Bundesverwaltungsgericht

ACA EUROPE

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Functions of and Access to Supreme Administrative Courts

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Answers to questionnaire: Latvia

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

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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?

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

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.

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.)!

Generally, there are courts of three instances. The Administrative district court (the court of first instance), Administrative regional court (the court of appeal) and the Department of Administrative Cases of the Supreme Court (the court of cassation). However, the law can prescribe that some of cases are reviewed in fewer instances. For example, small petition cases are reviewed in Administrative district court as a first instance court only and the judgment in these type of cases is not subject to appeal. Public procurement cases are reviewed in Administrative district court and is subject to appeal directly to the Supreme Court (thus skipping the court of appeal). Competition cases are reviewed in Administrative regional court (in this particular case as a court of first instance) and are subject to appeal to the Supreme Court.

Department of Administrative Cases of the Supreme Court is a first instance court in specific cases prescribed by law, for example, cases concerning parliament election results as well as cases concerning decisions of inclusion of foreigners into the list of persona non grata. However, the number of such cases is minor, under 1% (around 0,5%), that is to say, there may be 1-8 cases a year.

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?

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 statistics evidence that larger groups of cases making up the overall case load are: cases concerning state tax administration (~25%), cases concerning state social security and insurance (~10%) and complaints concerning living

conditions in prisons (~10%). Proceedings of admitting an appeal form notable group of work since 55 % of all cases are rejected in this stage. As for the tax law, usually, this type of cases is comparably more difficult to handle and thus these cases require more time. Similarly, there is a view that competition as well as cases concerning regulators of public utilities are very difficult. However, the last mentioned types form a small number in total amount.

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?

In appeals cases, the Department of Administrative Cases review decisions of the lower courts with a view to the law only (it is cassation court).

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 basic functions of the Supreme Court (including Department of Administrative Cases) is the administration of justice at cassation instance, creation of uniform case-law and development of legal thought as well as informing and legal educating of society. Thus, functions of the Supreme Court includes the unification of the law, further development of the law as well as care for adherence to procedural rules of lower courts.

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

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

In such type of cases, the Supreme Court is the court of full jurisdiction – it reviews questions of law as well as questions of fact. These type of cases are considered to be highly important or very sensitive, usually the parliament is willing to assign such cases to the senior and most competent judges.

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

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

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

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?

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?

Latvia does have a separate constitutional court Satversmes tiesa. According to the article 16 of the Constitutional Court Law the Constitutional Court adjudicates matters regarding: 1) conformity of laws with the Constitution; 2) conformity of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima) with the Constitution; 3) conformity of other laws and regulations or parts thereof with the norms (acts) of a higher legal force; 4) conformity of other acts of the Saeima, the Cabinet, the President, the Speaker of the Saeima and the Prime Minster, except for administrative acts, with law; 5) conformity with law of such an order with which a Minister authorised by the Cabinet has suspended a decision taken by a local government council; 6) conformity of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution.

Thus, the Department of Administrative Cases of the Supreme Court does not serve as a constitutional court. However, according to the Article 104 of the Administrative Procedure Law in examining the legality of an administrative act or actual action and in ascertaining public legal duties or rights of private persons, in case of doubt the court (also the Supreme Court) must verify whether the norm of law applied by the institution or to be applied in the administrative court proceeding conforms to the norms of law of higher legal force. If a court acknowledges that a norm of law does not conform to the constitution (the Satversme) or norms (acts) of international law, it must suspend court proceedings in the matter and send a substantiated application to the Constitutional Court. After the coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the must shall be renewed the following court proceedings must be based upon the view of the Constitutional Court.

According to article 17 (1) of the Constitutional Court Law the right to submit an application regarding initiation of a matter regarding compliance of laws or international agreements with the Constitution is held by, inter alia, a court, on adjudicating a civil matter, criminal matter or administrative matter as well as a person in the case of the fundamental rights being infringed upon as defined in the Constitution. Thus, plaintiffs can in deed challenge laws and international agreements (but not administrative acts) before the constitutional court (i.e. without bringing the case before administrative courts and the Supreme Court first). If there is a case at the same moment in the Constitutional Court and in an administrative court, the administrative court will suspend its proceedings and will wait for the judgment of the Constitutional Court to be rendered.

There is no any special/extraordinary remedy against (final) decisions of the Supreme Court to the Constitutional Court claiming violations of constitutional law.

II. Access to the SAC

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

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?

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

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

It is preferred that the party is represented by a legal professional before the Department of the Administrative Cases of the Supreme Court, but is not mandatory under the law. Thus, there is no attorneys/solicitors/barristers specially authorized to act before the Court and it is not mandatory that the representative have to be an attorney at law/solicitor/barrister. The same rules apply for administrative authorities. The purpose of such a regulation is to provide plaintiffs with better access to administrative courts.

