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ACA EUROPE

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

ReNEUAL I –

Administrative Law in the European Union

"Single Case Decision-Making"

Cologne, 2 – 4 December 2018

Answers to questionnaire: Romania

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ACA-Seminar
ReNEUAL I – Administrative Law in the European Union
Single Case Decision-Making

2. - 4. December 2018

Verwaltungsgericht Köln (Administrative Court Cologne)

Questionnaire

Introduction:

National legal orders and European Union law are in many fields closely linked. Both underlie mutual influences. The jurisdiction of the European Court of Justice is not only relevant and binding as the interpretation and application of European Union law is concerned. Also, its jurisdiction partly affects the interpretation and application of national law. This phenomenon can be observed e.g. in the law of administrative procedure or of administrative court procedure.

On the other hand, European Union law is founded on the national jurisdictions of the member states. From an optimistic point of view it ought to be an essence of the best the national legal orders have to offer. In this line of thinking the European Court of Justice considers the national legal orders as source of inspiration in determining the general principles of European Union law which traditionally, i.e. before the Charter of Fundamental Rights came into force, were the sole source of fundamental rights within the jurisdiction of the European Court of Justice (cf. ECJ Case 4/73 (Nold), ECLI:EU:C:1974:51, p.507-508). Accordingly, the European Court of Justice has deducted many procedural rights in administrative procedure from the national legal orders.

It is in the interest of the member states that the relationship between European Union law and the national legal orders remains one of mutual interchange, better: a dialectic process. It would be contrary to the common European project, if it degenerated into a one-way-street. Recently, there have been two proposals which try to implement this process by developing a European administrative law. These proposals are <u>not</u> directed at modifying the national laws of administrative procedure. Their purpose is to establish for a first time a general codification of administrative procedural law binding for the institutions of the European Union, particularly the Commission.

The ReNEUAL draft is a project which has mostly been promoted by European scholars with expertise in European Union law, in various national legal orders as well as in comparative legal studies (http://www.reneual.eu/index.php/projects-and-publications/reneual-1-0). Yet, several legal practitioners, i.a. judges from several member states, have also contributed. The ReNEUAL draft is available in English, French, German, Italian, Polish, Romanian and Spanish. For the purpose of this questionnaire, Book III (Single Case Decision-Making) is attached as a

file in English. You will find links to other language versions on the ReNEUAL-website: http://www.reneual.eu/index.php/projects-and-publications/.

The second draft is a resolution adopted by the European Parliament in 2016 on a proposal for a regulation for an open, efficient and independent European Union administration (EP-No. B8-0685/2016 / P8_TA-PROV(2016)0279). It was inspired by the ReNEUAL draft. Although the Commission reacted rather sceptically in October 2016, the proposal is still on the agenda of the European Parliament. The proposal is also attached as a file; more language versions are accessible through the European Parliament's website: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0279+0+DOC+XML+V0//EN#BKMD-8.

The seminar to be held in Cologne aims at further investigating into the national legal orders in order to assess their principles more profoundly and on a wider scale. The purpose is to achieve a better understanding of the specific approaches of the national legal orders, to discover similarities and/or differences in order to promote the dialectic process mentioned above and thus both contribute to a better understanding of the principles of the European legal order derived from the essence of the member states' legal orders and enable a mutual learning process as well between national legal orders among themselves as between the national legal orders and the European Union's legal order.

As the seminar cannot investigate the national administrative laws of the member states in their entireties the seminar has to limit its scope: first, to single case decision-making as the probably most typical form of action of the administration. Other forms of action, especially administrative rulemaking, pose another variety of questions which could make it worthwhile dedicating another seminar to this topic. Second, the seminar focuses on two important areas of administrative procedure, which are covered by the first two parts of the following questionnaire. The first is dealing with the legal position of different categories of (potential) parties to administrative proceedings (I.), the second with the administrative determination of facts and discretionary powers (II.). The last part contains a small case study in which these areas of administrative procedural law play a decisive role (III.). This sequence is, of course, not meant to prejudice the order of answering.

