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

**“Techniques for the protection of private subjects in  
contrast with public authorities: actions and remedies  
– liability and compliance”**

Rome, 23 May 2022

**Answers to questionnaire: Slovakia**



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## **“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.**

### **INTRODUCTION**

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

### **SESSION I**

#### **LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT**

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
  - An ordinary judge
  - An administrative judge
  - A judge who deals with special areas
  - Others



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## Slovak reply

In the Slovak Republic, disputes, in which the public administration is a party, are decided by an administrative judge. According to Article 19 of the Code of Administrative Court Procedure: "*Administrative courts are the Supreme Administrative Court, regional courts and, in cases laid down in law, also district courts.*". The Supreme Administrative Court and regional courts decide in the senates, while in the district court the judge himself decides.

### 2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts
- action of condemnation
- Other actions

If you have replied 'other actions', please clarify which.

## Slovak reply

The Slovak Code of Administrative Court Procedure exhaustively lists the following actions:

- Administrative action (general) (Article 177 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of administrative punishment (Article 194 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of social affairs (Article 199 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of asylum, detention, and administrative deportation (Article 206 et seq. of Code of Administrative Court Procedure)
- Administrative action against an omission of administrative authority (Article 242 et seq. of Code of Administrative Court Procedure)
- Administrative action against other intervention of administrative authority (Article 252 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of election affairs (Article 264 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of local self-government (Article 313 et seq. of Code of Administrative Court Procedure)



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- Administrative action in cases of political rights (Article 375 et seq. of Code of Administrative Court Procedure)
- Competence action (Article 412 et seq. of Code of Administrative Court Procedure)
- Proposal in other cases (Article 420 et seq. of Code of Administrative Court Procedure)

**3. From which sources can actions be proposed brought before the administrative court?**

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

**Slovak reply**

As above-mentioned, in the Slovak Republic, actions that can be brought before the court are regulated by law, specifically by the Code of Administrative Court Procedure. According to Article 2 paragraph 2 of Code of Administrative Court Procedure: “*Anyone who claims that his rights or legally protected interests have been violated or directly affected by a decision of an administrative authority, a measure of an administrative authority, omission of an administrative authority or other intervention of an administrative authority shall be entitled to claim protection before an administrative court under the conditions set out in this Act.*”

**4. Which administrative decisions can be challenged?**

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

**Slovak reply**

Administrative courts review decisions and measures of administrative authorities. A decision of administrative authority is an administrative act issued by an administrative authority in administrative proceedings, which is formally marked as a decision or is considered as a decision according to a specific legal act and establishes, amends, revokes, or declares rights, legally protected interests, or obligations of natural and legal persons, or directly affect her/him/it. A measure of administrative authority is an administrative act issued by an administrative procedure, which directly



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affects the rights, legally protected interests, or obligations of a natural person and a legal person. (Article 3 paragraph 1, b) and c) of the Code of Administrative Court Procedure).

Administrative courts do not review generally binding legal regulations (unless the Code of Administrative Court Procedure establishes otherwise) and preliminary, procedural, and disciplinary decisions and measures of administrative authorities. (Article 7, c) and e) of the Code of Administrative Court Procedure).

**5. On the grounds of which defects can the annulment of an administrative act be requested?**

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

**Slovak reply**

According to Article 191 paragraph 1 of the Code of Administrative Court Procedure: “*The administrative court shall annul the contested decision of an administrative authority or a measure of an administrative authority if:*

- 1. it was issued based on an invalid legal act,*
- 2. it was issued by an administrative authority that was not entitled by law to do so,*
- 3. it was based on an error of law in the case,*
- 4. is unreviewable due to incomprehensibility or lack of reasons,*
- 5. the finding of the facts by the administrative authority was insufficient for a proper assessment of the matter,*
- 6. the facts which the administrative authority took as the basis for the contested decision or measure are contrary to the administrative files or they have no grounds in them,*
- 7. there has been a material breach of the proceeding provisions before an administrative authority which may have led to the adoption of an illegal decision or measure in the main proceeding”.*



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**6. Can the judge partially annul the challenged administrative act?**

- Yes
- No

If your reply is yes, please elaborate.

**Slovak reply**

If the administrative court has not annulled the entire decision or measure of administrative authority, it shall state the description of the annulled operative part of the decision or measure of administrative authority in the operative part of the judgment.

