

ADMINISTRATIVE JUSTICE IN EUROPE

- Report for the Republic of Slovenia -

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 first Administrative Dispute Act (ADA) was adopted on 31st of July 1997 and was published in Official Gazette of the Republic of Slovenia, no. 50/97. When ADA came into effect (on 1st of January 1998) the Administrative Court assumed its regular court function (it started functioning as the court of first instance in administrative disputes) and the Supreme Court continued its work as court of appeal against the decisions of the Administrative Court and in some cases as court of first instance (the competence of the Supreme Court changed from being the court of first instance to being the court of second instance).

On 1st of January the Law on Administrative Disputes (Official Gazette of the SFRY, No. 4/77 and 60/77-amendment) ceased to be valid. Under that law only one level of judicial review of administrative acts was determined. ADA was amended on 19th of July, when The Law on amendments of The Administrative Dispute Act was adopted. It was published in Official Gazette of the Republic of Slovenia, no 70/00 and it came into force on 23rd of August 2000.

In 2006 National Assembly of Republic of Slovenia adopted new Administrative Dispute Act (ADA-1), which came into force on 1st of January 2007 and was published in Official Gazette of the Republic of Slovenia, no. 133/06.

2. Purpose of the review of administrative acts

In the constitutional system of the Republic of Slovenia the principle of separation of powers is established. Based on this principle judiciary has the authority to supervise the legality of individual acts and actions of administrative authority. This aspect of the principle of separation of powers is further elaborated in the right to judicial protection, which is one of the human rights, ensured by the Constitution. Pursuant to the Article 23 of the Constitution (right to judicial protection) everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law.

The power of judiciary to supervise administrative authority is further detailed in Article 157 of the Constitution. Pursuant to this article a court having jurisdiction to review administrative acts decides the legality of final individual acts with which state authorities, local community authorities and bearers of public authority decide the rights or obligations and legal entitlements of individuals and organisations, if other legal protection is not provided by law for a particular matter (Paragraph 1).

If other legal protection is not provided, the court having jurisdiction to review administrative acts also decides on the legality of individual actions and acts which intrude upon the constitutional rights of the individual (Paragraph 2). Article 157 of the Constitution therefore ensures that the executive power is subjected to independent judicial control of legality of its decision-making in individual matters. However, not only the relationship between executive and judicial power is defined by this provision. More importantly, this provision also defines the relationship between an individual and the executive power and ensures the protection of an individual against it, as an individual and an administrative body in administrative dispute act as equivalent opponents.

The judicial review of administrative acts and actions through administrative dispute in the Republic of Slovenia therefore serves both purposes - it insures the protection of individual rights, that may be violated by administrative act or actions, and at the same time it establishes possibility of judicial control of the legality of administrative acts and actions. But primarily, function of judicial review is the protection of individual rights and ensuring the rule of law.

3. Definition of an administrative authority

The definition of an administrative authority includes state authorities, local community authorities, bearers of public authority and public service contractors. Clearly, that the definition also includes private legal entities exercising public authority.

4. Classification of administrative acts

Pursuant to the ADA-1 an administrative act shall be an administrative decision and other public law, unilateral, authoritative individual act, issued within the framework of implementing administrative function, in which a body makes a decision on a right, obligation or legal benefit of an individual or legal entity, or of any other person who may be party to the proceeding of issuing the act. The final administrative act is an act against which no ordinary appeal is possible in the decision-making procedure (Paragraph 2 and 3 of the Article 2).

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

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

No, in Slovenia courts are competent to review administrative acts.

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

The judicial system of the Republic of Slovenia includes courts of general and specialised jurisdiction. The courts of general jurisdiction are: 44 local courts, 11 district courts (both courts of the first instance), 4 higher courts (courts of appellate jurisdiction) and The Supreme Court of the Republic of Slovenia (as the highest court in the state). As mentioned, there are also specialised courts of the first instance. They are competent for determination of labour disputes, and one of them also for determination of social security disputes. In administrative disputes first-instance decisions (as a rule) come under the jurisdiction of the Administrative court of the Republic of Slovenia as a specialised court. Court of appellate jurisdiction in cases of administrative review is The Supreme Court of the Republic of Slovenia (Administrative Review Department of The Supreme Court). In cases of asylum and taxes The Administrative Review Department of the Supreme Court decides in specialised panels.

The Constitutional Court in Slovenia is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms. Among other issues it decides on constitutional complaints, which can be filed by anyone, who believes that his human rights and basic freedoms have been violated by a particular act of a state body, local community or statutory authority. In also decides on conformity of the laws with the Constitution and on conformity of the general acts issued for the exercise of public authority with the Constitution, the laws and non-statutory regulations.

