



*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: Latvia**



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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.

*In Latvia, we have a general principle of law called “Principle of Reasonable Application of Norms of Law” which is materialised in the Article 8 of the Administrative Procedure Law. The Article 8 states that state institutions and courts, in applying the norms of law, shall use the basic methods of the interpretation of the norms of law (grammatical, systemic, historical and teleological methods) in order to achieve the most equitable and useful result.*

*Further, as to the substance, those methods are developed and explained in doctrine and court case-law.*

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.

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

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

Explain, if necessary.

*As for the analogy, Article 17 (2) of the Administrative Procedure Law states that if an institution or a court finds a gap in the system of law, it may rectify it by using the method of analogy, that is, by a systematic analysis of the legal regulation of similar cases and by applying the principles of law determined as a result of this analysis to the particular case. Such administrative acts as infringe human rights of an addressee may not be based on analogy.*

*There are multiple criteria to be obeyed. Article 15 of the Administrative Procedure Law requires in administrative proceedings, institutions and courts to follow hierarchy of the legal force of external regulatory enactments. Firstly, they must apply external regulatory enactments, the legal norms of international law and the European Union, as well as the general principles of law. Further, institutions and courts must observe the following hierarchy of the legal force of external regulatory enactments: 1) the Constitution (Satversme); 2) laws; 3) Cabinet regulations; and 4) binding regulations of local governments.*

*Also, the general principle of law called “Principle of equality” written in the Article 6 of the Administrative Procedure Law states that in matters where there are identical factual and legal circumstances, institutions and courts shall adopt identical decisions (in matters where there are different factual or legal circumstances - different decisions) irrespective of the gender, age, race, skin colour, language, religious beliefs, political or other views, social origin, nationality, education, social and financial status, type of occupation or other circumstances of participants in the administrative proceedings.*

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

- No
- Yes

Please explain and give an example.

*The Supreme Court usually specifies - regarding a specific case - how the law applicable to the case should be interpreted. These criteria are generalized and later widely referenced in future judgments (both in judgments of the Supreme Court as well as lower courts). Moreover, state institutions as well as private parties make references to those interpretative criteria (paragraphs of judgment) as well.*

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

*There is a unit within the Supreme Court, composed of legal senior advisers, employed by the Supreme Court. It is responsible for classifying the most important judgments of the Supreme Court, drafting their abstracts as well as composing case law summaries in specific matters (tax law, competition law, public registers, access to public information etc.) which are published to the public in form of commentaries of laws.*

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.

*The unit does selection of national case law as well as extensive legal research in comparative, European and international law. The research is performed on specific cases after request of judge referee. As a result of analytical work, a legal review (opinion) is drafted and provided to the judge referee. Senior legal advisers are obliged to involve in training of judges of lower court instances and public in general.*

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

- No
- Yes

Please explain.

*Latvian court system operates a free and open database, which includes judgments from Supreme, as well as first and second instance.*

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.

*There are two equal databases which provides judges with mostly all former judgments. One database is closed-state owned database, another is the public version of the previously mentioned database which provides judgments in anonymized form.*

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

*Article 350 of the Administrative Procedure Law states that the interpretation of legal norms given by the Supreme Court is mandatory for the court which adjudicates the matter de novo.*

*However, in practice, the principle of equality requires that similar cases are decided in similar way, therefore, to some extent there is an effect on other cases than the one being decided. Lower courts have to follow / obey the jurisprudence of the Supreme Court.*

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.

*Not applicable*

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.

*Yes, Department of Administrative Cases may work in extensive composition where all judges of the department are present and decide respective case.*

*However, there is alternative mechanism when there is dispute as to the subordination of the case. In that case that a matter can be referred to a special meeting of “presidents of the Supreme Court”, where the president of the Supreme Court as well as all 3 chairs of each departments are present and decide which “branch of law” (administrative, civil or criminal) shall be the court to adjudicate the case (Article 121 (4) of Administrative Procedure Law).*