The first part deals with the questions of who is or can become a party to administrative proceedings before an administrative authority (not before an administrative court!) and of what rights and/or obligations might follow from being a party to administrative proceedings. The second part centres on the question of how administrative authorities determine the facts on which to found their decisions. Although here, too, the main focus is on the proceedings before administrative authorities, this part also makes reference to proceedings before administrative courts. In this regard it deals with the administrative courts' review of administrative decisions having in mind that there might be different standards of review concerning the establishment of the facts and concerning the application of substantial law.

Wherever you consider it appropriate, it would be helpful if you not only described your national legal order, but also compared your national legal order with the relevant provisions of the two drafts mentioned before. For this purpose the questionnaire makes reference to single provisions of these two drafts in order to facilitate the links.

I. Parties to Administrative Proceedings: Categories and Legal Positions

1. a) Are the following categories of parties to administrative proceedings for single case decision-making recognized in your legal order:

- **addressees of onerous administrative acts / applicants of beneficial acts,**
- **other individuals (please differentiate, in its case, further, e.g. between individuals claiming subjective rights, concrete legal interests, factual interests, individuals as members of the general public),**
- **associations or non-governmental organisations (e.g. environmental, consumer,…) (please indicate, in its case, details and/or specific requirements),**
- **other administrative bodies?**

The following categories are recognized to be parties to administrative proceedings in the national legal order:

1) Addressees of onerous administrative acts (e.g. requesting an authorization for a self-employed activity) as well as applicants of beneficial acts (e.g. social benefits);

2) Other individuals:

a) citizens and legally established organizations that have the right to appeal to public authorities by formulating petitions. Applicants may claim subjective rights (requesting information of public interest), concrete legal interests (conclusion of marriage) or factual interests (informing the competent administrative authority of a breach of public order and requesting to be re-established);

b) persons whose legitimate rights or interests may be infringed and to whom the law requires to issue an agreement or opinion (for example, in the case of ownership of immovable property);

c) persons who claim the violation of a subjective right or a legitimate interest by issuing an individual administrative act addressed to another subject of law (third parties), to whom the law allows to request to the authority issuing the administrative act to revoke it, in whole or in part (article 7 paragraph (1) of the Administrative Contentious Law no. 554/2004). Following this preliminary procedure, the person in question has the right to file a complaint to the Administrative Court of Appeal;

3) Social bodies (associations, foundations and others), which have as their object of activity, for example, the protection of the environment, the consumer protection, the protection of the rights of different categories of citizens or, where appropriate, the proper functioning of the administrative public services and who may make petitions to the authorities in case of an

administrative act violating subjective rights or legitimate interests in the field in which they operate;

4) Exemples of other administrative bodies that may intervene in an administrative proceeding:

a) The National Authority for Consumer Protection, which, according to art.3 paragraph (1) lit.m of the Government Decision no.882/2010, notifies the decision makers and the operators involved in the product and service quality certification system (based on its own findings and on the information received from non-governmental bodies and from the consumers) about the lack of compliance of products and services with the certification documents. The National Authority for Consumer Protection may propose new regulations in this area or the improvement of the existing ones. The Authority may also require to the issuing bodies, according to the law, to suspend or withdraw the operating license, the manufacturing license or the classification certificate;

b) The National Agency of the Civil Servants, which, according to the provisions of the Law no.188/1998 on the civil servant's statute, monitors and controls the implementation of the legislation concerning the public offices and the civil servants from the public authorities and institutions.

As a consequence of the findings resulting from its activity of control, the Agency may become party to an administrative proceeding by notifying the issuing authority about the unlawfulness of the administrative act or the refusal to enforce the legal provisions concerning the civil service.

The President of the Agency may also notify the Prefect (the representative of the Government at local level) about the illegal acts issued by the local public authorities or institutions (article 22 paragraph (5) of the Law no.188/1998).

