



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: Spain



Seminar co-funded by the «Justice » program of the European Union



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 requested information is available at the ACA-Europe webpage, Tour of Europe file (points 48 and 55) although there is one question to be updated, related to cassation:

The regulation of cassation in the Law of Administrative Jurisdiction has been amended by final disposition 3.1 of the Organic Law 7/2015, July 21 and therefore, since July 22, 2016, cassation (arts. 86-93) is possible before the Superior Courts of Justice in matters of Law of the Autonomous Communities and, of course, before the Higher Court, but only if the Higher Court appreciates that the cassation presents objective interest to create case-law.

- 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.)

We can only provide official numbers of January 1, 2018

<i>Instance</i>	<i>I.</i>	<i>II.</i>	<i>III.</i>
<i>Name</i>		<i>Chambers of the Administrative Litigation of the Superior Courts of Justice («Salas de lo Contencioso Administrativo de los Tribunales Superiores de Justicia»)/ Chamber of the Administrative Litigation of the National Audience («Sala de lo Contencioso Administrativo de la Audiencia Nacional»)</i>	<i>Chamber of the Administrative Litigation of the Higher Court («Sala de lo Contencioso Administrativo del Tribunal Supremo»).</i>
<i>Number of courts</i>	30: <i>21 Chambers of the Administrative Litigation of the Superior Courts of Justice («Sala de lo Contencioso Administrativo de los Tribunales Superiores de Justicia») / 8 Chamber of the Administrative Litigation of the National Audience («Sala de lo Contencioso</i>	29	1

	<i>Administrativo de la Audiencia Nacional»)/ 1 Chamber of the Administrative Litigation of the Higher Court («Sala de lo Contencioso Administrativo del Tribunal Supremo»).</i>		
<i>Number of judges</i>	241: <i>229 Judges of the Administrative Litigation («Juzgados de lo Contencioso Administrativo»)/ 12 Central Judges of the Administrative Litigation («Juzgados Centrales de lo Contencioso Administrativo»)</i>	<i>0</i>	<i>0</i>

- 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.

We can only provide official numbers of january, 1, 2018.

1575 magistrates in collegial courts.

- *76 at the Supreme Court*
- *65 at the National High Court (Audiencia Nacional)*
- *489 at the High courts of justice of the autonomous communities (Tribunales Superiores de Justicia de las Comunidades Autónomas)*
- *945 at the Provincial Courts (Audiencias Provinciales)*

3564 single judges.

- *986 at the Courts of first instance and trial (Juzgados de primera instancia e instrucción)*
- *61 at the commercial courts (juzgados de lo mercantil)*
- *793 at courts of first instance (Juzgados de primera instancia)*
- *494 at the courts of trial (Juzgados de instrucción)*
- *6 at the central courts of trial (Juzgados centrales de instrucción)*
- *377 at the criminal courts (juzgados de lo penal)*
- *105 at the courts of violence against women (juzgados de violencia sobre la mujer)*
- *81 at juvenile courts (juzgados de menores)*
- *48 at the prisión supervision courts (juzgados de vigilancia penitenciaria)*
- *227 at the administrative courts (juzgados de lo contencioso-administrativo)*
- *12 at the central administrative courts (juzgados centrales de lo contencioso-administrativo)*
- *340 at the labour courts (juzgados de lo social)*
- *26 at the civil registries (registros civiles)*
- *8 senior judges (juzgados decanos)*

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.

<i>Instance</i>	<i>I.</i>	<i>II.</i>	<i>III.</i>
<i>Judicial fee</i>	NO	NO	NO

On 07/21/2016, the Constitutional Court issued a judgment (Constitutional Court, n° 140/2016, of 07/21/2016, Rec. Appeal of unconstitutionality 973/2013) declaring the unconstitutionality and nullity of Article 7, paragraph 1 of Law 10/2012, of November 20, canceling the following court fees:

- In the civil jurisdictional order: appeal: € 800; cassation and extraordinary for procedural infringement: € 1,200*
- In the jurisdictional contentious-administrative order: abbreviated: € 200; ordinary: € 350; appeal: € 800; cassation: € 1,200*
- In the social order: supplication: € 500; cassation: € 750*

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

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

- 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?

