



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: Latvia



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## 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 administrative judiciary consists of regional courts as the courts of first instance, one district court as the court of appeal and the Department of Administrative Cases within the Supreme Court of Latvia as the court of cassation. There are no specialised jurisdictions such as financial or social security courts. It is possible to appeal a judgment of first instance court to the court of appeal and further also to the court of cassation if the leave to appeal is granted. However, in Latvian administrative judiciary exist also many examples of so-called "leap-frogs" when the case from the administrative regional court (first instance court) can be appealed directly to the Department of Administrative Cases within the Supreme Court (cassation instance), thus making it two-instance court system in certain fields of law (like public procurement, access to information etc.).*

- 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	<i>Regional Court</i>	<i>District Court</i>	<i>Supreme Court (Dep. Of Administrative cases)</i>
Number of courts	5	1	1
Number of judges	38	23	11

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.

*582 judges*

**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	<i>yes</i>	<i>yes</i>	<i>yes</i>

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

*State fee before a regional court: 30 euros;*

*State fee before the district court: 60 euros (deposit for an ancillary complaints – 15 euros);*

*State deposit before the Supreme Court: 70 euros (deposit for an ancillary complaints – 15 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 amount is flat. The same applies to all instances.*

- 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?

*The petitioner have to pay the fee at the same time as filing the petition. If he does not fulfil his duty to pay the fee, the court gives him additional time period at least 20 days. If the petitioner does not fulfil his or her duty to pay the fee in the additional time period, the court discontinues the proceedings. The same applies to all instances.*

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

*Exempt from the duty to pay the fee are 1) the public authorities (the State), 2) private party which appeals the decision of the legal aid administration as well as 3) public legal entities who have the right to submit a submission to an institution or an application to a court in order to defend the rights and legal interests of other private persons (for example, the prosecutor, the Ombudsman) (Article 128 of the Administrative Procedure Law).*

*The same applies to all instances. However, as for public authorities, they still may have to be obliged to pay the fee if they are applicants in, for example, public contract disputes in administrative court proceedings. And additionally, it must be mentioned that public authorities are obliged to pay the fee in appeal proceedings (if they want to appeal a judgment).*

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

*Generally no, but under very specific circumstances specified by the law it may happen. According to the Article 29 and 128 (3) of the Administrative Procedure Law if the non-governmental organisation complies with the notion of “private law legal persons (entities) who have the right to submit a submission to an institution or an application to a court in order to defend the rights and legal interests of private persons” and if the person who they represent is poor and thus is*

*exempted from duty to pay the fee, such a non-governmental organisation is exempt from the duty to pay the fee.*

- 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?

*Yes, a court or a judge, taking into account the financial situation of a natural person, may decrease the amount of the State fee (Article 128 (3) of the Administrative Procedure Law).*

- 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?

*The answer to this question is precisely regulated by the Article 125 of the Administrative Procedure Law. The State fee paid for an application shall be reimbursed in full if the judge refuses to accept the application or leaves the application without examination on the grounds that: 1) an application has been submitted by a person who is lacking capacity to such extent that does not permit it to exercise administratively procedural rights and obligations independently; 2) the applicant has not complied with the procedures for extrajudicial examination of the case prescribed by law, because he or she has taken into account an incorrect indication of the institution regarding the procedures for appeal (Article 125 (1) of the Administrative Procedure Law).*

*The State fee paid for an appeal shall be reimbursed in full: 1) if a judge refuses to accept an appeal or the court terminates the appeal proceedings on the grounds that the applicant or a third party has filed an appeal regarding a judgment that is not appealable because he has taken into account the court's erroneous indication regarding the procedure for appeal of the judgment; 2) if the appellate court revokes the judgment of the Court of First Instance in the case provided for in Section 303 of this Law (Exceptional Cases where a Judgment of a Court of First Instance shall be Set Aside and the Matter shall be Sent to a Court of First Instance to be Adjudicated de novo); 3) the defendant or third party, if the applicant withdraws his/her application (Article 125 (2) of the Administrative Procedure Law).*

*A half of the State fee paid for examination of a case at the relevant court instance shall be reimbursed if the applicant or third party has withdrawn the application or appeals before the examination of the case on the merits has been completed (Article 125 (3) of the Administrative Procedure Law).*

*Entire State fee or overpaid share shall be reimbursed if:*

- 1) the person paid the fee despite the fact he/she did not have to pay it;*
- 2) the person by mistake has paid a higher State fee than the law prescribes (Article 125 (4) of the Administrative Procedure Law).*

