Bundesverwaltungsgericht

ACA EUROPE

Seminar organized by the Federal Administrative Court of Germany and ACA-Europe

Functions of and Access to Supreme Administrative Courts

Berlin, 13 May 2019

Answers to questionnaire: Greece

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

ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg

(Higher Administrative Court Berlin-Brandenburg)

Introduction

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which "filters", for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12th to 14th May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states' Supreme Administrative Courts. It shares this objective with the closely linked seminar taking place in Dublin on 25th and 26th March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge's daily work.

This Questionnaire has been answered by Dr. Theodora Ziamou, Judge (Associate Councillor), Supreme Administrative Court of Greece

I. Functions of the Supreme Administrative Court (SAC)

1. a) *How many **instances** are known in your (administrative) jurisdiction?*

There are ordinary administrative courts of first instance ("first trial courts" or lower courts) and second instance ("courts of appeal" or higher / appellate courts). The Council of State of Greece (henceforth "the Greek SAC") hears applications for revision against judgements of the administrative courts of appeal and in a few cases against judgements of administrative first trial courts. The Greek SAC acts also as a court of second instance mainly when hearing appeals against judgements of administrative courts of appeal taken in judicial review cases of lower importance allocated to them specifically by the legislator.

b) *Does your SAC also serve as a first instance court?*

The Greek SAC acts primarily as a first instance court in judicial review cases by virtue of the Constitution which accords to the Greek SAC, since its foundation as a democratic institution in 1911 / 1929, the presumption of competence for judicial review cases. The SAC itself declared its institutional role as a Court of judicial review with Decision 478/1945, consisting in "the objective control of administrative action to the aim of safeguarding the strict adherence to the law and to the principle of legality by state organs and also in the combat of the excess of powers undertaken by the Administration, by this way corresponding to the democratic spirit of the Constitution of 1911 which is based primarily on the rule of law". Judicial review of administrative action was understood from the beginning to encompass review of constitutionality of

statutes. With its first decision 1/1929, the Greek SAC declared that it is not hindered to review incidentally the constitutionality of statutes, drawing its authority on the constitutional provision that stipulates that courts have the obligation not to enforce a law, the content of which contravenes the Constitution. Observing the principle of legality in the workings of the Administration is the cornerstone of judicial review exercised by the SAC.

The Greek SAC acts also as a first instance court when hearing appeals against (most serious) decisions of the administrative councils of civil servants, also by virtue of the Constitution.

More specifically, according to Article 95 para. 1 of the Constitution, "The jurisdiction of the SAC pertains mainly to: a) The annulment upon petition of enforceable acts of the administrative authorities for excess of power or violation of the law" (judicial review cases) ... "c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the statutes". According to Article 103 para. 4 of the Constitution: "Civil servants holding posts provided by law shall be permanent so long as these posts exist. (…) With the exception of those retiring upon attainment of the age limit or when dismissed by court judgement, civil servants may not be transferred without an opinion or lowered in rank or dismissed without a decision of a service council consisting of at least two-thirds of permanent civil servants. Recourse against the decisions of these councils may be sought before the Supreme Administrative Court, as specified by law."

c) *If so, under what circumstances does your court serve as a first instance court?*

- *depending on the subject-matter?*
- *depending on the importance of the case?*
- *depending on a choice by the plaintiff (alone) or the parties (by agreement)?*
- *depending on other criteria?*

Please explain.

As a Court which enjoys constitutionally the presumption of general competence for judicial review cases, the SAC is distinguished from ordinary (lower) administrative courts of first instance on the basis of two separate criteria: the subject matter of the disputes and the importance / severity of the cases, as both of these criteria are put in force by the legislator and controlled (ultimately) by the SAC. More specifically:

1) The Greek SAC hears applications for annulment of illegal administrative acts (individual or regulatory) affecting (having adverse consequences on) the legal capacity or lawful position of private parties (associations, private law bodies etc.), on which these parties base a particular advantage, with the view to correct any illegalities of administrative action put forward by the applicant parties. Lower administrative courts of first instance hear claims or lawsuits of private parties who are hurt in their legal rights by executive or non-executive acts and omissions of the Administration and who ask the court to remedy their loss by granting them a benefit or monetary compensation or by recognising a particular right belonging to them or a particular legal relationship governed by law. In the latter cases (which include taxation, social security, the execution of public contracts, compensation claims against the state and public-law bodies etc.) the lower administrative courts of first instance have the power not only to annul illegal administrative acts but also to exercise full jurisdiction on both the law and the facts of the case and respecting the type of the claim filed before the court, they have the power to correct or modify illegal administrative action, so as to uphold the rights of the claimant that have been hurt (substantive administrative-law disputes / full jurisdiction). As the SAC has ruled throughout its history in a series of cases discussed in plenary session (Plenum Decisions 1095/1987, 3919/2010, 616/2013, 619/2013, 693/2013), the legislator has the

discretion to transfer certain specific categories of judicial review (annulment) cases from the general jurisdiction of the SAC to the jurisdiction of the lower courts of first instance and even transpose them into substantive / full jurisdiction disputes, by taking into account their nature or their importance, as long as this does not result in the intersection of the judicial and the executive power in the fields where the executive power enjoys exclusive competence. This intersection could occur when in view of the object of the challenged individual administrative act, the conditions set for its issue, the type of review required to establish the fulfilment of these conditions and also in view of the results of the eventual judicial modification of the challenged act, the exercise of full jurisdiction by the courts would transcend the limits of the exclusive powers accorded to the executive by the legislator in the particular subject-matter and ultimately violate the constitutional principle of separation of powers. Cases that may not be transferred from the judicial review jurisdiction of the SAC to the substantive jurisdiction of the lower courts include in first line those arising from the direct challenge of regulatory acts of the Administration. This is because the Administration acts in a general, uniform and impersonal way when issuing a regulation, on the basis of statutory authorisation granted exclusively to its organs in accordance with the conditions set in Article 43 of the Constitution; the eventual judicial modification of an issued regulatory act would result in usurping the authority of the administrative organs in these particular fields by the judges.

