



**Seminar organized by the Council of State of France and
ACA-Europe**

“The Judicial review of Regulatory Authorities”

Paris, 6 December 2021

Answers to questionnaire: Slovakia



**Co-funded by
the European Union**



ACA-Europe symposium

Disputes concerning acts by regulatory authorities

Regulatory authorities have gradually emerged as one of the new forms of State intervention. In addition to the Regal State or the State as a supplier of goods and services, the regulatory authorities, in the broad sense, cover a wide range of administrative activities: they may be authorities responsible, in a given sector or across the board, for correcting market imbalances in a context of opening up markets to competition, or for ensuring that free competition is reconciled with other general interest objectives; in the broadest sense, regulatory activities may refer to any administrative activity that seeks to reconcile interests that may be contradictory or to organise access to scarce resources in a manner consistent with general interest objectives. In this broadest sense, this notion can refer as much to the transversal authorities responsible for enforcing competition law (e.g. the French Competition Authority) as to sectoral authorities (electronic communications, transport, energy, etc.), including national data protection authorities or authorities responsible for the marketing or evaluation of health products.

The symposium planned for December 2021 should be an opportunity to examine the specific issues that disputes concerning acts taken by these regulatory authorities may raise in the administrative courts. These questions arise from certain characteristics of the acts of these authorities, characteristics over which they do not have a monopoly compared with other forms of administration, but which combine or take on a particular role. These characteristics are at least three in number: firstly, the use of a wide range of acts or intervention tools, from flexible laws and codes of conduct to more traditional regulatory acts or sanctions, via a variety of communication media (press releases, public statements, FAQs, etc.); secondly, the degree of expertise and technicality of the decisions taken in a given activity sector (energy, health, electronic communications, etc.) and/or a certain technological context (personal data protection, cyberspace, etc.); finally, integration into complex economic and social ecosystems, often with a significant European or even international dimension, and likely to have a high media profile.

In this context, from the particular object of study that is disputes concerning the acts of these regulatory authorities, the symposium planned for December 2021 will make it possible to address the important challenges that these appeals raise for the effectiveness and credibility of the court's intervention.

Courts with competence to hear disputes concerning regulatory authorities

1. Does your supreme administrative court have competence to hear appeals against acts by regulatory authorities? **Yes/no**

If yes:

Without being exhaustive, could you present the main regulatory authorities in your country whose acts are brought before your **supreme administrative court**, specifying if these appeals are subject to several levels of jurisdiction? Please distinguish, if necessary, according to the nature of the acts concerned (in the event, for example, that individual acts taken by these authorities are subject to separate jurisdictions from their general acts, notably regulations).



- 1) Antimonopoly Office of the Slovak Republic
- 2) Regulatory Office for Network Industries
- 3) Regulatory Authority for Electronic Communications and Postal Services
- 4) Council for Broadcasting and Retransmission
- 5) Office for Personal Data Protection
- 6) Health Care Surveillance Authority
- 7) Transport Authority
- 8) Office for Public Procurement

The administrative courts act within the system of general justice. The administrative justice is performed by specialized panels of general courts at the level of regional courts and the Supreme Court of the Slovak Republic (administrative division). Exceptionally, if so provided for under certain provisions of law, administrative justice is also performed by district courts. Regional courts are the basic element of administrative justice and act as courts of first and only instance. The Supreme Court of the Slovak Republic has the position of the Court of Cassation and decides upon extraordinary remedies (cassation complaints) against final decisions of Regional Courts.

With effect from 1 January 2021, the Supreme Administrative Court of the Slovak Republic was incorporated into the court system by the adoption of Constitutional Act No. 422/2020 Coll. The establishment of the Supreme Administrative Court is the first step in the process of organisational separation of administrative courts from the system of the general judiciary in Slovakia, the next step is the reform of the judicial map, which should lead to the creation of three separate administrative courts at the level of regional courts. In connection with this process, the jurisdiction of the current Administrative Division of the Supreme Court will be transferred to the newly established Supreme Administrative Court, which should start operating from 1 August 2021.

2. In particular, can any of these authorities themselves impose sanctions (including fines)? **Yes/no**

If yes:

is it possible to challenge them before your **supreme administrative court**?