**7. Can the judge substitute the Administration by modifying the content of the administrative act?**

- Yes
- No

If your reply is yes, please elaborate.

**Slovak reply**

Yes, in exhaustively determined cases, the administrative court may change the decision or measure of an administrative authority, or it has extended jurisdiction.

In cases of general administrative action: *Administrative court may, based on the results of its evidence, order to reduce the amount of monetary or financial compensation awarded by the contested decision or measure of administrative authority, if the applicant proposed so, and the amount of monetary or financial compensation awarded is disproportionate or liquidating against the applicant.* (Article 192 of the Code of Administrative Court Procedure)

In cases of administrative punishment: *On the request of an applicant, the administrative court may, based on the results of its evidence, order to change the type or amount of the sanction, even if the administrative authority did not deviate from the legal framework when imposing it (if the sanction is disproportionate to the nature of the act or would be liquidating for the applicant); or to refrain from imposing a sanction (if the purpose of administrative punishment can also be achieved by the hearing itself).* (Article 198 paragraph 1 of the Code of Administrative Court Procedure)



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In cases of detention: *If, after review, the administrative court finds that the administrative action is valid, it shall, after taking evidence, impose less coercive measure on the applicant, which fully replaces the contested decision and order the defendant to release the applicant from the detention immediately.* (Article 230 paragraph 1 of the Code of Administrative Court Procedure)

In cases of election affairs: *If, after review, the administrative court finds that the administrative action is valid, it shall annul the decision of the Electoral Commission and declare the person who has been duly elected to be elected.* (Article 312j paragraph 2 of the Code of Administrative Court Procedure)

**8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?**

- Yes
- No

If your reply is affirmative, please elaborate.

**Slovak reply**

According to Article 191 paragraph 6 of the Code of Administrative Court Procedure: *“The administrative authority is bound by the legal opinion expressed by the administrative court in the annulling judgment in the further proceedings. If the administrative administration body did not act in accordance with the legal opinion of the administrative court in the following proceeding and the administrative court annulled the administrative authority decision or measure for the same reasons, the administrative court may, even without a request, impose a fine on the administrative authority in the annulling judgment.”*

**9. When do the effects of the jurisdictional annulment of an administrative act become applicable?**

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other



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### Slovak reply

A decision of an administrative authority is valid until it is finally revoked. Nor does the filing of an administrative action have a suspensory effect on the contested decision. However, the administrative court may, on the request of the applicant, order that the action should have a suspensory effect until it has decided on the merits.

**10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?**

- Yes
- No
- Other

**11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?**

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

### Slovak reply

In the Slovak Republic, there is no special type of action for damages in administrative legislation since damages are decided in civil proceedings. Damage caused in the exercise of public power is laid down in a specific act (lex specialis).

**12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?**

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other



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Please elaborate

### Slovak reply

The government is liable for damage caused by an unlawful decision or maladministration. According to Article 14 paragraph 1 of the Act on Liability for Damage Caused in the Exercise of Public Power: *“Maladministration is considered as a breach of the duty of an administrative authority to take an action or issue a decision within the time limit laid down in law, an omission of an administrative authority in the exercise of public power, unnecessary delays in proceedings or other unlawful intervention in the rights and legally protected interests of natural and legal persons.”*

### 13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

### Slovak reply

According to Article 17 paragraphs 1 and 2 of the Act on Liability for Damage Caused in the Exercise of Public Power: *“Actual damage and lost profits shall be compensated, unless a special act stipulates otherwise. If the mere finding of an infringement is not sufficient satisfaction in respect of damage caused by an unlawful decision or maladministration, non-material damage shall also be compensated, unless it can be satisfied otherwise.”*

### 14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

### Slovak reply

The responsibility of the government is given **only if the injured party has used all proper remedies to obtain redress**. This means that the injured party has lodged an appeal, objection, opposition, complaint, or another type of appeal against the unlawful decision.



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The condition for awarding compensation is that the decision which was supposed to violate the law has become final.

