



Seminar organized by the Supreme Administrative Court of  
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Norway



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## ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno  
(Supreme Administrative Court Brno)

### *Questionnaire*

#### **Introduction:**

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

## I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

*The Norwegian administrative judiciary is similar to the general court system. Hence, the first instance is the district courts, which decisions can be appealed to the Court of Appeal in the region. The judgments of the Court of Appeal can also be appealed to the Supreme Court. However, the appeal of a judgment regarding an administrative decision will as other appeals be subject to assessment of whether the appeal is of significance beyond the current case or not. Most appeals to the Supreme Court are not granted leave.*

*For cases regarding the national insurance act, the family allowance act, and some other acts regarding pension the court of first instance, will be the Insurance Court of Appeal. These judgments can be appealed to the regular Court of Appeal as the second instance. For cases regarding immigration there are an administrative appeal body which has many of the hallmarks of an administrative court. However, the Norwegian Immigration Appeals Board is not seen as an administrative court in Norway. The Appeal Board is a major appeal body and reviewed 9 788 cases in 2018. In Norway we also have a special administrative body which handles child welfare cases. This body also has many of the aspects of an administrative court, but is not seen as such in Norway. This body handles and reviews all decisions which are made by the child welfare service. The decisions made by these two last appeal bodies can be petitioned to the districts court like the regular administrative decisions.*

*We would like to add that the administrative system in Norway as the main rule consists of one first instance, which makes the decision. The affected parties may rise a complaint against this decision, and the decision will be tried of a second instance. This is not a part of the court system, but part of the executive branch of government. This administrative re-examination of the decision is normally free of charge and the second instance can change and make a new decision.*

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

*(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)*

Instance	I.	II.	III.
Name	District Courts	Court of Appeal	Supreme Court
Number of courts	63	6	1
Number of judges	376 judges and 161	180	20

	deputy judges		
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- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

*There are 737 judges, including deputy judges.*

**Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.**

## II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

*Cases before the court regarding administrative decisions are as a general rule applicable to the same filing fee as other civil cases. However, some cases are exempted, e.g. cases regarding national insurances, pension and administrative decisions on coercive measures in the health and social services.*

Instance	I.	II.	III.
Judicial fee	Yes	Yes	Yes

- b. If you answered *yes*, what is the amount of this fee (in euro)?

*The entry fee for a regular case in the district court is approx. 590 EURO. If the case needs a longer hearing than one day, each day add an amount of approx. 350 EURO.*

*The fee for an appeal hearing is approx. 2830 EURO. The fee increases with the same amount as for the district court, if the hearing lasts longer than one day. The fee for an appeal hearing is the same in the Supreme Court as for the Court of Appeal.*

- c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

*As stated above, the fee will rise with the number of days of the hearing. The fee is reduced if the appeal is denied leave or is rejected.*

- d. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

*The fee has to be paid after the petition, but before the proceeding commences. However, if the petitioner is represented by an attorney, the fee can be paid after the decision in court is delivered. If the fee is not paid, the case will be rejected before the court.*

- e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

*Yes, some private parties may be exempted from the fee. As stated above, cases regarding national insurances, pension and administrative decisions on coercive measures in the health and social services, are not subject to a filing fee.*

- f. Are non-governmental organizations exempt from the duty to pay the fee?

*No.*

- g. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

*If a party has the right to free legal aid, the party may also be exempted from the filing fee. This decision is taken by the same instance – court or administrative body – which decides if the party is subject to free legal aid.*

- h. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

*If the petitioner wins the case, the general rule is that the other party – in administrative case the administrative body – has to compensate the petitioner's legal cost, including the filing fee.*

*The fee is partially returned if the appeal is rejected, not granted leave or cancelled. If the case is settled/ withdrawn within four weeks before the main hearing, the fee is reduced to 235 EURO. If the case is settled/ withdrawn later than four weeks before the hearing, the party has to pay half of the filing fee.*

- i. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

*Not for administrative cases.*

*There is a provision of security for liability for legal costs. This only applies to foreign residents, and is not commonly used. There may also be some provisions in international conventions, but these are seldom relevant in administrative cases.*

- j. Are frivolous petitions penalized? Please explain how and under what conditions.

*No.*

- k. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

*No, there is not.*

### **III. Costs of proceedings**

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

*Yes, if a party had full success or succeeded to a significant degree.*

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

*Yes, the public authority may also be adjudicated compensation of costs subject to the same conditions as the private party described above in question a. However, the court may exempt a party from the liability of legal costs if the court finds that compelling grounds justify exemption. In this assessment the court will take into account a) whether there was just cause to have the case heard because the case was doubtful or because the evidence was clarified only after the action was brought, b) whether the successful party can be reproached for bringing the action or whether the party has rejected a reasonable offer of settlement, or c) whether the case is important to the welfare of the party and the relative strength of the parties justifies an exemption. The exemption is occasionally used to exempt the private party from the liability of legal costs of the public body.*

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

*Yes, see question b.*

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

*In cases regarding administrative decisions on coercive measures in the health and social services, all the expenses relating to the case shall be borne by the state.*

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

*The general rule is that the price is stipulated between an attorney and his client. However, if the party has free legal aid, there is a tariff of approx. 105 EURO per hour.*

#### IV. Representation

- a. Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner	No	No	No
Representation of opposing party	No	No	No

*However, there is a provision which allows the court to impose the use of a legal professional and there are in all normal cases just a theoretical situation that a party will represent itself before the Supreme Court.*

- b. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

*Yes.*

- c. What are the forms and conditions of free legal aid? Please explain for all instances.