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

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?

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?

Articles 325 – 328 of the Administrative Procedure Laws lay down strict rules on points the appellant can object. Participants in administrative proceedings may appeal, in accordance with cassation procedure, from judgments and supplementary judgments of lower courts if the lower court has breached the norms of substantive law or of procedural law or, in adjudicating the matter, has exceeded the limits of its competence and at the same moment the breach is or may be decisive.

It must be considered that a norm of substantive law has been breached if a court: has not applied such norm of substantive law as should have been applied; has applied a norm of substantive law which should not have been applied; or has erred in its interpretation of a norm of substantive law.

It must be considered that a norm of procedural law has been breached if the court: has not applied such norm of procedural law as should have been applied; has applied a norm of procedural law which should not have been ap-

plied; has erred in its interpretation of a norm of procedural law; has reviewed the case in written proceedings although it was necessary under the law to review the case in oral proceedings. In any way, the breach of procedural law must be of a kind to be considered decisive in the matter (the breach has resulted or may have resulted in erroneous adjudging of the matter).

The following must be regarded as breach of a norm of procedural law which may have resulted in erroneous adjudging of a matter: the court, when adjudicating the matter, was unlawfully constituted; the court has adjudicated the matter in breach of the norms of procedural law which stipulate that participants in administrative proceedings must be notified of the time and place of a court sitting, or the court has adjudicated the matter by way of written procedure notwithstanding that consent in writing of the participants in the administrative proceeding was not obtained; in the matter being adjudicated, the norms of procedural law regarding the language of judicial proceedings were breached; the judgment of the court determines rights and duties of persons who were not invited to participate in the matter as participants in the administrative proceeding; or there are not a full judgment or full minutes of the court sitting in the matter.

Additionally, in a cassation complaint (the appeal) parties must set out, inter alia, the extent to which the judgment is appealed (in part or in entirely), what norms of substantive law or of procedural law the court has breached and how this breach is manifested; reasoning on why, according to the appellant, the cassation procedure would be important for the development of jurisprudence.

Article 104.1 prescribes that a court (including the Supreme Court) in the cases provided for by European Union legal norms, must assign matters to the European Court of Justice regarding the interpretation or validity of European Union legal norms for the rendering of a preliminary ruling. In practice, the Court is very open towards parties. National legislation does not oblige explicitly a judge to consult parties before referring a preliminary question to the Court of Justice. However, lately in practice the Court provides parties with not only the draft of the questions, but background information as well.

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?

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

According to the Article 315 of the Administrative Procedure Law a participant in an administrative proceeding may appeal a decision of a court of first instance or a court of appellate instance separately from a court judgment by submitting an ancillary complaint in cases specifically stipulated by Administrative Procedure Law. Thus, there is a principle that party can refer to the superior court only if it is allowed by the law to do this. Otherwise, objections re-

garding other decisions of a court of first instance or of a court of appellate instance may be raised in an appellate or cassation complaint.

As it was mentioned before (Q.I.1.), in certain fields of laws, the law may prescribe different appealing procedures, for example, petition cases are reviewed in Administrative district court as a first instance court only and the judgment in these type of cases is not subject to appeal. Public procurement cases are reviewed in Administrative district court and is subject to appeal to the Supreme Court only (thus skipping the court of appeal). Competition cases are reviewed in Administrative regional court (in this case as a court of first instance) and are subject to appeal to the Supreme Court. Thus, the limitations of certain types of cases to be brought or not to be brought to the Supreme Court may vary. These type of cases are set in the laws by the legislator.

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): (peuvent saisir la CAS)

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?

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

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

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?

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?

As it was mentioned in question (Q.II.2.), there are filters established by the law. Firstly, parties can appeal judgment of the lower court case according to specific objections (on procedural law and/or on substantive law). Secondly, as it was mentioned in question (Q.I.1.) and (Q.II.2.), there are qualitative filters in certain fields of law.

As for the preliminary assessment procedure or also called a procedure of admittance, it is performed by the Departments of Administrative Cases of the Supreme Court itself, not lower courts.

According to the Article 338 of the Administrative Procedure Law cassation complaint is being decided in an assignments sitting by a collegium of the three judges designated in accordance with internal rules. If the collegium unanimously recognises that a cassation complaint does not comply with the requirements of law, it must by its assignments sitting decision refuse to initiate cassation procedures. Requirements of law are extensively mentioned in the answer (Q.II.2.). Just to give a short overview, judges may refuse to initiate cassation procedures if the complaint does not correspond to formal requirements, if the judgment which is appealed in fact is not subject to appeal by the law or the appeal is filed by the person who is not authorised to file this appeal. Also, judges may refuse to initiate cassation procedures if there is a clear jurisprudence and the judgment appealed complies with this jurisprudence, as well as if there is no doubts as to legality of the judgment appealed and the case is not important for the further development of the jurisprudence (Article 388-1 of the Administrative Procedure Law).

