



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: Croatia



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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 seminar 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?

There are two instances in Croatian administrative jurisdiction.

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

Yes.

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

- depending on the subject-matter?

It is laid down by a specific substantive law.

- depending on the importance of the case? *No.*

- depending on a choice by the plaintiff (alone) or the parties (by agreement)? *No.*

- depending on other criteria? *No.*

Please explain.

Act on Administrative Disputes provides that the High Administrative Court shall decide on the following:

1. appeals against the judgments of administrative courts and decisions against which an appeal is permissible;

2. lawfulness of general acts;

3. conflict of jurisdiction between administrative courts;

4. in other cases laid down by 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.)!

In 2018 there have been 8,61% first instance cases.

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 cases (84,30%) which make up the overall case load are appeal cases.

The largest group of cases (84,30%) which make up the overall case load are appeal cases.

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)?

Appeal cases are more complex than 1st instance cases. Abstract control of bylaws (review of lawfulness of general acts) represents also very complex cases.

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

- review decisions of the lower courts with a view to the facts and to the law?

Yes.

- review decisions of the lower courts with a view to the law only?

No.

- solely answer a(n abstract) legal question?

No.

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

- the standardisation/unification of the law?

Yes.

- the deliverance of single case justice?

Yes.

- (further) development of the law?

Yes.

- care for adherence to procedural rules of lower courts?

Yes.

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

It is a choice of a legislator.

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

It is a choice of a legislator.

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

Yes.

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

No, but it is competent for reviewing of bylaws, which is similar function to a constitutional court.

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

The scope of taking into consideration the fundamental rights depends on the circumstances of a specific case, but the first instance court's (or administrative authority's) decision can be annulled if the fundamental right is infringed.

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?

Yes.

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?

The court shall issue a decision suspending a dispute and send a request to Constitutional Court of the Republic of Croatia for review of the constitutionality of the 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?

The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.

If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette.

II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?
No, the parties may undertake procedural actions either personally or by a representative.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?
Only an attorney may represent a party as an agent, if the law does not prescribe otherwise.

A party may be represented by a person as an agent who is in an employment relationship with him/her if he/she has full disposing capacity.

A party may be represented by a blood relative in a legal line, a brother, sister or marriage partner – if he/she has full disposing capacity and if he/she is not illegally practicing law.

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?
No.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?
No.

e) Are there specific (different) rules for representatives of administrative authorities?
Yes, administrative authorities are represented by official person of the administrative authority.

Actions in a dispute for the respondent may be taken by official persons of the administrative body who took or failed to take a decision, acted or failed to act, or by official person of the 1st instance administrative body whose decision is confirmed by a 2nd instance administrative authority or by other persons laid down in the subordinate legislation on the internal structure of the administrative body. The head of the respondent may authorize another official person of the administrative body to take actions in a dispute. The bodies of state administration and other state bodies, with previous authorization of the head, may be represented by the State Attorney's Office.

The Government of the Republic of Croatia may authorize official person from a specific ministry which is competent for a subject.

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

An appeal against the 1st instance court's judgement is not allowed if an administrative decision is annulled and an administrative matter is returned back to administrative authority to issue a new decision; but only for the 1st time. An appeal against the 1st instance court's judgement is also not allowed in a case of "silence of administration" if the court ordered administrative body to issue a decision.

An appeal against a procedural decision (a ruling) of the administrative court may be filed only where stipulated in Act on Administrative Disputes.

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?

Yes, the High Administrative Court shall examine the first-instance judgment in the part in which it is disputed in the appeal, within the boundaries of the grounds stated in the appeal. The High Administrative Court shall ex officio take care of the grounds for nullity of a decision and the invalidity of an administrative contract.

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?

With broader interpretation of the provision cited above.

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?

Every party of the proceedings at the lower instance has the right to seize the decision of the SAC, but only within a "filter" for appeal (please see II.2.a).

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

Please see II.2.a).

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):

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)?

The "filter" is established by the Act on Administrative Disputes (please see II.2.a).

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

- Which court decides (lower court or SAC)? *Both.*

- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC? *No.*

- If the SAC decides, is there a specific procedure of admittance before the SAC?

Please give details! No, only the "filter" must be obeyed.

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

- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application? *It examines the "filter" ex officio.*

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?
No.

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

There is no special procedure of admittance.

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 are only two instances of administrative jurisdiction.

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

No.

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

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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?

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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?

The filter enables the case to come to SAC in "the 2nd round" of issuing an administrative decision.

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

Yes. According to Constitution of the Republic of Croatia the right to appeal against individual legal acts made in first-instance proceedings by courts or other authorised bodies shall be guaranteed.

By way of exception, the right to appeal may be denied in cases specified by law if other forms of legal protection are ensured.

It is also proscribed that the judicial review of individual acts made by administrative authorities and other bodies vested with public authority shall be guaranteed.

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?

No.

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)?

An academic discussion about the "filter" is always going on.

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? *Yes.*
- obligation of the administrative authority to issue an administrative act? *Yes.*
- obligation of the administrative authority to issue a new discretionary decision? *Yes.*
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)? *Yes (e.g. return of an item, compensation of damages caused by the respondent).*
- issue an administrative act itself? *Yes.*
- issue a discretionary decision out of its own authority? *No.*
- remit to the constitutional court? *Yes (for review of the constitutionality of the law).*
- other?

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? *No.*
- cassation of the administrative act? *Yes.*
- obligation of the administrative authority to issue an administrative act? *Yes.*
- obligation of the administrative authority to issue a new discretionary decision? *Yes.*
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)? *Yes (e.g. return of an item, compensation of damages caused by the respondent).*
- issue an administrative act itself? *Yes.*
- issue a discretionary decision out of its own authority? *No.*
- remit to the constitutional court? *Yes (for review of the constitutionality of the law).*
- issue a legal opinion/authoritative interpretation of the law without connection to a single case? *No.*
- other?

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

As far as new facts may not be presented in an appeal, SAC usually rely on the facts as they were investigated and determined by the lower court.

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?

Yes.

b) If not, what are the differences?

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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?

There is no specific procedure of admittance of appeals before the SAC.

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

No.

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

Yes.

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

No.

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

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

Yes.

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

Meeting of judges shall be convened when it is established that differences in understanding of the application of law exist among individual panels, or when a particular panel departs from a previously adopted interpretation of law.

Legal interpretation adopted at the meeting of judges of High Administrative Court of the Republic of Croatia, shall be binding for all panels of the court.

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

The High Administrative Court does not have other sections then administrative jurisdiction.