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

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

- 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?

- 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?

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

Fifteenth additional provision LOPJ, added by Law 1/2009 of November 3. Deposit to appeal

1. The filing of ordinary and extraordinary remedies, the review and the rescission of a final judgment at the request of the rebel, in the jurisdictional civil, social and contentious-administrative orders, will require the constitution of a deposit for this purpose.

In the penal order this deposit will be enforceable only to the popular accusation.

In the social order and for the exercise of actions for the effectiveness of labor rights in bankruptcy proceedings, the deposit shall be payable only to those who do not have the status of worker or beneficiary of the public Social Security system.

2. The deposit must only be consigned for the filing of appeals that must be processed in writing.

3. Anyone who seeks to appeal against judgments or orders that end the process or prevent its continuation, consign as deposit:

a) 30 euros, if it is a complaint resource.

b) 50 euros, if it is an appeal or rescission of a final judgment at the request of the rebel.

c) 50 euros, if it is an extraordinary appeal for procedural infringement.

d) 50 euros, if the appeal was the appeal, including the cassation for the unification of doctrine.

e) 50 euros, if it were revision.

4. Likewise, for the filing of appeals against resolutions issued by the Judge or Court that do not end the process or prevent its continuation in any instance, the deposit of 25 euros will be required. The same amount must include whoever recurs in review the resolutions issued by the Clerk of the Administration of Justice.

The formulation of the appeal for replacement that the law requires prior to the appeal of complaint is excluded from the deposition deposit.

5. The Public Prosecutor's Office will also be exempt from establishing the deposit that is required in this Law to appeal.

The State, the Autonomous Communities, local entities and autonomous agencies dependent on all of them will be exempt from constituting the aforementioned deposit.

6. When the resolution is notified to the parties, the need to establish a deposit to appeal shall be indicated, as well as the manner of carrying it out.

The admission of the appeal will specify that, when it is interposed in the case of interlocutory resolutions, the filing of the appeal, when filing the demand for a final decision in rebellion and review, or when announcing or preparing it in the In other cases, the amount deposited has been recorded in the appropriate credit institution and in the "Deposit and Consignment Account"

opened in the name of the Court or the Court, which must be accredited. The Clerk will verify the constitution of the deposit and will record it in the records.

7. Any resource whose deposit is not constituted will not be accepted for processing. If the appellant has incurred a defect, omission or error in the constitution of the deposit, the party will be granted a period of two days for the rectification of the defect, with the provision of supporting documentation where appropriate.

If this is not done, an order will be issued to put an end to the processing of the appeal, or the request will be inadmissible, and the contested decision will be final.

8. If the appeal is fully or partially estimated, or the review or rescission of the judgment, the same resolution will provide for the return of the entire deposit.

9. When the jurisdictional body inadmits the appeal or the claim, or confirms the appealed resolution, the appellant or plaintiff will lose the deposit, to which the destination provided in this provision will be given.

10. The lost deposits and the yields of the account are affected to the necessities derived from the activity of the Ministry of Justice, being destined specifically to defray the expenses corresponding to the right to free legal assistance, and to the modernization and integral computerization of the Administration of Justice. For these purposes, the income from the lost deposits and the income from the account will generate credit in the expense statements of section 13 "Ministry of Justice".

11. The Ministry of Justice will transfer annually to each Autonomous Community with powers assumed in matters of Justice, for the purposes indicated above, forty percent of the amount paid in its territory for this concept, and will allocate twenty percent of the total amount for financing the instrumental entity participated by the Ministry of Justice, the Autonomous Communities and the General Council of the Judicial Branch, in charge of preparing a computer platform to ensure connectivity between all the Courts and Tribunals of Spain.