Yes, they can be the subject of a cassation complaint.

3. Are any of these regulatory authorities subject to judicial review by civil courts, for some or all of their acts? **Yes/no**

If yes:

Please give examples.

4. Are the **courts** with competence to hear the acts of regulatory authorities:

- specifically identified by the texts in force, by way of derogation from the normal rules of territorial or material competence? **Yes/no**

- or do they result from the application of the general rules on the distribution of competences? **Yes/no**

The only exception in this area are proceedings on administrative actions in the field of competition, where specialisation in this area is necessary, and where only one regional court is causally competent, namely the Regional Court in Bratislava.

Is there any specific distinction in relation to the rules of competence applicable to equivalent acts of other administrative authorities in your country? **Yes/no**

If yes:

Please explain.

5. Are the remedies available against the acts of these authorities of the same nature as those available against the equivalent or similar acts of other administrative authorities? **Yes/no**

If no:

Please explain.

Admissibility of appeals against regulatory acts

6. In your view, do disputes concerning “hard law” acts (regulatory acts, sanctions, individual authorisation decisions, etc.) of these authorities raise particular issues of admissibility? **Yes/no**

If yes:

Please explain.

7. Are “soft law” acts (opinions, recommendations, warnings, position papers) of these authorities and, more broadly, their various positions on the behaviour to be adopted by the actors in their field of intervention (whatever form they take: code of conduct, guidelines, etc.) liable to be the subject of a direct action for annulment? **Yes/no**

If yes: under what conditions? Make any distinction you think useful according to the degree of normativeness of the acts.

8. Can positions taken by these authorities, possibly with little or no formality (press release, website section, FAQ, etc.) be challenged in court? **Yes/no**

9. Who can challenge the acts of regulatory authorities? Specify the criteria for assessing the interest in bringing proceedings, making any useful distinction according to the type of act (soft law act; individual decisions of a non-repressive nature; sanction; etc.).

Administrative justice in the Slovak Republic is not based on the public action "actio popularis", which would allow anyone to bring an administrative action. The legislator defines subjects allowed to challenge the acts of regulatory authorities in a procedural regulation. Judicial review is necessarily linked to the impact of the decision and action of the regulatory authority on the claimant's subjective rights. This also defines the purpose of the protection afforded by the administrative justice system. The protection of subjective rights may be invoked only by those subjects whose rights, legally protected interests, and obligations are at stake.

Standing to sue has a natural person or a legal entity who claims that, as a party to an administrative procedure, he or she has been curtailed of his or her rights and legally protected interests by such a decision or measure of the regulatory authority.

In the protection of non-subjective rights, the public prosecutor has standing to sue.

If special acts do not stipulate otherwise, the time-limit for bringing an administrative action is 2 months and is the same for all persons with the standing to sue.

10. Please indicate any other particularities that you consider relevant to the admissibility of appeals against the acts of these authorities (interest in bringing proceedings, time limits for appeal, specific means of appeal open to State authorities, etc.).

11. Can the general acts of a regulatory authority, whether “hard law” or “soft law”, be challenged by way of exception in an appeal against an individual decision (sanction, follow-up to a complaint, etc.) taken by that same authority and applying that general act (for example, if a sanction imposed on an economic operator refers to previously issued guidelines or recommendations to set out the applicable legal rules and the authority’s interpretation of the texts in force)? **Yes/no**

If yes, to what extent?

A normative/general act, i.e. a recommendation etc., may be reviewed, if the regulatory authority has referred to it in an individual administrative act (an individual decision). An administrative court is able to conclude unlawfulness of a normative/general act, if the regulatory authority was bound by such a general act when issuing an individual decision, however, the individual decision does not repeal this general act, because the general act by itself does not infringe the rights of a party to the proceedings.

Will the plea of illegality against this general act, if upheld, lead to the (retroactive) annulment of this act?

No

12. Where the actions of these authorities have harmful consequences, should liability claims be brought:

- against these authorities? **Yes/no**

- or against the State on whose behalf they may have acted? **Yes/no**

Internal organisation of the courts and hearing of appeals

13. Are cases concerning these authorities assigned, within the courts and more particularly within the supreme administrative court, to panels specifically dedicated (to the authority concerned, or more generally to regulatory litigation), in order to allow for an increase in the level of competence or a critical mass of cases? **Yes/no**

If yes: please explain and give examples.