2) As is held with standard jurisprudence of the Greek SAC, civil servants have the inalienable constitutional right to appeal directly to the SAC when they are lowered in rank or dismissed by decision of the civil service disciplinary councils, as a guarantee of their permanency in office which is safeguarded in Article 103 of the Greek Constitution. This is sought by filing the so-called “civil service appeal” directly before the SAC, which has the power to examine

the substance of the case, exercise full review of the law and the facts and ultimately modify the disciplinary penalty imposed by the civil service disciplinary council. All other decisions of civil service or military councils, disciplinary or general, are challenged before the SAC or before the administrative courts (which may act in these cases as courts of first instance or as courts of first and last instance), by application for annulment, as the legislator deems appropriate at each particular time-set, unless the legislator estimates that also other civil service disciplinary cases should be tried by the SAC for reasons of fuller and more effective judicial protection of the civil servant concerned. The limits to the discretion of the legislator, apart from the obligatory jurisdiction of the SAC according to aforementioned provision of Article 103 para. 4 of the Constitution, have been set again by the SAC (Decision of Administrative Plenum of the SAC 6/2000, 7/2001, Decision of the SAC in major session 1805/2009): The SAC remains exclusively competent: a) for applications for annulment filed by highest civil and military servants against condemnatory decisions of civil or military service disciplinary councils other than those subject to the above-mentioned civil service appeal, b) for appeals against decisions of administrative courts of appeal taken in first instance on disciplinary cases of lower military officials which result in the dissolution of the relationship with the military service.

3) The legislator enjoys also the discretion to transfer certain categories of judicial review cases from the jurisdiction of the SAC to the jurisdiction of administrative courts of appeal which act in such cases as judicial review courts of first instance (second instance court becoming then the SAC) or as courts of first and last instance, on the basis of the importance of the cases and by taking into account the need to the ease the workload of the Greek SAC as the Supreme Administrative Court of the country, in the general interest of the administration of justice (Law 702/1977).

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

At the time of the submission of the first edition of the present national report (20th January 2019) there are official statistical data about the workings of the SAC for the year 2017. According to the numbers of 2017, 47,5% (1750) of the total number of cases that entered the SAC (3683) have been applications for annulment (judicial review cases), 6,21% (229) have been appeals to the SAC as court of second instance, 42,43% (1563) of cases have been applications for revision, 1,57% (58) have been civil service appeals (introduced directly before the SAC) and 2,22% (82) have been other types of (exceptional) cases.

According to the official statistical data of the Greek SAC for the year 2018, which were made available to the judges in March 2019, 46,11% (1681) of the total number of cases that entered the SAC in 2018 (3645) have been applications for annulment (judicial review cases), 8,61% (314) have been appeals to the SAC as a court of second instance, 41,20% (1502) have been applications for revision, 1,37% (50) have been civil service appeals and 2,52% (92) have been other types of exceptional remedies / cases.

2.

*a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?*

Judges who are members of the three Sections of the SAC which treat primarily cases at first instance (judicial review cases, provisional proceedings, civil service appeals etc.), discuss in average, primarily judicial review cases (55%), then appeal cases (35%), then civil service appeals (6%) and provisional judicial protection requests (4%).

b) *If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?*

This task is undertaken by the President of each Section of the Court who is responsible to allocate the cases to each judge rapporteur - member of the Section, councillor (with one judge-referendaire as their assistant) or associate judge. Since December 2018, the President of each Section receives the file of the case after it has been preliminarily reviewed and categorised as to its object, its completeness and its complexity by competent secretaries and by assistant judges appointed periodically by the President of the SAC for each section of the Court, following the President's decision of entrance into force of Article 10 of the Codified Internal Regulation of the Greek SAC dated 1st October 2013. Most cases are of normal complexity, irrespective of their categorisation as judicial review, appeals etc., but the number of complex cases allocated to each judge in each category has a lot to do with their capacities, their qualifications, their previous experience in the particular cases and their general performance in the exercise of their judicial duties.

3. a) *In appeals cases, does your SAC:*

- *review decisions of the lower courts with a view to the facts and to the law?*

- *review decisions of the lower courts with a view to the law only?*
- *solely answer a(n abstract) legal question?*

The very definition of appeal cases heard by the Greek SAC is the review of the judgements of the lower courts with a view to the facts and to the law. More specifically, according to Article 64 of the Code of Procedure of the SAC (presidential decree 18/1989), the appeal to the SAC refers exclusively to errors of the seized decision taken at first instance. If the SAC accepts one of the grounds for appeal put forward by the appellant, then the SAC vacates the decision of first instance and treats itself the initial application for annulment. If the SAC finds that the initial application for annulment should be rejected, then the administrative act annulled before the administrative court of appeals which acted in the case as a court of first instance, is reinstated retroactively going back to the date of its issue.

In some situations the SAC does in fact have to answer a(n abstract) legal question only, when examining an appeal. This occurs in cases where applications for appeal lodged before the Greek SAC are rejected as inadmissible (*see below*).

4. *What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?*

- *the standardisation/unification of the law?*

Yes, especially since the enactment of Law 3900/2010 on 1st January 2011, which instituted the "filter" applicable also to appeal cases. According to these fairly recent provisions, an appeal is rejected as inadmissible if there is no specific argument put forward by the appellant party in their initial writ of appeal that the judgement of the administrative court is contrary to a judgement of the Greek SAC on the same legal matter judged previously by the SAC or

other Supreme Courts of the country, or that there is no known SAC jurisprudence on the same - critical for the case at hand - legal matter, or that the lower court has ruled on a matter of constitutionality of the applicable law which has not been answered by the Greek SAC until the time of the filing of the application. By treating on the merits only appeals which are accepted as admissible on the basis of the above-mentioned criteria, the law becomes in fact standardised and unified at the level set by the Greek SAC.

- *the deliverance of single case justice?*

This is expected in cases when an appeal passes the aforementioned filter and the appeal is heard on the merits. Then the particular facts of the case come to play and acquire major importance. However, deliverance of single case justice is mostly the objective of administrative disputes which go on trial at first and second instance and are also subject to revision by the SAC, whereby the judge looks for the deepest and fullest diagnosis of the matters of the case and for the correction of all errors of decisions of the lower courts. The trial of judicial review cases at second instance by the SAC is introduced as an exception to the general rule of the exercise of judicial review by the SAC at first and last instance with the aim to de-congest the SAC from its enormous workload. This has as consequence that in appeal (second-instance) cases, the SAC holds on to its basic role as a court of judicial review seeking to uphold the rule of law in an objective way and less to its role as a normal court seeking to correct previous decisions of the lower courts and ultimately make justice to the procedural and substantive rights of all parties involved in the case at every stage of the trial.

- *(further) development of the law?*

If the SAC decides that the appeal is admissible because the lower court has ruled on a legal matter that has not been decided before by the Greek SAC, then, yes, the purpose of the development of the law is also served.