According to Article 22 paragraph (3) of the Law no.188/1998, corroborated with Article 3 paragraph (2) of the Administrative Contentious Law no.554/2004, the Agency has an active procedural legitimacy and may bring the matter to the competent administrative court in case of:

-the acts by which the public authorities or institutions violate the legislation regarding the public office and the civil servants, ascertained as a result of their own activity of control;

-the refusal of the public authorities and institutions to apply the legal provisions concerning the civil service.

The administrative act brought to court is legally suspended.

c) The People's Advocate (the Romanian Ombudsman), which, according to article 1 paragraph (1) of Law no.95/1997, aims to protect the rights and freedoms of individuals in their relations with public authorities. The People's Advocate is a national institution for the promotion and protection of human rights, as established by the United Nations General Assembly Resolution (UN) 48/134 of 20 December 1993, which adopted the Paris Principles.

The People's Advocate exercises its powers ex officio or at the request of citizens, companies regulated by Law no. 31/1990, associations or other legal entities, as well as

unannounced, by making visits to places of detention. Petitions may be filed by the concerned persons irrespective of nationality, age, gender, political affiliation or religious beliefs.

Pursuant to article 17 paragraph (1) of the Law no.95/1997, petitions addressed to the People's Advocate are to be made in writing and should mention the name and domicile of the individual injured in his rights and freedoms, the rights and freedoms violated and the administrative authority or the civil servant concerned. The petitioner must prove the delay or refusal of the public administration to legally resolve the petition.

If, after examination of the petition filed, it is considered that the petition of the injured individual is founded, based on article 26 paragraph (1) of the Law no.95/1997, the People's Advocate shall notify in writing the public administration which has violated the rights of the individual and ask it to review or revoke the administrative act, to repair the damages and to bring the injured person’s situation back to its previous state.

The concerned public authorities are immediately required to take the necessary steps to eliminate the unlawfulness found, to compensate for the damage and to remove the causes that have generated or favoured the violation of the rights of the injured person and to inform the People's Advocate thereof.

If the public administration or civil servant fails to remove, within 30 days from the date of the referral, the unlawful acts committed in accordance with art. 27 paragraph (1) of the law, the People's Advocate shall notify the hierarchically superior public authorities, which have to communicate within 45 days the measures taken.

If the public authority or civil servant belongs to the local public administration, the People's Advocate shall notify the Prefect. A new deadline of 45 days runs from the date of filing the notification to the Prefect.

The People's Advocate is entitled, under Article 28 paragraph (1) of the law, to notify the Government about any unlawful administrative act of the central public administration and the prefects. If the Government fails to adopt, within a 20 days deadline, the appropriate measures concerning the unlawful administrative act, the People's Advocate shall notify the Parliament.

If the People's Advocate finds gaps in the legislation or serious cases of corruption or failure to comply with the laws of the country on the occasion of its investigations, it will file a report, containing its findings, to the Presidents of the two Chambers of the Parliament or, as the case may be, to the Prime Minister.

Also, according to article 1 paragraph (3) of the Administrative Contentious Law no.554 / 2004, if the People's Advocate, following the control it carried out, according to its organic law, considers that the unlawfulness of the act or the refusal of the administrative authority to perform its legal duties can only be removed through the courts, it may refer the matter to the competent administrative court from the domicile of the petitioner. The petitioner rightfully acquires the quality of claimant and will be notified as such. If the petitioner, at the first hearing, fails to become a party to the lawsuit filed by the People's Advocate, the administrative court shall cancel the application.

b) Are the categories of parties to administrative proceedings defined

- **in a general codification (i.e. Code of Administrative Procedure,…),**

- **by reference to other codifications (e.g. Code of Court Procedure,…),**
- **by custom(ary law),**
- **by jurisprudence,**
- **in another way (please explain)?**

The categories of parties and persons involved in each administrative proceeding are set out in the *normative act governing that procedure*. The general provisions of the Civil Code, the Civil Procedure Code may also apply.

