



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: Czech Republic



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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 administrative judiciary consists of regional courts as the courts of first instance and Supreme Administrative Court as the court of cassation. Against the decision of the regional court in the administrative cases no regular remedy is admissible. However, it is possible to lodge an extraordinary remedy (a cassation complaint), which is then dealt with by the Supreme Administrative Court.

- 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	<i>Regional Court</i>	<i>Supreme Administrative Court</i>	
Number of courts	8	1	
Number of judges	98	32*	

- 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.

3020 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	<i>yes</i>	<i>yes</i>	

* 30 judges by April 1 2019

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

The amount of the fee before regional courts depends on the subject of judicial review. In case of decision of public authority it is 117 euro (3000 CZK), in case of inaction or (factual) interference of public authority 78 euro (2000 CZK) and in case of measure of a general nature 195 euro (5000 CZK).

The amount of the fee before Supreme Administrative Court is 195 euro (5000 CZK).

- 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 is flat.

The same applies to both instances.

- 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 shall pay the fee at the same time as filing the petition (with a fee stamp or by bank transfer). If he does not fulfil his duty to pay the fee, the court shall give him additional time period at least 15 days (exceptionally less). If the petitioner does not fulfil his duty to pay the fee in the additional time period, the court shall discontinue the proceedings.

The same applies to both instances.

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

Exempt from the duty to pay the fee are the public authorities (the State) and the foreigners in proceedings concerning international protection, administrative banishment or detention. Exempt from the duty to pay the fee are proceedings concerning social security (e. g. pension insurance, sickness insurance, state social support and health insurance), elections and competence disputes.

The same applies to both instances.

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

There is no special regulation that would exempt non-governmental organizations from the duty to pay the fee.

The same applies to both instances.

- 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?

Yes, the president of a chamber can upon a request exempt the petitioner from the duty to pay the fee. The exemption can be full or partial. The decision must be reasoned. The exemption is awarded if the financial situation of the petitioner justifies it (the court compares the earnings and property conditions of the petitioner with the amount of the court fee; the obligation to document the lack of funds lies on the petitioner) and if the petition does not represent wilful or probably useless applying or protecting of the right. The full exemption may be only exceptional.

The same applies to both instances.

- 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?

If the petition was rejected (e. g. the court found the petition inadmissible or delayed), the court shall return the fee in full. If the proceedings were discontinued (e. g. in case of the withdrawal of the petition), the court shall return the fee decreased by 20 % or at least by 1000 CZK (40 euro). The court shall return the fee to a person who was not obliged to fulfil the duty to pay. It also returns the overpayment, if it is higher than 50 CZK (2 euro).

The same applies to both instances.

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

No, the petitioner cannot be imposed to pay a deposit before the proceedings commence.

The same applies to both instances.

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

No, frivolous petitions are not penalized.

The same applies to both instances.

- 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?

No, there is not.

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, if a party had full or partial success in the proceedings. The rule that costs follow the event applies.

The same applies to both instances.

- 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)?

Although the conditions described in answer to question a. are fulfilled, the compensation of costs of proceedings to the public authority cannot be adjudicated, if its participation in proceedings falls under the scope of common official activity of the public authority. It means for example that the costs of legal representation are not reimbursed, because it is considered that the activity may be carried out by the personnel of the public authority. Rarely, if the participation of public authority in the proceedings does not fall under the scope of common official activity, the court adjudicates the compensation of costs to the public authority. In addition, the public authority has no right to compensation of costs in cases concerning social security.

The same applies to both instances.

- 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 cost only when extraordinary reasons are given, for example if the compensation of costs is unfair or unreasonable. The court considers each case individually.

The same applies to both instances.

- 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?

General rule described in answer to question a. does not apply in the proceedings concerning review of elections and referendums; no party has a right to compensation of costs. The reason for this exemption is that in this proceedings are protected not only personal subjective rights of petitioner but also public interest of democratic society. No party has a right

to compensation of costs also in the proceedings concerning competence disputes (decided uniquely by the Supreme Administrative Court). In addition, the public authority has no right to compensation of costs in cases concerning social security.

The same applies to both instances (with the exception of competence disputes mentioned above).