B. RULES GOVERNING THE COMPETENT BODIES

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

The review of administrative acts and actions does not lie within the competence of the ordinary courts.

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

Rules about existence, competence and duties are set out in ADA-1. ADA-1 determines competence and organisation of the courts, that decide in cases of administrative review, and procedure in administrative disputes (parties, deadlines, costs of procedure, procedure before the court of first instance, legal remedies, writ of execution).

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

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

Judicial review is not assumed by ordinary courts.

10. Internal organization of the administrative courts

In administrative disputes decisions are made by the Administrative Court of the Republic of Slovenia and by the Supreme Court of the Republic of Slovenia. Adjudication of first instance is carried out by the Administrative Court, unless otherwise stipulated by law, the decisions on complaints against the decision of first instance in administrative disputes are made by the Supreme Court.

The decisions on extraordinary legal remedies are made by the Supreme Court, unless otherwise stipulated by law. In certain cases the Supreme Court decides as a court of first instance (see question no. 55). The head office of the Administrative Court is located in Ljubljana. The Administrative Court adjudicates at the head office and in 4 branch offices (Celje, Maribor, Nova Gorica, Koper).

D. JUDGES

11. Status of judges who review administrative acts

The judges who review administrative acts do not belong to a specific category. ADA-1 stipulates, that the provisions of the Judicial Service Act (which in general regulates judicial service) also apply to the office, election, appointment or dismissal of Administrative Court judge. There is a special criteria, that one must fulfil to be elected as an Administrative Court judge. That criteria, stipulated by ADA-1, is, that a person has to meet conditions set for high court judge or, in addition to the general requirements for the election to the office of a judge, also has to have at least ten years of experience in making decisions in administrative matters.

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

There is no difference between the procedure of the election and appointment for administrative court judges or judges of courts of general jurisdiction. The recruitment of judges is made by vocational selection and there is no additional examination.

13. Professional training of judges

A judge must have a university-level legal education (law degree) and must have

passed bar examination. Those are two basic requirements under the law regarding the professional training of judges.

14. Promotion of judges

Promotion of a judge is possible in 3 ways: promotion in higher payment rang, promotion in higher judicial rang (district, high, supreme court judge) and promotion in position of senior judge. Judges are promoted in higher payment rang every 3 years, under provisions of The Judicial Service Act. The Judicial Service Act also determines possibility for a accelerated promotion of judges if special conditions are fulfilled.

15. Professional mobility of judges

A judge can be transferred to another court or assigned to work at the Constitutional Court, the Supreme Court, High Court, Judicial Council or Ministry of Justice. Judicial office is not compatible with office in other state bodies, in local self-government bodies and in bodies of political parties, and activities as provided by law (Article 133 of The Constitution of the Republic of Slovenia).

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

In an administrative dispute, the due process of the protection of the rights and legal interests of individuals and organizations against decisions and actions of state authorities, local community authorities and holders of public authorities are provided, unless any other form of due process is stipulated by the law for a particular matter. The court rules on the legality of final administrative acts interfering with the legal status of the plaintiff and adjudicates on the legality of other acts only if stipulated so by the law.

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

There are no mechanisms in Slovenia to deliver a preliminary ruling.

However, if the decision in an administrative dispute depends entirely or partly on preliminary question (an issue related to an independent legal entity and belongs to the competence of another court or body), the court may, under the provisions of ADA-1, discuss it, or it may suspend the procedure until the question has been resolved by the competent body (Articles from 47 to 50 of ADA-1).

18. Advisory functions of the competent bodies

The competent body (The Administrative Court) has only judicial function.

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

See answer no. 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

One of the important tasks of the Supreme Court is also safeguarding the uniformity of judicial practice. The Supreme Court adopts in plenary meetings: 1. memorandum opinions on questions of judicial practice (i.e. accepts and gives a generalised significance to interpretations of law given in the statements of

reasons of a judgement, or another decision, of the Supreme Court or a court of the second or the first instance); 2. memorandum opinions of principle (i.e. it accepts interpretations of law, important in view of the uniformity of judicial practice, proposed by one of the Departments of the Supreme Court of its own accord or upon the proposal of a lower court).

According to the law, all these interpretations of law are binding on all the panels of the Supreme Court, but only by them, while there is no legal obligation for the lower courts to respect them. Nevertheless, the lower courts usually accept these memorandum opinions as correct interpretations of law. There are no proceedings analogous to the French "avis contentieux".

II - JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

It is necessary for a claimant to file a complaint against the administrative act before going to court. The administrative body of second instance decides on the complaint against administrative act, issued by administrative body of first instance. If the party who had opportunity to file a complaint against the administrative act did not file it or had filed it too late the administrative dispute shall not be permitted. If it is stipulated by law that a complaint against a decision taken by an administrative body at first instance is excluded (single instance procedure), a party may appeal against the administrative act to the Administrative Court directly.