An Administrative Procedure Code hasn't been adopted yet. At the level of the Ministry of Regional Development and Public Administration it was established a working group for the purpose of drafting the Administrative Procedure Code.

2. a) **Do (sectorial) pieces of legislation establish additional categories of parties to administrative proceedings or do such pieces of legislation modify the general categories? In this case, please give examples!**

The sectoral laws specifically define the parties and the persons involved in each administrative proceeding, without changing the generic categories.

3. **As far as the parties are not parties by law (e.g. addressees or applicants), how can the different categories of (potential) parties actually become parties to administrative proceedings?**
   - **Is a request of the party required?**
   - **Is a decision of the administrative authority admitting the party required?**
   - **Is the administration obliged to qualify potential parties ex officio?**

Insofar as a person claim the violation of a subjective right or a legitimate interest by issuing an individual administrative act or by not issuing it, that person may refer the matter to the issuing public authority, thus becoming party to the administrative proceeding.

The administrative authorities issue decisions on the acceptance of the parties only if the sectoral law requires for such decisions to be made by the administrative authorities during the administrative proceedings.

4. a) **Are administrative authorities obliged to identify third parties entitled to participate or potentially interested in administrative proceedings?**

Administrative authorities are not obliged to identify third parties who have the right to participate in administrative proceedings. When sectoral law requires a third party to issue an agreement or opinion, the administrative authorities check their existence in the documentation submitted by the applicant and, if the legal conditions are met, they issue the individual administrative act.

b) **Is the administrative authority obliged to announce the beginning of administrative proceedings to (potential) third parties to enable their participation?**

Administrative authorities are not required to notify potential third parties about an administrative proceeding, for the purpose of enabling them to participate in that proceeding, as third parties cannot be identified on a case-by-case basis.

c) **Are there any consequences, if the (potential) party does not make use of its right to participate in the administrative proceedings? Does your legal order provide for a foreclosure of the exercise of the party's rights (preclusion regulation), particularly with regard to later court proceedings (ability to challenge the final decision, legal standing in this regard)?**

If third parties do not exercise their right to participate in the mandatory administrative proceeding within the statutory deadline, and if the law expressly provides so, they may subsequently use the administrative proceeding only if they prove that they could not participate within the statutory deadline for objective reasons (illness, traveling in the interest of work etc.). In such a case, their right of appeal is reinstated.

When the individual administrative act concerns another subject of law, a third party may initiate the administrative proceeding within a certain period of time (30 days) from the date the third party acknowledges the existence of an administrative act that violates a right or a legitimate interest.

In both of the above situations, the failure to participate in the administrative proceedings does not subsequently allow the concerned party to file a case to the court for the purpose of annulling the unlawful individual administrative act.

5. **If individuals / organisations / other public authorities are not admitted as parties to administrative proceedings by the competent authority on their request, what are the legal consequences?**

a) **Are they entitled to direct court actions against the administrative decision to not admit them as parties to the administrative proceedings? Are (only) original parties (parties by law) to the administrative proceedings entitled to do so?**

Individuals/organizations, other public authorities who have not been recognized as parties to the administrative proceeding may apply to the competent court after having first filed the matter to the competent administrative authority.

b) **In contrast, do the parties not admitted to the administrative proceedings have to wait for and then challenge the final administrative decision claiming a procedural defect in not admitting them?**

Individuals/organizations, other public authorities that have not been admitted to the administrative proceedings does not have to wait for the final decision in order to claim a procedural defect in not admitting them..

c) **Can the competent authority remedy any omission to admit a party?**

Yes, the competent authority may remedy the omission to admit a party.

