



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Croatia



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ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno
(Supreme Administrative Court Brno)

Questionnaire

Introduction:

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

The structure of the administrative judiciary in Croatia is available at the ACA-Europe webpage, Tour of Europe file.

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)

Instance	I.	II.	III.
Name	Administrative Court	High Administrative Court	-
Number of courts	4	1	-
Number of judges	70	23	-

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

1.752 judges

Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.

II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee	yes	yes	-

- b. If you answered *yes*, what is the amount of this fee (in euro)?

The amount of the fee for a complaint to the administrative courts is 54 euro.

The amount of the fee for a complaint to the High Administrative Court in subjective administrative dispute is 67 euro.

The amount of the fee for a request for the assessment of the legality of a general act to the High Administrative Court in subjective administrative dispute is 270 euro.

- c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

The amount of the fee in each of the instances is not the same. The amount of the fee is regulated by law. (see answer b.)

- d. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

The petitioner has to pay the fee after the decision of the court is delivered (within 8 days after the petitioner receives court's decision on the fees).

If the party does not pay the fee, there is the mechanism to enforce payment of fees.

- e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

Yes.

The court fees are regulated by the Court Fees Act (Zakon o sudskim pristojbama) (Official Gazette of the Republic of Croatia, No 118/18.). This Law entered into force on 1st January 2019.

The exemptions from the payment of the court fees are regulated as follow:

- *The Republic of Croatia and government bodies,*
- *persons and bodies exercising public authority in the exercise of these powers,*
- *civil servants in disputes related to their service*
- *invalids of the Croatian War of Independence, and persons with disabilities*
- *spouses, children and parents of Croatian soldiers who were killed, missing and detained in the Croatian War of Independence,*
- *spouses, children and parents of those killed, missing and detained in the Croatian War of Independence,*
- *refugees, displaced persons and returnees,*
- *welfare recipients who receive subsistence allowance,*
- *humanitarian organizations,*
- *plaintiffs in disputes over rights arising from compulsory pension and general medical insurance, over rights of the unemployed pursuant to employment regulations and social welfare rights,*
- *a foreign state, if so provided by international treaty or subject to reciprocity.*

- f. Are non-governmental organizations exempt from the duty to pay the fee?

Yes – but only humanitarian organizations.

- g. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

No.

Croatian court fees waiver system has changed in recent years. Unlike prior legislative solution, administrative bodies now grant waivers instead of courts.

- h. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

The fee is returned if:

- *the person paid the fee that should not be paid (the fee is returned in full),*
- *the person paid the fee more than it was prescribed (the fee is returned partially),*
- *the person paid the fee for a specific court action, but this action is not performed (the fee is returned partially).*

- i. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

No.

- j. Are frivolous petitions penalized? Please explain how and under what conditions.

No.

- k. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

There are no analyses on this topic.

III. Costs of proceedings

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

Yes.

This issue is regulated by article 79. of The Act on Administrative Disputes as follows:

The party which loses in a dispute shall bear the costs of the dispute in full unless otherwise prescribed by the law. If a party wins the dispute in part, the court may order, in view of the success achieved, that each of the parties should bear its costs or that the costs should be distributed pro rata to the success of the parties in the dispute.

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

Article 79. of The Act on Administrative Disputes, which regulates the costs of the dispute, is applicable to each party in administrative dispute (including public authority). In general, the conditions for obtaining the compensation of costs of proceedings are the same, regardless of the party. On the other hand, the court adjudicate the compensation of costs of proceedings only if the costs are justified.

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

The court can decide not to adjudicate the compensation of costs of proceedings only if the costs are not justified.

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

No.

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

The costs of representation by lawyers is regulated by the Tariff.

For claims, answers to claims, motions for interim measures, drafting motions for settlement and submissions containing points of fact and points of law in first-instance administrative disputes: in non-assessable legal matters: 250 points

Representation at the trial: 250 points.

Drafting complaints against judgments and decisions, drafting response to appeals, drafting applications for the extraordinary examination of the legality of a final judgment, for representation at a trial before the High Administrative Court, drafting applications for the initiation of proceedings for the assessment of the legality of byelaws - the remuneration is 312,5 points.

The value of a point is of HRK 10.00 (1.3 EUR).

- f. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner	no	no	-
Representation of opposing party	no	no	-

- g. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

Yes.

- h. What are the forms and conditions of free legal aid? Please explain for all instances.

Free legal aid is possible if the party is unable to pay the cost of legal representation. The request for free legal aid is submitted to the competent administrative body.

- i. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

The conditions for the right to free legal aid are prescribed by law. Types of free legal aid are: primary legal aid and secondary legal aid. The secondary legal aid includes, inter alia, exemption from the duty to pay the judicial fee.

IV. Exclusions and immunities

(Note: If you answer yes to any question in this section, please provide details.)

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

No.

- b. Are there any final administrative acts of a public authority which are not reviewable at all?

No.

- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

No.

- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

Yes, if the public authority decides concerning the private law, the decision is reviewable before civil courts.

- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

Apart from the assessment of legality of individual decisions of a public authority, administrative courts have a competence for assessment of legality of an act of the body of administrative law by which a right, obligation and legal interest of the party was breached against which it is not possible to file a regular legal remedy. In addition, administrative courts have a competence for assessment of the lawfulness of the conclusion, termination and enforcement of administrative contracts.

V. Selection by lower and higher jurisdictions

- a. Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases	no	yes	-

- b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

The High Administrative Court deals with cases in subjective and objective administrative disputes. Only in objective administrative disputes the court has power to select cases, under conditions proscribed by law. In this sense, when the court receives information of illegality of some general act, the Court can decide whether to institute the proceedings ex officio.

- c. Is the power to select cases restricted to certain fields of law? Please give details.

Only in objective administrative disputes the court has power to select cases.

- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

No.

- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

When the High Administrative Court receives the case, it is assigned to a judge. The judge is a member of a chamber which consists of 5 judges. This chamber has to decide (by majority) whether the case will be selected. If the case gets selected, the same chamber decides the merit of the case.

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

If the Court does not select a case, the petitioner will be informed by “informal” letter. If the Court selects a case, the Court makes the decision which is delivered to the petitioner.

- g. Is the court obliged to give reasons when it decides not to select a case?

Yes. If the Court decides not to select a case, there is an obligation to inform the person who filed the motion about reasons for that.

- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

The first instance courts have no power to select cases.

- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

No.

- j. Does a judge determine the order of the cases to decide?

No. The cases must be resolved in the order of receipt in the court.

VI. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

No.

VII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Instance	I.	II.	III.
Case load 2016	14.340	5.017	-
Cases decided 2016	15.665	4.327	-
Case load 2017	11.816	5.040	-
Cases decided 2017	14.944	4.545	-
Case load 2018	13.430	6.026	-
Cases decided 2018	15.574	5.171	-