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: Greece

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.

The following answers to the questionnaire are provided by Theodora Ziamou, Referendary Judge, Council of State, Greece

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.

There are two instances of jurisdiction for administrative disputes in Greece: ordinary courts of first instance and ordinary courts of appeal. The decisions of the first courts are subject to appeal before the latter courts. The Supreme Administrative Court (SAC) hears applications for revision against decisions of the court of second instance and, in exceptional cases (like in cases of revocation of expropriation decisions for town planning purposes, cases of local government elections), directly, against decisions of the courts of first instance. The SAC has also constitutional jurisdiction to hear certain civil service disputes in first and last instance and to hear appeals (in second and last instance) against decisions of courts of appeal. There is no specialized jurisdiction for administrative disputes. Disputes arising from the administration of public finances are brought before the Court of Audit in first and last instance.

For the purposes of this report I shall consider the SAC as a court of third instance, so as to include it in the answers provided (considering its capacity as a court of revision, albeit reviewing only the correct application of the law by the lower courts and not the establishment of the facts of the case).

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.)

The numbers of judges given below reflect the number of the judges actually in service (928 in total in the ordinary administrative courts and 169 judges in the SAC). There are 134 judges in the Court of Audit who are not included in this table but will be included below in the calculation of the total number of judges in Greece. The numbers given represent the judges actually in service in ordinary administrative courts and not the number of places provided for, in abstract, by law (978 in total for the ordinary administrative courts, some of these places remain vacant). The number of judges in column II include also the 4 judges who are selected by the High Judicial Council to serve in the General Commission for Administration of the Administrative Justice.

The numbers below as well all statistics at the end of the questionnaire are taken from the General Report of the General Commissioner for Administrative Courts for the year 2018 (and for the years 2017, 2016) and also from the official site of the Ministry of Justice.

Instance	I.	II.	III.
Name	Administrative courts of first instance	Administrative courts of second instance (appeal courts)	SAC
Number of courts	30	9	1
Number of judges	588	336	169

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.

There are 96 positions of judges in the Supreme Court of Civil and Criminal Jurisdiction, 52 Attorney Generals in criminal courts of second

instance, 144 Attorney Generals in criminal courts of first instance, 602 judges of civil and criminal cases in appeal courts and 1105 judges of civil and criminal cases in courts of first instance, 35 justices of the peace (last amendment law 4596/2019). Attorney Generals and Justices of the Peace are considered judicial functionaries in Greece and for the purposes of this report I shall include them in the number of judges required.

Based on the above information, which is taken from the various published statistical data of the Ministry of Justice, as elaborated by me personally, the number of judges of all jurisdictions, including all three Supreme Courts, reaches a total of 3.261.

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	yes

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

For procedures before the SAC: applications for annulment, civil service appeals, applications for revision in social security: 150 Euros, appeal: 200 Euros, interim measures and applications to correct or interpret judgements: 50 Euros, applications for revision in all cases save those in social security: 350 Euros. Applications for model/pilot trial: 300 Euros (this amount falls in favour of the State if this special application is rejected by the SAC). All applications to all courts on matters of competition law: 750 Euros (Art. 39 of Law 4446/2016). For requests of temporary protection in competition procedures for the award of public contracts (lodged either with the Court of Appeal or with the SAC): 0,1% of the cost of the contract which can not be lower than 500 Euros or

higher than 5000 Euros – half of it is deposited with the filing of the application and half of it is due if the applicant loses his case (Art. 372 of Law 4412/2016 on the award of public contracts). Application to postpone the trial date: 50 Euros.

For procedures before ordinary administrative courts (last amendments: Law 4446/2016): Appeals before the courts of appeal against decisions of one-judge-first instance courts: 100 Euros. Appeals before the courts of appeal against decisions of three-judge-first instance courts: 200 Euros. In tax and customs cases before first and second instance administrative courts: 1% of the object of the dispute until 15.000 Euros. All other applications to first instance courts exercising full jurisdiction: 100 Euros. Applications for annulment: 150 Euros. Social security cases: 25 Euros. Temporary / interim protection: 50 Euros. Applications to correct or interpret judgements of ordinary administrative courts: 50 Euros. No fee is required for claims of compensation directed against the State or other public-law bodies. As regards claims of compensation which contain an explicit request for the direct payment of money (and not simply for a declaratory judgement of the court) there is a different tax required to be paid until the first hearing of the case. This is returned to the successful claimant with the final decision on the merits of the case.

