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: Estonia

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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.

In general, Estonian country report from 2014 at Tour d´Europe is in most parts up to date. It is correct about the structure of the administrative judiciary. The information needs to be updated for section 11. "Status of judges who review administrative acts", as the numbers of judges in the Estonian court system and among this in administrative courts of I and II instance have changed, and for following sections 12.–15.

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	Tallinn Administrative Court Tartu Administrative Court	Tallinn Circuit Court Tartu Circuit Court	Supreme Court of Estonia
Number of courts	2	2	1
Number of judges	17 8	7* 5*	5*

*Members in the administrative law chamber of the circuit court or of the Supreme Court.

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.

At the end of 2018, there were altogether 237 judges in all jurisdictions in Estonia. According to law, there are altogether 242 positions for judges in all Estonian courts, so at the end of the year 2018 there were five vacant positions.

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.).

Yes.

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

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

In the first and second court instant, the state fee is usually 15 EUR (State Fees Act (henceforth: SFA[1]) § 60 (1) and (7)). In case of actions for compensation or other actions with a monetary value (for example disputing tax decisions or penalty payments), the fee is three per cent of the amount in dispute, but no less than 15 EUR and no more than 750 EUR (§ 60 (2) and (4) SFA). In public procurement disputes, the fee is 640 EUR for procurements below the international threshold and 1280 EUR above the threshold (§ 60 (5) and § 258 (1) SFA).

When lodging an appeal in cassation or petition for review in the Supreme Court, a security in cassation of 25 EUR is paid (§ 107 (1) and (2) in Code of Administrative Court Procedure (henceforth: CACP[2])).

In the case that an action contains several claims, including alternative claims, the state fee must be paid on the claim the making of which entails payment of the highest of the corresponding fees. In the case of an action brought by several persons jointly, the state fee must be paid by each of those persons in the full amount provided by law. (§ 104 (1) CACP)

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 fee is flat. Some particular actions are exempted from the state fee. An applicant for procedural assistance may be granted assistance from the government towards payment of procedure expenses (see answer to question **g**).

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?

Information concerning the payment of the state fee, or an application for procedural assistance must be already annexed to the action at the very beginning of the procedure (§ 39 (1) 4) CACP). If the state fee on an action has not been paid or the sum paid falls below what is required by the law, the court sets a time-limit for the payment of the state fee or of a supplementary state fee. If the state fee is not paid by the established date, the action is returned or dismissed (§ 104 (2) CACP). When the court returns the action (by making a corresponding order) to the person who submitted that action, this person can file his/her action again after paying the fee.

[1] Available in English: https://www.riigiteataja.ee/en/eli/526032019005/consolide.
[2] Available in English: https://www.riigiteataja.ee/en/eli/521032019005/consolide.

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 Republic of Estonia as a participant of proceedings is exempt from paying the state fee and the security (§ 104 (10) and § 107 (9) CACP). Also, an agency of a local government or an agency administered thereby is exempt from payment of state fees if the person applying for the act and the performer of the act are agencies of the same local government or agencies administered thereby (§ 21 SFA).

A state fee is not charged for hearing an appeal against an order and a protest in administrative matter; and hearing an application for procedural assistance (§ 22 (1) 9) and 10) SFA). For explanation, a protest according to § 256 (1) CACP to protect the public interest may be brought by an administrative authority in whom that right has been vested by the law. A protest brought in an administrative court may make the following claims:

1) annulment in part or in full of an administrative act (annulment protest);
2) the issue of an administrative act or the taking of an administrative measure (mandatory protest);
3) forgoing the issue of an administrative act or the taking of an administrative measure (prohibition protest);
4) elimination of unlawful consequences of an administrative act or measure (reparation protest);
5) ascertainment of the nullity of an administrative act (declaratory protest). (§ 255 CACP)

Some examples of areas of disputes exempt by law from the payment of state fees:

- A pension or support claimant, in a matter concerning unduly paid benefit or pension amounts or failure to pay such sums (§ 22 (1) 2) SFA);
- reinstatement in service, or amendment of the written legal basis for release from service (§ 22 (1) 1) SFA);
- hearing of an action or appeal for compensation for damage caused by bodily injury, another health disorder or the death of a provider (§ 22 (1) 12) SFA).

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

No.

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.

By way of procedural assistance, the court may rule, if a person requests this, that the recipient of procedural assistance is exempted in part or in full from the payment of the state fee or the security on certain proceedings or from the payment of other legal costs or the costs of translation of

procedural documents. Alternatively, that the recipient is allowed to pay the state fee, the security on certain proceedings or the costs of translation of procedural documents in instalments by way of periodic payments during a period established by the court, *etc*. (§ 110 (1) CACP).

