



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative
Courts**

Berlin, 13 May 2019

Answers to questionnaire: Czech Republic



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ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg
(Higher Administrative Court Berlin-Brandenburg)

Questionnaire

Introduction

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which “filters”, for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12th to 14th May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states' Supreme Administrative Courts. It shares this objective with the closely linked seminar taking place in Dublin on 25th and 26th March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge's daily work.

I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

There are two instances, one of them is a first instance and the other one is an instance of cassation.

b) Does your SAC also serve as a first instance court?

Yes, it does.

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter

Please explain.

The SAC serves as a court of first instance in some matters of national elections (parliamentary and presidential) and elections to the European Parliament and also in matters of dissolution, suspension or renewal of political party or political movement. It further decides positive and negative competence conflicts between the State administration and self-governing authorities, between different self-governing authorities and between different central administrative authorities.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

	2017	2018
<i>New cassation cases</i>	3902	4109
<i>New first instance cases</i>	276	215
<i>Percentage of first instance cases</i>	6.6 %	5.2 %

2.

a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?

The majority of the case load consists of cassation complaints. There were 126 new cassation complaints per one judge in the year 2017. The average case load of first instance cases per judge was almost 9; however, these cases are not assigned to all judges evenly.

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

Generally, the complexity of cases differs case by case, however the majority of election cases (in which the SAC serves as a court of first instance) is less complicated.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law

- the deliverance of single case justice

- care for adherence to procedural rules of lower courts

5. a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

The purpose is to give a decision in a single case.

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

It is given by law.

6. a) Is there a separate constitutional court in your country?

Yes, there is.

b) Does the SAC in your country serve as a constitutional court?

No, it does not.

c) In how far does your SAC consider constitutional law, especially fundamental rights?

The SAC considers constitutional law; it applies law in conformity with the Constitution and Constitutional Court's jurisprudence. However, when it deems that a relevant law is unconstitutional, it shall bring a case before the Constitutional Court.

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

Yes, excluding the state, a party can file a constitutional complaint against the decision of the SAC.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

The SAC shall file a claim to the Constitutional Court if the judge finds the law unconstitutional.

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

Generally, if a complainant wants to bring the case before the Constitutional Court, he or she must first exhaust all possible remedies available (even the extraordinary ones, i. e. cassation complaint).

II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?

Yes, a complainant must be represented by an attorney, unless he or she, his or her employee or member, has legal education recognized in the Czech Republic. The other party does not have to be represented by an attorney or other legal professional or have legal education. He or she can be represented by anyone or not be represented at all.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

Yes, there is a general rule that the representative has to be an attorney.

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

No, there are none.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

A complainant can be represented by other legal professional under the condition that this lawyer is an employee or a member of the complainant. Other party can be represented by anyone or not be represented at all.

e) Are there specific (different) rules for representatives of administrative authorities?

If the administrative authority is a complainant, then it must be represented. The same rules mentioned in answer II.1.a) apply.

2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

A cassation complaint shall particularly contain the specification of the decision it opposes and the specification as to what extent and on what grounds the complainant contests the decision.

The judicial fee must be paid, or the complainant must be exempt from the duty to pay.

The complaint must be filed within two weeks after the delivery of the contested decision.

The complainant must be legally represented as mentioned above.

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

The cassation complaint can be submitted only on grounds of the claimed unlawfulness consisting in incorrect consideration of a legal issue before the court in the previous proceedings, the fault of proceedings, the irregularity of proceedings before the court consisting in the absence of conditions for the proceedings or non-reviewability consisting in incomprehensibility or lack of causes for a decision.

