



*Consiglio di Stato*



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

**“Law, Courts and guidelines for the public  
administration”**

Fiesole (Firenze), Autumn 2021

**Answers to questionnaire: Bulgaria**



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



ITALIAN PRESIDENCY ACA - EUROPE  
FIESOLE (FIRENZE), 19 OCTOBER 2020

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

*QUESTIONNAIRE*

**1. Introduction**

1.1 The seminar to be held in Fiesole, on the 19<sup>th</sup> and 20<sup>th</sup> October 2020 at the European University Institute, is the first meeting organised by the Italian presidency.

As explained during the initial presentation of the programme for the upcoming Italian presidency, its leitmotiv will be to enhance and foster the value and the experience of “horizontal dialogue” among the highest administrative national Courts, aiming to create and develop a common culture and shared standards in judicial review of the activity of the public authorities.

This “horizontal dialogue”, more than “vertical dialogue”, aims to focus on examining and comparing modes of judicial decision making and judicial conduct, and the impact of judgments on the activities of public authorities.

Horizontal dialogue between Courts of Member States is the best way to achieve an effective European citizenship, that is to say a common standard of legal protection for citizens and companies living in Europe and dealing with public powers.

1.2 The purpose of this questionnaire and of the subsequent seminar is to provide a greater understanding of similarities and differences among our legal systems, especially regarding:

- a) the interpretation of law by judges;
- b) the binding effect of judgments both so as to ensure the judges’ compliance with the nomophylactic statements of the Supreme Administrative Courts (SACs) and to act as an instrument to address the future action of public administrations in similar cases;
- c) the effect of the administrative judgments on the activity of public administration and their enforcement;
- d) the consultative role of the SAC, if existing.

1.3. The seminar will cover the following topics:

- a) The method followed by administrative courts in the interpretation of the law, focusing on the criteria applied by judges (including reference to *ratio legis*, reference to preparatory work, reference to the advice of the SAC regarding the adoption of the law, if existing, etc.). A special focus will be placed on the tools for supporting judicial activity with regard to services for classifying and archiving judgments, e.g. databases and AI instruments.
- b) The application of the law by the Court, with specific reference to the nomophylactic pronouncements of the SAC. Jurisprudential stability and the predictability of decisions are important values related to the general principles affirmed by the European Court of Justice such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and the protection of legitimate expectations. Therefore, there will be a special focus on the ways and the procedures, where they exist, through which SACs ensure compliance with the nomophylactic statements in the administrative system.  
The “binding or steering effect” of the of Supreme Court judgments: this topic aims to foster mutual understanding of the capacity of administrative judgments to bind the public administration in the subsequent exercise of its power. It covers not only the binding effect on decided case, but it also aims to analyze judgments as instruments to orientate the future action of public administrations in similar cases (i.e. judgement as guidelines).
- c) The seminar will also examine the enforcement of the administrative judgment, in case the public administration fails to comply with it spontaneously and correctly, with special reference to judicial enforcement measures provided by each legal jurisdiction, if they exist.
- d) Finally, a brief session will be devoted to the consultative role of the SAC, if existing, and its impact on administrative action.

1.4 It is intended that the Seminar will provide each Supreme Administrative Court with a better understanding both of the decision making process underpinning the judgments of other SACs and of their impact on the activity of public authorities.

In a constitutional democracy, administrative courts are seen as performing a vital function in the interaction between law and administration.

The purpose, to reiterate, is to verify whether it is possible to find or develop a homogeneous method to scrutinize the way public administrations exercise their powers and to guarantee a common standard of legal protection for citizens and companies in all Member States.

The questionnaire which follows represents an initial information gathering exercise the purpose of which is to clarify the interaction of the administrative courts with the law, on the one hand, and the administration, on the other, so as to ensure certainty, legality and quality of justice for citizens and public institutions.

## I SESSION

### THE METHOD OF INTERPRETATION OF LAW AND ITS APPLICATION BY THE COURTS

#### 1. The role of the Supreme Administrative Courts in the interpretation of law.

##### 1.1. Does your legal system provide general rules for the interpretation of law?

- No
- Yes

##### 1.2. What is the level of general rules for interpreting the law?

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

Please explain and give an example.

Chapter five of the Law on Normative Acts is entitled Interpretation of Normative Acts and contains rules through which the interpretation of normative acts is carried out for the purposes of their application. It also contains rules that bridge the gap in the law. According to Art. 124 of the Judiciary Act in case of contradictory or erroneous case law general assemblys of the Supreme Court of Cassation or the Supreme Administrative Court may issue an interpretative decision. In case of contradictory or erroneous case law of the Supreme Court of Cassation and the Supreme Administrative Court the general assembly of the judges of the relevant colleges of both courts including those commissioned shall jointly adopt an interpretation decree.