22. Right to bring a case before the court

Any individual, legal entity, organisation, group of people and others that believe that any of their rights and legal benefits have been violated by an administrative act may bring a case before the court. It is also possible for the state attorney to act as a claimant in cases when grounds exist for believing that a law has been violated by an administrative act to the detriment of the public interest. The defendant can be a state body, a holder of public authorisation or a local community body whose act is being contested. A proceeding for judicial review in which both the applicant and the defendant are state bodies is not possible.

23. Admissibility conditions

An administrative dispute is permitted if the claimant is claiming that his rights or legal benefits have been affected by an administrative act or because the administrative act was not issued and served on him within the prescribed period. If a claimant was a party to the administrative procedure in which the administrative act that is being contested in administrative dispute has been issued, he is not required to demonstrate a particular interest in the annulment of this act.

However, that is not the situation if a claimant did not participate in administrative procedure as party. In such cases he has to demonstrate that his rights or benefits directly based in law have been violated by an administrative act. When grounds exist for believing that a law has been violated by an administrative act to the detriment of the public interest, the state attorney may also act as a claimant. Regarding the protection of public interest it needs to be mentioned that a copy of every action is submitted by the court to the representative of the public interest (as a rule, this role is assumed by the attorney general) who can register his participation in the procedure before the court.

24. Time limits to apply to the courts

Under the provisions of the ADA-1 an action must be filed within thirty days of

the receipt of the administrative act. Special laws can stipulate different time-limits for filing an action (for example Asylum act - 15 days or 3 days). Prescribed time-limits for filing an action are explicit and it is not possible for the court to grant an extension. Under the provisions of the General Administrative Procedure Act an administrative act has to contain information on the right of lodging a legal remedy (action) and the prescribed time-limit for doing it. Time-limit determined in days begins to run on the first day after the occurrence (the receipt of the act) and it expires on the last day of the time-limit.

25. Administrative acts excluded from judicial review

There are no administrative acts or actions that are not open to review by the court because of the reasons of unimportance of political sensitivity.

26. Screening procedures

There is no screening procedure for applications filed before the Administrative Court (as court of first instance) or the Supreme Court (as court of second instance).

27. Form of application

In an action the name, the surname and the place, or the title and main office of the claimant, the administrative act, challenged by the action, and reasons for an action need to be given, and a proposal made as to how and in which parts the administrative act should be annulled. The original, written copy or photocopy of an act must be appended to the action. There is no specific form required for an action.

28. Possibility of bringing proceedings via information technologies

For the time being proceedings via Internet is not yet possible.

29. Court fees

There is a pecuniary charge for lodging an application for judicial review (court fee). It is stipulated by the Court Fees Act that in court proceedings payment of court fee is obligatory. Court fee can be paid in cash, e-money or by other valid means of payment.

30. Compulsory representation

The assistance of a lawyer is not compulsory, except in cases of extraordinary legal remedies. There is no difference between the procedure before the Administrative Court (as court of first instance) and the Supreme Court (as court of second instance) regarding that question.

31. Legal aid

The costs of the proceedings can be paid through legal aid. There are special conditions for access to legal aid. The Free Legal Aid Act stipulates to whom legal aid can be granted and determines criteria that have to be met in order for the application to be approved.

The criteria include the financial resources of the applicant. Legal aid shall be granted to an applicant who considering his financial position and financial position of his family could not afford to pay the costs of the proceeding without worsening his social status and social status of his family. What is considered as worsening one's social status is precisely determined by law.

On applications for granting legal aid decide Presidents of District Courts, President of the Administrative Court and President of the Labour and Social Court in administrative procedure. A decision on the application may be

challenged before the court in administrative dispute.

32. Fine for abusive or unjustified applications

According to the provisions of the Civil Procedure Act (which are applied *mutatis mutandis* for the procedural issues not regulated by ADA-1) the court may fine the litigating parties in case of filing an application, which is objectively insulting in nature for the court and/or the judge.

B. MAIN TRIAL

33. Fundamental principles of the main trial

Main trial hearing in the judicial review of administrative acts is governed by the same principles as main trial hearing in civil procedure, since Civil Procedure Act (Official Gazette of the Republic of Slovenia, no. 73/07 - officially consolidated version, 101/07, 111/08, 116/08, 121/08, 47/09, 48/09 and 57/09; CPA) applies by analogy for the procedural issues not regulated by ADA-1 (Paragraph 1 of Article 22 of ADA-1). Fundamental principles thus derive from national legislation, which is in compliance with the European legal standards.

