SUPREME COURT
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ACA EUROPE

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"Due process"

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Due Process

Questionnaire for the ACA Seminar in Tallinn, 26-27 April 2018

ANSWER
Supreme Court of the Slovak Republic

Part A

Efficiency of Court Proceedings (at the Expense of Procedural Guarantees)

1. Simplified proceedings

Does your administrative procedural law provide for the possibility of resolving administrative cases in simplified proceedings: on the level of the highest administrative court and/or in lower administrative courts? (YES/**NO**)

- If NO, then are there any other possibilities for simplifying administrative court procedures (are there exceptions in, for example, taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, etc.)? Have there been discussions about the creation of simplified proceedings as a separate type of procedure? What are the main positions on the issue?

Within the administrative procedural law, there is administrative procedure and administrative judicial procedure. Public administrative body at first stage (not in meaning as first instance) conducts administrative procedure. Administrative procedure is the procedure of public administrative authorities, parties and other participants, the examination and enforcement of a decision issued in the form of an individual administrative act, in which administrative authorities decide on the specific rights, legitimate interests and duties of the parties. Administrative judicial procedure is the procedure of competent administrative courts in which the court acts and decides on decisions of lawful decision adopted (individual administrative act) by public administrative body in administrative procedure. Administration procedure is govern by Act no. 71/1967 Coll. on Administrative Proceedings (Administrative Code) as the main codex and many other specific acts governing selected legal areas (i.e. Administrative Infractions Act, Act on the Armed Forces, Act on Higher Education etc.), whereby Administrative Code is in relation to subsidiarity of these specific acts. The Act no. 162/2015 Coll. Administrative Judicial Code (hereinafter also referred to as "Code") governs administrative judicial procedure and replaced the original legal regulation contained in Civil Procedure Code. Adopted amendments represent essential and necessary steps to achieve more effective, faster and better quality of judgments in the administrative justice. The main objective of this recodification is to streamline, simplification, accelerating and rationalization of the judicial process in the administrative justice, in the purpose of ensuring more efficient protection of the rights and legitimate interests of natural and artificial persons, as well as protection of the rule of law and the public interest.

In administrative justice, courts protect rights, the legitimate interests and the duties of the natural and artificial persons regarding the public administration and decide on other legal matters provided for by this Code. Anyone claiming that his rights or legitimate interests have

been infringed or affected by a decision or measure of a public administrative authority, or by an inactivity of a public administrative authority or any other intervention by a public administrative authority may, under the conditions laid down by this Code, seek the protection at the administrative court. Administrative proceedings are one of the guarantees of the protection of fundamental human rights and freedoms and the protection of rights and the legitimate interests of the parties to the administrative procedure.

Regional courts as courts of first instance are basic elements of the organisation of the administrative justice. Supreme Court of Slovak Republic (hereinafter referred to as „Supreme Court") as a court of first instance just exceptionally in special proceedings established by Code (some electoral matters and deciding on the Prosecutor General's proposal to dissolve a political party). Firstly, Supreme Court is appellate court deciding on cassation complaints. Supreme Court as the highest judicial authority in matters of administrative justice also ensures the unity and lawfulness decision-making. A cassation complaint should replace the appeal, should be in nature of extraordinary remedial measure, and should be admissible only for the reasons stated in the Code.

Despite the fact that there is currently no possibility of settling administrative disputes in the simplified procedure at the level of the administrative courts, the new legislation – Administrative Judicial Code also establishes **several procedural legal institutes, which enable to maximize the quick and fair protection of the rights and legitimate interests providing proper access to the court.** The aim of new legislation (Code) is to make so procedural legal institutes that enable to come closer to the idea of quick and fair protection of rights and legitimate interests of parties, under responsible access of persons to judicial procedure thus creating the space for qualitative judicial decisions.

Such institutes are for example:

APPLICATION - The application may be filed in writing, through electronic means.

JOINING MATTERS - For the sake of the economic efficiency of the proceedings, the court shall be authorised to join in common proceedings individual matters that have been initiated at that court under individual actions, and facts at issue of which are connected with each other or involve the same participants.

THE LETTER OF REQUEST - Procedural acts that could be taken by the competent court with difficulty or increased, needless costs or that cannot be taken in its district shall be taken by another court upon a letter of request.

THE ACCUSANT´S SATISFACTION - The accused public administrative authority may bring a proposal to the Administrative Court to satisfy the accusant that the administrative authority would issue a new decision, measure or other action unless it does not affect the rights, interests or obligations of third parties and the administrative court has not yet ruled on the case. The procedural institute is a manifestation of the application of the principle of economy based on the effectiveness and subsidiarity of judicial protection. The administrative court may issue a resolution of satisfaction or may decide not to issue such consent. In the resolution on the issuance of consent, the administrative court will always set a limitation period, within which the accused must not only make satisfaction, but also notify the administrative court. This

provision establishes a new competence for public authorities to eliminate unlawfulness detected outside its standardized, in-process procedure.