- *care for adherence to procedural rules of lower courts?*

Not really, because when the SAC finds that the lower court has made a procedural error, it will not send the case back to the lower court but will rather reach a final decision on the case itself as a whole and from the beginning. However, this is not so in all cases where the lower court is found to have made a procedural error. The SAC has ruled in plenary session, yet with considerable dissenting opinion (Decision 1823/2012), that when the SAC examines an appeal and finds that the lower court has made the procedural error of not inviting properly the independent administrative authority which issued the challenged act to take part in the proceedings, but invited only the supervising Minister, the SAC has to vacate the decision of the lower court and remit the case to it for trial after proper adherence to all procedural rules of the pre-trial stage, save in cases where the SAC estimates that sending the case back to the lower court for trial is detrimental to judicial economy and deems appropriate to discuss the application for annulment as a court of first instance, making use of its general jurisdiction in judicial review cases.

5. *a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?*

As aforementioned, the fundamental purpose of the jurisdictional work of the SAC as a court of first instance is to uphold the principle of legality of the Administration, examined objectively, as a matter of interest to a state based on the rule of law and not not only insofar as the behaviour of the Administration violates the individual rights of citizens in particular subject-matters.

b) *What is the rationale of assigning certain proceedings to the SAC as a court of first instance?*

As aforementioned, the rationale can be found in the specific constitutional provisions and consists in serving the democratic nature of the Institution by staying close to each individual citizen aggrieved by the Administration.

However, for reasons of judicial economy and of decentralisation in the administration of justice, certain categories of judicial review cases of lower importance are heard by administrative courts of appeal. More specifically, with Laws 2721/1999, 2944/2001, 3659/2008 certain categories of judicial review cases were transferred from the jurisdiction of the SAC to that of ordinary administrative courts of appeal as courts of first instance; laws 2944/2001, 3659/2008 and 3900/2010 abolished the jurisdiction of the SAC as an appeal court judging at second instance judicial review cases; laws 2721/1999 and 3659/2008 transposed certain categories of judicial review cases to cases of full jurisdiction (*pleine juridiction*), mainly administrative fines and other ordinary sanctions. As a result, according to Article 1 of Law 703/1977, as modified by subsequent laws, the competent administrative courts of appeal hear cases pertaining to: the appointment and general service status of civil and military functionaries of the State, of local authorities of first and second degree and of all other public law bodies / the status of pupils and students and all matters of education / the appointment and general service status of the personnel of the State, of local authorities and of all public law bodies, irrespective of the nature of their working relationship as public law or private law and also of the personnel of private law bodies when their appointment is made on the basis of a public law procedure / the foundation, function and sanctioning of private-law educational centres / matters of compensation of owners of land for loss of property for land use or urban planning purposes / the application of legislation

on unauthorised buildings / the issue of building licences and licences to cut trees or connect buildings with public-use networks / outdoors advertising / the application of legislation on local authorities except for those relating to the organisation and function of their services which are heard by the SAC / the licensing of all professional activities and establishments and of product circulation / the application of sports legislation / the characterisation of land as forest land or as land dedicated to reforestation / the application of legislation on public notaries, land registrars, auditors, customs clearers, stockbrokers, court bailiffs etc. On the other hand, the SAC remains competent to hear judicial review cases at first and last instance on the appointment and status of judges and the personnel of the Legal Council of the Greek State / on the appointment and dismissal of professors of universities and higher technological institutions / on the appointment and dismissal of highest civil servants / on the promotion to the Ambassador's degree / on the filling of the places and demobilisation of the Heads of the three Army Branches and of the Police / on the promotion to the degree of General Director of the Administration.

6. *a) Is there a separate constitutional court in your country?*

There is no separate constitutional court of the type known in other European countries. There is, though, the Special Highest Court of Article 100 of the Greek Constitution, which has a competence, *inter alia*, the settlement of controversies on whether the content of a statute enacted by Parliament is contrary to the Constitution, or on the interpretation of provisions of such statute when conflicting judgements have been pronounced by the SAC, the Supreme Civil and Criminal Court or the Court of Audit. This Court is composed of the President of the Supreme Administrative Court, the President of the Supreme Civil and Criminal Court and the President of the Court of Audit, four Councillors of the Supreme Administrative Court and four members of the

Supreme Civil and Criminal Court chosen by lot for a two-year term. The Court is presided over by the President of the Supreme Administrative Court or the President of the Supreme Civil and Criminal Court, according to seniority and when hearing constitutional law conflict, its composition is expanded to include two law professors of the law schools of the countries' universities, chosen by lot. The judgements of this Court are irrevocable. Provisions of a statute declared unconstitutional are invalid as of the date of publication of the respective judgement or as of the date specified by the ruling.

b) *Does the SAC in your country serve as a constitutional court?*

According to Article 100 para. 5 of the Greek Constitution, when a Section of the Supreme Administrative Court judges a provision of a statute to be contrary to the Constitution, it is bound to refer the question to the respective plenum, unless this has been judged by a previous decision of the plenum or of the Special Highest Court on the same constitutional article. In such cases the plenum is assembled into judicial formation and decides definitively. This regulation also applies accordingly to the elaboration of regulatory decrees by the SAC as provided for in Article 95 para. 1d of the Greek Constitution. The SAC serves as a constitutional court in such situations, enjoying the factual authority of its judgements, as it does also in the cases it hears as “model or pilot” trials on matters of general importance, including constitutional matters (*see below*). Normally, when the SAC quashes in plenary session extensive administrative action for reasons of unconstitutionality of the authorising legislation, the legislator is expected to reform its legislation in accordance with the criteria set by the SAC, so as to enable the conformity of the Administration to its rulings, adhering, at the same time, to the principle of equality of all citizens before the law, whether applicants to the SAC or not (Plenum Decision 258/2018).

c) *In how far does your SAC consider constitutional law, especially fundamental rights?*

According to Article 87 para. 2 of the Constitution, in the discharge of their duties, judges are subject only to the Constitution and the laws; in no case whatsoever are they obliged to comply with provisions enacted in violation of the Constitution. Furthermore, *a*ccording to Article 93 para. 4 of the Constitution, the courts are bound not to apply a statute whose content is contrary to the Constitution. These provisions are taken to mean that the SAC, like any other court of the country, is obliged to control the constitutionality of the content of statutes and other legislative instruments (that bear the necessary formalities), but not the parliamentary procedures leading to their issuance. Accordingly, the SAC may not directly order the Parliament to change a law or to issue a new law in the way prescribed. However, the SAC, while exercising its constitutional competence to control and monitor the conformity of the Administration to its decisions with which a certain statute was deemed unconstitutional, it has also the power to control if the legislator has followed the criteria that the Court has set in its decisions when issuing a new law in replacement of the law that was deemed unconstitutional, as part of the general obligation of all organs of the State (legislative or administrative/executive) to conform to irrevocable decisions of the judiciary. (See Decision 21/2015 of the Three-Member Council of the SAC established to control the conformity of the Administration to the plenum decisions of the SAC on the unconstitutionality of the economic crisis laws that introduced excessive cuts on the salaries of army and police officers.)