*If the application is fully or partially satisfied or the proceedings in the case have been terminated (because of legal dispute which gave rise to the submission of an application to a court expired, for example, by entering into an administrative contract by revoking an administrative act*

*appealed to the institution or declaring an administrative act appealed to be illegal, null and void), the court (judge) orders State fee to be returned to the applicant (Article 126 (1) of the Administrative Procedure Law).*

*There are also very detailed rules for the deposit paid in the Supreme Court as well (Article 129-1 of the Administrative Procedure Law).*

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

*No, there is no deposit when filing the application before the first instance court. However, there is a deposit before the Supreme Court (see answer „b”) and deposit before a court of appeal and the Supreme Court when person files an ancillary complaints to appeal procedural errors of lower courts. There is no specific conditions, it is a flat sum. In case of success, the deposit will be paid back to the petitioner. Deposit has to be paid both by individual and public authority if they file an ancillary complaints or a cassation complaint before the Supreme Court.*

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

*No, frivolous petitions are not penalized. However, if the person requires a judge to decrease the amount of the State fee due to his/her poor financial situation (Article 128 (3) of the Administrative Procedure Law), the judge is obliged to assess whether the person has not acted frivolously before. That is to say, a judge has to take into account whether during last three years: 1) submissions of this person were not too excessive and 2) if they were well-founded or they were rejected by courts as unfounded (Article 128 (3) of the Administrative Procedure Law).*

- 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 any analysis. However, it must be stressed that current amounts of sums to be paid are too small to serve the purpose of state fees – to limit the amount of appeals and ancillary complaints and to force a person to assess preliminary success of their appeal.*

### **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?

*Yes, party may request free legal aid (under criteria set by the law) before court proceedings (Article 18 of the Administrative Procedure Law) (see also question “IV b”) as well as may request legal aid after court proceedings if he/she had full or partial success in administrative*

*court proceedings (Article 92 of the Administrative Procedure Law). The rule that costs follow the event applies here. The same applies to all instances.*

*According to the Article 18 (4) of the Administrative Procedure Law in administrative cases, which are 1) complicated for the addressee, pursuant to a decision of an institution or court, and 2) taking into account the financial circumstances of the natural person, 3) remuneration to a representative of the natural person shall be paid from the State budget. These costs are covered by the State before the case is adjudicated.*

*Article 92 of the Administrative Procedure Law covers financial losses, including expenses of legal representation which has aroused as a result of adjudication of the case. In order to cover these financial costs (losses) the court has to identify illegal action of the institution (act, actual action or failure to act), expenses of legal representation which has to be proven and finally a causal link between the two mentioned before.*

- 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)?

*No, the law does not provide that the court could adjudicate the compensation of costs of proceedings to the public authority.*

- 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?

*Conditions described in answer to question a. are specific enough. Additionally, types of costs which may be compensated is subject to limitation of the law (see question e) – the law stipulates what can be reimbursed and to what extent, for example, a legal advice, draft of a complaint, appeal, representation at the hearing.*

- 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.*

- 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)?

*Yes, the amount and services which may be covered is determined by a tariffs determined by regulation of the Cabinet of Ministers (Regulation No. 1493 of 22 December 2009 on Regulations Regarding the Amount of State-ensured Legal Aid, the Amount of Payment, Reimbursable Expenses and the Procedures for Payment Thereof and respectively Regulation No. 859 8 November 2011 on provisions regarding the maximum amount of legal aid costs to be reimbursed to a private person).*

*The Supreme Court has expressed itself that the purpose of such limitations is to balance individual interests on one hand and taxpayers (state) interests on other hand. Individual has to assess (produce) his or her costs of legal representation wisely (Judgment of the Department of Administrative Cases of the Supreme Court of 24 April 2012, case no SKA-213/2012 (case concerns costs of legal representation specifically in criminal 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	No
Representation of opposing party	No	No	No

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

*Yes, the law provides for the right to free legal aid for participants in administrative cases. In such a case a judge takes a decision regarding the granting the legal aid provided by the State, evaluating the financial situation of the natural person and as well as the complexity of the specific administrative matter (see also question "III a").*

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

*Free legal aid may include legal advice, assistance in preparation of procedural documents as well as a representation in court. As it was mentioned before, a judge takes a decision regarding the granting the legal aid provided by the State, evaluating the financial situation of the natural person and as well as the complexity of the specific administrative matter. 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?