- Or is it a distributed dispute with no particular allocation rule? **Yes/no**

Please indicate, in a more general way, any notable particularities in the internal organisation of your courts that may be relevant.

14. What investigative or examination techniques can you use in particular in the examination of particularly technical cases:

- oral inquiry hearing in the presence of the parties,
- expert's report,
- amicus curiae,
- solicitation of a reference expert administration,
- other?

Please explain, where applicable by giving some examples from your experience.

Administrative courts do not try cases based on facts, and takes evidence only exceptionally. The purpose of the administrative proceedings is the examination of the legitimacy of decisions and measures of public authorities. As a result of this, the Administrative court does not base its decision on the knowledge obtained at the oral hearing. Section 107 of the Administrative Judicial Code regulates conditions under which the presiding judge shall order a hearing to try the case on the merits.

The presiding judge shall order a hearing to try the case on the merits if

- a) it is required by least one of the parties,
- b) taking evidence,
- c) it is required by a public interest,
- d) it is necessary for the hearing of the case; or
- e) this Act so provides.

In particular, the public interest may be the reason for which an oral hearing is ordered, as the issues which are the subject of the proceedings in cases involving regulatory authorities may have a wider societal impact, and the protection of the rights and legitimate interests of the parties could also be relevant for other entities. It is therefore a matter for the court to assess whether or not, in the circumstances of the particular case, there is a public interest in the matter. It is a matter of public interest if the legal matter in question does not concern only the parties to the proceedings, but applies to a wider range of subjects (the decision may also have an impact on natural persons or legal entities who are not parties to the court proceedings).

Do you feel that these regulatory cases require a particular method? **Yes/no**

If yes:

Please explain.

Since the issues concerning regulatory authorities are highly specific and require a high level of expertise, it would be appropriate to provide for a procedure by which the judges could reach out to experts in particular fields. A solution would be the possibility to appoint ad hoc consultants who

would become expert advisers to the administrative panels. In the course of the proceedings, the consultants could provide the judges with expert explanations necessary for a correct assessment of the case, in particular with regard to possible aspects of the interpretation of vague concepts referred to in the text of the legislation, as well as financial, economic, technical, operational and other contexts relevant to the assessment of the case.

15. What is the role of the traditional administrations (especially when the act of an independent administrative authority, distinct from the ministry concerned, is at issue) in the examination of appeals against regulatory authorities:

- are they invited to comment? Yes/**no**

- or do they remain outside the case? **Yes**/no

16. More generally, when examining appeals against acts with a high socio-economic impact issued by these authorities, in particular those in charge of a field of economic regulation, does the court collect (on the initiative of the court or the interested organisations) observations from other stakeholders? Yes/**no**

If yes:

Please explain.

17. What role does orality play, even before the hearing, in the investigation of complex cases, in particular those involving regulatory acts?

- not applicable

18. Do you have, in one form or another (specialisation of magistrates, continuing education, expert decision support unit to assist magistrates, etc.) internal resources in your courts enabling you, if necessary, to familiarise yourself with or master sectoral but also transversal expert subjects (technologies protecting privacy, communication technologies in the case of audiovisual or electronic communications regulators, role and architecture of social networks, etc.)? Yes/**no**

If yes:

Please explain and give examples.

The extent of the judge's control, the court decision

19. What are the main categories of grounds that can be invoked and relied upon against the acts of regulatory authorities? Based on your experience and the case law of your country, do you find that appeals against acts of independent authorities raise particular problems (real independence in decision-making, impartiality, etc.) compared with disputes concerning acts taken by other administrative authorities? Please share any relevant analysis you may have

- we are not currently experiencing any problems

20. Does your court consider itself bound by the technical or economic assessments made by the regulator? Or does it feel entitled to control them? In the latter case, is this control complete or only limited to the manifest error of assessment?)

The Administrative court generally does not review the correctness or appropriateness of an administrative decision or measure, as it only focuses on its legality. If, in the claimant's view, a technical or economic assessment of an issue would lead to the illegality of a decision, the administrative court is obliged to provide such assessment. The judge is not empowered to deal with technical issues and an expert in the field would have to be appointed to deal with questions of this nature.