In general, an applicant for procedural assistance is granted the assistance if that applicant is unable, due to his or her financial situation, to pay the procedure expenses or if he or she is only able to pay those expenses in part or by instalments (§ 110 (1) CACP). In addition, there should be sufficient ground to believe that the envisaged participation in the proceedings holds good prospects (§ 111 (1) CACP).

When assessing the prospects of participation in the proceedings, amongst other things the significance of the matter for the applicant for procedural assistance is to be considered (§ 111 (2) CACP). Procedural assistance is to be refused to a person whose participation in the proceedings is not reasonable, in particular when it is manifest that the applicant does not have the right of action, when an eventual benefit which the applicant stands to gain from the matter is unreasonably small compared to the estimated expenses of court proceedings, or when the action is not suited to achieving its aim (§ 111 (3) CACP).

Procedural assistance is not granted to a natural person if: 1) the procedure expenses do not exceed two times the average monthly income of the applicant for the assistance, calculated on the basis of the average monthly income for the four preceding months from which amount the taxes, mandatory insurance premiums and any sums required to perform maintenance obligations, as well as reasonable cost of accommodation and transport and other inevitable costs, deduction of the inevitable costs on a monthly basis being allowed up to the rate of 75% of the minimum monthly salary rate; 2) the applicant for procedural assistance is in a position to cover the procedure expenses by selling an existing item or items of his or her property which can be sold without significant difficulty and against which the law allows claims for payment to be made; 3) the proceedings are related to the economic or professional activity of the applicant for procedural assistance and do not concern any of the applicant's rights which are unrelated to such activity (§ 112 (1) CACP). Legal persons may only be exempted from the payment of the fee if their seat is located in Estonia or in another EU member state (§ 113 (4) CACP).

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?

A state fee which has been paid is returned:
1) to the extent that the sum paid exceeds the sum due, provided a higher amount has been paid than was required by the law;
2) in general, if the court returns the action to the person who brought it (there are some exceptions; see answer to question j);
3) if the court refuses to hear the action (there are some exceptions);
4) in certain situations where the court terminates proceedings in the matter (§ 104 (5) CACP).

In the case that the amount of the state fee paid exceeds 31.94 EUR, one-half of the fee paid is returned if:
1) the parties reach a compromise;
2) the applicant discontinues the action (§ 104 (6) CACP).

Usually, the state fee is returned on the basis of the corresponding demand by the person who was obligated to pay the fee. Where necessary, the court may also, of its own motion, return the state fee to be returned (§ 104 (8) CACP).

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.

By making a corresponding order, the court may return the action to the person who submitted that action if the applicant has to a significant extent been abusive of his or her right to bring an action and if infringement of the right for which the action seeks protection is a minor one. In this case, the state fee will not be returned (§ 104 (5) 2) and § 121 (2) 2^2) CACP).

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?

In 2009 the Constitutional Review Chamber of the Supreme Court has said that „The bigger a state fee, the more intensively it restricts the general fundamental right to effective legal protection and fair trial. If the amount of a state fee prevents a person, who is not eligible for the state procedural assistance, from exercising his or her rights in the courts, the state fee is disproportionate and, thus, unconstitutional. /---/ On the other hand, the principle of economy of proceedings is important, too. The hearing of appeals which are unfounded, vexatious, etc., may bring about a situation where the court system will not be able to ensure that persons get effective legal protection within a reasonable time. The handling time of court cases is extended and the workload of the courts increases unnecessarily."[3]

The state fee of 15 EUR paid upon filing an action in administrative procedure seems to have only a moderately dissuasive effect. For most people, 15 EUR is not a difficult sum to pay, and many types of claims where a difficult financial situation of the claimant could be presumed (social support or pension disputes, disputes about wages or termination of civil service) are automatically exempt from payment of state fees. However, the higher state fees for monetary claims have a stronger dissuasive effect, in combination with the fact that procedural assistance is only granted in case the action holds good prospects. Due to the high number of actions brought to administrative courts by prisoners, there has been more discussion on the dissuasive effect of those fees on them, considering that their financial situation is usually worse and thus, for them, 15 EUR is often a considerable sum. However, if there is sufficient ground to believe that the envisaged participation in the proceedings holds good prospects, in most cases the prisoner will receive procedural assistance to pay the court fee because of his or her

[3] Judgment of the Constitutional Review Chamber of the Supreme Court, 17.07.2009, in case no. 3-4-1-6-09, p 22. Available in English: https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-6-09

financial situation. Thus, it has been found that the state fee has no real dissuasive effect on prisoners.[4] Another group in a financially difficult situation, applicants for international protection, in practice almost always receive procedural assistance including being exempt from paying state fees.