As a procedural matter, the Greek SAC considers constitutional law insofar as the judges find that the applicable law violates a constitutional law provision and also insofar as the applicant claims that there has been a violation

of a constitutional law principle or individual right by the Administration in issuing an act that affects adversely his legal interests.

d) *If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?*

As aforementioned, only in the case that the SAC decides differently on the constitutionality of a particular statutory provision than the other Supreme Courts of the country have done on the same legal matter, the SAC itself, but not the parties or other citizens, sitting in plenary session, has the constitutional obligation to refer the case to the Special Highest Court of Article 100 of the Constitution, for a final and irrevocable decision on the constitutional matter in question (*see below*).

Beside that, extraordinary remedies against final decisions of the SAC on constitutional matter, may be brought before the SAC directly in the following two cases:

1) In cases where the Special Highest Court has taken a decision retroactively declaring a law unconstitutional in accordance with Article 51 para. 4 of the Law on the Special Highest Court, an application for review (repetition of procedure) may be made in respect of any irrevocable judicial decision, including decisions of the SAC, taken during that period and founded on provisions held unconstitutional. Such application may be made by any party within six months as from the publication of the Special Court's decision. For the remainder, the ordinary procedure before the court in question shall be upheld and it shall disregard the provision declared unconstitutional. The Plenum of the SAC has restricted the scope of application of the extraordinary appeal to review an irrevocable decision on the SAC on the basis of an opposite

decision of the Special Highest Court, to cases where the SAC has completely disregarded the decision of the Special Highest Court. The Plenum of SAC has excluded from the scope of application of the said provision the cases whereby either the interpretation given by the SAC to the same legal provision or the application of the decision of the Supreme Highest Court on the case resolved by the SAC, are simply doubted by the parties (Plenum Decision 3473/2011).

2) Jurisprudence has expanded the scope of application of Article 23 of Law 3900/2010 (which added a new Article 105A to the Code of Procedure before Administrative Courts) to cover also the jurisdiction of the SAC. This provision stipulates that plaintiffs can ask for the repetition of procedure before the ordinary administrative court that has issued a final decision on a matter which has been judged in an opposite way by the European Court of Human Rights (ECHR), on the condition, *inter alia*, that the ECHR has provided in its own judgement adequate reasoning and full evaluation of the facts of the given case. More specifically, according to decision 1993/2016 of the SAC (taken in broad session by the tax section of the SAC), plaintiffs can address the SAC with an application to repeat the trial that took place before the SAC and which ended either with the rejection of an application of revision against the decision of the ordinary administrative court as inadmissible or with the rejection of the application of revision with a reasoning that contravenes the ruling of the ECHR on the same matter.

e) *If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?*

According to the Greek Constitution, the SAC may only deem a law unconstitutional sitting in plenary session. As aforesaid, if one of the Sections of

the SAC reaches a (preliminary) decision on the unconstitutionality of the applicable law, it is under the constitutional obligation to direct it to the plenum. If there is no opposite jurisprudence by the other Supreme Courts of the country, then the ruling of the SAC on the unconstitutionality of a particular statute stands as it is and while it does not have a legally binding force on cases other than the one decided, it has an enormous influence on how all other courts, the Administration and the Parliament treat the constitutional issue addressed in future situations. This influence is based on the authority that the Greek SAC has built for itself during all the years of its operation, which is in turn owed to the deep and extensive reasoning that it provides in its decisions and to the independent stance that it has steadily exhibited against governmental authority over the years ever since its foundation.

In all other regular cases in which the SAC deems a relevant law as unconstitutional, the SAC will simply not apply this law in the given case, quash the challenged administrative action based on that law or deny the applicant the advantage granted to him by the unconstitutional law. If the unconstitutional law itself denies an advantage which can be based on another existing constitutional law, then the SAC will grant the advantage by basing its decision on that other law. Depending on the particularities of the case, after judging the law in force as unconstitutional, the SAC can also apply previous law, e.g. in order to secure the equal treatment of all cases whether they fall under previous law or under the law that was found unconstitutional (salary cases).

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

Plaintiffs can bring cases to the Special Highest Court of Article 100 of the Greek Constitution by raising objections in electoral cases, by challenging the validity and returns of a referendum held for critical national issues or for voted statutory drafts on serious social issues upon decision of the Parliament, by bringing forward the incompatibility or the forfeiture of office by a Member of Parliament, or by being a party to a dispute raising controversy related to the designation of rules of international law as generally acknowledged. In no other circumstances may individual plaintiffs address directly the Special Highest Court of Article 100 of the Greek Constitution.

II. Access to the SAC

1. a) Does a party have to be ***represented by a legal professio*****nal** before the SAC?

Not only does a party have to be represented by an attorney when appearing before the SAC, but also a party may not file an application to the SAC unless this is signed by an attorney.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

All writs submitted to the SAC have to be signed by licensed attorneys at law, irrespective of their level of experience. However, private parties appearing before the SAC during a hearing have to be represented by barristers specially authorised by their Bar Associations to appear before the Supreme Courts of the country (Articles 17 para. 4, 26 para. 1 and 27 paras. 1 and 2 of Codified Law of Procedure before the SAC, also Plenum Decision of the SAC 2688/2010).

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

Yes, they are the ones who have the years of experience set by the Regulations of the Bar Associations, that enable them to appear before the Supreme Courts of the country. University professors may appear before the Supreme Courts with less years of experience. No previous test or examination is required.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs…?

No other legal professionals are admitted as representatives of private parties. Only the Greek State and Social Security Organizations may use members of the Legal Council of the Greek State to represent them before the SAC.

e) Are there specific (different) rules for representatives of administrative authorities?

Administrative authorities of the State, local authorities and most public-law bodies and organisations are represented before the SAC by members of the Legal Council of State as prescribed in Law 3086/2002. They may also employ other independent attorneys for particular cases, who are appointed by the Legal Council of the State, on the conditions set in Articles 24 and 25A of Law 3086/2002.