6. a) **Do all categories of parties to administrative proceedings enjoy the same procedural rights:**

- **to be heard (orally or in writing),**
- **to be advised by the competent authority concerning the relevant procedural rights,**
- **to submit documents,**
- **to have access to the file, including documents submitted by other parties,**

- **to call witnesses or to initiate other gathering of evidence,**
- **to be provided with a copy of the final decision,**
- **to file a claim in the administrative proceedings?**

The parties involved in various administrative proceedings enjoy the rights expressly provided for by the sectoral law governing such proceedings. We generally mention the following rights as recognized by the parties:

- the right to be heard;
- the right to be informed of the applicable proceedings;
- the right to submit documents;
- the right to have access to the file, including to the documents submitted by other parties;
- the right to request further evidence or to have other persons heared;
- the right to get the administrative act requested;
- the right to notify the issuing authority of the unlawfulness of the administrative act it issued;
- the right to notify the hierarchically superior public authority, if any, if the response received from the issuing authority is not favourable;
- the right to bring an action before the administrative court if the public authority does not issue within the prescribed period of time the administrative act requested or if it unjustifiably refuses to issue the administrative act;
- the right to refer the matter to the administrative court if the public authority issues an administrative act violating a subjective right or legitimate interest.

b) **Or do different categories of parties to the administrative proceedings have different rights? If so, please provide information about the most important differences!**

Persons involved but not admitted in various administrative proceedings enjoy the rights expressly provided by the sectoral law governing such proceedings without, however, benefiting from and substituting them in the rights recognized to the parties. We generally mention the following rights recognized by the persons involved:

- the right to refer to the public authority the unlawfulness of an individual administrative act issued by it where the sectoral law necessarily requires their agrrement or opinion to issue the act (e.g. the need for the neighboring owners to agree when the headquarters of an independent activity is to be set at the applicant's domicile);
- the right to notify the hierarchically superior public authority, if any, if the response received from the issuing authority of the act is not favourable;
- the right to notify the administrative court in order to ascertain the unlawfulness of the administrative act issued in the absence of the agreement or opinion expressly required by the law;
- the right to refer the matter to the administrative court if the individual administrative act issued to another subject of law violates a subjective right or legitimate interest.

7. Is there a political or academic discussion concerning any kind of reform with regard to the participation rights of third parties to administrative proceedings in your country? Are there recent legislative proposals concerning the participation rights of third parties to administrative proceedings?

According to article 7 paragraph (3) of the Administrative Contentious Law no.554/2004, the person injured in his/her right or in a legitimate interest by an individual administrative act concerning another subject of law is entitled to introduce a preliminary complaint from the moment he/she became aware, by any means, of its existence, within the 6 month period stipulated in paragraph (7), respectively a 6 month period from the date the administrative act was issued.

The above legal text has been the subject of a constitutional challenge, stating that the legal treatment of third parties in relation to the deadline for bringing an action against an individual administrative act is the same as that applicable to the addressee of that act, categories of persons that are in different legal situations, which leads to a negative discrimination of the third party category preventing their free access to justice. It has been argued that, according to the criticized text, the limitation of the right to action begins before the right has actually been born.

In considering this constitutional challenge, the Constitutional Court found that the provisions of Article 7 paragraph (7) of Law no.554/2004 do not distinguish between the quality of the person injured by a an individual administrative act, namely whether it is the addressee of the act itself or a third party. Without making a distinction in this respect, the text of the law provides for the same period of six months from the issue of the administrative act in which the act may be appealed. However, an individual administrative act - not being subject of any form of publicity - is not applicable to third parties, so that they do not have the possibility to know about its existence from the date of its issuance. This act is only communicated to the addressee through notification. As such, third parties find themselves in the objective impossibility of knowing about the existence of an administrative act addressed to another subject of law. For these reasons, the Constitutional Court upheld the constitutional challenge of the provisions of article 7 paragraph (7) of the Law no.554/2004, finding that this text is not constitutional inasmuch as the 6-month deadline from the date of issue of the administrative act would apply to the preliminary complaint filed by the person (third party) injured in his/her right or in a legitimate interest by an administrative act of an individual nature addressed to another subject of law than the addressee of the act.

