Court invalidates it in its challenged part, terminates the proceedings, sends back the case for new considering by the first instance or sends it to the competent court or authority.

47. Distribution of legal costs

The party in which favour the judgement has been passed, has the right to get back the expenses.

The claimant has the right to receive the expenses also when the case is terminated due to withdrawal of the administrative act challenged by him.

48. Composition of the court (single judge or a panel)

The case is considered by the administrative court as first instance by one judge. The Supreme Administrative Court considers the case in a chamber of three judges. When the first instance judgement of the Supreme Administrative Court is appealed, the case is considered in a chamber of five judges of the same court.

49. Dissenting opinions

The judgements of the court are passed with majority of the votes of the judges. No one of the judges may refrain from voting. The judge who does not agree with the opinion of the majority signs the judgement, providing reasons for his dissenting opinion.

50. Public pronouncement and notification of the judgement

The court passes the judgement, announcing the background to it, within one month after the hearing, in which the considering of the case was finished. The judgement is announced in the register of the court judgements, which register is public and each person has free access to it.

D. EFFECTS AND EXECUTION OF JUDGEMENT

51. Authority of the judgement. Res judicata, stare decisis

When challenging an administrative act, the judgement has effect to the parties on the case. If the challenged act is repealed or amended, the judgement has effect erga omnes. Acts and actions of the administrative authority which are effected in contradiction to the court judgement which has entered into force, are invalid. Every interested person may always rely on the invalidity or may request that the court declares that invalidity. The judgement which repeals the challenge for annulment of an administrative act is an obstacle for challenge of the administrative act as invalid, as well as for its challenge due to any other cause.

The judgement as per which the challenged general administrative act is declared invalid, the act is repealed or amended, has effect erga omnes.

The judgement referring challenge of a bylaw normative act has effect erga omnes. The bylaw normative act is considered repealed from the day on which the court judgement enters into force.

The judgement with which the bylaw normative act is declared invalid or it is repealed, if no cassation appeal or protest were brought in due time or they been rejected by the second-instance court, is published in the way the act has been published and that judgement enters into force from the date of its publication. The judgements of the Supreme Administrative Court when the latter considers as first instance claims against bylaw administrative acts, except those against normative acts issued by the municipal councils, are published in Official Gazette.

52. Powers of the court in limiting the effects of judgement in time

The legal consequences of a bylaw normative act, which has been declared invalid or it has been repealed as an act which might be annulled, are settled ex officio by the competent authority within a term not longer than three months from the entering of the judgement into force. The Administrative Procedure Code does not preview the possibility the court to give time-limit for the consequences.

53. Right to the execution of judgement

The judicial acts of the administrative courts are writs of execution. The public debts are executed in the way previewed by the Tax and Social Insurance Procedure Code. The private debts of the state and the municipalities, the debts from indemnity for damages due to illegal administrative acts and from coercive execution and other private pecuniary debts, as well as debts for expenses connected with the execution, are gathered in the way previewed by the Civil Procedure Code.

The judgement is subject to coercive execution after sending a compulsory invitation for voluntary execution and in case the debtor does not take any executive actions within the term of voluntary execution.

The execution may be postponed or prolonged under the prerequisites previewed in the Administrative Procedure Code.

The imposing of security measures is admissible on the basis of the judgement which has entered into force, when the lack of such measures would make the execution of the obligation or the gathering of the expenses on it, impossible or difficult, including when the execution is postponed or prolonged.

54. Recent efforts to reduce the length of court proceedings

The efforts are orientated to initiating of the necessary additional legislative amendments, which will outline the Supreme Administrative Court as a cassation instance, summarizing the judicial practice and enacting interpretative decrees.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

The administrative courts consider all the administrative cases as first instance except those for which the law defines the Supreme Administrative Court to have jurisdiction – challenge against bylaw normative acts except those issued by the municipal councils; challenge against act of the Council of Ministers, the Prime-Minister, the Deputy Prime Ministers and the ministers; against the decisions of the Supreme Judicial Council; against the acts of the Bulgarian National Bank, etc.

56. Recourse against judgements

The judicial proceedings under the Administrative Procedure Code are two-instance, except in the cases in which the code or another law sets something else.

The first-instance court judgement is subject to cassation appeal at the Supreme Administrative Court when the judgement is invalid, inadmissible or wrong due to infringement of the material law, material infringement of the court procedural rules or it is not well-grounded.

The parties on the case for whom the judgement is not favourable, have the right to appeal it, the persons who have not participated in the proceedings and towards whom the judgement has effect have also the right of appeal. The Chief Prosecutor or his deputy at the Supreme Administrative Prosecutor's Office also may bring cassation protest.

The case is considered in an open hearing by a three-member chamber of the Supreme Administrative Court, with the participation of a prosecutor, when the judgement has been passed by an administrative court and by five-member chamber when the judgement has been passed by a three-member chamber of the Supreme Administrative Court.

The Supreme Administrative Court considers only the defects of the judgement pointed in the appeal or in the protest. The court looks after the validity, admissibility and the correspondence of the judgement to the material law ex officio. Written evidences are admitted for proving the cassation causes. Evidences for events, which are not connected with the cassation causes, are not admitted. The Supreme Administrative Court estimates the

application of the material law on the basis of the facts, established by the first-instance court in the appealed judgement.

The Supreme Administrative Court passes judgement within one month from the hearing in which the considering of the case finishes.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

At any stage of the proceedings up to the moment of entering of the judgement into force, the admitted preliminary execution, as per an order of the authority which has issued the administrative act and that order has entered into force, may be stopped by the court in case that preliminary execution may cause to the challenger significant or difficult to remove damage. The request is considered in an open hearing. The court passes an immediate adjudication, which may be appealed with a private appeal within 7 days from its announcement during the hearing.