12. The amount of the deposit to appeal may be updated and revised annually by Royal Decree.

13. The requirement of this deposit will be compatible with the accrual of the fee required for the exercise of the jurisdictional branch.

14. The deposit provided for in this provision shall not be applicable for the filing of appeals for appeal or cassation in the social jurisdictional order, nor for review in the civil jurisdictional order, which shall continue to be governed by the provisions of the Law, respectively, of Labor Procedure and the Civil Procedure Law.

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

If the judgment declares the recklessness of the convicted person in costs, the attorney and solicitor fees may be included in the assessment of costs even if his intervention is not PRECEPTIVE. The declaration of recklessness to the condemned in costs, whose concurrence demands the art. 32.5 Law of Civil Procedure is that which occurs within the process as a consequence of not adapting the part of its conduct to the canons derived from good procedural faith.

- 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, the court can adjudicate the compensation of costs of proceedings to the participant.

In the first or single instance, the losing party shall bear the fees incurred by the other party. Where claims are partially allowed or disallowed, each party shall pay the costs associated with its actions and one half of any communal costs, unless the court, on duly reasoned grounds, imposes costs on just one of them on the basis that their action was taken, or their appeal lodged, in bad faith or recklessly.

In appeals, costs will be awarded against the appellant if the appeal is completely dismissed, unless the court, on duly reasoned grounds, finds attendant circumstances justifying not making the award.

In an appeal for judicial review, each party shall bear their own costs and half of the common costs. Nevertheless, an award may be made for the costs of the appeal for judicial review against just one of the parties where the ruling deems, and it is reasoned, that they acted in bad faith or recklessly. This imposition may be limited to a part of the costs or a maximum amount.

- 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)?

Yes, the court can adjudicate the compensation of costs of proceedings to the public authority on the terms described in the answer to question a. Nevertheless, costs will never be awarded against the Public Prosecution Service.

- 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?

In appeals, the court can decide not to adjudicate the compensation of cost only when, on duly reasoned grounds, extraordinary circumstances do not justify that compensation. The court will consider each case individually.

- 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 aren't any specific areas of administrative law where different rules to those discussed in this section 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)?

An award for costs may be in full, partial or up to a maximum amount. Its up to the court to decide that amount.

IV. Representation

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

The answer to this question requires some previous explanation. In Spain there are two legal institutions regarding representation in litigation. On the one hand, we have the "procuradores", who legally represent both the petitioner and the opposing party from an administrative point of view, i.e. they formally present documents before judges and courts, they sign them, they officially receive notifications and they take care of deadlines. On the other hand, "abogados" do the legal work strictly speaking. Public bodies dispose of their own legal services, which represent and defend them, according to article 551 of the Organic Law of the Judiciary (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial).

*In the following table we have answered *yes* (Y) or *no* (N) from this twofold perspective, corresponding the first answer to procuradores and the second one to abogados.*

There is, nevertheless, an exception to this general regime, namely the exception concerning public servants, who are legally granted the right to represent themselves in cases regarding their rights as civil servants.

<i>Instance</i>	<i>I.</i>	<i>II.</i>	<i>III.</i>
<i>Representation of petitioner</i>	N/Y	Y/Y	Y/Y
<i>Representation of opposing party</i>	N/Y	Y/Y	Y/Y

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

Yes, there is such a system, as will be explained in detail in the following question.

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

In Spain there is a Statute on Free Legal Aid (Ley 1/1996, de 10 de enero de asistencia jurídica gratuita), which regulates this issue for all types of proceedings and all instances. A long article 2 states in detail who – both individuals and entities - is entitled to this type of aid and under which circumstances. In article 3 the economic requirements for such an aid are included, whereas article 6 explains all legal activities covered by the aid, in case this is granted. Applications can refer either to activities undertaken by procuradores or by abogados or both.

Several Commissions at local, regional and State level decide upon applications and legal remedies are foreseen in case those applications are unsuccessful.

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

Not necessarily. Applicants may be granted free legal aid, yet they still have to comply with the duty to pay the judicial fee. However, courts exempt litigants from paying immediately and use a formula by which they postpone payment to a date in which litigants acquire the necessary economic means.