II. Determination of Facts and Discretionary Powers

1. a) In administrative proceedings, do administrative authorities have a general duty to carefully and impartially investigate the facts of the case ex officio in your jurisdiction (principle of investigation)?

Yes. In administrative proceedings, the administrative authorities have a general duty to carefully and impartially investigate the facts of the case. Sometimes, in accordance with sectoral laws, in order to initiate an administrative proceeding, a complaint or a notification from a public authority, a non-governmental organization or an injured person is required.

b) Are, in contrast, the parties to administrative proceedings generally obliged to present facts or evidence of their own accord (principle of party presentation)?

The parties involved in administrative proceedings are required to provide acts, opinions, facts or other evidence when requesting the issuance of an administrative act or when they consider that the administrative act issued violates their right or a legitimate interest.

c) Do the rules for determining the facts distinguish between administrative proceedings initiated ex officio or by application?

Legal rules do not distinguish between administrative proceedings initiated *ex officio* or by application. The difference lies only in the way the administrative proceedings are initiated and, possibly, in the persons involved in the proceedings.

d) Do the rules for determining the facts distinguish between facts which are favourable to the individual and others which are unfavourable to him?

The legal norms do not distinguish between facts which are favourable to the individual and others which are unfavourable to him.

e) Do different models of fact finding in administrative proceedings exist in your country with regard to different subject matters (e.g. ex officio administrative orders prohibiting or requiring specified actions of individuals, licensing of private projects on application, administrative sanctions, specific sectors of administrative law,…)?

Yes, in the Romanian law there are different models of fact finding in administrative proceedings, governed by sectoral laws, depending on the subject and the field of activity. Sectoral laws also stipulate how to initiate, develop and complete the administrative proceedings, acts that can be issued, appeals, and competent authorities to resolve them.

For example, the issuance of an act of general applicability requires, according to the *Law no.24/2000 on the rules of legislative procedure for drafting normative acts*, to go through several procedural steps:

- setting the goals;
- collecting, processing and scientifically analyzing the information;
- drafting records and reports, compiling statistical data and information, getting opinions and authorizations etc.
- the explicit configuration of the concepts and notions used;
- developing alternatives and choosing the best one;
- adopting the act;
- enforcing the act and monitoring its implementation.

The reasons for issuing the act, the socio-economic impact, the financial impact, the impact on the legal system, the consultations carried out for the drafting the act, the public information activities, the implementation measures are included in the instrument of presentation and motivation accompanying the act.

The Parliament, the Government and the other central and local public administration authorities may set out their own rules for drafting the legislation falling within their scope, while observing the provisions of *Law no.24/2000 on the rules of legislative procedure for drafting normative acts*.

For the issuance of an individual administrative act, the applicant must submit to the competent public authority all the documents expressly provided by the sectoral law (application, documents, sketches, opinions, agreements, declarations etc.).

For example, for the issuance of a building permit, the procedure is laid down in the *Law no.50/1991 on the authorization of the execution of construction works and some measures for the construction of dwellings*; for the issuance of an environmental permit, the procedure is regulated by the *Emergency Ordinance no.195/2005 on the protection of the environment*; for

carrying out self-employed activities, the authorization procedure is stipulated by the *Emergency Ordinance no.44/2008 on the economic activities carried out by authorized persons, individual enterprises and family companies.*

Finding a non-compliance with the obligations under the sectoral laws in different areas of activity is done in accordance with the applicable procedure in that area. For example, in case of misdemeanor, the general procedure is governed by the Government Ordinance no.2/2001. In case of work-related misconducts, the procedure is provided by the *Law no.188/1998 on the Statute of civil servants* and by *Law no. 53/2003 - Labor Code*.

2. If your jurisdiction provides for the duty of the competent administrative authority to care- fully and impartially investigate the facts of a case:

a) Are the parties to administrative proceedings obliged to cooperate in the investigation (e.g. by providing documents or by answering questions)?