There has also been discussion whether using state fees for their dissuasive effect is reasonable at all, since disproportionately high fees would also limit the submission of well-founded and non-malicious actions. Bases for returning malicious or obviously unfounded actions also exist outside the context of state fees (see also answers in part VI).[5]

Unfortunately, we know of no special analysis concerning the court fees´ effects in administrative justice. Doingbusiness.org collects yearly data about *inter alia* the indicators about enforcing contracts (resolving commercial disputes) in Estonia, but that concerns only the cost of civil proceedings in court. Estonian data for 2019 show the ranking as the 13th country among 190 countries in the enforcing contracts category and an overall ranking as the 16th country in the world in ease of doing business. If the considerably higher state fees in civil proceedings are regarded as moderate, the court fees in administrative justice should not be considered disproportionately dissuasive either. European e-justice project´s country report about Estonia covers also only the costs of civil judicial proceedings.

In the last bigger revision of CACP by the legislator, made for the efficiency of the administrative court proceedings, the code was changed and since 01.01.2018, the state fee is not charged for hearing an appeal against an order in administrative matters (§ 22 (1) 9) and 10) SFA). This change was justified by a considerable workload due to dealing with procedural assistance (preparing and delivering orders, solving appeals against orders). It was analysed that the income to the state budget was small in comparison to the amount of time spent and direct costs, the workload of the courts and the slowdown of the main proceedings. Therefore, it was concluded that the state fee charged for hearing of an appeal against an order was economically ineffective.[6]

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, the court can adjudicate the compensation of costs of proceedings to the participant. This is regulated in §§ 108–109 of the CACP.

Procedure expenses are to be **borne by the party against whom judgment is given** in the matter, including any third party who has lodged an appeal or a petition for review (§ 108 (1) CACP). The **expenses of a third party** are compensated by the party adverse to their party according to the same rules that apply in respect of the payment of compensation to a party. If the adverse party has not been ordered to pay the expenses, the expenses of the third party are borne by the third party themselves (§ 108 (8) CACP). If the **respondent admits the action**, they do not bear the procedure

[4] Kool, Kristi. Opportunities to make administrative court proceedings more efficient when processing the actions of prisoners. Master´s thesis. University of Tartu, 2018, see p 69.

[5] Kuusk, Pihel; Vallimäe-Tuberg, Külli. Väiksed lõivud, suured mured. Menetlusabi andmine halduskohtumenetluses. Kohtute aastaraamat 2014, p 49. (Small fees, big troubles. Procedural assistance in administrative proceedings. Yearbook of Estonian Courts 2014, p 49.)

[6] Explanatory Memorandum to the draft law 17-0116, p 5.

expenses, which arise after the admission. If the admission is rejected because a third party does not agree, and the action is granted, the third party bears those expenses (§ 108 (5) CACP). The respondent may be ordered to bear the procedure expenses that the applicant incurred in relation to bringing the annulment action, if the court forgoes declaring the administrative act null and void primarily on account of the **reasons given in court proceedings** and the court considers those reasons to have guided the administrative authority when making the administrative act (§ 108 (6^1) CACP). If a participant in the proceedings **abuses their rights** under the rules of procedure by delaying the proceedings with malicious intent, the court may order the participant to pay part of the expenses which the other participants incurred as a result of such actions (§ 108 (9) CACP). In the case that an appellant **prevails in their appeal** because of a fact, which they could have relied on already in the administrative court, the court may order the appellant to pay a part or all of the expenses related to the appeal (§ 108 (10) CACP).

In the case of a **partial grant of the action** the expenses are divided in proportion to the grant (§ 108 (2) CACP).[7] An exception to this is if the action is granted to an extent that was proposed during the proceedings by way of a compromise by one of the parties. In that case, the court may order the party who did not agree to the compromise to pay the entire amount or a large part of the procedure expenses (§ 108 (3) CACP).

If the **court returns the action**, refuses to hear the action or terminates proceedings, the applicant bears the procedure expenses unless provided otherwise (§ 108 (4) CACP). However, procedure expenses are to be borne by the respondent if proceedings are terminated because the respondent declared the contested administrative act invalid, or issued the administrative act or took the administrative measure demanded – unless these activities did not result from the bringing of the action (§ 108 (6) and § 152 (1) 4) CACP). An applicant who discontinues the action bears the procedure expenses. If the participants have concluded a compromise without agreeing on the division of procedure expenses, the expenses are to be borne by the participants themselves (§ 108 (7) CACP).

To obtain compensation for procedure expenses, a **list of procedure expenses and the expense documents** are to be submitted to the court before the commencement of summations or, in written procedure, within the time limit established by the court. If the aforementioned documents are not submitted, the compensation of expenses is not awarded (§ 109 (1) CACP).