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 certain cases, because administrative acts have to exhaust the administrative route

- 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 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?

No, there are not.

- 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, in addition to the aforementioned cases, for example, the Economic-Administrative Courts resolve a special appeal to challenge the tax acts before the Administration itself; and the appeals of the acts dictated by the Central Electoral Commission.

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	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 Court's Contentious-Administrative Chamber will admit the appeals in those matters that considers to have objective interest for establishing jurisprudence. Act 29/1998, of 13th July, regulating the jurisdiction for judicial review, provides a list of advisory nature

circumstances together with certain presumptions in order to admit the cassation appeal before the Supreme Court's Contentious-Administrative Chamber, which have been interpreted by the Court itself, creating a jurisprudential body about the criteria that should allow the admission of the appeal. In the same way, the Autonomous Communities' High Courts of Justice perform a similar function when the appeal is based on the violation of rules of regional law.

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

As a general rule, matters of fact are excluded, since the cassation appeal is aimed at establishing jurisprudence. In addition, Act 29/1998 excludes appeals filed against judgments rendered in the proceeding for the protection of the fundamental right of assembly and in contentious-electoral processes. On the other hand, it will not be able to know of the matters that are based on the contravention of Regional Right norms, this being the remit of the Autonomous Communities' High Courts of Justice.

- 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.

Yes. Selection conditions are the same as in others administrative law fields.

- 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?

29/1998 Act provides that admission or refusal will be decided by a Section of the Supreme Court's Contentious-Administrative Chamber, composed of the Chamber's President and at least one Magistrate of each of the other Sections. With the exception of the President of the Chamber, said composition will be renewed in half every six months.

The procedure for admission begins with the appellant bringing a preparation writing before the same court that issued the judgment within thirty days. Then, the instance court will verify that the preparation writing satisfies the procedural requirements demanded, just from a formal point of view, and, in such case, it will send it to the Supreme Court along with the proceedings and the administrative file. Once writing has been received, it will be examined by the Admission Section, for which it will have the support of the Technical Cabinet's Attorneys. On the other hand, the instance court may, if it considers appropriate, issue a succinct report on the objective cassation interest on establishing of jurisprudence.

- 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?

Refusing decision is delivered in any case via a formal decision, which is notified to the petitioner. When the decision takes the form of a court order, in those cases that are required by 29/1998 Act, it is also published on the Supreme Court’s website.

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

Yes; succinctly, when done by providence; and in a more detailed way, when delivered by court order.

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

Yes. Refusing decisions issued by Contentious-Administrative Single Judge and Contentious-Administrative Central Single Judge can be appealed, respectively, before the Autonomous Communities’ High Courts Contentious-Administrative Chambers and the National Court’s Contentious-Administrative Chamber. On the other hand, refusing decisions issued by the Autonomous Communities’ High Courts Contentious-Administrative Chambers and the National Court’s Contentious-Administrative Chamber are appealable in cassation before the Supreme Court, with the same requirements for any other cassation appeal.

- 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, notwithstanding what is indicated in point e.

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

No.

VII. Other measures

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

According to article 19.1 of Act 29/1998, dated 13 July, governing contentious-administrative jurisdiction, access to the courts is restricted to those natural persons or legal entities with a direct and legitimate interest in the process. It is also permitted, according to the same article, to groups of affected persons legally qualified to protect legitimate collective rights.

The administrative judiciary is also open to the State, Autonomous Communities, local entities and other public bodies with legitimate interest to challenge public decisions issued by other administrations or public bodies.

Nevertheless, as a measure which simplifies access to courts may be considered the right of non-governmental organizations interested in environmental protection to challenge a decision of a public authority claiming an infringement related to the environment. This measure is specified in article 22 of Act 27/2006, dated 18 July, regulating access to justice in environmental issues. Furthermore, a popular action without restrictions of interest is provided by the law in town-planning issues.
