

Raad
van State



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Answers to questionnaire: Bulgaria



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Answer of Supreme Administrative Court of Bulgaria to ACA 'better regulation' questionnaire

According to the regulation of the judicial system the Republic of Bulgaria established by the Constitution of the country in 1991. The Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and uniform application of laws in administrative justice. The Supreme Administrative Court ruling on disputes concerning the legality of acts of the Council of Ministers and ministers, as well as other acts specified in law.

According to the Constitution the Supreme Administrative Court is not granted a consultative capacity. This is why judicial authorities are not directly involved in the legislative and legislative process, which is implemented by the legislative authority - the National Assembly.

Supreme Administrative court has no consultative power over those of the executive authorities, which under the Constitution have legislative competence. As judicial authorities administrative courts and Supreme Administrative Court exercise control over the legality of regulations adopted by the administrative authorities.

According to Art. 125. Of the Constitution The Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and equal application of the law in administrative justice. The Supreme Administrative Court shall rule on all challenges to the legality of acts of the Council of Ministers and the individual ministers, and of other acts established by law.

During the period until the amendments of 2016 Judicial System Act has not explicitly dealt with the legal possibility of the Supreme Administrative Court to be involved through an advisory opinion in the legislative process. However, the General Assembly of judges gave an opinion on some bills. This refers to bills concerning the status of magistrates and was carried out only when the Council of Ministers or the Parliament wanted this statement. The most common form of participation in the legislative process is the participation of individual judges who are specialized in the matter concerned, in working groups on the elaboration of a bill by the Council of Ministers.

In all cases where the Council of Ministers is working on a bill that requires high level of competence at the administrative matter and working groups with broad participation of various experts are formed judges from the Supreme Administrative Court take part .

For example, such participation had been done in the process of drafting the bill on amending the Execution of Penalties and Detention Act. It occurs due to the need to establish effective domestic preventive and compensatory means of persons deprived of their liberty because of bad conditions in prisons in the country identified by the authorities of the Council of Europe and the European Court on Human Rights in the pilot judgment *Neshkov and others v. Bulgaria*.

After the amendment of the Judicial System Act the possibility of involvement of the courts in the legislative process by issuing observations and opinion was established by law.

At present according to Art. 119 Paragraph 2 Item 6 of the law The plenum of the Supreme Administrative Court shall address opinions to the Council of Ministers and the National Assembly on draft laws concerning the activities of the Supreme Administrative Court. The cooperation between the judiciary and the executive powers shall be conducted through the Minister of Justice and the administration of the Ministry of Justice. The cooperation between the authorities of the judiciary and the Supreme Judicial Council and the authorities of the executive shall be conducted in the following directions:

1. judicial activity;
2. drafting of projects of laws and subsidiary normative acts related to the judicial system and to the activities within the limits of the competences of the Minister of Justice;
3. professional qualification;
4. information technologies;
5. crime resistance;
6. management of the property of the judiciary;
7. activities, related to the drafting of the judiciary budget;
8. security;
9. activities, related to the state and private bailiffs, to the public notaries, to the registry judges and to the syndics;
10. international cooperation.

Unfortunately, despite the legal framework of interaction between the judiciary and the executive in the field of the legislative activity there is no established legal mechanism of feedback.

For example, there is no direct contact between the court and other authorities on the issue whether drafts involving the participation of judges had been adopted by the National Assembly without any comments and changes or they had been amended or changed by the plenum of Parliament or by its legal commission.

Often in practice presented by the working group draft law is subject to change in the plenary chamber or in legal commission of the parliament. In such cases, the participants in the working group are not informed about the subsequent changes and the adopted national statutory texts are seen until after their promulgation in the State Gazette. It should be pointed out that the participation of judges in the legislative process is within their working time, but no extra cost and there are no mechanisms for reporting on their additional work load.