**15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?**

- Yes – the party with burden of proof is...
- No

**Slovak reply**

In principle, the burden of proof is placed on the party whose claim is to be substantiated, therefore the injured party in this case. In accordance with the adversarial principle, the obligation to bear the burden of proof and to prove the fulfilment of qualifying conditions for non-material damage, as well as the criteria for determining its amount, burdens the injured party (this statement was confirmed by the Constitutional Court of the Slovak Republic in its resolution on 12 January 2012)

**16. Can the judge convert *ex officio* one action into another?**

- Yes
- No

If the reply is yes, please elaborate

**Slovak reply**

*“The applicant determines the subject-matter of the proceedings as dominus litis. It must be entirely unquestionable and clear from the applicant's arguments and his required wording of the decision (petition), what the applicant seeks.*

**17. Is there a time-limit for the proposition of the compensatory action?**

- Yes
- No

If the reply is yes, please elaborate



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### Slovak reply

According to the Act on Liability for Damage Caused in the Exercise of Public Power “*The right to compensation shall be time-barred within three years from the date on which the injured party became aware of the damage. If the condition for exercising the right to compensation is the annulment or amendment of a valid decision, the limitation period shall run from the date of delivery (notification) of the decision by which the final decision was amended or revoked.*”

**18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?**

- Yes – explain
- No

### Slovak reply:

No, the administrative court only examines the lawfulness of the issued decision or measure of an administrative authority. If the administrative court revokes a decision or a measure, it will state what the unlawfulness consists of and how the administrative authority should eliminate it in the next proceedings. Only in an action against an omission of an administrative authority proceeding the following shall apply: “*If, after review, the administrative court finds that the action is valid, it shall order the administrative authority to act and decide, issue a measure or perform an act or initiate an administrative proceeding ex officio within a specified period. The issuance of this order does not end the court proceedings and the administrative authority is obliged to deliver to the administrative court within the specified period the issued decision, measure, or notification of the performed act or initiation of administrative proceedings.*” (Article 250 paragraph 1 of Code of Administrative Court Proceeding) The administrative court imposes a reasonable period of time on the administrative authority to fulfil the given obligation, but not longer than 3 months.



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## **SESSION II – SPECIAL PROCEDURES**

### **1. Does your administration have provisions for special procedures**

- Yes
- No

If the reply is yes, please elaborate

#### **Slovak reply**

Code of Administrative Court Procedure in its IV. section stipulates the following special proceedings:

- Administrative action against an omission of administrative authority (Article 242 et seq. of Code of Administrative Court Procedure)
- Administrative action against other intervention of administrative authority (Article 252 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of election affairs (Article 264 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of local self-government (Article 313 et seq. of Code of Administrative Court Procedure)
- Administrative action in cases of political rights (Article 375 et seq. of Code of Administrative Court Procedure)
- Competence action (Article 412 et seq. of Code of Administrative Court Procedure)
- Proposal in other cases - proceedings on the enforceability of decisions of foreign public administration bodies and proceedings on the issuance of consent to inspection (Article 420 et seq. of Code of Administrative Court Procedure)

### **2. What do the specialities consist of?**

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other



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### Slovak reply

The procedure of bringing an action, the time limits, and the jurisdiction of the court are governed by the same general provisions for each type of action. However, the special proceedings have specific conditions of action (in addition to general ones) as well as specific standing to bring proceedings.

#### 3. The special rites are established:

- According to subject ( for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

Please elaborate

### Slovak reply

See the answer to question no. 1

#### 4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No

If the reply is yes, please elaborate

### Slovak reply

According to Article 3 paragraph 1 d) of Code of Administrative Procedure: *"The omission of an administrative authority is a situation where an administrative authority unlawfully does not proceed with an initiated administrative proceeding or a situation where an administrative authority unlawfully has not initiated an administrative proceeding."* In a special proceeding, the applicant is entitled to bring an action to seek elimination of the omission of an administrative authority.

According to Article 244 paragraph 1 of the Code of the Administrative Court Procedure: *"An applicant is a natural or legal person who, as a party to an administrative proceeding objecting to*



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*an omission of an administrative authority, has unsuccessfully exhausted a complaint according to a special act or a complaint to the public prosecutor's office."*

**5. Do the Administrations comply spontaneously with the decisions of the administrative courts?**

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

**Slovak reply**

If the administrative authority does not act in accordance with the decision of the administrative court, the administrative court is entitled to impose a fine on the administrative body, even repeatedly.