- 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 amount of the costs of legal representation (by an attorney) is defined by a tariff. The amount per an act of legal service (e. g. a petition) is in social security cases 1 573 CZK (63 euro) and in other cases 4 114 CZK (165 euro). The same applies to both instances. Roughly, there are two or three acts of legal representation in average in proceedings before the regional court and one or two acts in proceedings before the Supreme Administrative Court.

IV. Representation

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

Instance	I.	II.	III.
Representation of petitioner	No	Yes	
Representation of opposing party	No	No	

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

Yes, the court may appoint an attorney upon a request of a participant.

The same applies to both instances.

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

To a party who complies with the conditions for being exempt from the duty to pay judicial fee (see answer to the question II. g.) and if it is necessary for the protection of his/her rights, the court can appoint a representative, who can also be an attorney.

The same applies to both instances.

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

Yes, the right to free legal aid belongs to a party who complies also with the conditions for being exempt from the duty to pay judicial fee (see answer to question c.).

V. 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, there are not.

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

No, there are not.

- 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, there is not.

- 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 cases concerning relations of private law, the decision is reviewable before civil courts (e. g. decisions of Land Registry). In addition, civil courts decide disputes concerning compensation of material and non-material damage caused by the unlawful administrative act of public authority.

- 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)?

Yes, the administrative judiciary (i. e. both instances) decides in matters of elections (local, national, European) and referendums (local). The Supreme Administrative Court also decides in matters of dissolution, suspension or renewal of political party or political movement and positive and negative competence conflicts between the State administration and self-governing authorities, between different self-governing authorities and between different central administrative authorities.

VI. 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 Supreme Administrative Court selects cases only in the field of international protection. According to a law (legislation) the case is selected, if it substantially exceeds the interests of petitioner (complainant). On this ground, the jurisprudence (case law) of the Supreme Administrative Court selects cases, i) if no previous jurisprudence exists, ii) if the previous jurisprudence is inconsistent, iii) if it decides to change its previous jurisprudence or iv) if substantial deviations of regional court (in particular, if the regional court did not respect previous jurisprudence) may have an impact on legal sphere of complainant.

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

The Supreme Administrative Court selects cases only in the field of international protection and if the subject of judicial review before regional court was an administrative decision.

- 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, it does not.

- 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?

At first the case is assigned to a judge of the Supreme Administrative Court. The judge is a member of an ordinary chamber which consists of 3 judges. This chamber has to unanimously decide 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?

The selection process forms a part of the formal proceedings before the Supreme Administrative Court. If the Court does not select a case, the petition (complaint) is rejected by a resolution (formal decision), which is notified to the parties of the proceedings. If it selects a case, its decision is implicit in the sense that the Court delivers only a final decision (regarding the merit of the case). The grounds on which the case was selected the Court gives in the reasoning of the final decision.

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

Based on a law, the decision of the Supreme Administrative Court does not have to contain reasoning, although according to jurisprudence (in particular, of the Constitutional Court) at least abbreviated reasoning is indispensable.

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

Regional court has 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.

Regional court has no power to select cases.

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

The rule “first come, first served” applies with the exception of cases with fixed time limits for a final decision (e. g. elections) and preferential cases (e. g. international protection, administrative banishment or detention).

The same applies to both instances.

VII. Other measures

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

As a measure which simplifies access to the court may be considered right of non-governmental organizations interested in environmental protection (or with similar interest) to file a petition against a decision of public authority claiming an infringement of their material rights. This measure was established by jurisprudence (case law) on the ground that organization’s right to favourable environment may be infringed by a decision of the public authority, if the organization focuses on protection of the environment in the affected area. Another measure which simplifies access to the court is also concerning protection of the environment. Non-

governmental organizations with main interest in environmental protection may become a party in administrative proceedings according to special law and thus have the right to file a petition to administrative court against the decision of a public authority claiming an infringement of their procedural rights.

Finally, it is generally considered that the administrative judiciary is also open to the State. It means that the State may be a petitioner before the regional court and the disputes between the State (one public authority) and the State (another public authority) are, therefore, subject to administrative judicial review.

VIII. 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	10 101	3 246	
Cases decided 2016	9 637	2 954	
Case load 2017	10 670	3 902	
Cases decided 2017	10 113	3 442	
Case load 2018	<i>Data not yet available</i>	4 109	
Cases decided 2018	<i>Data not yet available</i>	3 489	