The court that dealt with the matter sets out the division of expenses and orders compensation of those expenses in the **decision (judgment or order) by which it terminates proceedings** in the matter (§ 109 (2) CACP). In the case that the higher court varies the decision of the lower court or enters a decision without returning the matter for a new hearing, the higher court changes the division of expenses (§ 109 (4) CACP).

[7] This division depends on the substance of the case. In case of a monetary dispute, the division is simple and based on percentages. On the other hand, if the action contains several claims, which do not all have a direct monetary value, the division does not always follow the number of claims granted vs. not granted. Rather, it sometimes depends on the substantial importance of the claims in relation to the purpose of the applicant (see, for example, judgments of the Administrative Law Chamber of the Supreme Court of Estonia, 05.05.2011, in case no. 3-3-1-17-11, available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-17-11, and 30.11.2010, in case no. 3-3-1-63-10, available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-63-10).

There are two bases for the court to **reduce the compensation of expenses** by the losing party. One of these is in § 108 (11) CACP, according to which the court may order the parties to bear a part or all of their own expenses, if it would be highly unjust or unreasonable to order the party against whom judgment was given to pay the expenses of the adverse party. The other basis is that the court only orders compensation of procedure expenses which are necessary and reasonable (§ 109 (6) CACP). Especially the latter provision is relied upon often to reduce the expenses. A special provision on the necessity of expenses is related to expenses on several contractual representatives: these are only compensated if they are caused by the complexity of the matter or the need to change representatives (§ 108 (12) CACP and § 175 (3) of the Code of Civil Procedure (henceforth: CCP)[8]). According to § 108 (12) CACP, the court verifies the reasonableness and necessity of the expenses even when no objections have been filed in respect of the expenses.

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)?

There is no provision that forbids the **compensation of costs of proceedings to the public authority**. However, it is the settled case law of the Administrative Law Chamber of the Supreme Court that costs of contractual representatives are usually not compensated to public authorities, even in case of the action being unsuccessful, as they are considered unnecessary (with reference to § 109 (6) CACP). While public authorities are not forbidden to use contractual legal representation, the subject matter of the case must fall outside the daily main activities of the authority in order to justify the compensation of the expenses incurred – usually, the public servants working for the authority are presumed capable of defending the authority's own activities.[9] Among other aspects, the principle of proportionality, the economic situation of the applicant and the possible maliciousness of the action are also taken into account when deciding on this issue.[10] A typical example where the compensation of costs to the public authority is generally considered justified are public procurement disputes. The Administrative Law Chamber of the Supreme Court has reasoned that public procurement disputes cannot be considered part of a public authority's daily main activities, but rather a side function.[11] On the other hand, for example disputes concerning public service are deemed to be among an authority's daily activities and thus legal representation not compensated.[12]

[8] Available in English: https://www.riigiteataja.ee/en/eli/512042019002/consolide.

[9] Even in front of the European Court of Justice in preliminary ruling procedure. (see judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 15.03.2019, in case no. 3-14-436, available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-14-436/115)

[10] See, for example, judgments of the Administrative Law Chamber of the Supreme Court of Estonia, 25.04.2010, in case no. 3-3-1-9-10, available in Estonian: https://rikos.rik.ee/?asjaNr=3-3-1-9-10, and 10.11.2016, in case no. 3-3-1-50-16, available in Estonian: https://rikos.rik.ee/?asjaNr=3-3-1-50-16.

[11] Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 15.01.2015, in case no. 3-3-1-68-14, available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-68-14.

[12] Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 19.04.2016, in case no. 3-3-1-83-15, available in Estonian: https://rikos.rik.ee/?asjaNr=3-3-1-83-15.

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 situations where costs of proceedings can remain uncompensated are described in answers to questions **a** and **b**.

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?

There are no such areas of national administrative law. One area with certain additional rules is environmental law, where in addition to the aforementioned rules and principles, references to art 9 (4) of the Aarhus Convention have been used to justify the reduction of the compensation for costs.[13]

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)?

There is **no tariff** to determine the amount of the costs of legal representation. The price of legal representation is stipulated between an attorney and their client without any limitations, but the complete sum may not always be compensated, as explained in the answer to question a. In practice, the sum compensated has been reduced both with the reasoning that the number of hours the representative reportedly spent on the case is unnecessarily high (more common), and that the hourly fee was unreasonably high (this mostly if the hourly fee of the same representative is increased disproportionately during the same proceedings)[14]. One of the typical reasons for the reduction is that expenses in appeals and cassation procedure should not exceed those of the lower instance(s), since normally it takes less time to work on the case in higher instances.[15] Another limitation referred to in case law is the predictability of the costs (i.e. comparison with earlier cases of similar complexity and workload).[16]

IV. Representation

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

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[13] See, for example, judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 15.12.2014, in case no. 3-3-1-67-14, available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-67-14.