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 amount is flat, pertains only to the initial application to the court and is fixed by law. This applies to all instances. In proceedings before the SAC and as it has been recently decided definitively (Council of State in plenum decisions 682-684/2019), there is one fee per writ and not per applicant (since multiple applicants may petition the court with the same writ). In proceedings before the ordinary administrative courts, there is one fee per writ if the object of the dispute is an obligation to pay money that concerns all the applicants together; if the monetary object of the dispute concerns each applicant individually, then a separate fee has to be paid by each one of them.

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?

Procedures before the SAC: The fee has to be paid (electronically) within a month after the filing of the initial application / writ before the SAC, otherwise the application will be rejected as inadmissible. In applications for temporary protection in competitions for the award of public contracts the amount of the fee required has to be paid (at the tax offices) at the same time as filing the petition.

Procedures before ordinary administrative courts: The fee has to be paid until the first hearing of the case, otherwise the application is rejected as inadmissible. The judge, however, has the discretion to invite the applicant, if he appears at the time of the hearing or if he has appointed an attorney representing him, to provide the missing fee within a set reasonable deadline. If the fee is deposited but is incomplete, the amount of the fee missing is asked by the applicant with the final decision on his case. In tax and customs cases, if the amount of the fee required surpasses 3000 Euros, then 3000 Euros are due at the time of the filing of the petition and the rest is due if the applicant loses his case.

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

The Greek State, all public authorities and public law bodies and all municipalities and local authorities are exempt by law from the duty to pay the fee.

f. Are non-governmental organizations exempt from the duty to pay the fee? Not unless they constitute public law bodies or organizations.

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?

Procedures before the SAC: The petitioner can be exempted from the fee by decision of the President of the pertinent senate of the SAC, if, judging upon the documents provided, poverty is speculated. The petitioner may not be exempted if his application is manifestly inadmissible or unfounded. If the request of the petitioner is rejected, then he has a 30-days deadline to provide the necessary fee otherwise his initial application to the SAC is rejected as inadmissible.

Procedures before the ordinary administrative courts: The petitioner can be exempted from fees required at each stage of trial separately, by decision of the President of the pertinent court which is reached upon speculation, if he can prove that his maintenance is jeopardised by the pre-payment of the fee and upon the condition that the application is not evidently inadmissible or unfounded. Private law bodies can also be exempt if they can provide evidence that the payment of the fee renders impossible or particularly problematic the fulfilment of their constitutive goals. If this special request of the petitioner is rejected, then he has to provide the fee by the date of the first hearing of his case before an audience. A renewed application to the President of the court is permitted only once and only on the condition that the facts of the applicant have changed.

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?

Before the SAC: The fee is returned to the petitioner in the case of the withdrawal of the petition, if the petitioner wins his case before the court and also if the case is ended without a decision on the merits. Depending on the circumstances of the case, the SAC has the power by law to exempt the successful applicant from the required fee with his final decision on the case. If the application is manifestly inadmissible or unfounded the SAC has also the power by law to multiply up to 20 times the amount of fee required.

Before the ordinary administrative courts: Similar legal provisions apply. The court can decide to double the amount of fee required if the application is manifestly inadmissible or unfounded. If the application is only partially accepted, then a part of the fee, as determined by the court, is returned to the petitioner.

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

No deposit is required, save in cases whereby the bringing of scientific or technical expertise is ordered by the court; in such cases the deposit required is paid by the state party. This applies also to proceedings before the SAC.

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

Yes. Frivolous petitions are penalized under the conditions explained above. Also in proceedings before ordinary administrative courts, if the losing party has failed to include in his initial writ of application a description of the different legal issues raised with his application, then he is subject to being burdened with triple the costs of the trial. The administrative courts also have the power to adjudicate 100 – 500 Euros to the detriment of the party that has requested the postponement of the trial of his case, by way of a separate recorded decision and after a specific request of the opposing party. The SAC has recently been given the power to multiply the costs adjudicated on the defeated party if his writ exceeds a reasonable length, taking into consideration the legal issues posed (Art. 14 of Law 4446/2016).

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. The preparatory work of legislation that has amended the amounts of fee required until now speak only of the "rationalization of the organization of the judicial system" in general and of the uniform application of the rules governing fees in all jurisdictions.

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?

