



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: Lithuania



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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?

A court system of the Republic of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction. Special jurisdiction courts have two instances – regional administrative courts and the Supreme administrative court of Lithuania.

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

It does serve as first and only instance in certain cases.

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

- depending on the subject-matter?
- depending on the importance of the case?
- depending on a choice by the plaintiff (alone) or the parties (by agreement)?
- depending on other criteria?

Please explain.

Law provides details in which cases (based on their subject-matter) Court serves as first instance.

According to the Law on Administrative Proceedings, the Supreme Administrative Court serves as first and only instance in cases where abstract application is lodged requesting investigation of legality of a regulatory administrative enactment passed by central entities of state administration as well as cases where legality of general acts adopted by societies, political parties, political organisations or associations is questioned.

The Supreme Administrative Court of Lithuania also hears requests to reopen proceedings in cases ended by res judicata court judgements; requests by entities of municipal administration to give conclusions whether a member of municipal administration broke an oath; requests by State Data Protection Inspectorate to address EU judicial authority where European Commission decision is in doubt; cases concerning elections.

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.)!

Roughly 2,5 percent.

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?

Cases concerning damages caused by the unlawful acts of public authorities. Roughly 40 percent.

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)?

Yes, they are considered as homogenous uncomplicated cases.

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

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

In appeals cases the Supreme Administrative Court of Lithuania reviews 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?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

All of the above.

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

Considering types of cases that are heard by the Supreme Administrative Court of Lithuania as first instance, purposes of such a role are the deliverance of single case justice and development of the law.

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

Some cases do not arise from a dispute between parties (e. g. contesting legality of a regulatory administrative enactment), therefore do not require two instances to check facts and arguments, other cases are urgent and have to be dealt with within particular timeframe (e. g. cases concerning elections).

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?

Court relies on established case-law of the Constitutional Court of Lithuania, applies its doctrine, however, never goes further than it has been explained by the Constitutional Court and does not provide interpretations of its own on matters which come under the Constitutional Court's jurisdiction.

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?

There is not. Rulings of the Supreme Administrative Court are final and not subject to appeal or contest to other national courts.

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?

Where there is ground to believe that the law or the act applicable in a particular case contravenes the Constitution, the court shall suspend the hearing of the case and, in view of the competence of the Constitutional Court of the Republic of Lithuania, apply to it with a request to determine whether the aforesaid law or other legal acts complies with the Constitution. Having received the ruling of the Constitutional Court, the court shall resume the hearing of the case.

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?

The Supreme Administrative Court and the Constitutional Court have different competences and hear different cases regarding constitutionality of legal acts. Therefore nature of contested act clearly indicates which court should hear certain case. Competences of these two courts do not overlap.

Also, it is important to add that possibility to bring about any challenges before the Constitutional Court is rather limited since Lithuania's legal system foresees only certain legal acts to be examined in the Constitutional Court and such claims to be brought by certain entities prescribed by law.

II. Access to the SAC

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

It does not.

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

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

There are not.

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

Yes. According to the Law on Administrative Proceedings, representatives in court can be also assistants of counsels holding a written consent of counsels supervising the assistants' internship to represent in a specific case; persons with university degree in law if they represent their close relatives or a spouse (partner); employees or civil servants of legal entities (in appeal instance court – holding university degree in law) which represent that legal entity.

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

According to Law on Administrative Proceedings State and Government are represented by state's representatives – institutions and agencies.

Heads of appropriate institutions, agencies, services shall be considered as legal representatives, acting within the powers granted on the basis of laws or other legal acts.

If it is foreseen so in law or other legal acts, employees or civil servants also have a right to represent administrative authorities.

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

Formal requirements can be found in Law on Administrative Proceedings. The following shall be indicated in the appeal:

- 1) the name of the court to which the appeal is addressed;*
- 2) the appellant's name, identity number and address, if appellant has – his email address, telephone and fax numbers or addresses of other means of electronic communications;*
- 3) the names and addresses of other participants in the proceedings, if known – their email addresses, telephone and fax numbers or addresses of other means of electronic communications;*
- 4) the appealed decision and the court which adopted the decision;*
- 5) the contested issues;*
- 6) the laws and circumstances of the case whereon the illegality or invalidity of the decision or a part thereof is based (legal grounds for appeal);*
- 7) the appellant's petition (subject matter of the appeal);*
- 8) evidence confirming the circumstances presented in the appeal;*
- 9) preferences to get court's judgement or other documents of proceedings via electronic means of communication;*
- 10) if appellant pleases so, his request for oral hearing;*
- 11) the list of documents attached to the appeal.*

The appeal must be accompanied by the evidence indicated in the appeal (if the appellant is in possession of any), also information regarding the payment of the stamp duty for the appeal. When appeal is filed in writing, the number of copies of the appeal with the annexes must be sufficient for delivering a copy to each party to the proceedings and leaving one copy for court documentation.

The appeal shall be signed by the appellant or his representative. When the appeal is filed via means of electronic communications it is considered signed. When the appeal is filed by representative, the documents confirming mandate as representative filing the appeal must be attached thereto.

Claims which were not filed when the case was heard at the court of the first instance shall not be allowable in the appeal. Claims which are inextricably connected to the filed claims shall not be deemed to be new claims.

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?

According to the Law on Administrative Proceedings, circumstances that are crucial for legitimate and fair decision can be examined on court's own motion (ex officio). Court establishes boundaries of such examination and is not limited to the points or requests made by the parties of the case.