##### 1.3 What are the criteria for interpretation of the law?

- literal interpretation
- reference to purpose of law (so-called *ratio legis*)
- consistency within the legal system
- reference to preparatory work
- reference to the advice of the SAC regarding the adoption of the law, if existing

- Other

Explain, if necessary.

According to Art. 46 of the Law for the normative acts the provisions of the normative acts shall be implemented according to their exact sense, and if they are unclear, they shall be interpreted in the sense, which most responds to other provisions, to the objective of the interpreting act, to the basic principles of the law of the Republic of Bulgaria.

1.4. What criteria do judges apply when there are gaps in the law?

- Analogy (reference to similar *ratio* of other rules)
- General principles of the legal system
- Other

Explain, if necessary.

When the normative act is incomplete, for the cases not provided in it shall be applied the provisions, referring to similar cases, if this responds to the objective of the act. If there are no such provisions, the relations shall be provided according to the basic principles of the law of the Republic of Bulgaria.

1.5. Does the SAC elaborate general interpretative *criteria*?

- No
- Yes

Please explain and give an example.

The situation in the Bulgarian legal system is similar to that in the Italian legal system. For specific cases provided by the Judiciary Act for overcoming contradictory or incorrect case law, the SAC may give an interpretation of the law in connection with a specific case.

1.6 In deciding the case, to what extent does the Court take the following into account and within which limits?

- EU law (Nice Charter, EU regulations, EU directives) and the judgments of the EU Courts;

- never    seldom    sometimes    often

- The European Convention of Human Rights and the general principles elaborated by the ECHR;

- never    seldom    sometimes    often

- The general clauses of proportionality and of reasonableness.

- never    seldom    sometimes    often

- The statements (or case law) of the Courts of other countries in similar cases;

- never    seldom    sometimes    often

- The general interests involved (i.e: order and public safety, environmental protection, consumer protection, the economic, financial and social effects on the labour market)

never  seldom  sometimes  often

- The results of regulatory impact analysis (AIR), if applicable;

never  seldom  sometimes  often

- The impact of the decision;

never  seldom  sometimes  often

Other

Please specify.

## 2. Tools for supporting judicial activity.

2.1. Are there any services established in the Supreme Administrative Court responsible for classifying the judgments and drafting their abstracts?

No

Yes

2.2. What other activities do these Services perform?

preparation of useful material for the most important judgments of the SAC ;

comparative studies;

information about new developments in the law and in the case law;

training of judges

other activities.

Please specify.

2.3. Are administrative Court judgments stored on a searchable and free database?

No

Yes

Please explain.

A common information system between the Supreme Administrative Court and all administrative courts has been established and is functioning.

2.4. What kind of database do the administrative judges consult in their daily work?

- public and free databases
- private databases, provided by their institution
- other

Please explain.

2.5. Are there projects implementing advanced artificial intelligence systems operating in the decision making process and/or for the preparation of decisions?

- No
- Yes

2.6 If yes, explain the role of the AI systems in the decision-making process (e.g. drafting final decisions, supporting judges for some significant aspects of the case, such as for example the calculation of damages, etc.)

3. The application of law: the “nomophylactic” statements in the administrative judicial system.

3.1. Does the judgment of the SAC have binding effect on lower courts?

- No
- Yes
- Only if the SAC decides in special composition

The decisions of the SAC are binding only when they are interpretative decisions and are issued by the General Assembly of the judges of the SAC. The interpretation decisions and the interpretation decrees shall be binding on the judiciary and executive authorities, on the local self-government authorities, as well as on all authorities issuing administrative acts. Apart from the procedure for adopting interpretative decisions, the jurisprudence of the SAC generally does not have a binding effect on the lower courts, but they comply with it.

3.2. If the answer to question 3.1. above is no, what percentage of lower court cases comply with SAC decisions?

- less than 25%
- from 25% to 50%
- from 50% to 75%

- from 75% to 100%

3.3. If the answer to question 3.1. above is no, how is the consistency and predictability of court decisions ensured?

Please explain and give an example.

When a contradictory practice arises in the law enforcement process, the interpretative decision of the SAC is binding and the lower courts cannot deviate from it.

3.4. When solving jurisprudential conflicts or stating principles of law, does the SAC work in a special composition (for example a Plenary Assembly or a larger panel)?

- No
- Yes

If the answer is yes, please explain.

The General Assembly consists of all judges of the SAC.

3.5. Is there a specific procedure for referring a question to the SAC working in special composition?

- No
- Yes

Requests for adopting interpretation decisions or interpretation decrees shall be entitled to make the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court, the Chief Prosecutor, the Minister of Justice, the ombudsman or the Chairman of the Supreme BAR Council. Law on the Judiciary contains basic principles for this type of activity. The General Meeting of the SAC has adopted Rules for the work of the General Assembly when acting in a procedure for adopting interpretative decisions

3.6. If the answer to question 3.5 above is yes, if a judge of the SAC does not agree with the principle affirmed, what can he or she do?

