



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: Slovakia



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

"LAW, COURTS AND GUIDELINES FOR PUBLIC ADMINISTRATIONS"

QUESTIONNAIRE

THE SUPREME COURT OF THE SLOVAK REPUBLIC

ANSWER

1. Introduction

1.1 The seminar to be held in Fiesole, on the 19th and 20th 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.

The Act no. 162/2015 Coll. Administrative Procedure Code governs administrative judicial proceedings. Administrative judicial procedure is founded on basic procedural doctrines common to all types of proceedings. Such doctrines are expressed in Civil Procedure Code (that is subsidiary to Administrative Procedure Code). One of these is a procedural principle set out in Article 3, which defines basic rules for the interpretation of law.

Article 3

1. Each provision must be interpreted in compliance with the Constitution of the Slovak Republic, public order, the doctrines on which this Act is based, the international obligations of the Slovak Republic, which take precedence over the law, with the case law of the European Court of Human Rights and the Court of Justice, and that in constant regard to the values these protect.

2. The interpretation of this Act must not contradict to what is clear and absolute in its words and sentences. No one may refer to the words and sentences of this Act against their purpose and meaning under section 1.

This principle expresses the prioritization of objective teleological interpretation, i. e. the interpretation according to the purpose and meaning of the law. In simple cases, a grammatical interpretation could take precedence, especially in cases that disallow for alternative interpretation. In cases marked as hard cases (for example, gaps in the law), interpretation “per analogiam” and completion of the law by court could be appropriate (Article 4).

Article 4

1. If a case cannot be heard and decided on the basis of an express provision of this Act, the case shall be assessed by the provision of this or another Act which regulates the issue in content and purpose closest to the issue under consideration.
2. In the absence of such provision, the court shall hear and decide the case under the rule which the court would have chosen if it had been the legislature itself, taking into account the principles of general justice and the doctrines on which that law is based, so as to result in a reasonable order of procedural relations reflecting the knowledge of legal theory and the case law of the highest judicial authorities.

Procedural doctrine stated in Article 4 Sec. 2 expresses “denegatio iustitiae”, so the judge cannot fail to hear and decide a case simply because there is no explicit legislation. This doctrine is only a rule for the interpretation, it is not judicial law-making.

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.

See answer in question 1.2.

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.

See answer in question 1.2.

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

No

Yes

Please explain and give an example.

The court can only specify - regarding a specific case - how the law applicable to the case should be interpreted (see also answer for question 12 about Article 4).

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.

Currently, the decisions of the Supreme Court are available to the public on its website and also on the website of the Ministry of Justice. These websites offer at least basic search criteria.

The Supreme Court wants to innovate and improve the way its decisions are published on the website, including the expansion of search criteria. All in order to improve and facilitate public access to court decisions.

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

public and free databases (for example website of the Ministry of Justice, HUDOC, website of the Court of Justice etc.)

private databases, provided by their institution

other – database provided by a private person in Slovak republic for a fee

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

Although the case law of the Supreme Court of the Slovak Republic, including judicial opinions adopted by it to consolidate decision-making, is not formally binding, ipso iure it has normative force, both in the vertical line and in the horizontal line.

If a judicial solution of a certain issue has already been reached and a decision or an opinion resolving this issue has been published in the Collection of Opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic, it is necessary for courts to take this judicial shift into account in their decision-making practice.

The notion of established decision-making practice of the highest authorities can also include the practice expressed repeatedly in several unpublished decisions of the Supreme Court, or even in an individual previously unpublished decision, unless some later issued (unpublished) Supreme Court decisions challenged the opinions contained in an earlier decision, or alternatively if they accepted these opinions and materially followed them up.

The court should know its own case law, i. e. decisions of other judges (or chambers) of the same court and must also take this case-law into account, regardless of whether the parties to the dispute themselves refer to it. On the contrary, the position of the ordinary courts characterized by differences in approach to the present cases, which are essentially identical, without justifying their departure from the established practice is an expression of arbitrariness contrary to the fundamental principle of the rule of law.

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.

The Grand Chamber of the divisions of Supreme Court of the Slovak republic is the body which ensures unity of decision-making.

See also answer in question 1.2 and 3.1

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 most important body of the Supreme Court is the Plenum, which consists of the President of the Supreme Court, the Vice-President of the Supreme Court, Heads of the Divisions, Presiding judges of the Sections and all other judges of the Supreme Court. The Plenum discusses the Supreme Court's Rules of Procedure and in the interest of consistent decision-making of the courts adopts opinions on the lower courts decision-making in matters of concerning issues pertaining to more than one division.

Then there is the Grand Chamber. If a section has reached a legal opinion, which is different from the legal opinion already expressed in the decision of another section, it shall refer the case to the Grand Chamber for its decision. In its resolution to transfer the case to the Grand Chamber, it justifies its different legal opinion. The Grand Chamber consists of the Presiding judge of the Section and six judges of the Supreme Court. The President of the Administrative Division of the Supreme Court is the Presiding judge of the Grand Chamber. The members of the Grand Chamber are the judges of the Section of the Supreme Court who have referred the case to the Grand Chamber and three judges of that division laid down by the working schedule.

Sessions of the Administrative Division are another place for debate on the unification of case law.

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

- No
- Yes**

See answer in question 3.4.

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 (Grand Chamber in another case) is necessary**

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.

See answer in question 3.4.

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*).

In Slovakia, administrative courts are not separated. Administrative benches (or particularly judges) are part of the ordinary courts. Also, the Supreme Court consists of 4 chambers – Civil, Criminal, Administrative and Commercial. Despite this fact, there can arise disputes over jurisdiction (competence). Jurisdictional disputes between courts, if it is disputed whether the case belongs to the administrative judiciary, are decided by a special bench (deciding upon conflicts of competence) of the Supreme Court. This bench is composed of seven judges, namely three judges of the Administrative Chamber, three judges of the Civil Chamber and

one judge of the Commercial Chamber; one of them is the presiding judge. Presiding judge and members of this bench are appointed by the President of the Supreme 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.

Administration is bound by the legal opinion expressed by the administrative court in the annulling judgment. If the administrative body does not act in compliance with the legal opinion of the administrative court and the administrative court annulled the decision of the administrative body for the same reasons for the second time, the administrative court may set a fine upon the administrative body in such an annulling judgment.

If the decision is annulled and the case is returned for further proceedings and a new decision is being deliberated on, both the first instance court regional court and the administrative body are bound by the legal opinion of the Court of Cassation (i. e. the Supreme Court).

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 question of the application and interpretation of the law in a specific case which was resolved by a final decision of the Court of Cassation, serves as a guideline for the decision-making practice of administrative authorities in similar cases. The established case law of the Court of Cassation is binding and departure from it is considered to be one of the grounds on which a cassation complaint can be based.

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.

Administrative authorities are in principle obliged to decide in similar cases in the same way. Therefore, their decision-making practice also creates a legitimate expectation for other parties to the proceedings in similar circumstances that their case will be assessed in the same way.

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**

If an administrative authority whose decision has been reversed and the case has been remanded with a binding legal opinion of the administrative court for further proceedings, does not respect this legal opinion and decides again in conflict with it, the party to the proceedings may turn to the administrative court with an administrative action and request the annulment of this decision. In such a case, the administrative court is entitled to impose a fine on the administrative body for non-compliance with the binding legal opinion of the court.

If the administrative decision grants a right or imposes an obligation the fulfillment of which can be enforced, a party to the administrative proceedings may file a motion for enforcement of the decision.

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

We do not have data available.

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.

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.

Not 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