



Consiglio di Stato



Seminar organized by the Council of State of Italy and ACA-Europe

“Law, Courts and guidelines for the public administration”

Fiesole (Firenze), Autumn 2021

Answers to questionnaire: Czech Republic



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ITALIAN PRESIDENCY ACA - EUROPE
FIESOLE (FIRENZE), 19 OCTOBER 2020
"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE

1. Introduction

1.1 The seminar to be held in Fiesole, on the 19th and 20th October 2020 at the European University Institute, is the first meeting organised by the Italian presidency.

As explained during the initial presentation of the programme for the upcoming Italian presidency, its leitmotiv will be to enhance and foster the value and the experience of “horizontal dialogue” among the highest administrative national Courts, aiming to create and develop a common culture and shared standards in judicial review of the activity of the public authorities.

This “horizontal dialogue”, more than “vertical dialogue”, aims to focus on examining and comparing modes of judicial decision making and judicial conduct, and the impact of judgments on the activities of public authorities.

Horizontal dialogue between Courts of Member States is the best way to achieve an effective European citizenship, that is to say a common standard of legal protection for citizens and companies living in Europe and dealing with public powers.

1.2 The purpose of this questionnaire and of the subsequent seminar is to provide a greater understanding of similarities and differences among our legal systems, especially regarding:

- a) the interpretation of law by judges;
- b) the binding effect of judgments both so as to ensure the judges’ compliance with the nomophylactic statements of the Supreme Administrative Courts (SACs) and to act as an instrument to address the future action of public administrations in similar cases;
- c) the effect of the administrative judgments on the activity of public administration and their enforcement;
- d) the consultative role of the SAC, if existing.

1.3. The seminar will cover the following topics:

- a) The method followed by administrative courts in the interpretation of the law, focusing on the criteria applied by judges (including reference to *ratio legis*, reference to preparatory work, reference to the advice of the SAC regarding the adoption of the law, if existing, etc.). A special focus will be placed on the tools for supporting judicial activity with regard to services for classifying and archiving judgments, e.g. databases and AI instruments.
- b) The application of the law by the Court, with specific reference to the nomophylactic pronouncements of the SAC. Jurisprudential stability and the predictability of decisions are important values related to the general principles affirmed by the European Court of Justice such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and the protection of legitimate expectations. Therefore, there will be a special focus on the ways and the procedures, where they exist, through

which SACs ensure compliance with the nomophylactic statements in the administrative system.

The “binding or steering effect” of the of Supreme Court judgments: this topic aims to foster mutual understanding of the capacity of administrative judgments to bind the public administration in the subsequent exercise of its power. It covers not only the binding effect on decided case, but it also aims to analyze judgments as instruments to orientate the future action of public administrations in similar cases (i.e. judgement as guidelines).

- c) The seminar will also examine the enforcement of the administrative judgment, in case the public administration fails to comply with it spontaneously and correctly, with special reference to judicial enforcement measures provided by each legal jurisdiction, if they exist.
- d) Finally, a brief session will be devoted to the consultative role of the SAC, if existing, and its impact on administrative action.

1.4 It is intended that the Seminar will provide each Supreme Administrative Court with a better understanding both of the decision making process underpinning the judgments of other SACs and of their impact on the activity of public authorities.

In a constitutional democracy, administrative courts are seen as performing a vital function in the interaction between law and administration.

The purpose, to reiterate, is to verify whether it is possible to find or develop a homogeneous method to scrutinize the way public administrations exercise their powers and to guarantee a common standard of legal protection for citizens and companies in all Member States.

The questionnaire which follows represents an initial information gathering exercise the purpose of which is to clarify the interaction of the administrative courts with the law, on the one hand, and the administration, on the other, so as to ensure certainty, legality and quality of justice for citizens and public institutions.

I SESSION

THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

1. The role of the Supreme Administrative Courts in the interpretation of law.

1.1. Does your legal system provide general rules for the interpretation of law?

- No
- Yes

1.2. What is the level of general rules for interpreting the law?

- Law
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other

Please explain and give an example.