Complying with the Recommendation of 2004, the proceedings are adversary in nature. This fundamental principle ensures that each party to the litigation shall be granted the opportunity to be heard on the opposing party's claims and assertions. The claims in respect of which the opposing party has not been heard may only be decided upon if the CPA so stipulates (article 59 of the ADA-1 relating to article 5 of CPA). The equality of arms is guaranteed by the same provision.

Generally, the court decides upon the claim on the basis of an oral, immediate and public main hearing (article 51 of the ADA-1 relating to article 4 of CPA). Only under conditions specified by ADA-1, claims may also be determined without a main trial (trial at a session) on the basis of procedural acts made in writing.

When a judgement is announced after the main hearing, a presiding judge reads in open court the ordering part of the judgement and give a brief statement of reasons. Even if the public has been exceptionally excluded from attending the main hearing, the ordering part of the judgement is always read out in open court. After the ordering has been read out, the court decides whether and if so to what extent the public is to be excluded from hearing the statement of grounds (article 322 of CPA in connection with article 294 of CPA).

34. Judicial impartiality

In Slovenia, judicial impartiality is ensured with the constitutional right to judicial protection, which is in conformity with the stated provision of the Recommendation R (2004) 20. Constitutional right is further detailed by the article 70 of the CPA, which stipulates that a judge is prohibited to exercise the judicial function, if he has a certain conflict of interest in that particular case - *iudex inhabilis* (e.g. he is a party to the litigation or he has taken part in the proceedings before a lower court...) or if other circumstances render his impartiality doubtful (*iudex suspectus*).

Immediately after learning of the existence of any of the former grounds for disqualification, the judge must discontinue forthwith any activity in the proceedings and must notify thereon the president of the court, who appoints a substitute judge. The acts of procedure which he has performed after having learnt of the existence of such ground have no legal effect. However, if a judge believes that other circumstances exist which put his impartiality into doubt, the judge may continue to take part in the proceedings until the president of

the court passes a resolution on his disqualification. The disqualification of a judge may also be moved for by the parties. The motion for disqualification is decided upon by the president or the chief judge of the court.

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

In a first instance proceeding the claimant can not state facts and supply evidence, if he was given an opportunity to state the facts and supply the evidence in the administrative procedure prior to the issuing of the administrative act (Paragraph 3 of Article 20 of ADA-1).

In appeal proceedings the claimant may only supply new facts and evidence, if it has been plausibly demonstrated that he was unable, through no fault of his own, to supply them by the end of the main hearing, and if proceedings have been conducted without a main hearing until the end of the proceedings of first instance (Paragraph 1 of Article 74 of ADA-1).

36. Persons allowed to intervene during the main hearing

In addition to the claimant and the defendant the other parties involved in an administrative dispute may also be the defender of public interest (Article 18 of ADA-1), a person who has suffered direct damage as a result of the annulment of the contested administrative act (Paragraph 1 of Article 19 of ADA-1), third persons, if the regulation of the contested relationship could interfere with their rights or legal benefits (Paragraph 2 of Article 19 of ADA-1) and third person that is involved in the contentious legal relationship in such a manner that only a uniform decision which covers this person as well can be adopted (Paragraph 3 of Article 19 of ADA-1).

37. Existence and role of the representative of the State ("ministere public") in administrative cases

The representative of the State may submit pleadings in cases concerning administrative law for the protection of public interest as an intervenient or for the protection of state interest as a claimant.

The public interest is generally represented by the state defender; however, the government may appoint another representative of the public interest for an individual dispute or individual type of dispute. A person who meets the requirements for a district court judge may be appointed as the representative of the public interest from the preceding paragraph (Paragraph 3 of Article 18 of ADA-1).

The state interest is always represented by the state defender, who may act as a claimant when there are reasons for believing that a law has been violated by an administrative act to the detriment of the public interest of the Republic of Slovenia (Paragraph 3 of Article 17 of ADA-1).

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

Slovenian legal system is not familiar with such an institution or a person.

39. Termination of court proceedings before the final judgement

Pursuant to the Paragraph 1 of the Article 36 of ADA-1 the court shall reject an action with a resolution if it has been established that:

1. that rendering decision is not within the jurisdiction of the court;
2. that the action was filed late or prematurely;
3. the plaintiff in his action does not exercise any his right or legal benefit or if he may not be a party under ADA-1;
4. that the act contested with the action is not an administrative act or an act

that may be contested in an administrative dispute;

5. the administrative act challenged in the action entails no consequences for the plaintiff or else these consequences are insignificant, except if an important legal issue is to be solved;
6. that an administrative dispute, contested with the action, does not clearly violate the plaintiff's right or benefits directly based in law;
7. that an appeal could have been filed against the administrative act contested in the action but was not, or was filed late;
8. that a final decision has been issued in an administrative procedure on the same case.