21. If you receive an application against an act of a regulatory authority or against a sanction imposed by it, is your court only competent to annul the act or sanction or can it also modify the sanction imposed?

- can also modify the imposed sanction

22. Have you been confronted with the problem of an independent authority in your country taking into account a foreign element such as an opinion given by an authority in another country or a decision by a European authority (for example, in the context of the mechanisms set up by the GDPR between the European data protection authorities, which lead these authorities to submit some of their decisions to the European Data Protection Committee for approval)? **Yes/no**

If yes: what kind of legal treatment? Please explain and give examples.

23. Are these cases a particular field of preliminary questions to the Court of Justice of the European Union? **Yes/no**

If yes:

Please explain and give examples.

C-857/19 – Slovak Telekom a.s. v. Antimonopoly Office of the Slovak Republic

1. This request for a preliminary ruling concerns the interpretation of the first sentence of Article 11(6) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1) and of Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2. The request has been made in proceedings between Slovak Telekom a.s. ('ST') and the Protimonopolný úrad Slovenskej republiky (Antimonopoly Office of the Slovak Republic) ('the Slovak competition authority') concerning the legality of a decision imposing a fine on ST for having abused its dominant position, within the meaning of Article 102 TFEU, by applying tariffs on retail telecommunications markets and on the wholesale interconnection market which resulted in a margin squeeze.

C-378/19 – Prezident

1. This request for a preliminary ruling concerns the interpretation of Article 35(4) and (5) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

2. The request was made in the context of proceedings brought by the Prezident Slovenskej republiky (President of the Slovak Republic) concerning the compatibility with the Slovak Constitution, read in conjunction with Union law national rules on the appointment and dismissal of the President of the Úrad pre reguláciu siet'ových odvetví (Regulatory Office for Network Industries, Slovakia, hereinafter 'the Regulatory Authority') and on the participation of representatives of national ministries in price-fixing proceedings before that authority.

C-68/12 – Antimonopoly Office of the Slovak Republic v Slovenská sporiteľňa a.s.

1. This request for a preliminary ruling concerns the interpretation of Article 101 TFEU.

2. The request has been made in proceedings between the Protimonopolný úrad Slovenskej republiky (Antimonopoly Office of the Slovak Republic; 'the Protimonopolný úrad') and Slovenská sporiteľňa a.s. ('Slovenská sporiteľňa') concerning the conduct of three banks which, in that authority's view, constituted an agreement intended to restrict competition.

24. Does the drafting of court decisions raise particular issues related to the technical nature or media exposure of some of these cases? **Yes/no**

If yes:

Please explain and give examples.

The judge in the regulatory ecosystem

25. Are judgments on such appeals subject to any particular publicity or accompanying measures (press release)? **Yes/no**

If yes:

Please specify.

Although such cases are rather rare, if there is a case concerning wider societal interest, a press release is usually issued.

26. Are regulatory authorities entitled to challenge acts or decisions taken by other public persons on the grounds that they impinge on their competence?

- no

27. Independently of a particular case, do your court or its members regularly participate in general exchanges bringing together professionals (regulatory authorities, operators, doctrine, ministries, etc.) from the regulatory sectors concerned? **Yes/no**

If yes:

Judges attend events (lectures, conferences) organised by regulatory authorities. Judges are usually invited to the annual conferences of the Antimonopoly Office or the Office of Public Procurement, and some judges participate as lecturers in professional events.

Please specify.

28. Are the judges in your courts, or more generally the staff of your investigating and registry departments, sometimes led in their careers to take up activities in regulatory authorities, and are such careers encouraged where appropriate? Yes/**no**

If yes:

Please explain.

Quantitative data

29. What is the number of cases concerning regulatory authorities registered before your supreme administrative court in 2020?

50 cases

30. What is the number of cases concerning regulatory authorities settled by your supreme administrative court in 2020?

19 cases

31. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases registered before your supreme administrative court in 2020?

2,78 %

32. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases settled by your supreme administrative court in 2020?

2,50%

33. What percentage of applications against the acts of regulatory authorities were annulled, in whole or in part, by your supreme administrative court in 2020?

31,6%