Yes, in the administrative proceedings, the parties involved are obliged to cooperate with the public authorities, to provide documents, to indicate known persons and facts, to answer questions.

b) What are the consequences, if a party to administrative proceedings does not comply with its duty to cooperate?

If a party does not fulfill its obligation to cooperate, it shall bear the consequences expressly provided by the sectoral laws (not issuing the administrative act requested, annulment of the administrative act, suspension of the operating licence, fine, disciplinary sanction).

c) Are there differences in the duty to cooperate among different categories of parties (applicants, potential addressees of the final decisions, third parties)?

Yes, there are differences in the obligation to cooperate with the administrative authorities between the persons who are parties to the administrative proceedings and the third parties.

3. a) In the fact finding process, is the administrative authority in your legal order bound by strict procedural rules (e.g. demanding for a certain organisation) or is this process subject to discretion of the administrative authority?

The administrative authority is bound by the observance of procedural rules depending on the field of activity, provided for in the sectoral laws and developed by the rules of organization and functioning of that authority.

b) Has the administrative authority broad discretion in evaluating the facts found in the administrative proceedings?

Depending on the field of activity, the administrative authority may have a certain margin of discretion in the administrative proceeding.

c) Does your national legal order provide for rules concerning composite investigations, i.e. the collaboration of different administrative authorities (like establishing a responsible officer of one administrative authority) or the collaboration of different officers within one administrative authority, e.g. a hearing officer who may hold hearings with applicants (like asylum seekers) while another officer takes the final decision based on written reports of such a hearing officer?

In the national legal order there are both rules governing the collaboration between different administrative authorities, as well as rules for the collaboration between different officers within the same administrative authority. For example, in the procedure for the authorization of a self-employed activity or in the procedure for issuing a building permit, the approvals of several public authorities are required (sanitary-veterinary approval, environmental approval, gas approval, electricity approval etc.).

In the misdemeanor procedure, there are situations regulated by law where the finding of a misdemeanor is done by an officer, while the the penalty is applied by his/her direct supervisor or by a structure of the same administrative authority.

4. a) Does your national legal order provide for specific rules of evidence for the fact finding in administrative proceedings?

The national legal order provides both specific rules of evidence for finding the facts in the administrative proceedings and specific rules in the judicial proceedings.

As regards the administrative proceedings, the facts finding and the evidence is determined by sectoral laws and secondary legislation.

If sectoral laws do not contain rules relating to certain situations, the provisions of general regulations such as the Labor Code, the Civil Code, the Civil Procedure Code apply.

b) If this is the case, what are the most important principles?

The most important principles are the lawfulness principle and the principle stating that when both general and specific rules may apply to a legal issue, the more specific rules prevail.

7. a) In your national legal order, are the procedural standards to be observed by administrative authorities in their fact finding the more stricter the more the administrative authorities are conceded substantive discretionary powers?

In the national legal order, the strictness of procedural standards to be observed by administrative authorities in their fact finding is the same, regardless of the extent of their discretionary powers.

8. Are there any constitutional provisions and/or principles governing the questions

a) of the determination of facts of a case by the administration

Principles to be respected: equal rights, lawfulness, fairness, relevance, reality, accountability, proportionality.

b) of the possibilities of the administration to enjoy discretion therein

Principles to be respected: equal rights, lawfulness, subsidiarity, autonomy, pertinence, impartiality, budgetary balance, efficiency, effectiveness, consultation of citizens, accountability, proportionality.

9. Is there a political or academic discussion concerning any kind of reform with regard to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts in your country? Are there recent legislative proposals

concerning the discretionary powers of the administration and the corresponding reduced judicial control?

Currently, the Government intends to achieve a reform of the public administration by systemizing and codifying the legislation in the main areas of public interest. In this respect, in July 2018, the Administrative Code was adopted by the Parliament. After its adoption, the Administrative Code was submitted to the *a priori* control of the Constitutional Court.

On the other hand, discussions were resumed and a working group was set up at the level of the Ministry of Regional Development and Public Administration for drafting the Administrative Procedure Code.