[14] Judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 05.02.2013, in case no. 3-3-1-66-12, available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-66-12. A reasonable increase in the hourly fee is accepted. (judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 03.03.2015, in case no. 3-3-1-82-14, available in Estonian: https://rikos.rik.ee/?asjaNr=3-3-1-82-14)

[15] Unless there are exceptional circumstances, like for example preliminary ruling procedure in front of the ECJ as part of the cassation proceedings. (see judgment of the Administrative Law Chamber of the Supreme Court of Estonia, 18.10.2012, in case no. 3-3-1-55-10, available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-55-10)

[16] See, for example, judgment of the Administrative Law Chamber of the Supreme Court of Estonia, in case no. 3-3-1-35-13, available in Estonian: https://www.riigikohus.ee/lahendid?asjaNr=3-3-1-35-13.

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

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

Yes, under the conditions described in answer to question **c**.

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

Free legal aid is only provided if certain conditions are met. According to § 110 (1) 3) CACP, by way of procedural assistance the court may rule, if a person requests this, that the recipient of procedural assistance does not have to pay the fee for the services of an advocate appointed by way of procedural assistance or does not have to pay the fee immediately or in the full amount. The specifics of legal aid are regulated in the State Legal Aid Act[17] (henceforth: SLAA).

A **natural person** may receive state legal aid if they are unable to pay for competent legal services due to their financial situation at the time the person needs legal aid or able to pay only partially or in instalments, or if the person's financial situation does not allow for meeting basic subsistence needs after paying for legal services (§ 6 (1) SLAA). Unless there is an international obligation otherwise, state legal aid is only provided to natural persons who are domiciled in a Member State of the European Union or who are citizens of a Member State of the European Union (§ 6 (1^1) SLAA). In addition, state legal aid may be provided to a **non-profit association or foundation** included in a tax-incentives-based list, or that is insolvent and applies for state legal aid in the field of environmental protection or consumer protection, or there are other overriding public reasons for granting state legal aid (§ 6 (3) SLAA). The applicant must provide certain **data and documents** to show their financial situation, as well as explain the problem that they need legal aid for and their possible gain from the case (§§ 12–13 SLAA). The application must be in Estonian, but may also be in English in case of persons with domicile or citizenship of another Member State of the EU. Translation of applications in other languages widely used in Estonia (this most importantly includes Russian) is organised by the processing authority (§ 12 SLAA).

However, there is a list of **grounds for refusal to grant state legal aid** (§ 7 (1) SLAA), if:
1) the applicant is able to protect their rights on their own;[18]
2) the applicant cannot have the right for the protection of which the applicant is applying for state legal aid;

[17] Available in English: https://www.riigiteataja.ee/en/eli/517012019003/consolide.
[18] This is interpreted in practice in conjunction with the fact that administrative courts have extensive obligations to investigate the facts of their own motion and to provide sufficient explanation to participants in proceedings at every stage of the proceedings. (§ 2 (4)–(5) CACP) However, according to § 7 (3) SLAA, state legal aid may be granted without this restriction, if the assistance of an advocate is clearly necessary for the correct adjudication of the case in order to ensure the equality of the parties or due to the complexity of the case.

3) the applicant could bear the costs of legal services at the expense of their existing property that can be sold without any major difficulties and which can be subject to a claim in accordance with law;
4) the costs of legal services do not presumably twice exceed the applicant's average monthly income that is calculated on the basis of the average monthly income in the last four months preceding the submission of the application, from which taxes and compulsory insurance payments, amounts earmarked for fulfilment of a maintenance obligation arising from law and also reasonable housing and transport costs have been deducted;
5) under the circumstances it is clearly unlikely that the applicant will be able to protect their rights;
6) state legal aid is applied for in order to file a claim for non-pecuniary damages and there are no overriding public reasons in the case;
7) the dispute is related to the business activities of the applicant and does not harm their rights that are unrelated to their business activities;
8) state legal aid is applied for to protect a trademark, patent, utility model, industrial design or a layout-design of integrated circuits or another form of intellectual property, except rights arising from the Copyright Act;
9) state legal aid is applied for in a case in which the applicant clearly has joint interests with a person who is not entitled to state legal aid;
10) state legal aid is applied for to protect a right transferred to the applicant and there is reason to believe that the right was transferred to the applicant in order to receive state legal aid;
11) provision of legal services is guaranteed to the applicant under a legal expenses insurance contract or compulsory insurance;
12) the possible gains of the applicant upon adjudication of the case are unreasonably small in comparison with the estimated legal aid expenses of the state.

State legal aid may be granted either without the **obligation to compensate** for the fee or expenses, or with the obligation to partially or fully compensate for the fee or expenses either in a lump sum or in instalments (§ 8 SLAA).