Czech answer:

There is no binding methodology or procedure for interpreting the law that would be generally applicable. The criteria for interpretation of the law mostly derive from legal theory, literature, and legal principles (including those incorporated in legislation, e. g. the fundamental principles of functioning of the administrative authorities such as legality or prohibition of misuse of discretion of the administrative authority). Especially rulings of the Constitutional Court sometimes comprise general rules for interpreting the law and are usually regarded as having a precedential nature (e. g. proportionality, the principle in favorem restitutionis).

Above that, the Civil Code provides some criteria for interpretation in Art. 2:

“Any provision of the private law can be interpreted only in accordance with the Charter of Fundamental Rights and Freedoms and the constitutional order in general, with the principles this law is based on, as well as with constant regard to the values it protects. If the interpretation of an individual provision differs from this given order if only in its words, it must give way to it.

A statutory provision may not be given a meaning other than which follows from the very meaning of the words in their mutual context and from the clear intention of the legislator; however, no one may invoke the words of part of legislation against its meaning.

The interpretation and application of a legal regulation must not be in conflict with good moral and must not lead to cruelty or ruthlessness offending ordinary human feelings.”

1.3 What are the criteria for interpretation of the law?

- literal interpretation
- reference to purpose of law (so-called *ratio legis*)
- consistency within the legal system
- reference to preparatory work
- reference to the advice of the SAC regarding the adoption of the law, if existing
- Other

Explain, if necessary.

Czech answer:

*The literal interpretation is the first criterion to use when interpreting the law. Also, the consistency and placement of the discussed legal norm in the text and the system of the particular legal regulation as well as in the legal area and the whole legal system are assessed. The logical procedures are used in the interpretation too (*argumentum a contrario, argumentum per eliminationem, argumentum per analogiam, argumentum a fortiori, reductione ad absurdum*).*

Finally, the purpose of the law which can be recognizable from the preparatory work (a source that can also be used to clarify the intention of the legislator) should be respected.

Sometimes as a supporting argument a reference to the legislation and jurisprudence of another country can be used (comparative method).

1.4. What criteria do judges apply when there are gaps in the law?

- Analogy (reference to similar *ratio* of other rules)
- General principles of the legal system
- Other

Explain, if necessary.

Czech answer:

According to Art. 10 of the Civil Code judges apply both, analogy legis and analogy iuris: “If a legal case cannot be decided on the basis of an explicit provision, it shall be assessed according to the provision concerning the legal case in terms of content and purpose of the legal case closest to the assessed case. In the absence of such provision, a legal case shall be assessed in accordance with the principles of justice and the principles on which this Act is based, so as to arrive at a good organization of rights and duties and taking into account the state of legal science and established decision-making practice.”

The legal theory says that analogy can be used for overcoming de lege lata gaps (not lege ferenda). Still, sometimes the analogy cannot be used, especially to the detriment of the claimant in cases of administrative punishment.

1.5. Does the SAC elaborate general interpretative *criteria*?

No

Yes

Please explain and give an example.

Czech answer:

When deciding some specific cases SAC clarified how the law applied to the case should be interpreted further on. For example in one of its decisions in electoral cases, the SAC formulated the so-called “Assessment Algorithm of complaints against elections”. The SAC stated three main consecutive conditions the fulfillment of which leads to the success of the proposal (namely: illegality; the existence of a direct relationship between this illegality and the outcome of the elections, and the fundamental intensity of this illegality).

As part of the grounds of the judgment the SAC also sometimes mentions interpretative criteria important for the case such as in Case No. 5 As 25/2003: “it is important and decisive what in the text of the law is actually expressed, not what the legislator intended to express”.

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;

never seldom sometimes often

- The European Convention of Human Rights and the general principles elaborated by the ECHR;

never seldom sometimes often

- The general clauses of proportionality and of reasonableness.

never seldom sometimes often

- The statements (or case law) of the Courts of other countries in similar cases;

never seldom sometimes often

- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)

never seldom sometimes often

- The results of regulatory impact analysis (AIR), if applicable;

never seldom sometimes often

- The impact of the decision;
 never seldom sometimes often
 Other
Please specify.

