



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Finland



Seminar co-funded by the «Justice » program of the European Union



ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno
(Supreme Administrative Court Brno)

Questionnaire

Introduction:

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.

I. The structure of the administrative judiciary

- a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

The requested information is available on ACA-Europe’s website.

- b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)

| Instance | I. | II. | III. |
|------------------|---|---|------|
| Name | Regional administrative courts (6), The Administrative Court of the Åland Islands, The Insurance Court and The Market Court | The Supreme Administrative Court of Finland | |
| Number of courts | 9 | 1 | |
| Number of judges | 334 | 28 | |

- c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

The total number of judges in all jurisdictions in Finland is 1,082.

Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.

II. Fees and access to the court

- a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

| Instance | I. | II. | III. |
|--------------|-----|-----|------|
| Judicial fee | yes | yes | |

- b. If you answered *yes*, what is the amount of this fee (in euro)?

It varies; administrative courts 260 euros, Supreme Administrative Court 510 euros, Insurance Court 510 euros (260 euros for private persons), Market Court 2 050 euros (510 euros for private persons), 4 100 if the value of the public procurement is more than 1 million euros and 6 140 if the value of the public procurement is more than 10 million euros .

- c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

The fee is flat, see above with regard to the Market Court.

- d. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

After the decision is delivered. Court fees are directly distrainable receivables, i.e. they can be collected by way of enforcement without a separate judgment on enforcement.

- e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

Yes, a number of public authorities (e.g. police, prosecutor, enforcement and state and municipal authorities, when performing supervisory functions) and areas of disputes are exempt by law from the duty to pay the fee. Exempt are e.g. appeals initiated at the Insurance Court by private persons concerning the right to a benefit, the amount of benefit or the recovery of benefits, proceedings concerning international protection, proceedings in accordance with the Child Welfare Act as well as certain other areas of disputes.

- f. Are non-governmental organizations exempt from the duty to pay the fee?

Not as such.

- g. Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

The fee can be waived if imposing a court fee would be manifestly unreasonable.

- h. Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

No fee is payable if a decision of a lower court is amended in favour of the appellant. As a rule, a court fee is charged also when a claim, appeal or petition is withdrawn.

- i. May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

No.

- j. Are frivolous petitions penalized? Please explain how and under what conditions.

No.

- k. Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

No there is not, but it can be estimated that the court fee in some instances functions as a disincentive in respect of petitions which are manifestly unfounded.

III. Costs of proceedings

- a. Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

A party shall according to section 74 subsection 1 of the Administrative Judicial Procedure Act be liable to compensate the other party for his legal costs in full or in part, if especially in view of the resolution of the matter it is unreasonable to make the latter bear his own costs. The provisions in this section and section 75 on a party may be applied also to the administrative authority that made the decision.

According to subsection 2, when assessing the liability of a public authority, special account shall be taken of whether the proceedings have arisen from the error of the authority.

- b. Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

According to section 74, subsection 3 of the Administrative Judicial Procedure Act a private individual shall not be held liable for the costs of a public authority, unless the private individual has made a manifestly unfounded claim.

- c. Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered *yes*, please explain under what conditions?

See point A; the decision to adjudicate compensation of costs depends on the outcome of the case and the consideration of what is equitable in the particular case. The court has been left with relatively wide discretion.

- d. Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

There are differing rules on adjudication of compensation in the Municipal Civil Servants Act. According to section 53 of the said act, a civil servant, having lodged a municipal appeal, is on demand liable to compensate the employer's reasonable legal costs, if the appeal concerns a matter within the meaning of the Municipal Civil Servants Act, and the appeal is not upheld. The employer is correspondingly liable to pay the reasonable legal costs of the party having lodged a municipal appeal, if the decision on appeal is repealed in whole or in part.

- e. How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

If the party is entitled to free legal aid, the tariff is determined based on the Legal Aid Act and the Government Decree concerning the criteria governing remuneration for legal aid services. As per the decree, the current payable fee is 110 euros/hour. The hourly fee can in certain circumstances be increased by 20 % (consultations with the client in a foreign language, the case is exceptionally complex or the attorney's responsibility is considerably greater due to eg. the significant economic interest involved). In cases concerning international protection the fee is flat (depending on the nature and scope of the case 1 300/800/400 euros in the Administrative courts, and 1 000/400/200 euros in the Supreme Administrative Court). Legal aid can be granted against a deductible.