40. Role of the court registry in serving procedural documents

The court register does not have the right to forward any written applications and pleadings to the parties. Such tasks are reserved for the judge himself.

41. Duty to provide evidence

The parties are responsible for providing evidence. If an action claims a decision on a right, obligation or legal benefit, refund of items or reimbursement, the claim must contain a specified relief or remedy claimed in respect of the cause of action, the lateral claims, the statement of facts constituting the cause of action, and the statement of evidence proving these facts (paragraph 2 of Article 30 of ADA-1).

At the main hearing the court shall order the production of evidence when it is necessary for the determination of the administrative dispute, if the production of an evidence was not ordered in the administrative procedure issuing the contested administrative act, or if other facts indicate an assessment of evidence different from the one made by the administrative authority, which passed the contested administrative act (Paragraph 2 of Article 51 of ADA-1).

42. Form of the hearing

The court of first instance renders decisions after the main hearing (Paragraph 1 of the Article 51 of CPA). The court notifies the parties to all hearings for the production of evidence (Article 54 of CPA).

The main hearing is held in an open court and may be attended only by persons of full age (Paragraph 1 and 2 of the Article 293 of CPA). However, the court panel may exclude the public from all or part of the main hearing, where so required by the interest of official, business or personal secrets, or for moral considerations. The panel may also exclude the public from the main hearing also when by application of measures for maintenance of order it cannot secure an undisturbed progress of the proceedings (article 294 of CPA). Exclusion of the public shall not apply to the parties, their statutory representatives, attorneys and intervenients (article 295 of CPA).

The court of first instance may render a decision without a main hearing (trial at a session) if after a preparation proceedings was established that the facts of the case have been completely and correctly asserted during the administrative procedure issuing the administrative act, or such facts are not contentious neither did the parties request a main hearing in the an action or in the answer to the an action (Paragraph 2 of the Article 59 of ADA-1). When the court renders a decision at a session, the session is not public (Paragraph 1 and 5 of the Article 59 of ADA-1), but is conducted in camera.

43. Judicial deliberation

The court adopts a judgement or a resolution with a majority of votes. Special minutes on consultations and voting are kept and they must be signed by all members of the panel and by the recording clerk. Dissenting opinions are possible, however are only marked in the minutes on consultation, and not attached to the rendered decision. The court shall consult and vote in the

absence of the parties (Paragraphs 2, 3, 4 of the Article 61 of ADA-1).

All the members of the panel take part in the deliberation, whereas the member who delivered an opinion plays an active role as a judge rapporteur. Judge acting as a rapporteur cannot at the same time be a judge presiding the panel. Rules governing deliberation are set by CPA without any recent modifications influenced by the case-law of the European Court of Human Rights.

C. JUDGMENT

44. Grounds for the judgement

Decisions of the court of first instance are generally given in details, indicating the claims raised by the parties, the facts asserted to give rise to these claims, the evidence, and the law applied in the rendering of the decision (Paragraph 4 of the Article 324 of CPA). Nonetheless, the court of first instance does not have to cite the reasons for the decision if it follows the grounds of administrative authority who issued the administrative act and asserts this in the judgement (Paragraph 2 of the Article 71 of ADA-1).

Grounds of the Appellate court decisions also contain all the mentioned elements, but may be shorter, especially if they follow the grounds of the judgement of the court of first instance.

Grounds of every judgement aims to be as specific and clear to enable applicants to understand the meaning and the scope of the decision.

45. Applicable national and international legal norms

Generally, most often used reference norms are those contained in national laws (and in executive acts based thereon) and jurisprudence, all of which are in accordance with the Community law. After Slovenia's EU accession, the Slovene administrative law has to be in conformity with the European primary and secondary law or more precisely with *acquis communautaire*. In cases alleging the breach of constitutional rights, the lawfulness of administrative acts is evaluated by reference to the Constitution of the Republic of Slovenia and to the European Convention for the Protection of Human Rights.

46. Criteria and methods of judicial review

Specific review of the administrative authorities' appreciation of situations may only be exercised in an administrative procedure, whereas only global control is reserved for the review of administrative courts. Both the court of first instance (Administrative Court) as well as to the appellate court (the Supreme Court) may carry out only global control on appreciation of situations and cannot compare advantages and drawbacks of the decision in any situation where the decision is legally grounded.

Pursuant to Paragraph 2 of Article 27 of ADA-1 discretionary decisions are not considered to violate administrative regulations, if such a decision has been rendered by the competent authority based on an authorisation granted by the regulations, within the limitations of the authorisation and in compliance with the purpose for which it was granted the authorisation.