- it is not possible to disagree
- it is possible to take a different decision, giving reasons
- a new referral to the Court is necessary

If a judge of SAC as a member of general assembly does not agree, he may present his opinion as a dissenting opinion

3.7. In order to guarantee the consistency of jurisprudence among the various sections of the SAC or with another Supreme Court, if such exists, are there organizational mechanisms in place to promote this aim (for example, periodical meetings among judges or among presidents)?

- No
- Yes

If the answer is yes, please explain.

This is done by adopting joint interpretative decrees by the General Assembly of Judges of the Supreme Court of Cassation and the Supreme Administrative Court.

If your judicial system has administrative Courts separated from other Courts (civil ones), which body or Court is entitled to resolve conflicts of jurisdiction between administrative and ordinary courts? (e.g. *Tribunal des Conflits*).

The disputes on jurisdiction between the general and the administrative courts shall be decided by a chamber, including three representatives of the Supreme Cassation Court and two representatives of the Supreme Administrative Court.

## **SESSION II.**

### **THE IMPACT OF DECISIONS OF SUPREME ADMINISTRATIVE COURT ON THE FUTURE DEVELOPMENT OF ADMINISTRATIVE ACTIVITY**

1. To what extent does the administrative judgment bind the public administration in the new exercise of its power?

Please explain.

When the matter has been left on the assessment of the administrative body, after declaring the invalidity or cancelling the administrative act, the court shall decide the case on its merits. When the act is invalid because of incompetence or its character does not allow the decision of the matter on its merits, the court shall send the file to the respective competent administrative body with obligatory instructions for the interpretation and the application of the law. At unlawful refusal to be issued a document, the court shall oblige the administrative body to issue it, without giving instructions on its contents. At refusal by an incompetent body to issue an administrative act, the court shall declare invalid the refusal and shall send the case as a file to the respective competent body.

2. Can the decision of an administrative judge influence the work of public administrations even beyond the objective and subjective context of the case decided?

- No
- Yes

Please explain.

The decision shall have effect for the parties in the case. If the contested act has been cancelled or amended, the decision shall have effect regarding everyone.

3. According to regulatory rules or practices, may the effects of an administrative judgment be extended by the administration itself beyond the case decided?

No

Yes

Please explain.

In principle, the administration could use the court decision in other administrative proceedings in the same factual and legal circumstances. Such a practice is not stipulated in the Code and can not be considered as constant

### **SESSION III**

#### **IMPLEMENTATION AND ENFORCEMENT OF THE DECISIONS.**

1. Is there a specific legal procedure in your system aimed at monitoring and pursuing the full and complete execution of the judgment?

No

Yes

1.1 If the answer to question 1 above is yes, in what percentage of cases are such remedies used?

2. If there is no specific procedure, how does your system ensure the full compliance of the judgment?

3. If there is such a judicial remedy, does it require the judgment to become final?

No

Yes

Please explain.

4. Do judges have the power of substitution, directly or through Commissioners *ad acta*, in the case of *inertia* or incorrect execution of judgments?

- No  
 Yes

Please specify.

5. Is the administration (and/or the official) liable for damages due to non-execution or incorrect execution of the judgment?

- No  
 Yes

5.1. If the answer above is yes, is it within the jurisdiction of the administrative judge to decide on the action for damages?

Please explain and give an example.

In all cases where the damages are caused in connection with the execution of an administrative act, the administrative court is competent to consider the claim for damages. In all cases where the damages are caused in connection with the execution of an administrative act, the administrative court is competent to consider the claim for damages. The rules of the APC for claims for damages from illegal administrative acts, actions and omissions are applicable.

## SESSION IV

### **THE CONSULTATIVE ROLE OF THE SAC (IF EXISTING) AND ITS IMPACT ON ADMINISTRATIVE ACTION.**

1. Does the SAC play advisory functions for the government or for the public administration?

- No  
 Yes

1.1 Where the answer to the above question is yes, please specify the kind of acts to which the advisory functions apply.

*(More options are possible)*

- primary legislative acts (of parliament or of government)
- governmental and ministerial regulatory acts
- resolution of specific questions on request of a public administration, on the interpretation of a law or in the definition of a specific matter.
- Other

Please specify.

2. The SAC's advice in its consultative role is:

- optional and non binding
- mandatory and binding
- mandatory but not binding
- optional and, once required, binding
- it depends on circumstances (please clarify)

3. In exercising its advisory functions, can the SAC consult experts in economics or statistics in order to assess the economic and social impact of regulations?

- No
- Yes
- In certain circumstances only (please specify)

4. Are there forms of collaboration of administrative judges in the activity of the Government or of public administrations? (for example, secondment of individual magistrates to head legislative boards of a Ministry or as members of an independent authority, participation in study commissions, etc.).

- No
- Yes

.

5. Can the advisory function of the SAC also consist in the resolution of a specific dispute working as an ADR (alternative dispute resolution)?

No

Yes

.