Types of legal aid for administrative disputes include representing a person in administrative proceedings or administrative court proceedings (including review proceedings), in enforcement proceedings, drawing up legal documents and other legal counselling or representing of a person (§ 4 (3) SLAA). A person who has received state legal aid retains the right to receive it if the case is transformed to another type [for example administrative proceedings come to an end and the person turns to court to contest the administrative act] and the advocate appointed earlier will continue to provide state legal aid to the person. The court who decided the granting of state legal aid may, based on the request of the advocate providing state legal aid or on its own motion, at any time reassess whether the grounds of granting state legal aid to the applicant continue to exist and, if the grounds for granting state legal aid have ceased to exist, terminate the aid (§ 17 (1) SLAA). The **continuity of state legal aid** includes appeal proceedings and compulsory enforcement proceedings concerning the same case (§ 17 (3) SLAA).

State legal aid is granted by an order of the court, on the basis of which the **Bar Association** will promptly appoint an advocate to provide the aid (§ 18 (1) SLAA). The order is forwarded to the Bar

Association electronically through an information system (§ 18 (1^1) SLAA and the regulation of the Minister of Justice, 06.12.2013, no. 39[19]).

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

There is **no direct connection**. Obviously, when considering the financial criteria for these two types of procedural assistance, if the person is unable to pay the judicial fee, they are very probably also incapable of paying for legal representation (the opposite, however, might not be true, since judicial fees are generally much lower than costs of legal representation). Another common basis for both types of procedural assistance is the requirement that the case not be hopeless. However, since there are extensive grounds for refusal to grant state legal aid that do not apply to exemption from the duty to pay the judicial fee they must be decided separately.

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)?

Yes, in some types of cases.

The law may prescribe mandatory challenge proceedings or other mandatory pre-action proceedings for determining certain types of claims. In that case, an action may be filed only if the person has followed the pre-action procedure prescribed for dealing with the claim and only to the extent that the person's claim has not been satisfied in the pre-action proceedings within due time. (§ 47 (1) CACP) These cases include *i.a.* the prisoners´ and persons´ in custody right to file complaints against administrative acts issued or measures taken by a prison (§ 1^1 (5) Imprisonment Act[20]) and public procurement disputes (§ 268 (1) CACP and § 185 (1) Public Procurement Act).

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

It is not clear.

The President's resolutions regarding reviews of appeals for clemency of convicted offenders are acts of individual application and thus do not fall within the scope of the review of the Chancellor of Justice. The President passes resolutions in order to perform her constitutional duties and the Chancellor of Justice performs the oversight of legislative acts of the President. (See § 13 (5), § 14 (4) and § 18 (2) President of the Republic Work Procedure Act[21]). There has been some discussion whether the President's resolutions regarding reviews of appeals for clemency of convicted offenders are subject to judicial review in administrative courts. The Constitutional Review Court Procedure Act (henceforth:

[19] Available in Estonian: https://www.riigiteataja.ee/akt/121052014022.
[20] Available in English: https://www.riigiteataja.ee/en/eli/512032018002/consolide.
[21] Available in English: https://www.riigiteataja.ee/en/eli/504072017010/consolide.

CRCPA[22]) foresees only that a person who finds that his or her rights have been violated by a decision of the President of the Republic on the appointment to or release from office of an official may submit a request to the Supreme Court to annul the decision of the President of the Republic (§ 18 CRCPA).

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 no public authority whose administrative acts overall are not subject to judicial review.

See also answer to previous question.

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.

The complaints against resolutions and decisions of *Riigikogu* (Parliament), the Board of *Riigikogu* and of President of Republic; the termination of activities of a political party and the complaints and protests against acts of elections manager or decisions or acts of electoral committee fall within the competence of the Constitutional Review Chamber or the General Assembly of the Supreme Court. (Chapters 3, 5 and 6 CRCPA).

In detail, a special procedure is foreseen for review of complaints against the actions of the elections manager or the decision or actions of the electoral committee by the National Electral Committee followed in second instance by the Constitutional Review Chamber (§ 60 (2) Referendum Act,[23] see § 37 (1) CRCPA).

What is more, everyone has the right to file a complaint to the Estonian Data Protection Inspectorate. According to § 28 (1) Personal Data Protection Act (Henceforth: DPA)24 if any data subject finds that the rights of the data subject are violated upon processing of personal data, the data subject has the right to address the Estonian Data Protection Inspectorate with a complaint. The Estonian Data Protection Inspectorate shall notify the data subject of the decision made based on the data subject's complaint and the right to have recourse to courts in order to contest the decision of the Estonian Data Protection Inspectorate. (DPA § 28 (2)) If a competent supervisory authority of another Member State of the European Union has jurisdiction in solving the complaint of the data subject, the Estonian Data Protection Inspectorate shall refer the data subject to the competent supervisory authority of the other Member State of the European Union for filing the complaint (DPA § 28 (3)). However, this procedure does not exclude turning to court.