47. Distribution of legal costs

If the court in an administrative dispute renders a decision on a right, obligation or legal benefit (full review), it shall apply the provisions of the CPA for the decision relating to the costs of the procedure (Paragraph 1 of Article 25 of ADA-1).

The party shall always bear the costs arising due to default of, or the accident

occurring to him (Paragraph 2 of the Article 25 of ADA-1).

If the court in an administrative dispute only rules on the legality of an administrative act and in disputes from the paragraph 3 of the article 25 of ADA-1 (disputes between the state and local communities, among local communities, and between them and the holders of public authorisations), each of the parties each party bear their own costs of proceedings.

If the court refuses or rejects the appeal or the procedure is suspended, each of the parties shall be billed for their own costs related to the procedure.

If joint costs occurred, the court rules on the proportion of costs to be born by each party (Paragraph 6 of the Article 25 of ADA-1).

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

The Administrative court:

Generally, the proceedings before the Administrative court are conducted by a panel consisting of three judges. However, single judge rules if:

- the value of a contentious act in matters where the right or liability of the party is expressed in money value does not exceed EUR 20.000 and the matter does not concern an important point of law;
- the procedural rulings in the procedure of issuing an administrative act are contested;
- simple facts of the case and legal situation has been established;
- the contested administrative act has such deficiencies that it cannot be tested.

The Supreme Court:

The Supreme Court adjudicate on the appeal and on the revision within a panel of three judges; a single judge decides on the stay of the proceedings.

In disputes between the Administrative Court and the Supreme Court over their jurisdiction, the decisions are made by the Supreme Court within a panel of five judges. In disputes over the jurisdiction between the Administrative Court and a court of general jurisdiction or a specialized court, the decisions are made by the Supreme Court within a panel of three judges.

49. Dissenting opinions

The court adopts a judgement or a resolution with a majority of votes (Paragraph 2 of the Article 61 of ADA-1), therefore the dissenting opinions are possible, however they are not very common in practice. When a member of a senate is overruled by the majority decision, his dissenting opinion it is not indicated in the grounds of the decision, rendered to the parties, but it is only revealed in the voting minutes. The same practice applies to both court of the first instance as well as to the appellate court.

50. Public pronouncement and notification of the judgement

When the decision is reached after the main hearing has been concluded, the court decision is delivered orally. Generally, the decision is publicly pronounced by the judge presiding the panel at the end of the main hearing. In complicated cases, however, the decision is delivered in writing in eight days after the main hearing.

When the decision is reached at a session, the court decision is delivered in writing.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgement Res judicata, stare decisis

Final decisions of the court become res judicata and produce effects only for the parties (inter partes authority). The nature of the challenged act does not influence this authority. The solution given is formally limited to the present case. In practice, however, the courts try to rule on similar legal situations in the same way due to the principle of legal certainty.

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

The judgement rendered by the court has an unlimited effect in time.

53. Right to the execution of judgement

Execution of judicial decisions is guaranteed through a specific judicial procedure. The implementation of the judgement by administrative authorities is regulated in the General Administrative Procedure Act, whereas the implementation of the judgement by private persons is regulated through separate execution proceedings (the Execution of Judgments in Civil Matters and Insurance of Claims Act).

If the execution is implemented against the state, local community or their bodies or organizations, the court competent for the execution under the Execution of Judgments in Civil Matters and Insurance of Claims Act, prior to issuing the execution order, informs the body or organization about the intended execution with an invitation to avoid the execution by a voluntary fulfillment of obligations. The time limit for fulfillment should not exceed three months.

54. Recent efforts to reduce the length of court proceedings

As in many other legal systems in EU the excessive delay of a judicial procedure may turn out to be unconstitutional. In Slovenia the delays occur mainly due to a heavy workload of the judges, which consequently leads to court backlogs.

The Courts Act establishes some administrative measures in order to reduce the length of court proceedings or to diminish the backlogs on individual courts (exp. changes in classification of posts; new appointments, relocation of judges etc.)

In individual pending cases a claimant may file a supervisory appeal to the president of the relevant Court, which may request a written report from the judge, a priority treatment of the case, set the appropriate deadline to reach a decision or reassignment of the case to another judge.

In 2006 National Assembly of Republic of Slovenia adopted the Act Regulating the Protection of Right to Trial without Undue Delay new Administrative Dispute Act - it came into force on 1st of January 2007 (published in Official Gazette of the Republic of Slovenia, no. 49/06) - and which establishes the legal basis for, among others, claiming fair compensation of damages due to excessive length of the court proceeding.

E. REMEDIES

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

The competent court for adjudicating at first instance is generally the Administrative Court, except for the disputes concerning the legality of acts issued by election authorities at elections to the National Assembly, the National Council and the presidency of Slovenia which is adjudicated by the

Supreme Court.