*Free legal aid is granted without assessment of economy etc. in cases relating to exemption from military service for reasons of personal conviction, to a person which a coercive measure is aimed in cases involving the re-examination of administrative coercive measure, to a private party in cases where lawsuit is recommended by the Storting's Ombudsman for public administration, to a foreign national regarding expulsion etc., and to a person who is being declared incompetent or who is petitioned to have a guardianship removed. In all other cases, free legal aid may be granted if the applicant fulfils the financial conditions and the case seen from an objective point of view is especially pressing for the applicant. The financial conditions are income below approx. 25 000 EURO for a single person and approx. 37 500 EURO for people with joint economy, and the person cannot have registered wealth of more than approx. 10 000 EURO. If a case is granted leave to be heard before the Supreme Court, the Court can decide that the party is subject to the right to free legal aid even if the financial conditions are not met. This provision is commonly used for private parties in administrative cases heard by the Supreme Court.*

- d. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

*Yes, see the answer to question II g.*

**V. Exclusions and immunities**

*(Note: If you answer yes to any question in this section, please provide details.)*

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

*No.*

- b. Are there any final administrative acts of a public authority which are not reviewable at all?

*No.*

- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

*No.*

- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

*N/A, see question c, Norway does not have a separate administrative court.*

- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

*N/A.*

## VI. Selection by lower and higher jurisdictions

- a. Do the administrative courts have power to select cases? Answer yes/no.

*These answers are given based on the regular court system in Norway.*

Instance	I.	II.	III.
Power to select cases	No	Yes	Yes

- b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

*The Court of Appeal may refuse leave to appeal against a judgment if it finds it clear that the appeal will not succeed. This is stated in the Dispute Act section 29-13 subsection 2. However, there are just a small percentage of the appeals, which are denied leave according to this provision.*

*The Supreme Court selects cases and needs to grant leave for the case to be heard by the Court. The Dispute Act section 30-4 subsection 1 states: "Leave can only be granted if the appeal concerns issues that are of significance beyond the scope of the current case or if it is important for other reasons that the case is decided by the Supreme Court." According to this provision, most of the appeals are not given leave. In 2018, about 15 % of the appeals of judgments in civil cases were granted leave.*

- c. Is the power to select cases restricted to certain fields of law? Please give details.

*No.*

- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

*Yes. If the case is based on an administrative decision, the criteria will be the same. These cases are civil cases in the Norwegian court system.*

- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

*It is the judges in the Appeal Court and the Supreme Court who decides which cases should be heard and not. In the Supreme Court, the decision is taken by the Appeals Committee of the Supreme Court, consisting of three judges. All the judges in the Supreme Court participate in the Appeals Committee. At any given time, the Appeals Committee consists of five judges serving in turns of approx. five weeks at the time.*

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

*Yes. The Appeal Court delivers a formal decision if the case is denied. If the case is not denied, there is no decision, just regular proceedings. The Appeals Committee of the Supreme Court delivers a formal decision in all cases.*

- g. Is the court obliged to give reasons when it decides not to select a case?

*Yes, the Appeal Court has to give reasons. The Appeals Committee of the Supreme Court does not give reasons in administrative cases.*

- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

*Yes, the Appeals Committee of the Supreme Court will be able to review the Appeal Court’s decision to refuse leave to appeal against a judgment. However, the appeal may only be based on the grounds of procedural error.*

- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

*No.*

- j. Does a judge determine the order of the cases to decide?

*The cases are normally heard in the order of “first come, first served”. However, cases concerning administrative decisions on coercive measures in the health and social services, are given priority.*

## **VII. Other measures**

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

*Organisations may bring an action in its own name in relation to matters that fall within its purpose and normal scope. This may simplify actions regarding administrative decisions which affects the environment.*

## **VIII. Statistics**

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

*There are no such numbers. The administrative cases are registered as any other civil case, and hence, we cannot see how many of the civil cases which are administrative cases.*

*However, the numbers we may give, are the numbers of administrative cases heard in the Supreme Court in 2017 and 2018.*

*In 2017, 30 of the 121 cases which were heard by the Supreme Court, were administrative cases.*

*In 2018, 13 of the 105 cases which were heard by the Supreme Court, were administrative cases.*

Instance	I.	II.	III.
Case load 2016			
Cases decided 2016			
Case load 2017			
Cases decided 2017			
Case load 2018			
Cases decided 2018			