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

- No
- Yes

*Yes. According to the Article 346 (2) and (3) (2) if in a matter being adjudicated by a panel of three senators, the court does not reach a unanimous opinion, or all senators consider that the matter should be adjudicated in a plenary sitting of the Administrative Matters Department of the Senate, the court shall take a decision to refer the matter for it to be adjudicated in a plenary sitting of the Administrative Matters Department of the Senate. In a plenary sitting a*

*judgment shall be rendered by a majority vote of senators. The judgment shall be signed by all judges.*

*As to the second mechanism, according to the Article 121 (4) if the issue of subordination of a case is found to be particularly complicated, the court or judge shall apply to the President of the Supreme Court for resolution of the issue.*

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

*As for the first mechanism, it is possible to draft dissenting opinion which will be added to the judgment (if he or she disagrees within the respective case). However, if judge disagrees with the principle affirmed in previous case law, the case has to be referred to plenary sitting of the Administrative Matters Department de novo (mentioned in previous answer 3.5.).*

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.

*Yes, there are plenary meetings between all the departments of the Supreme Court (Administrative, Civil and Criminal), there is Analytical Unit consisting of senior legal advisers who are following the case law and informing judges about inconsistencies as well as there is informal communication between judges of different departments.*

3.8. 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*).

*As mentioned before, according to the Article 121 (4) of Administrative Procedure Law if there is a dispute as to the subordination of the case, that matter can be referred to a special meeting of “presidents of the Supreme Court”, where the president of the Supreme Court as well as all 3 chairs of each departments are present and decide which “branch of law” (administrative, civil or criminal) shall be the court to adjudicate the case.*

## **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.

*The extent is governed by the principle of equality written down in the Article 6 of the Administrative Procedure Law that states that in matters where there are identical factual and legal circumstances, institutions and courts shall adopt identical decisions (in matters where there are different factual or legal circumstances - different decisions). It means that if the public administration will not follow the judgment (case law), in case of appeal, the administrative court will enforce the previous case-law.*

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.

*As a general principle, the effects of an administrative judgment are limited to the parties involved in the trial. However, an administrative judgment can have a persuasive effect on the work of public administrations even beyond the objective and subjective context of the case decided, when applied to similar cases. The administration must take the previous judgments of the Supreme Court into account. Moreover, the Supreme Court, as mentioned in answer 2.1., prepares case law summaries (commentaries to laws) which serves as a form of guidelines on how the law should be applied by institutions in further practice.*

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.

*If the effect is favorable to a private person, the public administration is expected to extend the effects of an administrative judgment beyond the case decided. Meaning, the administration might have a responsibility to withdraw or rectify wrong administrative acts (if the law allows to act on their own motion to correct their own decisions in individual cases).*

### **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

*Yes, in the Latvian legal system there is a specific procedure for the execution of judgments is foreseen (Part D of the Administrative Procedure Law). A participant in an administrative proceeding may file a complaint regarding inappropriate enforcement of a court judgment. This complaint is reviewed in a written proceeding by the court which has adopted the final judgment (district or regional courts) (Article 376(2) of the Administrative Procedure Law).*

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

*Unfortunately, there is no national statistics 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?

*Not applicable.*

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

- No
- Yes

Please explain.

*Generally, a judgment shall be executed after it has come into effect (Article 264 of the Administrative Procedure Law). However, Article 265 provides that pursuant to the petition of an applicant, a court may stipulate in the judgment that it shall be executed in full or in part without delay if due to special circumstances delay in the execution of the judgment may cause substantial losses to the applicant or the execution of the judgment may become impossible. In this case a judgment may still be appealed.*

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.

*In case of inertia or incorrect execution of an administrative judgement, the judge has the power to impose a penalty to the institution (Article 376 (3)). There can be subsequent penalties for the same or the continued disobedience.*

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.

*There are no rules explicitly to the execution of judgments, but there are rules for compulsory execution of an administrative act. According to the Article 374 if, as a result of compulsory execution of an administrative act, a private person other than the one against whom the compulsory execution is directed suffers, such private person has the right to compensation in accordance with the provisions of Chapter 8 of this Law, irrespective of the fact whether the compulsory execution was lawful or unlawful.*

#### **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.

*Not applicable*

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)

*Not applicable*

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)

*Not applicable*

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

*Not applicable*

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

*Not applicable*