If the party is not entitled to free legal aid, the tariff is based on a price stipulated between an attorney and his client (the Finnish Bar Association

has fee guidelines). As stated above, the court can also moderate the amount when adjudicating compensation of costs for legal proceedings.

IV. Representation

- a. Does a party have to be represented by a legal professional? Answer yes/no.

| Instance | I. | II. | III. |
|----------------------------------|----|-----|------|
| Representation of petitioner | No | No | |
| Representation of opposing party | No | No | |

- b. Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

Yes, free legal aid is provided at the expense of the state to persons who need expert assistance in a legal matter and who are unable to meet the costs of proceedings as a result of their economic situation. Legal aid can be granted against a deductible. The percentage of the deductible depends on the monthly available means of the person. An advance towards the deductible may be collected.

- c. What are the forms and conditions of free legal aid? Please explain for all instances.

Legal aid may be granted to individuals whose case is being heard in a Finnish court or whose place of residence is in Finland. Legal aid may not be granted to companies or associations. A person pursuing a business may be given legal aid in court proceedings relating to the business, but in other matters relating to the business only if there is a special reason for it.

Legal aid will not be given, if the matter is of little importance to the applicant, if legal aid would be clearly pointless or if the pursuit of the matter would constitute an abuse of process.

Legal aid is granted on the basis of the applicant's income, expenditures and maintenance liability, that is, his or her available means. The available means of the applicant determine whether the applicant is given legal aid for free or against a deductible.

- d. Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

Yes, a person who is entitled to free legal aid is also exempt from paying the judicial fee.

V. Exclusions and immunities

(Note: If you answer yes to any question in this section, please provide details.)

- a. Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

No.

- b. Are there any final administrative acts of a public authority which are not reviewable at all?

As a rule, no. Only to a very limited extent (e.g. short-term appointment of civil servants).

- c. Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

Decisions by the President of the Republic are not subject to judicial review.

- d. Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

As a pre-phase to court, yes.

- e. Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

Yes, certain cases, where a public authority is not competent to decide a matter, a case can be brought as an administrative dispute (e.g. public custody of a child, disputes between authorities etc). Election results can be reviewed on appeal against the decision of the election authority.

VI. Selection by lower and higher jurisdictions

- a. Do the administrative courts have power to select cases? Answer yes/no.

| Instance | I. | II. | III. |
|-----------------------|----|-----|------|
| Power to select cases | No | Yes | |

- b. If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

When an appeal against a decision of an Administrative Court to the Supreme Administrative Court requires leave to appeal pursuant to the provisions of an Act, such leave shall be granted if: 1) with regard to the application of the act, in other similar cases, or because of the uniformity of case law, it is important to bring the matter to the Supreme Administrative Court for decision; 2) there is specific reason to bring the matter to the Supreme Administrative Court for a decision due to an obvious error in the matter; or 3) there is another important reason for granting leave.

- c. Is the power to select cases restricted to certain fields of law? Please give details.

Yes, currently certain subject matters are subject to the requirement of leave to appeal while others are not. A new administrative judicial procedure act will likely come into force in the year 2020, and according to the new act, the system of leave to appeal will become the rule, whereas direct appeals to the Supreme Administrative Court will become the exception.

- d. Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

n/a

- e. Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

The procedure is only for the Supreme Administrative Court. When refusing leave to appeal, a chamber of the SAC may be composed of three

judges (when deciding a case on the merits, a chamber is composed of at least five judges).

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?

A formal decision is delivered whether leave to appeal is granted or not. When refusing leave to appeal the decision is brief (standardized formulation). Usually, the decision to grant leave to appeal is incorporated in the decision on the merits of the case. However, the Supreme Administrative Court can also issue a separate decision granting leave to appeal and later decide the merits of the case.

- g. Is the court obliged to give reasons when it decides not to select a case?

Yes, but only a very brief and formal reasoning.

- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.

n/a

- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.

No.

- j. Does a judge determine the order of the cases to decide?

Guiding principles are given and the order of preparation is supervised by the president of the chamber.

VII. Other measures

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

No

VIII. Statistics

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Case load is here the number of pending cases at years end.

| Instance | I. | II. | III. |
|--------------------|-------|------|------|
| Case load 2016 | 23569 | 3315 | |
| Cases decided 2016 | 30815 | 5378 | |
| Case load 2017 | 20879 | 3066 | |
| Cases decided 2017 | 29878 | 6637 | |
| Case load 2018 | 17750 | 3354 | |
| Cases decided 2018 | 27608 | 5904 | |