



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: Romania



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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.
- 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	County Courts (tribunals) Administrative and Tax Litigations Chambers	Regional Courts (courts of appeal) Administrative and Tax Litigations Chambers	High Court of Cassation and Justice (supreme court) Administrative and Tax Litigations Chamber
Number of courts	42	15	1
Number of judges	No statistics for chambers	No statistics for chambers	30

- 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.

5068 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	yes

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

The amount of the fee before county courts and regional courts (when a court of appeal decides as a court of first instance) depends on the subject matter of judicial review. In case of decision of the non-material damage is approx. 1 euro (50 RON) and in case of material damage is 10% of the value, but no more than approx. 63 euro (300 RON).

The amount of the fee before a regional court (when a court of appeal decides as a court of last instance) and before the High Court of Cassation and Justice depends on the number of grounds of appeal (pleas in law); there are 8 possible grounds of appeal, all of them on the matter of law (a party usually use 1 or 2) and the fee is 21 euro (100 RON) for each of them.

- 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:

- *approx. 1 euro for petitions concerning non-material damage and, in case of material damage, 10% of the value, but no more than 63 euro, for both, tribunals and courts of appeal (if a court of appeal decides as a court of first instance);*
- *approx. 21 euro for every ground of appeal (168 euro if a party invokes all possible grounds of appeal) for courts of appeal (if a court of appeal decides as a court of last instance) and for the High Court of Cassation and Justice.*

- 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 (bank transfer). If he does not fulfil his duty to pay the fee, the court shall give him additional time period of 10 days (exceptionally less). If the petitioner does not fulfil his duty to pay the fee in the additional time period, the court shall declare void (cancel) the petition.

The same applies to all courts.

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

There are exempts from the duty to pay the fee for some public authorities (e.g. Senate, Chamber of Deputies, etc.), it doesn't matter what is the subject matter of judicial review, and for other public authorities only when the subject matter of judicial review consists in public revenue.

The same applies to all courts.

- 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 all 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 the formation (there are formations of 1 judge in first instance and 3 judges in appeal) 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).

The same applies to all 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?

The court shall return the fee only in those situations laid down by law, for example to a person who was not obliged to fulfil the duty to pay or in case of overpayment.

The same applies to all courts.

- 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 same applies to all instances.

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

Frivolous petitions can be penalized but this happens extremely rare.

The same applies to all 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?

There is no analysis of such correlation. My own personal assessment is that a very low amount of fee combined with other factors (e.g., the fact that a party does not have to be represented by a legal professional) overloads the courts and affects the quality of justice.

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 has full or partial success in the proceedings. The rule that costs follow the event applies.

The same applies to all 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, when the public authority has specialised personnel to deal with the case (and it usually has; exceptions are extremely rare). It is still possible for a public authority which has personnel specialised in law to decide that its interests are better represented by attorneys. In such situations, the rule that costs follow the event applies (these situations are extremely rare).

The same applies to all courts.

- 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 (or to limit it) only when the compensation of costs is considered unfair or unreasonable. The court considers each case individually.

The same applies to all courts.

- 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, there are no specific areas of administrative law where different rules apply.

- 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 is based on the price stipulated between the attorney and his client. The court can decide not to adjudicate the compensation of cost of legal representation (or can limit it) when the compensation of costs is considered unfair or unreasonable. The court considers each case individually.

The same applies to all courts.

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	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, the court may appoint an attorney upon a request of a participant.
The same applies to all 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 an attorney.
The same applies to all instances.*

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

Yes, conditions for the right to free legal aid are the same with conditions for exemption from the duty to pay the judicial fee.

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, before resorting to the competent court (administrative chamber), the party which considers that one of its rights or legitimate interests was prejudiced by an individual administrative act must request to the issuing public authority or to the hierarchical higher body, if any, within 30 days from the date when the act has been communicated, to cancel it in full or in part. This is the rule; there are some exceptions (e.g., in case of actions instituted by the prefect, the Ombudsman, the Public Ministry, the National Agency of Public Servants, etc.).

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

Yes, the following are not reviewable at all before an administrative court (or other court of law): the administrative acts of the public authorities which concern their relations with the Parliament; military command act.

- 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 are 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, all acts concluded by a public authority under the civil law (they are not considered administrative acts) are reviewable before civil courts. It is also possible that some administrative acts are reviewable before civil courts but only when it is stipulated by law (it is within the discretion of the legislator).

- 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, administrative chambers of the courts can decide to force the public authority to issue an administrative act or to issue another document or to perform a certain administrative operation. In case of settlement of the case, the court shall also decide on the compensations for the material and moral damages caused, if the applicant requested it. When the object of the proceedings in the administrative disputed claims is an administrative contract, depending of the state of fact, the court may: a) order its cancellation, in full or in part; b) force the public authority to conclude the contract to which the applicant is entitled; c) impose to one of the parties the carrying out of a certain obligation; d) substitute the consent of one party, when the

public interest requires it; e) to force the payment of certain compensations for material and moral damages.

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	No	No

- 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?

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

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- 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.

The Romanian courts do not have the power to select cases.

- 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?

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- 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?

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

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

The Romanian courts do not have the 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.

The Romanian courts do not have the power to select cases.

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

Yes, judges can determine the order of the cases to decide with the exception of cases with fixed time limits for a final decision. The rule "first come, first served" usually applies but is possible to prioritise (e.g. suspension of the enforcement of an administrative act).

The same applies to all instances.

VII. Other measures

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

There are no other measures which simplify access to the courts. Any person which considers that one of his/her rights or one of his/her legitimate interests is injured by a public authority, by an administrative act or by the failure to settle a petition within the legal time limit, may address to the competent administrative court, for the annulment of the act, the acknowledgement of the claimed right or of the legitimate interest and the legal redress of the damage caused. The legitimate interest may be both private and public. When the legitimate interest is exclusively public there are some restrictions (e.g. when the Public Ministry appreciates that the issue of an administrative statutory instrument gives rise to a prejudice of a legitimate public interest, it shall refer the matter to the competent administrative court; this possibility belongs only to the Public Ministry).

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	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	11 496
Cases decided 2016	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	3 684
Case load 2017	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	13 884
Cases decided 2017	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	4 172
Case load 2018	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	15 891
Cases decided 2018	No statistics for Administrative and Tax Litigations Chambers	No statistics for Administrative and Tax Litigations Chambers	4 656

Note

There are not public national statistics containing an aggregate number of case load and cases decided for administrative and tax litigations chambers. Anyway, there are such statistics for all 42 county courts (tribunals) and 15 regional courts (courts of appeal) containing an aggregate number of case load and cases decided for all chambers (penal, civil, commercial, administrative and tax litigations) as follows:

- case load in 2016 for regional courts: 203 974;
- cases decided in 2016 by regional courts: 154 315;

- case load in 2017 for regional courts: 232 101;
- cases decided in 2017 by regional courts: 171 544;

- case load in 2018 for regional courts: 220 764;
- cases decided in 2018 by regional courts: 163 071;

- case load in 2016 for county courts: 733 709;
- cases decided in 2016 by county courts: 480 548;

- case load in 2017 for county courts: 772 861;
- cases decided in 2017 by county courts: 508 983;

- case load in 2018 for county courts: 688 980;
- cases decided in 2018 by county courts: 462 636.