EX OFFO - The principle of judicial concentration (as a part of adversarial principle) is a newly implemented principle according to which the means of procedural attack and procedural defence must be used on time. The court may not consider the means if the court believes that the party could have used them at earlier stage of proceedings. If the proceedings were initiated, the court proceeded without any further suggestions (ex offo) so that the case could be resolved as soon as possible. The administrative court continues to proceed, even though the parties are inactive. The parties are required to contribute to the purpose of the procedure, in particular by truthfully and fully describing all the necessary facts, identifying the means of proof and taking account of the instructions of the administrative court.

DELIVERING - The proposed concept of delivering action and parties' submissions is based on the application of the principle of judicial concentration of proceedings in the administrative judiciary. A replica and a rebutter is a procedural regime the purpose of which is to "substantiate" the facts and legal arguments of the parties so that the principle of equality of arms is fulfilled and that the administrative court can proceed without delays in proceeding. Once the replicas and rebutters have been exhausted, the court of justice for further statements may not take account of what the participants are instructing.

THE ABRIDGED REASONING - If any cases with the same applicant and the identical subject-matter of the proceedings have taken place on the administrative court, the administrative court shall, in the grounds of each subsequent judgment, refer to the same (previous) judgment only, or briefly reiterate its (already mentioned) reasons. Given that there is no judicial precedent in our system, at least the possibility of abridged reasoning with a reference to the same judgment, in which the legal problem has already been resolved, is introduced. 'Identical subject matter' means an object of a proceeding, which is identical in nature but does not constitute an obstacle to lis pendens or res judicata.

All above-mentioned institutes may apply in general to all administrative disputes without exception.

- If YES, please answer questions 2–4.

2. Prerequisites of simplified proceedings

2.1 To hear a case in simplified proceedings, is the prerequisite:

a. that the dispute is in a specific area of law? Please specify which areas (for example, minor traffic violations, administrative fees, aliens' cases, extradition *etc.*);
b. a minor infringement? Please specify criteria for which infringements are considered minor (for example, is the breach of law in question of a low priority or is the amount of the claim small; is it characterised by a monetary limit and if so, what is it?). If possible, please submit the legal definition of a minor infringement or a small claim, as well as examples or definitions from case law;
c. that the solution to the case is clear and obvious;
d. something else (please specify)?

2.2 Have the possibilities of hearing a case in simplified proceedings been exhaustively defined in law or is it case law instead that has a decisive role in whether it is used (for example, a discretionary decision)?

2.3 Can the court use simplified proceedings regardless of whether the parties to the proceedings agree to it?

2.4 Can a person appeal the implementation of simplified proceedings separately from the final court decision?

2.5 Can simplified proceedings be carried over into general procedure and *vice versa*?

3. Nature of simplified proceedings

3.1 Which rules of administrative court procedure are mandatory in simplified proceedings (for example, hearing the parties, general principles of administrative court procedure, *etc.*)?

3.2 Which general rules of administrative court procedure do not need to be followed in simplified proceedings (are there exceptions, for example, in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, public announcement *etc*.)?

3.3 Are there differences in using simplified proceedings across the court instances?

3.4 What are the limitations on the right to appeal in case of simplified proceedings? Can an administrative case that is resolved in simplified proceedings be appealed up to the highest instance? If there are differences compared to general procedure, please describe how a case for which simplified proceedings are used moves through the court system (for example, the appeal might be submitted directly to the highest court, etc.).

3.5 In simplified proceedings, can a court issue a judgment without the statement of reasons? (YES/NO)

- If NO, then why is such a possibility not provided?
- If YES, then:

    a. what kind of information does that judgment have to contain?
    b. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?

4. Simplified proceedings in court practice

4.1 What is the share of cases resolved in simplified proceedings out of all resolved cases? (%)

4.2 Has the case law in your country pointed to any problems related to simplified proceedings, and if it has, what kinds of problems were they? Please give up to 3 examples.

Part B

Right to Public Hearing

1. Are there any types of administrative cases or any court instances in which only oral proceedings are allowed (i.e. written proceedings are prohibited)?

In administrative justice, proceedings can be conducted in both forms – in written and as oral proceeding, with a combination of both. Therefore, each case might be conducted in part in writing (action, parties ´ statements, procedural resolutions, subpoenas) and partly orally (hearing). The Code does not prohibit written proceedings in any cases, but rather prefers it before the oral hearing, that is rather restricted by specifying the cases when the hearing is exclusively eligibleness.

Under the Code, in administrative justice, the judge does not conduct the hearing in principle, because the court does not find the facts of the case in the proceedings, as the competent public administrative authority have already established facts at issue, which therefore was recorded by public administrative body in the file. If the administrative court orders the hearing, it prepares it so that **it can be decided on a case-by-case basis in a single hearing**.

(Section 107 of Code) The court **shall order a hearing** to try the matter

A) at least one of the parties so requests
B) evidence is being carried out
C) it requires public interest
D) it is necessary to discuss the matter
E) it is established by this Act

In other cases, the administrative court decides **without a hearing**. Therefore, it means, the proceedings before the administrative court are oral, **if so provided by this Act**. The presiding judge shall order the hearing only if there is a legitimate reason under paragraph 1. The provision of Section 107 gives the Administrative Court sufficient opportunity to consider when the hearing is indeed necessary.