**6. . In your legal system, is there a special procedure for ensuring the integral execution of the sentence?**

- Yes
- No

If the reply is yes, please elaborate

**7. Are the judge's decisions which are not of the last resort immediately enforceable?**

- Yes
- No

If the reply is yes, please elaborate

**Slovak reply**

*"The decision is enforceable as soon as the time limit for complying with the obligation laid down by the administrative court has expired, otherwise when it has become final." (Article 146 paragraph 1 of Code of Administrative Procedure) The decision of the regional court becomes final*



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upon expiry of a period of 30 days from the delivery of the decision or by filing a cassation complaint within the same period. The cassation complaint has no suspensive effect unless there are exhaustive exceptions.

**8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of “reduction” of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**

- Yes – elaborate

- No

### Slovak reply

Article 27 paragraph 2 of the Code of Administrative Court Procedure is based on the "setting of limits" in reviewing the lawfulness of a decision, measure, or other intervention issued or made by administrative discretion of an administrative authority. The Administrative Court is not entitled to review whether an administrative authority has appropriately applied its discretion. The subject matter of the review covers whether the contested decision, measure, or other intervention did not deviate from the limits and aspects established by law. However, the applying of discretion can never be arbitrary and must therefore be duly justified and at the same time in line with the principles of logical thinking. Article 27 paragraph 2 of the Code of Administrative Court Procedure also emphasizes that the mentioned limits shall not apply in cases of full jurisdiction.

According to Article 27 paragraph 3 of the Code of Administrative Court Procedure: *“The Administrative Court does not review the efficiency, cost-effectiveness, and appropriateness of a decision, measure or other intervention of an administrative authority.”* (except for monetary limiting, sanction limiting, and full jurisdiction).



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### **SESSION III – PRECAUTIONARY MEASURES**

**1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**

- Yes
- No

#### **Slovak reply**

According to Articles 184 and 185 of the Code of Administrative Court Procedure: *“Filing an administrative action has no suspensive effect unless the Code of Administrative Court Procedure or a special act stipulates otherwise. On the request of the applicant and after the administrative authority has delivered the opinion, the administrative court may order that the action should have a suspensory effect*

1. *if the immediate enforcement or other legal consequences of the contested decision or the measure of the administrative authority is a risk of serious injury, significant economic damage or financial damage, serious damage to the environment, or other serious irreparable consequence and a suspensive effect is not in conflict in the public interest, or*
2. *if the contested decision or measure of the public authority is based on a legally binding act of the European Union, the validity of which may be seriously doubted, and the applicant would otherwise be in danger of serious and irreparable damage and the suspensory effect is not contrary to the European Union's interests”*

**2. In your legal system, are precautionary measures provided for?**

- Yes
- No

#### **Slovak reply**

In the Slovak Republic, there are no interim measures in the administrative legislation. Interim measures ("urgent and precautionary measures") are stipulated only in the Code of Civil Procedure, but this section does not apply to administrative court proceedings governed by the Code of Administrative Court Procedure.



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The only special (interim) measure is the "temporary suspension of the general binding regulation", which can be imposed in proceedings on the compliance of a generally binding regulation of a municipality, city, city district, or self-governing region with the law, government regulation and generally binding legal regulations of ministries and other central state administration authorities. According to Article 362 paragraph 1 of the Code of Administrative Court Procedure: *"On the request of the applicant, the administrative court may order to temporarily suspend a generally binding regulation or its part, if its further application may jeopardize fundamental rights and freedoms if there is serious economic or environmental damage or another serious irreparable consequence."*

### **3. What kinds of decisions can the judge apply as a precautionary measure?**

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

#### **Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

### **4. What are the conditions for the acceptance of a precautionary request?**

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites ( please specify )



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### Slovak reply

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

#### 5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

### Slovak reply

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

#### 6. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted? Which?

### Slovak reply

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

#### 7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings ( *ante causam* )?

- Yes
- No

### Slovak reply

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.



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**8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?**

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

**9. When dealing with the precautionary request, does your legal system provide for specific procedure?**

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

**10. Is the precautionary decision taken unilaterally or collegiately?**

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.



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**11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?**

- Yes ( explain in which conditions )
- No

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

**12. Can precautionary measures be challenged before the Supreme Court /Council of State?**

- Yes
- Yes, but only if they pass a test of eligibility
- No

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

**13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?**

- Yes
- No

**Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.

**14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?**



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### **Slovak reply**

In the Slovak Republic, there are no interim measures in the legislation of the administrative judiciary.



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