



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: Slovakia



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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?

The Administrative Judicial Code creates a one-instance system of judicial review, i.e. Regional Courts acting as courts of first and last instance with no appeal or other ordinary judicial remedy being permissible. There is, however, the possibility of filing an extraordinary remedy – the cassation complaint – before the Supreme Court. The Supreme Court of the Slovak Republic has the position of the Court of Cassation in the administrative justice system.

At the first-instance level, proceedings on all matters of administrative justice are dealt with by the Regional Court, with the exception of cases that are expressly defined by law under the jurisdiction of the Supreme Court.

The review of the final decisions of public authorities by the administrative court, based on the two-instance administrative proceedings and on the principle of appeals, has proved to be both inappropriate and unnecessary for the administration of justice. This conclusion also justifies the need to strictly observe the principle that the judicial protection of participants should be rapid and effective, as required by Art. 6 ods. 1 of the Convention

The Administrative Court does not investigate the appropriateness and effectiveness of individual administrative acts, it examines their substantive correctness or proportionality. The subject of review in administrative justice is the lawfulness of the application of substantive and procedural law, and within this framework it is also the assessment of the legitimacy or potential abuse of the administrative discretion. The proper discovery of the facts of the case is a necessary requirement for such a decision and must be ensured even in the proceedings before the public authorities. The administrative court, if acting in full judicial capacity, may supplement such evidence, but it is not necessary to carry out such evidence in proceedings in two courts of law.

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?**

- 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.

The SAC as the court competent in the first and only instance decides only on actions defined by law, which are characterized by a certain element of exclusivity. The jurisdiction of the Supreme Court to act in the first instance is particular. The Supreme Court decides

a) on an administrative action against the decision of the Committee of the National Council of the Slovak Republic to review the decision of the National Security Authority,

b) in the procedure in matters regarding registration of list of candidates for elections to the National Council of the Slovak Republic and for elections to the European Parliament

- c) in the procedure in matters regarding accepting a proposal for a candidate for the position of President of the Slovak Republic,
- d) in proceedings in an action for the refusal of registration of a political party or political movements,
- e) in proceedings in an action of the Prosecutor General of the Slovak Republic for the dissolution of a political party

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.)!

year 2017: 2070 (case load) / 12 (first instance) = 0,58 %

year 2018: 2155 (case load) / 5 (first instance) = 0,232 %

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?

Based on our internal classification criteria, we cannot currently provide you with the required overview.

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)?

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?

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?

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?

The provision of Section 11 of the new Administrative Judicial Code defines the subject-matter jurisdiction of the SAC to a much narrower extent than it was in the former Civil Procedure Code, the reason for which is primarily the position of the SAC

as the highest court, when its role can not be deciding cases as a court of a first instance. The SAC is primarily to be the court which has jurisdiction over extraordinary appeals and, in addition, the court which has the task of unifying the case law.

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

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

SAC is obliged to interpret the alleged violation of the constitutional rights by constitutionally conforming manner.

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?

- Constitutional complaint

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?

SAC is obliged to interpret the alleged violation of the constitutional rights by constitutionally conforming manner even if it is contrary to the positive 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?

Plaintiffs are obliged to exhaust all remedies provided by law before public authorities and general courts, before they recourse to the Constitutional Court.

II. Access to the SAC

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

- yes, the plaintiff must be represented by an attorney before the administrative court; unless being legally educated himself or unless his employee or member acting on his behalf at the court is legally educated.

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

- yes, the representative has to be an attorney at law; representation before an administrative court is the practice of advocacy, which is ex lege reserved for an attorney at 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...?

The plaintiff must be represented by an attorney at law, unless being legally educated himself or unless his employee (member) acting on his behalf at the court is legally educated; this shall not apply in the proceedings of administrative action in social matters, asylum matters, in matters of detention of persons and expulsion or in cases where the defendant is the Centre of Legal Aid.

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

- he/she must be legally educated

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

Apart from the general terms, the following must be stated:

- identification of the impugned decision
- the date when the impugned decision was delivered to the complainant
- a description of the decisive facts to make it clear to what extent and for what reasons the complaint is submitted,
- proposal for the judicial statement (what the person claims)

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

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?

If the Supreme Court considers that there is a need for an interpretation of the EU law in order to decide the case, it has the right to apply to the Court of Justice of the European Union. However, in the case of decisions against which a remedy under national law can not be brought, it is obliged to submit such a proposal to the Court of Justice of the European Union, except where case law already exists (and any new circumstances do not raise real doubts as to the possibility of applying this case law) or if the correct way of interpreting the right in question appears to be entirely unambiguous. The national court itself may also decide on a correct interpretation of the European Union law and apply it to the facts of the case, in particular if it considers that the case-law of the Court of Justice of the European Union provides sufficient information. The submission of a reference for a preliminary ruling may, however, be particularly useful in the case of a new question of interpretation which is connected with the general interest in the uniform application of European Union law or where the existing case-law appears to be inapplicable to the new facts.

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?

- No

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

- yes

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)?

- No

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?

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?

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?

- No

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?

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)?

- No

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?

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?

The court of cassation decides only on the basis of the facts and evidence contained in the file and the administrative file. The court of cassation is bound by the facts on which the decision of the Regional Court was based.

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, essentially the same

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?

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

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

Although the case-law of the Supreme Court is not formally binding erga omnes, it has ipso iure normative power, both in the vertical line (towards the courts of lower instance) and in the horizontal line (between the various Sections of the Supreme Court).

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

They are not strictly bound.

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

The lower court is always obliged to accept unconditionally the legal opinion of the Supreme court expressed in the cassation decision in the unaltered factual and legal circumstances. In case of so-called precedential binding force there is a possibility for a general court of any instance (not) to reflect the legal opinion of the Supreme Court, in which case the lower court may deviate from the relevant decision of the

Supreme Court, but it must provide a critical and detailed reasoning and confront the arguments of the Supreme Court with which it could not identify in a similar factual and legal situation.

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

Part of the principle of legal certainty is formed by a requirement that the same answer is given to a certain legally relevant question when it is repeating itself under the same conditions. If the General Court decides in similar cases in a different or contradictory way, without justification for a different opinion adopted in such similar matter, it violates the fundamental right to judicial protection under Art. 46 ods. 1 of the Constitution, as well as the right to a fair trial under Art. 6 ods. 1 of the Convention.

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

In case of change of legislation or development in law or jurisprudence, i. e. in case there was a change of legal opinion.

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

If the Supreme Court Division, when deciding, reaches a legal opinion that is different from the legal opinion already expressed in the decision of another Supreme Court Division, it shall refer the matter to the Grand Chamber for its consideration and decision. In its resolution to transfer the case to the Grand Chamber, it justifies its different legal opinion.