2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

- No
 Yes

Czech answer:

A group of nominated judges of the SAC meets every month and classifies judgments of the administrative courts (SAC and Regional Courts) and pre-selects the most important ones for publication in the SAC's Collection of Judgments. After the pre-selection, judgments are proofread and prepared by the Department of Research and Documentation for the following monthly plenary meeting (consisting of all judges of the SAC), where the judges vote on the publication of each judgment. Afterward, the judgments are published in the Collection of Judgments.

2.2. What other activities do these Services perform?

- preparation of useful material for the most important judgments of the SAC ;
 comparative studies;
 information about new developments in the law and in the case law;
 training of judges
 other activities.

Please specify.

Czech answer:

The Department of Research and Documentation provides legal research assistance on request from any judge, panel or clerk (useful legal material for judgments, comparative studies). It also provides judges and clerks with a regular overview of current judgments and relevant information from courts abroad and from the Court of Justice of the European Union. It is the guarantor of publishing the Collection of Judgments.

2.3. Are administrative Court judgments stored on a searchable and free database?

- No
 Yes

Please explain.

Czech answer:

The SAC operates a free and open database, which includes all judgments given by SAC and the majority of judgments given by Regional Courts.

2.4. What kind of database do the administrative judges consult in their daily work?

- public and free databases

- private databases, provided by their institution
- other

Please explain.

Czech answer:

Czech administrative judges have free access to public databases of judgments and to some private legal databases (such as Beck-online). In addition to that they can also access the internal information system of the SAC that includes analyses published by the Department of Research and Documentation and judgments and procedural decisions of SAC and Regional Courts.

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- No
- Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.)

Czech answer:

There is no project implementing AI systems for drafting the content of final decisions. There is, however, a project that utilizes automated anonymization of personal data in judgments, which is now done by administrative staff.

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- No
- Yes
- Only if the SAC decides in special composition

Czech answer:

*Regional Court is bound by the SAC's opinion in a judgment that quashes the Regional Court's decision. However, there is no express provision in the law that would bind lower courts to abide by the SAC's opinions **stated in other cases**. Nonetheless, the principle of legal certainty and predictability applies under Czech law. Lower courts should, therefore, follow the SAC's decisions (above all the judgments published in the Collection of Judgments). Nonetheless, they may deviate from the legal opinion of the SAC, if they give reasons for this deviation. Consequently (if a cassation complaint is filed), the SAC either upholds this deviation (and procedure described below under 3.4. follows), or denies it (and quashes the Regional Court's decision).*

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%
- from 50% to 75%
- from 75% to 100%

Czech answer:

We do not have any statistics at our disposal. Please note that this is a rough estimation.

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example.

Czech answer: Not applicable.

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

No

Yes

If the answer is yes, please explain.

Czech answer:

Jurisprudential conflicts are solved by a larger panel of the SAC. If a standard 3-judge panel of the SAC has in its decision arrived at a different conclusion than the one reached in the previous decision(s) made by the SAC (including decisions of the extended panel), the panel shall refer the matter to an extended 7-judge panel for its decision.

An exceptional instrument that aims to ensure the unity of decision making is an issue of resolution. In reaction to the previous case law of certain kind the President of the SAC or an extended panel may refer the question of law to the plenary meeting (consisting of all judges of the SAC). Because of the broad admissibility of cassation complaint (i. e. the SAC may deal with nearly any question of law in standard procedure) and because of its constitutional limits (i. e. a question of separation of powers), it is not used in practice (in the past only two resolutions were issued in 2004 and 2005).

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

No

Yes

Czech answer:

Please refer to the answer 3.4.

The parties cannot appeal directly to the extended panel under any circumstances, they may, however, express why the 3-judge panel should refer the matter to the extended panel. If a 3-judge panel decides to refer the case to the extended panel, it delivers a decision (and reasons the referral). The parties may express their own opinion in regard to this decision. The decision is available to the public.

The lower instances do not have the authority to refer questions to this panel (still, they may deviate from the legal opinion of the SAC; see the answer 3.1.).

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

it is not possible to disagree

it is possible to take a different decision, giving reasons

a new referral to the Court is necessary

Czech answer:

Concerning a judge of the Regional Court please see answer 3.1. (i. e. it is possible to take a different decision, giving reasons).