*2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?*

According to Articles 17 and 19 of the Codified Law of Procedure before the SAC, all applications to the SAC are introduced by way of a writ signed by

an attorney in three copies, accompanied by the payment of the appropriate (according to the type of application/remedy sought by the SAC) court fee. The writ must include the name of the person(s) filing the application, their home address, the administrative act or judicial decision challenged (in two hard copies), specific grounds of review or of appeal, date and signature and a concise summary of the legal issues posed with the application to the SAC (this last formal requirement does not apply to applications to the SAC for temporary legal protection). In the case of appeals addressed also against private parties, the name of these private parties and their address are also required. If the writ is signed by an attorney who is not member of the Athens Bar Association, then the applicant has to appoint in the writ an attorney who is member of the Athens Bar Association. The application for judicial review may be lodged at the Secretariat of the SAC or at any other public authority, by which is sent subsequently to the SAC. The appeals against judicial decisions taken at first instance and the applications for revision are lodged at the Secretariat of the court that issued the decisions challenged. For all submissions of writs to the SAC there is an act of registration signed by the person who files the writ. All appeals to the SAC may also be filed electronically.

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

The SAC enjoys complete investigative powers regarding the verification of the facts of the case and is deemed to know the law (*jura novit curia*) as regards the application of the pertinent legal provisions. The SAC investigates the conditions of admissibility and the formal prerequisites for the issue of an administrative act (incl. lawful publication, incompetence of the issuing organ) of its own motion. However, the investigative powers of the judge of the SAC may not go as far as to rectify the vagueness of the content of the application for

judicial review and render admissible an otherwise inadmissible application, because this would go against the fundamental principle of equality of arms in the administrative trial (Decision 935/2017).

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

If a matter of European law is not raised by the parties, in the sense that no particular European (secondary) law provision is invoked by the parties as grounds of a specifically described and factually-based violation on the part of the Administration, the SAC is under no obligation to look for a possible breach of European law by the Administration and thereby refer the case to the ECJ for a preliminary ruling. In such cases it is understood that there is no connecting element of the case with European law (SAC decision 1438/2018 taken by the tax section of the SAC sitting in broad session). The obligation to consider European law of the SAC' s own motion does not exist either in the cases in which general principles of European law could come into play; in such cases it is the plaintiff who carries the burden to establish the conditions of applicability of the invoked general principle of law (SAC decision 2221/2018). However, given that the SAC does has the power and the obligation to examine of its own motion if the applicable law contravenes European law, if the SAC deems possible that the national applicable legislation, upon which the case is judged, is not set in accordance with European law, then it has the duty to refer for a preliminary ruling, provided that the rest of the conditions thereto are also fulfilled. Some characteristic examples from the jurisprudence can be cited here: With SAC decisions 3031/2008 and 1617/2012 taken in plenum it was held that it is necessary to ask the ECJ if the applicable law contravenes primary European law even if the case itself (as a set of facts) does not have a connection with European law, in situations where the national legislation poses questions

of a higher (general principle) level in a way that the differential treatment of the same matter examined under national and under European law may influence the uniform application of European law (ECJ judgement of 21.10.2010, C-81/09). With the SAC decision 2996/2014 taken in plenum it was held that the ECJ should be asked to what extent standard principles of Greek environmental law, which had been deemed constitutional and applicable until then, should be reconsidered under the standards of European environmental law (ECJ judgement of 10.9.2015, C-473/14). And finally, with its judgement of 11.9.2012 (C-43/10) the ECJ prescribed to the Greek SAC the rules according to which the national court should review the legality of the effects of a big project of river-redirection on protected environment, taken into account the relevant European law.

*3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):*

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

An appeal to the SAC may be brought by any of the parties who were accepted as litigants in the trial in which the judgement appealed, was pronounced, and who were harmed by it (were defeated) either by the operative part of the judgement (adjudication) or by its *ratio decidendi*. The victorious parties (including successful interveners in the first instance) are represented in the appeal proceedings as defendants. An appeal to the SAC may also be lodged by the minister who is the hierarchical head of the authority whose act or omission has caused the judicial review dispute or who supervises the public legal person which was a litigant in the first instance court. An appeal to the

SAC may finally be lodged by the competent Minister or the General Commissioner of State of the administrative courts, with no procedural restrictions and with no effects on the legal situation of the litigants (appeal in favour of the law).

Articles 1 and 5A of Law 702/1977 as amended by Article 47 para. 3 of Law 3900/2010, stipulate in which subject-matters the decisions of the courts of appeal can be exceptionally seized with an appeal before the SAC. Such cases include the appointment and dismissal of civil servants by way of a procedure not controlled by the Highest Council of Selection of Personnel of the Administration, the appointment and dismissal of University academic personnel other than full professors etc. Beside that, by virtue of Article 15 para. 3 of Law 3068/2002, as amended by Article 29 para. 1 of Law 4540/2018, applications for annulment of administrative acts (issued upon administrative appeal) rejecting or accepting asylum applications (recognition of refugee status / granting international protection), as well as applications for the suspension of the execution of the said acts or for the issuance of an interim order by the president of the court, are heard by the administrative courts of appeal in the first instance and at second instance by the SAC acting as an appeal court. Special procedural provisions apply in this respect. The trial before the court of appeal is set no later that 45 days from the date of the filing of the application with the court of appeal and the relevant decision has to be issued within 2 months from the date of the hearing. Exceptionally short deadlines apply also to the interim measures' procedure too, whereby the decision granting or refusing provisional protection is issued within 7 days after the expiration of the 5-day deadline set to the Minister to answer the application. For the rest, the normal procedural provisions for the exercise of judicial review by the SAC are applicable.

According to the aforementioned provision of Article 15 para. 3 of Law 3068/2002, the courts of appeal are also competent to hear applications for

annulment of administrative acts concerning the acquisition or loss of nationality. Decisions of the courts of appeal in this subject-matter are also subject to appeal before the SAC.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

Only final judgements of administrative courts of appeal are subject to appeal before the SAC. Provisional (interlocutory) decisions may not be appealed directly before the SAC but are challenged together with the final judgement in which they are incorporated. A final appeal against a judgement which interprets a previous decision of the same court is also admissible. Article 5A of Law 702/1977 (added with Law 2944/2001) establishes the rule that decisions of administrative courts of appeal in judicial review cases (*see above*) are not subject to appeal before the SAC, but declares also the exceptions to this rule in the following cases: the appointment and dismissal of highest civil servants, the permanency and dismissal of army and police officers, the appointment and dismissal of the teaching staff of Universities other than full professors, the recognition of foreign diplomas. In the latter cases, the decisions of administrative courts of appeal are subject to appeal before the SAC, as are also decisions of the administrative courts of appeal taken in the following subject-matters: building law, forest land, licensing, outdoors advertising, notaries, land registrars etc.