When court hears a case as an appellate instance, it analyses lawfulness and legitimacy of the judgement announced by first instance within boundaries of appeal that has been lodged. These boundaries can be disregarded only when interests of state, municipality or individuals' rights would be significantly infringed otherwise.

Examination covers both – procedural law and substantive law.

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?

If EU law (or national law implementing EU law) is applicable in a case and certain questions arising are not covered by the doctrine of acte clair or acte éclair, panel of judges has a right (and duty) to refer for a preliminary ruling. Such request to refer questions to the Court of Justice of the European Union can be put forward by parties of a case as well, yet they are not binding or obliging judges in any way. In 2017 the Supreme Administrative Court of Lithuania referred to the Court of Justice of the European Union for a preliminary ruling four times, in 2018 – once.

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?

Rulings of the Supreme Administrative Court are final and not subject to appeal or contest to other national courts.

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

*Yes: 1) such decisions are specified in the Law on Administrative Proceedings
2) such decisions of court do not preclude further conduct of proceedings.*

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)?

There is no such filter. As long as formal requirements are met and decision can be contested before the Supreme Administrative Court of Lithuania, it is considered to be admissible.

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

- Which court decides (lower court or SAC)?
- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?
- If the SAC decides, is there a specific procedure of admittance before the SAC?
Please give details!
- If the lower court decides (in a negative way), can the SAC still admit a case?
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?

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

There are not.

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

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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?

There are only two instances and rulings of the Supreme Administrative Court are final and not subject to appeal.

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

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

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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.

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?

There are no filters or restrictions.

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

According to the Constitution of the Republic of Lithuania, the courts of the Republic of Lithuania shall be the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts. For the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law.

There is no specific provision in Lithuania's Constitution with respect to having an appeal's instance as such, yet there is a provision directing to Law on Courts where instances (inter alia appeal instance) are prescribed expressis verbis.

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.

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)?

There is a new amendment of the Law on Administrative Proceedings where introducing filters and restricting appeal is foreseen, but is not ratified yet by Lithuania's Parliament.

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:

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- other?

When the Supreme Administrative Court of Lithuania serves as a court of first (and final) instance depending on a nature of case such types of decisions can be announced: where abstract application is lodged requesting investigation of legality of a regulatory administrative enactment passed by central entities of state administration

the Supreme administrative Court of Lithuania can declare such act either to be lawful or contravening to law or regulatory enactment of the Government.

After hearing requests by entities of municipal administration to give conclusions whether a member of municipal administration had broken an oath, the Supreme Administrative Court announces ruling whether oath has been broken or not.

In cases regarding elections (e. g. establishing a fact that presidential candidate provided misleading information about his work, studies or collaboration with certain bodies (structures) or withheld such information), the Supreme Administrative Court declares a fact whether information was withheld or inaccurate.

Procedure in the Supreme Administrative Court never amounts to cassation of the administrative act (as a matter of fact, there is no cassation in the system of administrative courts), also court does not issue an administrative act itself. There is always a possibility to apply to the Constitutional Court of Lithuania with a request to determine whether law or other legal acts, the decree of the President of the Republic or the act of the Government complies with the Constitution.

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?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- issue a legal opinion/authoritative interpretation of the law without connection to a single case?
- other?

According to the Law on Administrative Proceedings, after having heard the case, the appellate court shall have the right to:

- 1) uphold the decision of the court of the first instance and reject the appeal;*
- 2) reverse the decision of the court of the first instance and adopt a new decision;*
- 3) amend the decision of the court of the first instance;*
- 4) reverse the decision of the court of the first instance fully or in part and refer the case to the court of the first instance for holding a de novo hearing;*
- 5) reverse the decision of the court of the first instance and dismiss the case or leave the appeal unconsidered if the circumstances specified in regulations of Law on Administrative proceedings have been established.*

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

If parties do not contest facts already investigated and determined by the lower court, the Supreme Administrative Court does not reinvestigate them and rely on them fully. According to the Law on Administrative Proceedings evidence collected and recorded

according to rules prescribed by law keeps its evidential value in all stages of procedure and is not a subject to revision in the appeal stage of proceedings.

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?

Unless the Law on Administrative Proceedings establishes otherwise, administrative cases shall be reviewed by appeal in accordance with the rules laid down for the first instance.

b) If not, what are the differences?

There can be exceptions (e. g. according to the Law on Administrative Proceedings in cases where court itself decides to investigate legality of a regulatory administrative enactment passed by central entities of state administration written proceedings is in order, whereas courts of first instance have oral hearings; when there are requests by entities of municipal administration to give conclusions whether a member of municipal administration broke an oath such conclusion has to be given in two months since receiving such request etc.). Main difference is timeframes prescribed by law to examine cases.

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?

There is no specific procedure of admittance of appeals. However, starting 2019 the admittance of appeal claim takes place in the court of first instance.

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

There are not.

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?

Yes, they are. The Supreme Administrative Court of Lithuania develops a uniform practice of administrative courts (i. e. regional administrative courts as well) in interpretation and application of statutes and other legal acts.

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

Only when essence of case (ratio decidendi) is not similar enough or the applicable legal act has changed and therefore previous interpretation of provisions no longer applies.

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

It is.

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

Normally there has to be a change in legal acts (i. e. new law or new amendment to the old one), circumstances of reality or developments in jurisprudence of the European Court of Human Rights.

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

There are no sections in the Supreme Administrative Court of Lithuania, yet it is worth mentioning that Court's practice (therefore all decisions) is binding judges in future cases.