Concerning a judge of the SAC please see answer 3.5. (i. e. a new referral to the extended panel is necessary).

Above that if a judge of the extended panel does not agree with the panel's decision or reasoning, he can express a dissenting or concurring opinion. This opinion will be part of the decision of the extended panel.

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

No

Yes

If the answer is yes, please explain.

Czech answer:

The SAC is not divided into sections.

3.8. If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

Czech answer:

There is a special panel consisting of three SAC (Supreme Administrative Court) judges and three SC (Supreme Court) judges who decide on jurisdiction conflicts. The matter is referred to this panel either by a party to the proceedings or by public bodies/courts between which the conflict has arisen.

SESSION II.

THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain.

Czech answer:

If the decision of the administrative authority is revoked, then the legal position of the administrative court is binding for the administrative authority in subsequent proceedings. The SAC has the power to revoke a decision of the Regional (lower) Court as well as a decision of the administrative authority, and thus bind the authority with his legal position.

In general, there is no express provision in the law that would bind administrative authority to abide by the SAC's or Regional Court's opinions stated in other cases. Nonetheless, the principle of legal certainty and predictability applies under Czech law. The administrative authority shall, therefore, follow the court's judicial decision.

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

- No
 Yes

Please explain.

Czech answer:

The legal position in the judgment should be taken into consideration for other similar cases.

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

- No
 Yes

Please explain.

Czech answer:

In general, the administrative authority can extend the legal position of SAC or Regional Court to other cases, where this position may be applicable. This corresponds with the principle of legal certainty and predictability.

SESSION III

IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

- No
 Yes

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

Czech answer: Not applicable.

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment?

Czech answer:

If the decision of the administrative authority is revoked by an administrative court and the subsequent decision of the administrative authority does not comply with the legal position of the court, a party can lodge another complaint to the administrative court. Specific cases are the right to information and asylum proceedings. Regarding the former, the Act on Access to Public Information (No. 106/1999 Coll.) sets forth that the court has to order the administrative body to provide the applicant with the required information if the conditions to deny the application are not met. Regarding the latter, the SAC recently reiterated that administrative court will grant an applicant international protection shall the administrative body fail to comply with the judgment quashing its decision (based on the CJEU's judgment in case Torubarov, C-556/17; for further reading, please refer [here](#)).

3. If there is such a judicial remedy, does it require the judgment to become final?

- No
- Yes

Please explain.

Czech answer: Not applicable.

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

- No
- Yes

Please specify.

Czech answer: Not applicable.

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

- No
- Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example.

Czech answer:

The cases regarding the execution of judgment and liability of administration are held by the civil courts, not in the administrative justice (these cases could concern e. g. reimbursement of costs of proceedings or continuing inaction of administrative authority; nonetheless, in reality they do not occur).

SESSION IV

THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.

1. Does the SAC play advisory functions for the government or for the public administration?

- No
- Yes

Czech answer:

No, but the SAC comments on legislative proposals (bills) concerning its jurisdiction [art. 5 (1) e) of the Legislative Rules of the Government]. SAC comments on primary and secondary legislative act provided that those are either in relation to its jurisdiction (including both substantive and procedural law) or its function as a public body (organizational unit of the state).

The review is mandatory if a bill fits the criteria described above; however, the remarks and observations made by the SAC are not binding and are not subject to negotiations as is the case

of the remarks made by Ministries, National Bank, etc. However, in regard to those observations, it is obligatory to reason why the legislator has decided not to follow those observations.

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply.

(More options are possible)

- Primary legislative acts (of parliament or of government)
- Governmental and ministerial regulatory acts
- Resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.
- Other

Please specify.

Czech answer: Not applicable.

2. The SAC's advice in its consultative role is:

- Optional and non binding
- Mandatory and binding
- Mandatory but not binding
- Optional and, once required, binding
- It depends on circumstances (please clarify)

Czech answer: Not applicable.

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations?

- No
- Yes
- In certain circumstances only (please specify)

Czech answer: Not applicable.

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

- No
- Yes

Czech answer:

Administrative judges cannot be allowed to hold such a position while in office. The incompatibility of these functions is an instrumental guaranty of judicial independence and impartiality.

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

- No
- Yes