



Bundesverwaltungsgericht



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

**Functions of and Access to Supreme Administrative
Courts**

Berlin, 13 May 2019

Answers to questionnaire: Bulgaria



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ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg
(Higher Administrative Court Berlin-Brandenburg)

Questionnaire

Introduction

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which “filters”, for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12th to 14th May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states' Supreme Administrative Courts. It shares this objective with the closely linked semi-

nar taking place in Dublin on 25th and 26th March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge's daily work.

I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

Two instances

b) Does your SAC also serve as a first instance court?

In certain cases, the SAC is a court of first instance

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter?

- depending on the importance of the case?

- depending on a choice by the plaintiff (alone) or the parties (by agreement)?

- depending on other criteria?

Please explain.

It depends on the subject matter.

According to Art. 132. paragraph 2 APC with the jurisdiction of the Supreme Administrative Court shall be:

1. the contestations against the acts of secondary legislation, except for these of the municipal councils;

2. (suppl. - SG 77/18, in force from 01.01.2019) the contestations against the acts of the Council of Ministers, the Prime Minister, the deputy prime ministers and the ministers, issued while exercising their constitutional powers in the management and performance of government; in the cases provided for by law, as well as when those authorities have delegated their powers to the respective officials, the administrative acts issued by them shall be challenged before the relevant administrative court;

3. the contestations against decisions of the Supreme Judicial Council;
4. the contestations against the bodies of the Bulgarian National Bank;
5. cassation complaints and protests against court decisions of the first instance;
6. private complaints against definitions and orders;
7. claims on cancellation of entered into force court acts upon administrative cases;
8. the contestations against other acts, determined by a law.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

First-instance proceedings accounted for 14.62% of all proceedings before SAC.

2.

a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?

The largest group of proceedings is the cassation proceedings.

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

The most complex cases are completed over a period of about 10 months.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

SAC reviews decisions of the lower courts with a view to the law only. As a cassation instance the SAC is a court of law.

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law?
- the deliverance of single case justice?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

The court performs all four functions.

5. a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

The courts shall supervise the legality of the acts and actions of the administrative bodies.

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

The importance and complexity of the administrative matter, unifying the legal approach in appealing administrative acts.

6. a) Is there a separate constitutional court in your country?

Yes, there is a Constitutional Court of the Republic of Bulgaria

b) Does the SAC in your country serve as a constitutional court?

The Supreme Administrative Court does not perform such a function.

c) In how far does your SAC consider constitutional law, especially fundamental rights?

The Constitution has a direct effect and is applicable law especially with regard to fundamental rights.

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

There is no such remedy. The Constitutional Court is not part of the judiciary and can not control the constitutionality of the SAC's decisions.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

In this case, the court shall stop the proceedings and file a request to the Constitutional Court to declare unconstitutional the applicable law.

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC

first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

There is no legal possibility. The unlawfulness of administrative acts under the Constitution is challenged only before the court - the administrative or the Supreme Administrative Court

II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?

There was no such obligation before. Following the amendments to the APC in force on 1.01.2019 personal cassation complaints must be countersigned by a lawyer or a lawyer. A lawyer is not required to attend court hearings.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

There are no such legal requirements.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

There is no such legal opportunity.

e) Are there specific (different) rules for representatives of administrative authorities?

The administrative bodies may be represented by their professional legal advisors, who are in the position and employment contract. They can also be represented by solicitors or barristers

2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

According to Art. 212 of APC the complaint or the protest shall be filed in written form and shall contain:

1. indication of the court;
2. the name and the exact address of the appellant, and if is a natural person – and his/her personal identification number, the name and the exact address of the legal representative or proxy, if there are such ones, respectively the name and the position of the prosecutor;
3. indication of the appealed decision;
4. precise and grounded indication of the concrete defects of the decision, which present cassation grounds;
5. what consist the claim of;
6. a signature of the person, which files the complaint or the protest.

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

The Supreme Administrative Court shall consider only the defects of the decision, pointed out in the complaint or the protest. The court shall check and ex officio for the validity, the admissibility and the correspondence of the decision with the material law.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

The Supreme Administrative Court may make a reference for a preliminary ruling at its own discretion or at the request of the parties. Where it finds that this is necessary for the case, it is obliged to make such a reference for a preliminary ruling.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

Right to appeal the decision shall have the parties in the case, for which it is unfavourable. The persons, towards which the decision has an effect, shall be entitled to appeal it, when it is unfavourable for them, even if they have not participated in the case.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

With the amendments to the APC, in force since 1.01.2019, a large group of cases are already dealt with only by one instance and are not subject to cassation appeal. It should be pointed out that these amendments to the law have been challenged by the President of the Republic of Bulgaria and a group of members of the National Assembly as unconstitutional before the Constitutional Court. There is still no ruling of the Constitutional Court.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

The decision of the cassation institute is final and can not be appealed. In general, where this is not prohibited by law, all judgments of the court of first instance may be appealed to the Supreme Administrative Court

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

b) If there is a preliminary assessment, please give details:

- Which court decides (lower court or SAC)?

- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?

- If the SAC decides, is there a specific procedure of admittance before the SAC? Please give details!

- If the lower court decides (in a negative way), can the SAC still admit a case?

- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?