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)?

[22] Available in English: https://www.riigiteataja.ee/akt/107032019003.
[23] Available in English: https://www.riigiteataja.ee/en/eli/502012019006/consolide.
[24] Available in English: https://www.riigiteataja.ee/en/eli/523012019001/consolide.

In addition to the review of administrative acts, measures or inactivity by public authorities, there are certain types of disputes about private law contracts that administrative courts are competent to solve. According to § 5 (2) CACP, if an administrative act contains, or serves as the basis of, a private law declaration of intent by the respondent, the court may, when it annuls the administrative act, also ascertain the nullity of the transaction which the declaration of intent aimed to accomplish. In addition, disputes arisen from entry into or amendment of public contracts are also in the competence of administrative courts, along with other public procurement matters (§ 266 (1) CACP).

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	yes (restricted)	yes (restricted)	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 **administrative courts** (i.e. courts of first instance) normally have no power to select cases. However, there are some discretionary grounds for returning the action that may be considered as selection of cases by the court. In addition to formal requirements which are always basis to return the action, the court may return the action if: 1) it is manifest that the applicant has no right of action in the matter; 2) granting the action would not achieve the aim of the action; 2^1) encroachment on the right that the action seeks to protect is a minor one and, in the circumstances, there is little probability of the action being granted; 2^2) the applicant has to a significant extent abused their right of action and encroachment on the right that the action seeks to protect is a minor one (§ 121 (2) CACP). Especially the latter two bases give the court of first instance a wide range of discretion in deciding whether to return the action or hear the case. The bases were added to the CACP rather recently (entry into force 01.01.2018), so there is not yet much Supreme Court case law on them. However, there is one case where the Supreme Court annulled the order of an administrative court whereby an action had been returned based on section 2^1 cited above.[25] The Supreme Court connected the term "minor encroachment on the right" to § 133 (1) CACP which gives the basis to hear a case in simplified proceedings. According to that provision, in the case of legal values that can be appraised in monetary terms, encroachment is deemed to be a minor one primarily when the disputed legal value is not valued higher than 1000 euros. Thus, in this dispute, the Supreme Court referred to the fact that the monetary damage from the administrative act contested could be more than 1000 euros, so the encroachment cannot be deemed a minor one. In addition, the Supreme Court found in this case that since the applicant's claims were not manifestly ungrounded and the administrative court can collect additional evidence, the second condition (little probability of the action being granted) was not fulfilled. According to the earlier case law of the Supreme Court in the context of simplified

[25] Order of the Administrative Law Chamber of the Supreme Court of Estonia, 01.11.2018, in case no. 3-18-763, available in Estonian: https://rikos.rik.ee/?asjaNr=3-18-763/15.

proceedings, if a person's important right (for example life, health, freedom) may have been intensely encroached upon, the monetary value of the good is irrelevant.[26]

The grounds for returning an appeal for **circuit courts** are somewhat similar to those for administrative courts. An appeal is returned, *inter alia*, if it is manifest that the appeal cannot be granted, presuming that the assertions made in the appeal are true, or if the appellant does not have right of appeal or if it is manifest that, because of a change in the circumstances, the judgment to be entered in the matter could no longer affect the rights or obligations of the appellant (§ 187 (3) 5) and 6) CACP). In addition, the circuit court may return the appeal if the law permits the matter to be considered by simplified procedure [i.e. minor encroachment on the right that the action seeks to protect] and if, under the circumstances, there is little probability for the appeal to be granted (§ 187 (3^1) CACP).

The **Supreme Court** has a leave of appeal procedure. It only accepts an appeal in cassation if: 1) the positions stated in the appeal warrant the conclusion that the circuit court has incorrectly applied a rule of substantive law, or has significantly infringed the rules of court procedure, which has resulted or could have resulted in an incorrect judgment being entered, or 2) the decision on the appeal is of considerable import from the point of view of ensuring legal certainty or uniformity of approach in the case-law of the courts (§ 219 (3) CACP). An appeal is not accepted if the Supreme Court is convinced that the grounds for accepting the appeal listed above are absent. In addition, acceptance of the appeal is not required in the case that the Supreme Court is convinced that it will be impossible, by conducting cassation proceedings in the matter, to achieve the aim of the appeal. If encroachment on the right that the appeal seeks to protect is a minor one and the law would permit the matter to be considered by simplified procedure, the Supreme Court accepts the appeal only if the decision of the Supreme Court holds fundamental importance from the point of view of uniform application of the law or of development of the law (§ 219 (6) CACP).

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

No.

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.

Administrative courts are not competent to hear cases involving criminal law (neither crimes nor misdemeanours).

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?