In addition to the general provision mentioned above, the Code regulates the obligation to hold oral hearings in specific types of special procedures, i.e. :

(Section 228) Proceedings in **retention matters**

(Section 388) Proceedings in Matters Regarding **dissolution of a political party**

(Section 399) Proceedings in Matters Regarding **dissolution of association**

The Code establishes, relating to second instance, the cassation court (Supreme court) also hear and dispose of complaints without ordering the hearing almost always, unless the cassation court considers the hearing in the case to be necessary (if necessary to explain legal opinion).

Judicial review of legality is based on the findings from the contested administrative decision and from the administrative file in confrontation with the allegations in the action. Since the scope and grounds of the action are binding on the administrative court and the administrative

court bases its legal opinion on the facts at issue established by the public administrative authorities, the administrative court generally has a complete set of information on which it should decide without ordering the hearing.

The requirement appears to be well founded, since administrative courts do not conduct original procedure (with court´s fact finding, evidence proceeding etc.), but just the review of the previous one (brought by the public administrative body) and its nature is more related to the civil appeals procedure. So the administrative courts carry out review of legality, they are not "factual" court and do not conduct fact finding. The administrative court could decide upon the administrative file, which is not a mean of proof. At the hearing, parties will actually only file their written representations (action, statement), the judge will make parties and himself acquainted with the administrative file and then he will decide. The court carries out the evidence proceeding by acquainted itself with the content of the administrative file confronting it with evidence brought forward by parties. In practice, there won´t have been any contentious question about legal nature or quality of proof, but the question about correct evaluation of such proof, whether the public administrative authority has evaluated the evidence in accordance with the administrative procedural rules. In particular, the administrative court carries out control over the decision-making activities of public administrative authorities and investigates whether the public administrative body has found the facts sufficiently. **Ordering the hearing exceptionally only in certain cases is in behalf of applying the procedural economy principle.** Even if the court decides to conduct a hearing, it should proceed so that it will decide within this (one) hearing without the need for repeated adjournment (sine die) of this hearing.

2. Under which circumstances may cases be resolved in written proceedings? Can the justification be, for example:

a. exclusively legal questions;
b. highly technical questions;
c. the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written observations;
d. other bases, for example at the request of one of the parties to the proceedings?

We have already answered this question in response to the previous one stated above.

3. Can oral proceedings also be carried out via videoconferencing (i.e. in a manner where either a party to the proceedings or their representative or counsel can be in a different place during the hearing and carry out procedural acts in real time, through an audiovisual transmission)? (**YES**/NO)

- If NO, then has the creation of such a possibility been discussed? What were the main positions on the issue?

- If YES, then:

  a. what are the legal limitations (for example, in which kinds of cases is it not permitted)?
  b. have the risks of videoconferencing and the protection of a person's rights been discussed? What were the main positions on the issue?

The legislator emphasizes the line of modernization of court hearings, therefore expressly enshrines the possibility of conducting a hearing via videoconferencing or other modern technologies such as skype.

The administrative court may hold a hearing via videoconference or other means of communication technology only with the consent of the parties.

4. Can oral proceedings also be carried out outside the court-room (in prison, hospital *etc*)? In which circumstances is this possible?

By the 1st July 2016, the original Act (Civil Procedure Code) governing civil procedural law (including administrative procedural law) was replaced by 3 new codes - Civil Proceedings Code for Adversarial Procedures (abbreviated as "CPCAP"), Civil Proceedings Code for Non-adversarial Procedures (abbreviated as "CPCNP") and Administrative Judicial Code (the Code). These represent the first comprehensive amendment to the previous legislation in over 50 years. The primary aim of new codes is to accelerate the speed of court proceedings, to ensure equitable protection of participants' rights and to rationalise the cost of proceedings. The relationship of these three codes is expressed in section 2 of the CPCAP - *All judicial procedures (except for criminal proceedings) are proceeded upon this act, unless the Civil Proceedings Code for Non-adversarial Procedures, the Administrative Judicial Code or any other law provides otherwise.* Here is stipulated **subsidiarity principle**, which means that CPCAP regulates civil procedures in general (with an emphasis placed on adversarial procedures) and to non-adversarial civil procedures and administrative procedures is applicable only in a subsidiary way, unless the CPCNP and Code does not establish a special procedural regime which takes precedence over general regulation laid down by the CPCAP.

The Code does not specifically regulate the place of hearing, so in the sense of the principle of subsidiarity, the relevant provisions can be found in the CPCAP.

Hearing takes place in the courtroom at the place of the court´s seat, unless it is necessary to conduct the hearing in another appropriate place. If the court, for important reasons, decides to carry out the hearing in another appropriate place, it shall take steps to ensure the dignified course and fluency of the hearing. In preference, the hearing takes place in the designated premises in order to ensure its dignity. Due to ensuring the purpose of the procedures, for the court is given the facultative possibility to hold a hearing in another appropriate place, but with all the required attributes (especially dignity and the public).