The order of the administrative authority for admitting preliminary execution of the administrative act or the refusal such an execution to be admitted is subject to appeal separately from the act within 3 days from notification of the order. The request is considered immediately in a close hearing. The court settles the matter in the merits when it repeals the appealed order. If the preliminary execution is rejected, the administrative authority restores the situation as it existed before the execution. The court adjudication is subject to appeal with a private appeal.

Quick proceedings are introduced by some special laws. For example part of the decisions of the Central Election Commission when elections for members of Parliament take place, may be appealed at the Supreme Administrative Court within three days from their notification and the court passes final judgement within the same term. The decisions of the Central Election Commission for the registration of parties and coalitions for participation in the elections may be appealed at the Supreme Administrative Court within 24 hours after their notification and the court passes a final judgement within 24 hours.

58. Requests eligible for the emergency and/or summary proceedings

Look at the answer to question 57.

59. Kinds of summary proceedings

Look at the answer of question 57.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

The Administrative Procedure Code previews the possibility the individual and general administrative acts to be challenged in administrative way at the immediate higher administrative authority. The administrative appeal is not a compulsory prerequisite for the admissibility of the claim by the court except in the cases in which the law previews compulsory appeal in administrative way. For example the Tax and Social Insurance Procedure Code introduces compulsory requirement for challenge of the auditing acts of the tax administration at the higher administrative authority as a prerequisite for the admissibility by the court of the appeal of these acts. The higher authority competent to consider the appeal passes a well-grounded judgement within two weeks from receipt of the file, if the authority is one-person, and within one month if the authority is collective, the judgement may declare the challenged act invalid, may repeal it as a whole or partially as illegal or non-expedient or may reject the appeal. The competent authority settles the matter in the merits in case it repeals the act, except in the cases when the required act falls under the explicit competence of the lower authority.

The parties may reach an agreement during the proceedings in front of the administrative authorities in case that agreement is not contrary to law. The agreement may be signed between the administrative authority and the parties of the proceedings or only among the parties of the proceedings. In the latter case the administrative authority approves in written form the agreement. By signing the agreement, respectively by the approval of the agreement, the administrative act is annulled and it is replaced by the agreement.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

Administrative disputes which are connected with consumer rights might be subject to mediation. The mediation is voluntary and confidential procedure for settling disputes out of court, in which procedure a third person – the mediator, assists the parties on the dispute to reach an agreement.

62. Alternative dispute resolution

At any stage of the case an agreement may be reached in front of the court under the condition that such an agreement might be reached in the proceedings in front of the administrative authority even if the latter has refused to approve such an agreement. It is compulsory that all the parties on the case should participate in the agreement. The court approves the agreement in an adjudication. The refusal of the court to confirm the agreement may be appealed with a private appeal brought jointly by the parties on the agreement. With the adjudication with which the agreement is confirmed, the court annuls the administrative act and terminates the proceedings. The adjudication may be appealed only by a party which has not participated in the agreement. If the adjudication is repealed the considering of the case goes on. The confirmed agreement has the force of a judgement which has entered into force.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

As per the Constitution of the Republic of Bulgaria the judicial power has its independent budget.

64. Total number of magistrates and judges

Towards the beginning of 2009 268 judges work in the administrative court, while 82 judges work in the Supreme Administrative Court.

65. Percentage of judges assigned to the review of administrative acts

Look at the answer to question 64.

66. Number of assistants of judges

The judicial assistants are officers of juridical qualification, who assist the judges in their work. Judicial assistants are appointed in the first-instance administrative courts and in the Supreme Administrative Court. Towards the beginning of 2009 judicial assistants are appointed in the Supreme Administrative Court and they are set in a separate department.

67. Documentary resources

A library functions in the Supreme Administrative Court and it serves the judges, the judicial assistants and the officers in the court. The library fund comprises about 1 200 titles of legal literature, a number of specialized journals, dictionaries, directories, encyclopedia. There is a specialized bookshop for legal literature in the building of the court.

68. Access to information technologies

Each administrative judge has at its disposal computer, telephone and access to Internet.

69. Websites of courts and other competent bodies

The administrative courts and the Supreme Administrative Court have their own Internet sites.

B. OTHER STATISTICS

70. Number of new applications registered every year

Year	Supreme Administrative Court	Administrative courts ¹
2007	13 659	27 340
2008	16 402	33 183

71. Number of cases heard every year by the courts or other competent bodies

Year	Supreme Administrative Court	Administrative courts
2007	16 961	20 224
2008	19 586	32 451

72. Number of pending cases

Year	Supreme Administrative Court	Administrative courts
2007	3 302	0
2008	3 184	7 448

73. Average time taken between the lodging of a claim and a judgement

¹ The administrative courts function since 01.03.2007

Year	Supreme Administrative Court	Administrative courts
2007	Up to 3 months – 96% of the cases	Up to 3 months – 75% of the cases
2008	Up to 3 months – 99% of the cases	Up to 3 months – 66% of the cases

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Year	Administrative courts
2007	28,5%

75. The volume of litigation per field².

Year	Totally as per Administrative Procedure Code	Taxes and customs	Territorial structure and planning	State and municipal property and local self-governance
2007	19 930	2 660	3 476	1 421
2008	23 394	3 400	5 183	1 752

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

It is not known to have such.

² The statistics only refers the cases in the administrative courts