*The matter is regulated by different legal norms. However, given that both questions are linked to the financial situation of the petitioner, it should be considered that the right to free legal aid is connected to the exemption from the duty to pay 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, there are not. As for the mediation, the law kindly invites parties to use mediation, however, it is not mandatory step.*

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

*No, there is not.*

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

*No, there is not. In that case it would be considered as a regulatory act or political decision, not an administrative act.*

- 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, in some cases the public authority may decide cases concerning relations of private law, in such a case the decision is reviewable before civil courts (e. g. decisions of Land Registry, cases where regulator of public utilities reviews dispute between client and his/her provider of public utility (Article 32 of Law On Regulators of Public Utilities)). In specific cases where there is no administrative act of actual action on behalf of public authority (in other words, public authority acts in private law sphere), civil courts decide disputes concerning compensation of material and non-material damage caused by a public authority.*

- 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)?

*In Latvia, the Supreme Courts as well decides matters of elections (as court of first instance), however, in such a cases there is a decision of Central Election Commission, thus the court actually reviews a decision. The same applies when the initiative group appeals the decision of the Central Election Commission to refuse registration of the draft law or draft amendments to*

*the Constitutions (Article 23-1 (1) of the Law On National Referendum, Legislative Initiative and European Citizens' Initiative).*

*In Latvia, Public Procurement Law enumerates cases when an administrative courts can invalidate, amend or revoke a public procurement contract or general agreement (Article 74 of the Public Procurement Law).*

*Under exceptional circumstances there may arise also disputes between local municipal council and state administration (for example, disputes between local municipal councils and the Ministry of Environmental Protection and Regional Development when the chair of a local municipal council is deposed or disputes between Environmental Protection Agency and local municipality concerning environmental pollutions).*

*Otherwise, administrative courts review administrative acts, actual actions as well as contract of public law.*

## 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

*In the Supreme Court there is a leave to appeal system, however, it is not considered to be a tool for subjective selection of cases. Cases are leaved to appeal if they correspond to criteria set by the law.*

- 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?

*Just to give a short overview, judges in the Supreme Court 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). Thus, it must be stressed that there are rather very objective criteria stated in the legislation for the court to select / reject cases.*

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

*No.*

- 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.

*As it was mentioned before, there is no restrictions to certain fields of law.*

- 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?

*According to the Article 338 of the Administrative Procedure Law cassation complaint in the Supreme Court 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 mentioned in the answer (b).*

- 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?

*If the Supreme Court decides to accept / reject the cassation complaint, it is done by decision which is notified to the parties of the proceedings.*

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

*Yes, the court obliged to give reasons in form of written decision.*

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

*In Latvia, lower courts do not decide on selection of their own cases. Leave to appeal decision is taken by the Supreme Court.*

- 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.

*Lower courts have no power to select cases.*

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

*The rule “first come, first served” applies with the exception of cases with fixed time limits for a final decision (e. g. elections), preferential cases (e. g. child protection, dismissal of state officials). In order to guarantee the right to fair trial (adjudication of a case in reasonable time limits in judicial system of Latvia), judges may deviate from the principle “first come, first served”. As well, the court may deviate from the rule “first come, first served” if there are many identical cases and it is more effective to review them all at once. The same applies to all instances.*

## **VII. Other measures**

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

*As a measures which simplify access to the court may be considered (similarly as it was provided by the Czech answers) the right of non-governmental organizations interested in environmental protection (or with similar interest) to file a petition against a decision of public authority without having actual infringement of their material rights (eased locus standi requirements). Another measure which simplifies adjudication of a case is the right to request a summary of the complaint:*

*if the cassation complaint is way too long, judges may request party to submit summary of the complaint (Article 186 (1) of the Administrative Procedure Law).*

*As for the measures which restricts access to the courts, it should be mentioned that procedural laws provide that in certain types of cases general system of appeal may differ. For example, cases concerning Law on Submissions to governmental institutions or cases concerning asylum seekers may not be appealed to higher court; cases relating to procurement matters shall be appealed from the court of first instance directly to the Supreme Court, without filing an appeal to the court of appeal; for the cases related to competition matters the court of first instance is the court of appeal, this decision may be appealed to the Supreme Court; and additionally, for some types of cases the Supreme Court is the court of first instance, for example, cases concerning parliament elections.*

## 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 <sup>1</sup>	I.	II.	III.
Case load 2016	2515	1287	1236
Cases decided 2016	2396	1717	1142
Case load 2017	2224	1135	1110
Cases decided 2017	2200	1496	995
Case load 2018	2021	1106	961
Cases decided 2018	2091	1207	859

<sup>1</sup> Data taken from Court Information System: <https://tis.ta.gov.lv/>