The court that would ultimately hear the case is also competent to decide on accepting the case. The selection takes place in the same preliminary part of proceedings as checking whether the formal and material prerequisites of accepting an action or an appeal are met. In the first instance, the decision is

[26] Order of the Administrative Law Chamber of the Supreme Court of Estonia, 28.01.2014, in case no. 3-3-1-80-13, available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-80-13.

made by a single judge, in appeal as well as cassation procedures by a three-member panel. There is no special panel for that purpose.

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 is decided by an order of the court (§ 121 (1) CACP, § 187 (2) CACP, § 219 (7) CACP). This order must be served on the participants in proceedings (§ 179 (1) 2) CACP, § 189 (6) CACP) or in the case of the Supreme Court, sent to all participants in proceedings (§ 219 (7) CACP) and published on the website of the Supreme Court for 30 days (§ 219 (9) CACP).

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

The relevant orders of the first and second instance courts must be reasoned (§ 178 (2) CACP and § 465 (2) 8) CCP). The order of the Supreme Court must set out the legal basis for the acceptance or refusal to accept (§ 219 (7) CACP).

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

Yes. An interlocutory appeal may be lodged against an order by which the court of first instance returns the action, and the order made by the circuit court in respect of the appeal is subject to interlocutory appeal to the Supreme Court (§ 121 (4) CACP). The appellant may lodge an interlocutory appeal with the Supreme Court against the order by which the court refuses to accept their appeal (§ 187 (7) CACP).

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?

Yes. However, the judge is limited by the need to deal with the matter justly, fairly and within reasonable time (§ 2 (2) CACP). The reasonable time requirement is specified in § 100 CACP that allows participants in proceedings to apply to expedite judicial proceedings, if proceedings in an administrative matter have endured for at least nine months and the court, without having a valid reason, does not perform a necessary procedural act, in order to ensure the conclusion of judicial proceedings within reasonable time. In addition, some types of cases have priority: applications for interim relief, granting permission for administrative measures and public procurement disputes.

VII. Other measures

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

One of the measures that restrict access to courts is that there are certain **time limits for bringing an action** (§ 46 CACP). An annulment action may be filed within 30 days after the notification of the

administrative act. A mandatory action may be filed within 30 days after the notification of the refusal or, in the case of an omission or delay, within one year after the time limit for the administrative act or measure or, if there is no such time limit, within two years after the administrative act or measure was applied for. A compensation action or reparation action may be filed within three years of becoming aware of the harm and of the person who caused the harm, but no later than ten years after the administrative act or measure. An action to establish the unlawfulness of an administrative act or measure may be filed within three years after the administrative act or measure. Other declaratory actions, as well as prohibition actions have no time limit. There are also time limits for appeal and appeal in cassation: usually 30 days (§§ 181 and 212 CACP). These time limits may, however, be restored, provided there was a valid reason for not observing the time limit (§ 71 CACP).

There are also several requirements for the **form and content of the action** (§§ 38, 52 and 54 CACP), **appeal** (§ 182 CACP) and **appeal in cassation** (§ 213 CACP). However, even if these are not followed, they do not immediately lead to the returning of the action, but rather the court must establish a time limit for curing the defects and explain which defects need to be cured (§ 120 (3), § 187 (4) and § 217 CACP). It may be regarded as a simplification of the access that while professional participants (i.e. legal representatives, legal persons and administrative authorities) are required to submit applications, including actions, in an electronic format (§ 53 (1) CACP), other kinds of participants (i.e. natural persons not represented by professionals) are not required to do so.

It may also be considered a restriction that the **working language** of the court proceedings is Estonian (§ 80 CACP) and if a declaration (including an action) is made in another language, the court requires the participant to provide a translation, unless this is impossible or unreasonably complicated for the participant (§ 81 (1)–(2) CACP). However, based on the participant's application, the court may also arrange the translation itself (§ 81 (6) CACP) and one of the means of procedural assistance is exemption in part or in full from the payment of the costs of translation (§ 110 (1) 1) CACP).

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).

Under a "case load", we report the number of applications (actions, appeals against judgments or against a court order, appeals in cassation, and petitions for review) received by courts during that particular year. *Please note that the Supreme Court decides on opening of proceedings on an appeal in cassation, so the number for cases decided only includes those where proceedings were opened.[27]

Instance	I.	II.	III.*
Case load 2016	2956	1638	1166

[27] F. ex. in 2018, the Court opened proceedings on an appeal in cassation in case of 12% of appeals in cassation. In year 2017, it opened proceedings in case of 9% and in 2016 in case of 11% of appeals in cassation.

Cases decided 2016	3123	1731	97
Case load 2017	2986	1555	1120
Cases decided 2017	2967	1679	85
Case load 2018	2478	1304	961
Cases decided 2018	2477	1447	76