In all instances, all of the aforementioned provisions governing the payment of fee apply also to the costs of proceedings (contributions towards the supply of certain judicial services). There are separate costs of proceedings to be adjudicated with the final decision on the case, in the following circumstances (the following amounts refer to proceedings before the SAC): If the private applicant is represented by an advocate during the hearing and he wins the case, then the state (or the public-law party that loses the case) has to pay 460 Euros towards the writ of the application and 460 Euros towards the representation by an attorney during the hearing, plus 640 Euros for the costs of the eventual intervening party to the case. If the private applicant loses his case, then he has to pay only 460 Euros to the winning public-law party towards the representation by an attorney of the State during the hearing and not for any writs submitted by the state party. If the party (whether the private applicant or the public-law body) that loses the case has contributed with concrete actions to a delay in the trial of the case, then he has to bear triple the costs of the winning party. There are no judicial costs if the case is terminated without a decision on the merits.

b. *Can the court adjudicate the compensation of costs of proceedings to the public authority?*

Yes.

If you answered yes, please explain under what conditions?

Under the conditions described above.

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)?

There are such cases whereby, at the discretion of the court, the costs incurred by the public authorities are not recoverable, depending, especially, on the circumstances of the case (partial winning / partial losing of the case, great length of proceedings not by fault of the private party, change of jurisprudence that led to the private party losing the case) or on the economic and social situation of the private petitioner (e.g. in social security cases).

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 above. In general circumstances whereby the compensation of costs appears unfair or unreasonable, all courts can decide not to adjudicate the compensation of costs, based upon individual consideration of each particular case.

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?

No, there are not.

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)?

The costs of legal representation are deposited by the attorney representing the private party at the time of the filing of a writ or even after the trial and until a decision is reached on his case, after notification by the court (Art. 31 of Law 4509/2017). These costs incur in the framework of the obligations that every attorney has towards his Bar Association to make certain professional contributions. They are defined by a tariff set in the Code for Attorneys. After this amount is paid, the final costs of legal representation may be negotiated between the attorney and his client within the limits set in the Code for Attorneys. If the attorney fails to provide finally proof of the payment of these costs, then its actions are declared void (Art. 61 para. 4 of Law 4194/2013 as amended by Art. 7 para. 8 of Law 4205/2013).

IV. Representation

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

Instance	I.	II.	III.
Representation of petitioner	Yes	Yes	Yes
Representation of opposing party	Yes	Yes	Yes

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

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

To a party who complies with the conditions for being exempt from the duty to pay judicial fee and if it is necessary for the protection of his rights, the court can appoint an attorney to represent the party (and also a bailiff or process server), upon application of the petitioner that has to be submitted before the filing of the initial writ to the court. The same applies to all instances.

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

Yes, the right to free legal aid belongs to a party who complies also with the conditions for being exempt from the duty to pay judicial fee (see answer to question c.).

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)?

Procedures before ordinary administrative courts: By an express provision contained in the Code of Procedure Before Administrative Courts (Art. 63 of Law 2717/1999 as amended with Law 4223/2013), the tax payer is obliged, before bringing a claim to the administrative courts of first instance, to file an administrative "quasi-judicial appeal" (which gives to the Administration the power to decide on both the law and facts of the case), before the competent tax authority and within 30 days of the notification of his debt. The tax authority has in turn 120 days to decide on this administrative appeal. Without this prior action required from prospective claimants / petitioners to the court, the application lodged subsequently to the court of first instance is declared inadmissible. A similar administrative appeal is provided for by Art. 269 of the aforementioned Code of Procedure in matters of local government elections, although in this case the filing of the appeal before the competent administrative authority is not mandatory. Furthermore, it is possible for any of the parties to propose a judicial compromise in all circumstances where an administrative settlement of disputes is possible and under the same conditions, as provided by Art. 1 of Law 4600/1966, which was kept in force by Art. 285 para. 1 of the Code of Procedure before Administrative Courts and by Art. 71 of Law 2238/1994. The application of both of these provisions, which may take place at the time of the hearing or at every stage of the trial, was extended to procedures before all administrative courts by Art. 11 para. 8 of Law 2954/2001.