The Supreme Court adjudicates on disputes regarding the division of jurisdiction between an administrative and other court.

The Supreme Court adjudicates the appeals and revisions against the decisions of the Administrative Court.

56. Recourse against judgements

An appeal may be lodged against a ruling passed in an administrative dispute if the court itself established facts, which are different to those established by the defendant, and if it changed on the basis thereof the contested administrative act or if the court decided on the basis of the Article 66 (ADA-1 establishment of the illegality of the act or action) thereof. In such cases also the parties that cooperated in the administrative dispute of the first instance have the right to appeal.

The parties may also file a request for revision against a final ruling issued at the first instance if:

- the value of the contested part of the final administrative act or final ruling, when the court took substantive decision, in the matters where the right or obligation of a party is expressed in monetary value, exceeds EUR 20.000;
- the substance of the matter concerns the decision on a relevant legal issue or if the ruling of the court of first instance deviates from the case law of the Supreme Court with regard to the legal issue that is essential for the decision, or if there is no uniform position concerning this legal issue in the case law of the court of first instance and the Supreme Court has not yet adjudicated on the matter;
- the decision that is being contested in the administrative dispute, has very grave consequences for the party.

A claimant may also file a motion for a reopening of proceedings (Articles from 96 to 101 of ADA-1).

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings; applications for interim relief

This kind of proceedings are regulated in ADA-1 and in various substantive administrative acts.

See questions no. 58 and 59.

58. Requests eligible for the emergency and/or summary proceedings; applications for interim relief

According to ADA-1 at the request of the claimant the court suspends the implementation of the contested act until the issuing of a final decision, if the implementation would cause damage to the claimant that would be difficult to redress.

The claimant may also request a interim relief to temporarily regulate the situation in connection with the contentious legal relationship, if such a regulation appears to be necessary particularly in permanent legal relationships. The court makes the decision to issue a interim relief in a resolution within seven days of receiving a request.

Emergency proceedings in which the periods for issuing a court ruling is shorter than usually in administrative disputes are regulated for example in the following acts:

- Asylum Act,
- Courts Act,
- Judicial Service Act,
- Notary Act,
- Voting Rights Register Act,
- Local Government Act,
- Electronic Communications Act,
- Referendum and Public Initiative Act,
- National Assembly Elections Act,
- Free Legal Aid Act,
- Personal Data Protection Act,
- Public-Private Partnership Act,
- Information Commissioner Act,
- International Protection Act, etc.

59. Kinds of summary proceedings

According to article 54. of the International Protection Act the administrative body may decide on the logged application in a summary proceeding if the actual situation that is the basis for the issuing of an administrative act can be completely assessed from the facts and the circumstances from the first to eight indent of the article 23., such as application itself and attached documentation and evidence, official data, ex officio obtained evidence etc.

According to ADA-1 the court may adjudicate without a main hearing (trial at a session) if the actual situation that was the basis for the issuing of an administrative act between the claimant and defendant is not contentious. Apart from that the court may decide without the main hearing also in the following cases:

- if it is evident on the basis of the action, contested act and administrative files that the action needs to be granted and the administrative act removed (on the basis of the Article 64) and the accessory participant with the opposite interest did not take part in the administrative dispute
- a person who should participate as a party or an accessory participant in the administrative procedure was not given this possibility,
- a person who should participate as a party or an accessory participant in the administrative procedure was not given the possibility to make a statement on the facts and circumstances relevant for the issuing of the decision.
- in the disputes on the legality of the acts of the electoral bodies.
- if the actual state between the plaintiff and the defendant is contentious, but the parties state only those new facts and evidence that the court may not take into consideration in compliance with this ADA-1 or the proposed new facts and evidence are not relevant for the decision
- if there is a dispute between the same parties but the actual and legal basis are similar and the court has already passed a final ruling on this issue.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

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

At all times during the administrative procedure the authorised officer has to encourage the parties involved to settle their dispute. The settlement has to be clear and precise and should not offend public interest or public moral or should not be in conflict with legal interest of others.

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

In Slovenia, alternative administrative disputes resolutions by independent

bodies are not yet possible, however there is political will present to adopt legal bases needed for any future actions in this field. For the time being the mediation is possible only in civil and commercial disputes.

62. Alternative dispute resolution

As mentioned in the preceding answer, currently there is no possibility to resolve administrative disputes by means other than by recourse to the courts.