The SAC is bound by the scope of the cassation complaint. This does not apply if the proceedings before the court of the first instance were invalid or if it was affected by a fault which may result in an unlawful decision on the matter itself or if the contested decision is non-reviewable, nor in cases where the decision of the administrative authority is null.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

The SAC is the last instance court, so the SAC shall refer preliminary questions to the ECJ. When the SAC does not refer the question to the ECJ even though a party requested it, the SAC is obliged to give reasons for it. To this day, the SAC has referred 32 preliminary questions to ECJ.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

Both parties have the right to file a cassation complaint against the decisions of the court of lower instance to the SAC, except for exemptions stipulated by law.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

Yes, a cassation complaint opposing a statement on costs of proceedings is inadmissible. A cassation complaint is furthermore inadmissible against a decision whereby the court decided after its original decision had been vacated by the SAC; this does not apply if the cause for a cassation complaint is an objection that the court did not comply with the binding legal position of the SAC, whereby the proceedings are merely adjusted, or which is, in keeping with its nature, only temporary.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

In matters of international protection complaint is unacceptable if it concerns only the complainant..

b) If there is a preliminary assessment, please give details:

Yes, in cases concerning international protection the cases can be found unacceptable.

- Which court decides (lower court or SAC)? *The SAC decides about the acceptance.*
- If the SAC decides, is there a specific procedure of admittance before the SAC?
Please give details! *If the SAC decides that the complaint is unacceptable, the decision must be unanimous.*

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

Yes, there are. As mentioned above, the cassation complaints in cases involving international protection can be found unacceptable if the conclusions in judgement could be applicable only on specific situation of the petitioner and not in a general scope.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

In matters of international protection, there is a requirement of "broad scope" which is defined by case law as for example discrepancy in jurisdiction, new legal question or material error in proceeding or in law.

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

In the Czech Republic, there are only 2 instances, so the appeal (i.e. cassation complaint) always goes directly to the SAC.

f) Are there specific requirements in certain fields of law?

Yes, there are in the matters of international protection, as mentioned above.

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

	2017	2018
Cases	398	422
Cases admitted	91	79
<i>Percentage of cases admitted</i>	22.9 %	18.7 %

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

No, it has not.

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

Due to the only limited restriction in matters of international protection, the function is for the most part to deliver single case justice.

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

The SAC was established by the Constitution, but the constitutional provisions grant right to appeal only in penal cases.

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

No, it does not.

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

Yes, there is a political and academic discussion about admissibility or acceptability of complaints to the SAC.

III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

- other?

In matters of national elections and elections to the European Parliament, the SAC can revoke the results of elections, the election of candidate or the whole elections. It also decides in specific cases concerning registration of candidates.

It dissolves, suspends or renews political party or political movement.

In competence cases the SAC decides which administrative body is competent.

2. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

- *cassation of the decision of the lower court and remitting the case back to the lower court*
- *cassation of the administrative act*

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

The SAC shall not take into account facts which the complainant put forward after the contested decision was made. However, the SAC assesses the evidence by itself. New evidence can be produced only when the SAC needs to clear up the facts of the case found out by the regional court.

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

General procedural rules applicable to first instance courts apply to SAC too except when special rule is provided.

b) If not, what are the differences?

Parties are limited to specific subjects; time limits for filing a complaint or time limits for decision of the court; in cases involving election, the parties does not need to be represented by a lawyer. Also, the parties in some cases might not be entitled to reimbursement of cash expenses. The formal requirements for complaint might be higher too.

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

For the decision of unacceptability of case concerning international protection the chamber must vote unanimously.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

As a rule, the SAC decides on a cassation complaint without a hearing. If the SAC considers it necessary or if it produces evidence, the SAC orders a hearing to determine the cassation complaint.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

There is no express provision in the law that would bind lower courts to abide by the SAC's opinions stated in other cases. Nonetheless, principle of legal certainty and

predictability applies under Czech law. Lower courts shall therefore follow the SAC's judicial decision.

b) If so, under which conditions can they deviate from a decision of the SAC?

If the lower court wants to deviate from the legal opinion of the SAC, it shall give reason for the deviation. Afterwards the SAC may change its legal opinion with decision given by an extended chamber or reject the deviation.

c) Is the SAC bound by law to follow its own previous decisions?

Same answer as in III. 6. a).

d) If so, under which conditions can it deviate from its previous decision?

If a bench of the SAC has in its decision arrived at a different conclusion to a conclusion which is expressed in a previous decision(s) made by the SAC, the bench shall refer the matter to an extended bench for its decision.

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

The SAC does not have sections.