In certain fields of law, for example, public procurement, it is possible to appeal the judgment of court of first instance directly to the Supreme Court. It is possible only if it is thus prescribed by the law. However, general it is not possible to appeal against decisions of the court of first instance to the Supreme Court directly (Q.I.1.).

Proceedings of admitting an appeal form notable group of work since ~ 60 % of cases are rejected at this stage. Thus, only ~ 40 % of appeals are admitted.

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?

See previous answer. (Q. II.4.).

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?

One of the functions of the Supreme Court is to provide further development and unification of jurisprudence. These restrictions allow the Court to filter most important cases and better perform the function of unification of jurisprudence. This is the balancing of the standardisation/unification of the law and the deliverance of single case justice.

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

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 first sentence of the Article 92 of the Constitution of the Republic of Latvia states that everyone has the right to defend his or her rights and lawful interests in a fair court. It is stated in the national jurisprudence that the right to appeal derives from the Article 92 of the Constitution of the Republic of Latvia (judgment of the Constitutional Court of 15 March 2018, case No. 2017-16-01, point 9, 14).

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)?

There is a constant political and academic discussion and search of new filters. However, since the last filters were introduced in 2017, at the moment the discussion has calmed down and results are monitored.

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?

As it was mentioned before (Q.I.5.), in such type of cases, the Supreme Court is the court of full jurisdiction – it reviews questions of law as well as questions of fact. The Court can decide on obligation to issue a new decision, order administrative authority to act in a certain way, refer the case to the Constitutional Court or refer a question to the Court of Justice of European Union. However, the Supreme Court or any administrative does not substitute administrative authorities, that is to say, the Court does not issue an administrative act itself, unless it is specifically provided by sectorial law (Article 252 of the Administrative Procedure Law).

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?

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 the Court acts as a court of appeal, the Court performs cassation of the judgment / decision of the lower court. That is to say, the Court reviews if the judgment of the lower court is correct on points of law. Thus, the Court does cassation of the decision of the lower court and can remit the case back to the lower court. Also, the Court can refer the case to the Constitutional Court or refer a question to the Court of Justice of European Union.

The Court reviews if lower courts in investigation and determination of facts did not breach procedural laws, for example, the lower court must assess the evidence in accordance with its own convictions which shall be based on comprehensively, completely and objectively verified evidence, and in accordance with judicial consciousness based on laws of logic, findings of science and principles of justice. No evidence shall have such predetermined effect as would bind a court. A lower court judgment must state why preference has been given to certain evidence in comparison with other, and why certain facts have been recognised as proven while other facts as not proven. If, for example, these requirements are not obeyed, it would be considered as a breach of procedural law.

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?

b) If not, what are the differences?

When the Court acts as a first instance court, it does apply the same rules of court procedure as the common first instance courts.

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 procedure for admitted appeals is a consecutive procedure of procedure of admittance of appeals. In the first procedure, the collegium of judges decides if the case can be admitted to the cassation procedure (they review, inter alia, if the appeal correspond criteria referred in question (Q.II.2.). Further the case is decided in substance, and may include oral hearing, voir plus Q.II.4.).

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

As for procedures of admittance of appeals (cassation), there is no public hearings. However, once the appeal is admitted, adjudication in cassation may be held in public hearing. However, in Supreme Court public hearings are rare since most of cases are decided in written procedure.

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

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

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

According to the Article 350 of the Administrative Procedure Law the interpretation (construing) of the norms of law stated in a judgment of a court of cassation instance shall be mandatory for the court which adjudicates the matter de novo. Thus, formally, the decisions of the Court is biding only within the same court case. However, in practice, the principle of equality require that similar cases are decided in similar way, therefore, to some extend there is an effect on other cases than the one being decided. Lower courts have to follow / obey the jurisprudence of the Supreme Court.

Lower courts may deviate from a jurisprudence of the Supreme Court, however, they have to give fundamental reasons for their decision, because in case of an appeal the Supreme Court will review their judgments and may set aside this judgment, unless the jurisprudence itself is changed by the Supreme Court.

The law does not state precisely that the Supreme Court is bound to follow its own previous decisions. However, in practice judges of the Supreme Court rely on principle of equality and decide in accordance with jurisprudence and previous judgments. They can deviate from the previous decisions, only by changing jurisprudence.

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

Different sections of the Supreme Court (Department of Criminal Cases or Department of Criminal Cases) form the same institution – the Supreme Court, therefore, judges are bound by the decisions of other sections within the same Supreme Court. Under exceptional circumstances it is possible to deviate from decisions of other departments, however, in such a case, reasoning must be provided.