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 (2008)

- Administration of justice / Total State budget = 1,8 %
- Administrative justice / Administration of justice = 1,9%
- Staff and operation / Administrative justice = 85,1%
- Material costs / Administrative justice = 13,8%
- Small investments / Administrative justice = 0,6%
- Free legal Aid / Administrative justice = 0,4%

64. Total number of magistrates and judges (2008)

- Administrative Court: 32 (FTE)
- The Administrative division of the Supreme Court: 14 (FTE data is not available)

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

The total number of judges is 945 (FTE) and the number of administrative judges is 46. The percentage of administrative judges is 4,9%.

66. Number of assistants of judges

The Administrative Court judges and the Supreme Court judges are assisted by judicial advisers. At the Supreme Court the assistance is provided also by judges of lower courts who are assigned to work at the Supreme Court.

There are 10 judicial advisers at the Administrative Court and 10 judicial advisers and 5 district court judges at the Administrative Review Department of the Supreme Court. That makes total of 0,54 assistant available for each judge. A judicial advisor is required to have law degree and Bar exam.

67. Documentary resources

The Central Judicial Library is organised as a unit within the Registry Department of the Supreme Court. It is a professional and scientific (and publicly accessible) library specialised in legal issues. It is aimed at all lawyers (judges, state prosecutors, professional staff, barristers) and is available also to students of law and other users from the general public.

In the library mostly monographs and serial publications, journals, proceedings of professional conferences (including non-published materials), training seminars and study visits abroad, gifts from Slovenian and foreign institutions,

electronic publications, etc. are available. The Library also procures foreign-published legal literature and monthly publishes notice of newly acquired monographs and serial publications.

68. Access to information technologies

Slovene judicial system has access to information technology in substantial proportion. Information technology is mainly used as a computer assistance for writing decisions and for legal research through on-line legal resources (www.zakonodaja.gov.si, www.sodisce.si).

69. Websites of courts and other competent bodies

The court system in the Republic of Slovenia has a homepage www.sodisce.si, where the information regarding all Slovenian courts can be found. One can also access case-law of the Supreme Court of the Republic Of Slovenia and of ordinary and specialized High Courts of the Republic Of Slovenia, gain information of publicly accessible character, list of laws regulating the Slovene judiciary system and up-to-date notices for the public.

OTHER STATISTICS AND FIGURES

B. OTHER STATISTICS

Questions 70, 71, 72, 73 (Number of new applications registered every year; Number of cases heard every year by the courts or other competent bodies; Number of pending cases; Average time taken between the lodging of a claim and a judgement Administrative Court)

Administrative Court

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Cases lodged	4883	5199	4868	5210	5407	4917
Cases disposed of	3762	3948	4027	4481	4644	4931
Cases pending	5199	4868	5210	5407	4917	4285

Average time taken between the lodging of a claim and a judgement:

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The Administrative division of the Supreme Court of the Republic of Slovenia

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Cases lodged	1.518	1.490	1.687	1.830	1.325	1.410
Cases disposed of	1.332	1.360	1.742	1.807	1.684	2.036

	2003	2004	2005	2006	2007	2008
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Cases pending	2.647	2.777	2.722	2.741	2.381	1.754
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Average time taken between the lodging of a claim and a judgement: 10,3 months.

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

Annulment of administrative acts decisions/total number of decisions

= 33,1 % (2003)

= 33,5 % (2004)

= 21,2% (2008)

75. The volume of litigation per field

The number of actions filed before the Administrative Court (1.1.2008 - 31.12.2008)

FIELD OF LITIGATION	TOTAL NUMBER OF LITIGATION
Asylum	171
Free legal aid	275
Custom duties	343
Tax	593
Denationalisation	380
Access to Information of Public Character	18
Administrative internal affairs - others	433
Citizenship	67
Civil engineering	20
Intellectual property	51
Victims of war	78
Inspection measures	293
Civil Servants	36
Electronic communications	43
Agriculture	129
Concessions	100
Hunting and fishery	1
Social security	31
Co-financing from public funds and state aids	163
Building sites	123
Foreigners	61

FIELD OF LITIGATION	TOTAL NUMBER OF LITIGATION
Urban planning	18
Regulation of competition	15
Environment protection	25
Public data protection	7
Protection of the constitutional rights	42
Education	32
Others	571
TOTAL	4299

The number of actions filed before the Supreme Court of the Republic of Slovenia
(1.1.2008 - 31.12.2008)

FIELD OF LITIGATION	TOTAL NUMBER OF LITIGATION
Free legal aid	1
Right to vote and referendum	2
Tax	24
Denationalisation	7
Custom duties	24
Citizenship	2
Civil engineering, Urban planning	1
Inspection measures	2
Electronic communications	1
Agriculture	1
Concessions	2
Others	1
TOTAL	68

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

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

For determining cases on state liability for damages the civil procedure rules apply (civil courts jurisdiction). It is expected that the number of such cases shall increase in the future.