The preliminary assessment is only about the regularity of the cassation complaint. If the cassation appeal or protest does not meet the requirements of regularity, the Chairperson of the Supreme Administrative Court, or his deputies, respectively the Chairperson of the division, with an order, shall leave them with no motion, and shall send a notice to the contesting party to remedy the irregularities within 7 days of receipt. When irregularities are discovered during the proceedings, the judge-rapporteur shall proceed in the same way.

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

There are no special rules.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

According to Art. 215 of APC the complaint or the protest shall be left without consideration, and the instituted cassation proceedings shall be terminated, when:

1. are filed by a person or an organisation, which has not participated in the court proceedings;
2. the decision or its appealed part does not exist;
3. are filed after the term under [Art. 211](#);
4. are filed against a decision, which is not subject to a cassation contestation;
5. have been withdrawn or a refusal from them has been made by a written statement.

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

There is no such legal opportunity. Administrative justice in Bulgaria is two-instance justice.

f) Are there specific requirements in certain fields of law?

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

38% of complaints are ineligible. The remaining 62% are considered admissible.

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

Apart from the requirements of the law, the SAC does not apply other eligibility requirements as a filter of cassation complaints.

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

According to the Art. 125 of The Constitution the Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and equal application of the law in administrative justice. The Supreme Administrative Court shall rule on all challenges to the legality of acts of the Council of Ministers and the individual ministers, and of other acts established by law.

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

The Constitution does not address the issue in this way. The Constitution regulates the right to appeal before the court all administrative acts other than those for which the law excludes judicial review.

The APC regulates the possibility for the court of cassation to consider both the first-instance cases in substance and the cases that have been suspended at first instance.

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

As by the amendments to the APC will be dealt with only in a first instance court without a right of cassation, the matter is referred to the Constitutional Court, which will decide whether this is contrary to the Constitution.

III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- other?

Depending on the matter, the court has several options. 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. Out of the cases 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. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

- cassation of the decision of the lower court and remitting the case back to the lower court?
- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?

- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- issue a legal opinion/authoritative interpretation of the law without connection to a single case?
- other?

The Supreme Administrative Court shall leave in force the decision or shall cancel it in its contested part, if it is incorrect. When the Supreme Administrative Court leaves the decision in force, it shall state the reasons for it, and may also refer to the reasoning of the court of first instance. When the decision is inadmissible, the Supreme Administrative Court shall nullify it in the contested part terminating the case, shall return it for a new consideration, or shall refer it to the competent court or body. When the administrative body, with the consent of the rest defendants, withdraws the administrative act or issues the act, which issue has refused, the Supreme Administrative Court shall nullify the pronounced upon this act or refusal court decision as inadmissible and shall terminate the case. When the decision is invalid, the Supreme Administrative Court shall declare its invalidity entirely and if the case is not subject to termination, shall return it to the first instance court for pronouncement of a new decision. When before the Supreme Administrative Court has been concluded an agreement, the court shall confirm it with a definition, which shall nullify the court decision and shall terminate the case with.

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

When cancelling the decision, the Supreme Administrative Court shall decide the case on its merits. The Supreme Administrative Court shall return the case for a new consideration by another body of the first instance court, when:

1. establishes a substantial breach of the court procedural rules;
2. shall be established facts, for which the collection of written evidence is not sufficient.

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

The rules for the first instance proceedings are the same for both the administrative courts and the SAC when it is the court of first instance.

b) If not, what are the differences?

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

The rules that the SAC should follow when it acts as the first judicial authority are the following:

The chairman of the court, his/her deputy or the chairman of the division shall institute the administrative case, which shall be given to a judge-rapporteur. The judge-rapporteur, respectively the chairman of a division in the Supreme Administrative Court, shall set the case within a maximum of two months from the filing of the complaint in court. This period shall not run for the period of the judicial holiday, unless shorter deadlines are provided for in this Code or a special law. The reporting judge shall be determined according the sequence of the receipt of the contestations in the court by an electronic allocation or by another way for accidentally allocation of the cases, indicated in internal rules, accepted by the respective court and announced

When the complaint or the protest do not meet the requirements for regularity, the judge-rapporteur, respectively the chairperson of a division in the Supreme Administrative Court, shall leave them without any motion, sending the disputing party a notification to eliminate the irregularities within 7 days. When the addresses of the appellant and his/her representative have not been indicated, the notice under para 1 shall be made by putting an announcement on the definite for this place in the court during 7 days. If the irregularities have not been eliminated in the term under para 1, the complaint or the protest shall be left without consideration with an order of the judge-rapporteur, respectively the chairperson of the division in the Supreme Administrative Court. When the irregularities have been found in the course of the proceedings, the court shall terminate the case. The revised contestation shall be considered regular from the day of its filing.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

In this case complaint shall be considered in a closed meeting, unless the court orders otherwise. The court may collect ex officio all the evidence, necessary for the decision of the matter upon the private complaint.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

The decision has effect only on the case for which it was taken.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

Decisions on other cases serve as a means of unifying case-law in similar cases

b) If so, under which conditions can they deviate from a decision of the SAC?

c) Is the SAC bound by law to follow its own previous decisions?

No, unless they are interpretive decisions. Decisions in similar cases serve to unify the practice of the Supreme Administrative Court

d) If so, under which conditions can it deviate from its previous decision?

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

No, but decisions can serve to unify practice.