Procedures before the SAC: According to Art. 45 para. 2 of the Code of Procedure before the SAC, if the law provides for the filing of an administrative "quasi-judicial appeal" against an administrative act, which has to be submitted to the competent administrative authority within a set deadline from the date of the issuance of the act, an application to the SAC which is lodged with it before the Administration had a chance to examine the matter on its merits on the basis of a previously submitted quasi-judicial appeal, is rendered inadmissible. Similar provisions apply also to administrative procedures of competition for the award of public contracts, to asylum seekers etc.

Before all courts (incl. the SAC), the applicant / petitioner can raise only the same legal and factual issues that were put forward to the Administration with the "quasi-judicial appeal".

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

Yes, there is a series of administrative acts which are not reviewable for reasons pertaining to their very nature or because of specific provisions of the Constitution. Non-reviewable acts are specified only by the jurisprudence of the SAC itself and not by the legislator (since this would be regarded as an undue interference of the legislative branch with the jurisdiction of the courts). Such acts include primarily governmental acts (taken in the field of governmental policy or international relations) but also decisions of the government to appoint the heads of the judiciary, acts of execution of administrative decisions, administrative acts issued by public authorities in the exercise of private-law / management / internal-organizational competences etc.

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

With the exceptions mentioned above, no, there are not. See also below.

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

Yes, if the public authority decides cases concerning relations of private law or if it causes damage to individuals while acting outside the sphere of its public-law competence, then their acts are reviewable before civil courts.

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)?

Ordinary administrative courts decide in matters of collection of public revenue, of local government elections, of the issuance of an order to pay sums arising out of the execution of public contracts (courts of appeal in one-judge formation, Art. 6 of Law 4329/2015). Administrative courts of appeal in particular, decide on conflicts of local jurisdiction among administrative courts of first instance.
The SAC decides on conflicts of local jurisdiction among administrative courts of appeal and on applications of revision directed against decisions of courts of first instance taken in matters of local government elections.

Most importantly, the SAC (the 5th Senate) enjoys the constitutional jurisdiction to elaborate all draft presidential (regulatory) decrees, after they are proposed by the competent ministers and before they are signed by the President of the Republic (Head of State). The control exercised is control of constitutionality, of general legality, of legality as to the limits set by statutory authorization and of the technical correctness of the draft decrees.

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	No	No

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?

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

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. No.

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?

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?

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

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

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.

As a general answer to the above questions, no court (ordinary administrative court or the SAC) has the power to select cases; instead, they are bound by the procedural rules contained in the relevant statutes. According to law, the SAC (in one-judge or three-judge formations) can only select the cases that can be tried outside the courtroom and in proceedings followed *in camera*, if the application is manifestly inadmissible or unfounded or if it is manifestly founded on the law and on recent benchmark decisions of the SAC. In such cases the parties are notified respectively.

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

The president of each senate of the SAC and of each administrative court has the power to determine the order of the cases to be brought to trial. The rule "first come, first served" applies with the exception of cases with fixed time limits for a final decision, of cases where the challenged administrative act has a specific duration, and of preferential cases (which may influence the working of government at a particular time).

VII. Other measures

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

In judicial review cases, which concern the objective control of legality of the Administration, access to the courts is simplified, broadened or restricted basically on the basis of the SAC' s jurisprudence on the rules of standing (see the answers given to the ACA-Berlin questionnaire). In revision and appeal to the SAC cases, the SAC has developed a jurisprudence on recent statutory provisions, with the aim to restrict access to the SAC, for reasons of acceleration of justice. The ordinary administrative courts are obliged to follow strictly their own rules of procedure and the jurisprudence of the SAC and do not have the power to take measures to simplify or restrict access to courts.

Different laws also try to restrict access to the court with the aim to accelerate justice, e.g. by raising the ambit of jurisdiction of one-judge formations of administrative courts, by setting a monetary limit for the filing of appeals before the courts of second instance (currently: 5000 Euros in general cases, 3000 Euros for social security and salary claims), by raising the amount of fee required to file an admissible application to the court etc. Access to courts is also simplified by introducing the possibility to settle monetary judicial disputes arising out of the execution of public contracts with proceedings taking place *in camera*, by introducing computerised technologies to the courts' organization etc.

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).

Instance	I.	II.	III. SAC
Case load 2016	237.791	42.727	14.888
Cases decided 2016	79.872	16.637	6.097
Case load 2017	199.193	36.067	13.715
Cases decided 2017	98.698	25.040	4.905
Case load 2018	162.490	33.640	13.611
Cases decided 2018	98.621	21.630	3.701