Also, according to the special legislation on public competitions for the award of public contracts (Article 47 of Law 3900/2010, Law 3886/2010, Law 4412/2016), the administrative court of appeal is competent to decide at first and last instance on applications for annulment of all administrative acts issued during such administrative procedures, save in cases where the monetary object of the competition is above 15.000.000 Euros and also regarding public

competitions taking place in the sectors of transportation, water, energy and telecommunications and service concession. In the latter cases, the competent court is the SAC at first and last instance.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established ***filter*** *(quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?*

Law 3900/2010 established a filter in the sense of preliminary assessment of an appeal in a similar way as it has done for the application for revision. According to the rules set by Article 12 of Law 3900/2010, an appeal is admissible only if the appellant presents arguments in the introductory writ that the judgement of the administrative court is contrary to a judgement of the Greek SAC on the same legal matter judged previously by the SAC or other Supreme Courts of the country, or that there is no known SAC jurisprudence on the same - critical for the case at hand - legal matter, or that the lower court has ruled on a matter of constitutionality of the applicable law which has not been answered by the Greek SAC until the time of the filing of the application.

b) If there is a preliminary assessment, please give details:

- *Which court decides (lower court or SAC)?*

The SAC decides.

- *If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?* No, the SAC makes its own decision which is binding on the parties.

- If the SAC decides, is there a specific procedure of admittance before the SAC? Please give details!

The conditions of admissibility of an appeal are examined as a preliminary part of the case heard before the Court. In cases where the inadmissibility is obvious, the case does not make it to the courtroom, but it is sent to a so-called council procedure (in camera proceedings), by order of the President of each competent Section of the SAC, according to Article 34A of the Codified Law of Procedure before the SAC. The decision to reject the application without a hearing is reached by a formation of one or three judges, as determined by the order of the President and can be challenged before the Court by way of a subsequent application to discuss the hearing in the courtroom, for the filing of which the applicant has to bear triple the court fee and all the trial costs. If any of the parties files such an application and loses the case also in the courtroom, then they have to pay triple the normal costs of the trial. This obligation burdens equally the private applicants and the public authorities which are otherwise excluded from the obligation to pay a court fee for the filing of an application to the SAC (Plenum Decisions 2086-2088/2015, 2155/2015).

- If the lower court decides (in a negative way), can the SAC still admit a case? Not relevant.
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application? Not relevant.

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

Normally the filters are set by the legislator according the type of affidavit application for revision, appeal etc. and not by subject-matter.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

There is no separate procedure of admittance. The general requirements under which a case can be admitted to the SAC (filter, jurisdiction etc.) are examined by the same court session that decides ultimately and finally on the case.

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

According to Article 15 of Law 3068/2002 as amended by Articles 67 and 113 of Law 4055/2012, applications for annulment or for the suspension of execution of administrative acts rejecting or accepting administrative appeals against deportation orders (or refusals to grant stay and work permits for aliens) are heard by the administrative courts of first instance and at second instance by the SAC, acting in this instance as an appeal court, irrespective of the reason for the deportation order (denial of asylum, denial of work permit, criminal action or other). In such cases the application for suspension of the deportation act or for the issuance of an interim order that may stay the execution of the deportation order, may be filed even before the filing of an application for annulment of the same act, on the condition that the application for annulment is filed within 30 days after the fling of the suspension application and in any case not after 60 days after notification of the deportation act. After the expiration of the 30-days deadline set for the filing of an application for annulment, any

interim order issued in the meantime must be revoked and the relevant file is sent to the court archives. After the expiration of the same 30-days deadline, all suspension applications for which no interim order was issued are also sent to the court archives (see Article 54 of Law 3900/2010). No deportation or return order of an alien may be issued during the running of the deadline set for the filing and the answering of an appeal by the Administration on asylum (or such) matters and any such order issued during the same deadline and until the notification of the answer of the competent Administrative Authority to the applicant is automatically suspended (see Article 61 para. 1 of Law 4375/2016, Article 25 para. 2 of presidential decree 114/2010 as amended, Article 15 para. 3 of Law 3068/2002, Article 49 of Law 3900/2010).

f) Are there specific requirements in certain fields of law? See above.

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted? Not relevant.

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

The only applicable filter is the above-mentioned filter of Law 3900/2010 and no other jurisprudential filter is applied. Of course the Greek SAC has built its own jurisprudence on the conditions of application of this legislatively introduced filter.

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

The functions of the SAC as a court of appeals may only be exercised once a particular appeal passes the filter. This is in accordance with the constitutional provisions establishing the right to appeal against lower court decisions before the SAC, upon the specific terms and conditions which the legislator has the authority to set (*see below*).

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

According to Article 95 para 1b of the Greek Constitution, the jurisdiction of the SAC pertains also to "... the reversal upon petition of final judgements of ordinary administrative courts, as specified by law" and according to para. 3 of Article 95 of the Constitution: "The trial of categories of cases that come under the Supreme Administrative Court's jurisdiction for annulment may by law come under ordinary administrative courts, depending on their nature or importance. The Supreme Administrative Court has the second instance jurisdiction, as specified by law". These provisions have been interpreted to mean that the legislator may not abolish the appeal to the SAC, but he is free to set the conditions to allow or exclude an appeal before the SAC. In cases where the legislator has moved certain categories of judicial review cases from the competence of the SAC to the competence of the lower administrative courts, then the right to appeal before the SAC is safeguarded by the Constitution. At the same time that the standards of admissibility of appeals have been raised with Law 3900/2010 (Article 12), large categories of cases presenting issues of lower importance or about which the SAC has formed a constant jurisprudence, have been transferred to the ordinary administrative courts and the courts of appeal in particular (Articles 47-49 of Law 3900/2010).

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

There are no relevant constitutional provisions.

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

Yes. A SAC committee comprised of judges of all three ranks, appointed by the President at the end of last year, delivered a 50-page report in March 2019, in which the experience with Law 3900/2010 that set strict conditions to allow applications for revision and appeals to be heard on the merits by the SAC, is extensively discussed. Until now the experience with the strict application of Law 3900/2010 is generally evaluated as positive, mainly because it has resulted in the quick relief of the Court from a great number of cases (over 50% in of all appeals and of applications of revision that fell under the temporal scope of Law 3900/2010) which were found to be inadmissible and of low jurisprudential value.

III. Implementation / Procedural Aspects

*1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:*

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?

- obligation of the administrative authority to issue a new discretionary decision?

- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission…)?

- issue an administrative act itself?

- issue a discretionary decision out of its own authority?

- remit to the constitutional court?

- other?

According to Article 50 of the Codified Law of Procedure of the SAC as amended by Article 22 of Law 4274/2014, the decision of the SAC which accepts an application for judicial review, declares the annulment and the vacation of the administrative act *erga omnes* and with retroactive effect (from the date of the issue of the annulled act). The rejection of an application for judicial review does not preclude the filing of another application against the same administrative act by a different party. All decisions of the SAC, whether accepting or rejecting the application for annulment, have the force of *res judicata* before all judicial and administrative authority, as regards the administrative-law matter judged by the SAC.

If an omission of the Administration is challenged with an application for annulment, by accepting the application, the SAC remits the case to the administrative authority to take the omitted action. In certain cases, the SAC, after establishing either that the Administration failed to take the action required by law or that the Administration has indeed taken action albeit with a legal defect, which can be waived retrospectively, it has the power to decide not to annul the administrative illegal action or inaction but instead to order the Administration to waive the legal defect, rescind the measures and decisions that were deemed illegal or take the action or issue the rule required by law within a set deadline, which may be no shorter than one month and no longer than three

months. In exceptional cases the deadline imposed on the Administration to take the necessary legal steps may be longer than three months, that is, when the Court, after careful consideration of the circumstances of the case, makes an express judgement that the three-month period is inadequate. Until the final decision is made on the case, the contested act stays execution. The interlocutory judgement ordering the Administration to correct the fault of the challenged act contains a judgement on the illegality of the challenged act, which may not be reversed with the Court's final judgement on the case. After the publication of the interlocutory judgement of the SAC and its notification to the parties, the private parties have fifteen days after the expiration of the deadline set to the Administration to submit their reply with their views on the actions and the data presented meanwhile to the Court by the State. Then a second court hearing follows, after which the Council of State takes its final decision: either it does not proceed to judgement or it gives an annulling judgement on the case. One of the best-known cases in which the SAC applied the aforementioned rule was the one that arose out of the application to annul the omission of the Administration to readjust the tax values of immovable property in a way to correspond better to the realities of the market. With Plenum Decision 4446/2015, the SAC ruled that the six-month deadline set to the Administration by the Council of State's preliminary ruling 4003/2014 within which it was ordered to issue the necessary act of readjustment of the tax values of immovable property, expired with no action on the part of the Administration and as consequence the Administration was ordered to issue the act sought by the applicant parties with effect from that particular date (of the expiration of the deadline set previously by the SAC).

Furthermore, if the SAC accepts an application for annulment, it has the authority, after weighing the possible favorable effects on individuals deriving from the annulled act, against the public interest, it has the power to determine in its decision that the effects of the annulment go back to a later point in time that the date of the issue of the act but in any case prior to the publication of the

SAC' s decision on the case. For example, after the aforementioned decision 4446/2015 of the Plenum of the SAC, the Government finally issued the envisaged act but the Court annulled the Government's decision to reassess the tax value of the land in Greece by dividing the whole of Greece into zones and by making a horizontal cut in the market prices of the land in all zones, on the grounds that there was no discernible, clear and transparent methodology for this ministerial decision (some statistical data provided by the Bank of Greece were deemed insufficient and of general nature) and also on the grounds that there was no individualized evaluation of each zone (down to the smallest community level) and that neighboring zones or zones with homogeneous characteristics were not taken into account, all of which rendered the ministerial decision rather simplistic and based on unconvincing data. With constant jurisprudence it was held that the objective value of the land set by the Administration for tax purposes should be as close as possible to the real market value of the land, which in turn is understood as the selling price which can be reasonably be expected by two well-informed and diligent contracting parties with no relation to each other (SAC decisions 2334-7/2016, 170-1/2017, 539/2017, 556/2017, 680, 683/2017 etc.). However, the governmental decision was annulled by the SAC only as of the time that the case was heard in the courtroom and not retroactively so as not to disturb even more the finances of the State, i.e. the interests of the State in collecting revenue. After three subsequent annulments of different governmental decisions on similar grounds, the SAC ruled that the annulment of regulatory acts reassessing the tax value of the land in Greece for the years 2007-2011 could not result automatically in the previous regulatory act coming into force but created the obligation on the part of the Administration to proceed to the issue of a new act of land reassessment based on the criteria set by the SAC. Until that time the governmental decision of the year 2005 was to be applied, because it was found to set the most reasonable prices, as suggested

by the parties that won the case (see e.g. decision 2333/2016 taken by the tax section of the SAC sitting in broad session)

The Plenum of the SAC has also used this possibility in many cases in which legislative provisions introducing extensive cuts in salaries of civil servants in order to combat the economic crisis were found unconstitutional, with the result that the difference in salaries and pensions had to be returned by the State to all civil servants and pensioners favored by the plenum decisions. The SAC has declared in its decisions that, with the exception of the individuals who already appealed to the courts, the consequences of the ruling on the unconstitutionality of the statutes for all beneficiaries is to take effect after the publication of the decision by the SAC, so that civil servants, functionaries and pensioners who did not appeal to the courts are prohibited from raising compensatory claims against the State for the time prior to the publication of the case (Plenum Decisions 2288/2015, 4741/2014, 4446/2015, 258/2018, 431/2018, 479/2018).

Finally, if the SAC, while incidentally reviewing the regulatory act on which the challenged individual act is based, finds that there is grounds for illegality of the regulatory act on the basis of incompetence of the issuing organ or of serious procedural defects, it has the power not to proceed to the annulment of the challenged individual act, as long as it judges that long time has elapsed since the issue of the regulatory act and the results of the declaration of its illegality could shake the fundamentals of legal security.

In other environmental-law cases concerning the long-lasting administrative procedures to expropriate land by way of amending urban plans, the SAC rejected, on one hand, the application to annul the omission of the Minister to revoke an expropriation that bound the applicant's land for over 20 years, but, on the other hand, the SAC made use of its judicial powers to order the competent organ of Local Administration to proceed immediately to completing

the expropriation of land after paying full compensation to the party aggrieved within a set time-limit (of one year). The SAC also described the consequences to be drawn in the case that the Administration failed to conform to this order: after the expiration of the set deadline the aggrieved party would have the right to ask for the immediate revocation of the expropriation which would then be compulsory and judicially enforceable on the Administration (SAC decision 2142/2016 taken by the environmental section sitting in broad session, as followed by constant jurisprudence of the same section).

2. As far as your SAC serves as a court of appeal:

a) What is the possible ***content of decisions*** *of your SAC:*

- cassation of the decision of the lower court and remitting the case back to the lower court?
- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission…)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- issue a legal opinion/authoritative interpretation of the law without connection to a single case?
- other?

After the SAC finds that there is grounds for appeal and vacates the judgement of the lower court, it has the power to try the initial application for annulment as a normal judicial review case. In such circumstances the SAC has the power to form the content of its decision in the way shown above.

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

When the SAC examines an application for revision, it is under the obligation to take the facts as determined by the lower court. When the SAC acts as an appeal court, after it has found that the appeal is admissible and that there is grounds of appeal, it is under the obligation to investigate and determine of its own motion the facts of the case, within the boundaries set by the accepted grounds of appeal, like it would do in all other judicial review cases.

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

In judicial review cases, the SAC and the lower courts acting as first instance courts follow the same rules of procedure as found in the Codified Law of Procedure before the SAC. To put it more correctly, it is the ordinary first instance courts that follow the SAC rules, as provided for by the legislation governing the procedure before the ordinary court of appeals.

b) If not, what are the differences?

Certain differences in procedure are to be found in provisional protection proceedings in asylum / deportation cases and in cases of public contests for the award of public contracts (like shortening of deadlines etc.), whereby the granting of rapid judicial protection is of vital importance.

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

There is no separate, specific procedure as such.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure? Not relevant.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

According to the Constitution, the Administration is bound to comply with the judgements of the courts and of the SAC in particular and any violation of this principle provides grounds for review for the subsequent administrative action in the same case. Like all judicial decisions, the judgements of the SAC provide "*erga omnes*" the authority of "*res judicata*" for judicial and non-judicial authorities alike, as regards cases where the administrative-law matter judged is of primary importance (Article 50 para. 5 of the codification of the SAC). The judgements of the SAC are subject to compulsory enforcement against the Public Sector, local government agencies and public law legal persons. The administration must refrain from any action contrary to the decided issues and must even use means of positive action to validate the effects of the pronounced judgements. A breach of this obligation renders liable before the criminal and civil courts any responsible civil servant. The process of the compliance of the Administration to a particular pronounced judgement is monitored by the SAC with special proceedings taking place in camera. Also in cases where the SAC has held with its judgement that the challenged individual

act is invalid because it was based on a provision contrary to higher law or on an administrative regulation with no legal statutory authorisation, the Administration is obliged to reconsider within the bound competence or the margin of appreciation accorded to it by law and finally revoke all similar administrative acts, upon petition of the affected party, by taking into account any possible adverse public interest, the interests and rights of third parties acquired in the meantime in good faith and the time elapsed since the issue of these acts. The omission of the Administration to reconsider and revoke similar acts under the above-mentioned conditions can also be challenged before the SAC (SAC decisions 2176, 2177/2004). Furthermore, according to Article 51 para. 6 of the Law on the Special Highest Court, the revocation of administrative acts which are founded on statutory provisions held unconstitutional and which have been performed during the period of retroactivity of the Special Court's decision, is mandatory within six months following publication of the decision.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

The judgements of the SAC provide the highest authority on legal precedent for the lower administrative courts and set the standards for the interpretation of the Constitution and the laws and for the advancement of legal theory and practice. Judges of lower instance courts are bound by law to follow decisions of the Supreme Courts of the country in general only in the exceptional circumstances provided for by the Constitution (Article 100 para. 4 regarding decisions of the Special Highest Court) and ordinary law (Articles 48-51 of the Law establishing a Special Highest Court, Article 1 of Law 3900/2010 establishing the model/pilot trial before the SAC). According to Article 100 para. 4 of the Constitution, provisions of a statute declared unconstitutional shall

be invalid as of the date of publication of the respective judgement, or as of the date specified by the ruling.

1) According to Article 51 of the Law on the Special Highest Court, a decision by the Special Court resolving a dispute concerning assessment of the constitutionality of a law or its interpretation shall have force *erga omnes* as from its delivery in open court, save in the case that the Special Court decides itself, by reasoned decision with effect *erga omnes*, that the provisions held unconstitutional are invalid even in respect of the period up to the publication of the decision. Also in the case that the SAC or any other court has requested a preliminary ruling by the Special Highest Court, the case remains pending before the court requesting the ruling which, upon delivery of the Special Court's ruling, shall try the case again at the request of one of the parties or of its own motion, it being compelled to abide by the ruling of the Special Court which shall be transmitted to it by the Registrar of the Special Court (Article 48 of the Law establishing a Special Highest Court). Finally, any court which has pending before it a case requiring the application of the provisions of a law concerning which litigation is pending before the Special Court as provided in Article 48, shall, after learning of such litigation by any means whatsoever, of its own motion refrain from delivering a final judgement until the Special Court has ruled (Article 50 establishing a Special Highest Court).

2) As from 1.1.2011 any application for judicial remedy pending before the administrative courts may be introduced for judgement by the SAC following an act of the President of the SAC, the senior Vice-President and the President of the competent Section, issued upon request of one of the parties, when an issue of general interest with effects on a larger number of people is at stake (model or pilot trial established by Article 1 para. 1 of Law 3900/2010). Ordinary administrative courts may request a preliminary ruling from the SAC when they are faced with a similar issue (Article 1 para. 1 of Law 3900/2010). These applications to the SAC are widely publicized and the lower

administrative courts with pending cases facing the same legal issue presented before the SAC to be resolved with a model / pilot decision, are obliged to stay proceedings and await the decision of the SAC which they are then legally obliged to follow and apply in their own cases.

b) If so, under which conditions can they deviate from a decision of the SAC?

In all other cases the administrative judge as well as the judge of the SAC is master of his own case and is entitled to apply his own legal opinion on a matter already judged by the SAC, even in a way different than previously judged, on the condition that he cites the existing (opposite) jurisprudence. There is no legal provision that imposes on lower courts the obligation to follow the jurisprudence of the SAC. In principle lower courts can even change the jurisprudence of the SAC by presenting in their reasoning persuasive arguments as to the evolution of circumstances or by requesting the SAC to change itself its jurisprudence by way of the preliminary ruling procedure of Art. 1 of Law 3900/2010. The General Commissioner of Administrative Justice can also request such a change by filing a special application of revision which has effects only in law and not on the legal situation of the parties to the case. However, if it becomes clear from the content of the lower court's decision that the judge who made the decision (especially the judge-rapporteur and then also the presiding judge) is not aware of the existing established jurisprudence or if he simply fails to cite the opposite jurisprudence of the SAC, then he is eventually subject to disciplinary review by his superiors for negligence in the performance of his duties.

c) Is the SAC bound by law to follow its own previous decisions? d) If so, under which conditions can it deviate from its previous decision? 7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

The SAC is legally bound by its own previous decisions in the same way as ordinary administrative courts, as described above. Of course the continuing growth of the importance of SAC' s jurisprudence multiplies its factual binding effects on all courts and on the Administration. In principle there is no legal obligation on any of the sections of the Court to follow the decision of another section. What happens, though, in many cases, is that the section that decides last on the case and in an opposite way to a decision taken previously by another section, remits the legal issue in question to the Plenum of the SAC to be solved definitively.

The answers to the questionnaire are provided by Dr. Theodora Ziamou, Judge (Associate Councillor), Supreme Administrative Court of Greece.