



**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: Slovakia



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 Administrative Judicial Code creates a one-instance system of judicial review - 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.

- 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 courts</i>	<i>Supreme court</i>	
Number of courts	8	1	
Number of judges	<i>Data not available</i>	30	

- 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.

88 judges at the Supreme Court
429 judges at regional courts

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.

Judicial fees are levied for individual acts or proceedings of courts, if they are executed on a proposal, as listed in the Scale of fees.

Instance	I.	II.	III.
Judicial fee	<i>yes</i>	<i>yes</i>	

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

The amount of the judicial fee is stated in the scale of fees. The amount of the fee is determined by the percentage of the fee base or fixed amount. If the amount is set for procedure, this means procedure for one instance. The same fee is also charged on appellate procedure. The fee for the cassation complaint shall be levied at double amount.

The general principle is, that for actions and for proposal the amount of the fee is 6 % of the price of the subject-matter of the proceedings or of the value of the subject-matter of the case, at least 16.50 €, the maximum of 16,596.50 EUR. If the subject-matter of the proceedings cannot be valued with money, the fee is 99.50 €. This applies if no special rate is provided, eg. emergency measures, estate by the entirety, economic competition.

Even for some administrative procedures, the amount of the fee is determined separately.

- An administrative action against a decision of a public administration body or a measure of a public administration body - 70 €
- An administrative action against a decision of a public authority on an infringement – 35 €
- An administrative action against a decision by a public authority in the field of broadcasting, retransmission and the providing of audiovisual media services – 500 €
- An action against another public authority intervention – 50 €
- An action in the case of local self-government – 50 €
- A political rights action – 50 €
- An action in the case, that registration of a political party or the registration of a political movement has no deficiencies that would impede the registration - 165,50 €
- An action against a decision of a public authority to refuse registration of a political party or movement - 350 €

- 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)?

As stated above (question b) the amount of the fee for the cassation complaint is double. The amount of the fee should differ according to the subject-matter of the case.

- 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 fee obligation arises by bringing an action, proposal or cassation complaint, if the claimant, the plaintiff, or the person who made the cassation complaint is the ratepayer. The fee for submitting the proposal is payable due to the obligation to pay. Other fees are payable within three days after validity of the decision imposing the fee obligation.

If the person does not fulfil the duty to pay the fee, the court shall give him additional period generally 10 days. If the person does not fulfil duty to pay the fee in the additional period, the court shall discontinue the proceedings. The same applies to both instances.

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

The Act on judicial fees exempts from the fee obligation a range of specific proceedings and a selected group of persons. In the context of administrative proceedings, exempt from the duty to pay fee are cases in electoral matters, procedures for a competence action, and procedures for the approval of inspection and in matters of social security.

Exempt from the duty to pay the fee are also the public authorities (the State), plaintiff in administrative proceedings in asylum, detention and administrative expulsion cases and the foreigners in proceedings concerning international protection, administrative banishment or detention.

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

There is no special regulation that would exempt non-governmental organizations from the duty to pay the judicial fee. The same applies to both instances.

- 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 court may exempt the petitioner upon proposal and if his circumstances justify it. The exemption can be full or partial. The law does not specify such circumstances to more detailed criteria (property, social, etc.), but leaves the judge to evaluate the generally set criterion. If the court grants exemption and circumstances have changed, or if it is established until finalization of proceedings, that petitioner's circumstances did not justify such exemption, the court may revoke the exemption at any time. The same applies to both instances.

- 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?

In proceedings before the administrative court, the fee will be returned if the proceedings have been discontinued, if the administrative action, the cassation complaint or the action for re-trial have been rejected or withdrawn before the case has been heard. It also returns the overpayment, if it is higher than 1,70 EUR. The fee will be returned if it was paid by the person who was not obliged to pay or who paid it based on an incorrect court decision. If the administrative court discontinues proceeding on administrative action because of satisfaction of the petitioner, 75% of all paid fees will be returned to the petitioner. The same applies to both instances.

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

No, the petitioner cannot be required to pay a deposit before the proceedings commence. The same applies to both instances.

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

No, frivolous petitions are not penalized. The same applies to both instances.

- 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.

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, court can adjudicate the compensation of costs of proceedings to the participant, if a party had full or partial success in the proceedings. The same applies to both instances.

- 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)?

It is only exceptionally possible for a public authority to be compensated for legal costs. In these cases, the administrative court must carefully consider whether the petitioner may be fairly required to reimburse the costs of proceeding incurred to the public authority. The defence of public authorities and defending their decisions at the administrative court is an obvious part of the obligations that public authority derives from the ordinary administrative agenda and to which this public authority is personally and financially provided from the state budget. The same applies to both instances.

- 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?

The court can decide not to adjudicate the compensation of cost only when extraordinary reasons (the court considers each case individually) or the decision of a public administration body or a measure of a public administration body was cancelled on the grounds of § 206 par. 5 Administrative Court Code (substantial change in circumstances).

- 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?
- 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 amount of the costs of legal representation (by an attorney at law) is defined by a tariff. The basic rate of remuneration (tariff) for one act of legal service is one sixth of the accounting base in proceedings under the Administrative Procedure Code (163,33 €). In social security matters and review of infringement decisions, the remuneration for one act of legal service is one thirteenth of the accounting base (75,38 €). The accounting base is the average monthly wage of an employee for the first half of the previous calendar year (for the year 2019 the accounting base is 980 €).

IV. Representation

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

Instance	I.	II.	III.
Representation of petitioner	<i>Yes</i>	<i>Yes</i>	

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, a participant may ask the Centre for Legal Aid for the free legal aid.

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

The person is entitled for free legal aid if he/she meets these three conditions:

- He/she is in material need
- It is not an obviously unsuccessful dispute
- Dispute value exceeds the minimum wage set by the law

The Centre revises the fulfilment of these conditions in the proceedings upon the application. This procedure is prior to the proper provision of legal aid.

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

If the free legal aid is granted to a party as a person in material need, such party is exempt from the judicial fees. Such party have to submit a decision of the Centre on grant of the free legal aid.

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)?

Nor law nor jurisdiction set any mandatory steps before filing a petition or cassation complaint.

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

The administrative code determines group of decisions excluded from judicial review:

- administrative acts of public authorities which do not have the nature of a decision on rights, the legitimate interests or obligations of a natural and artificial person, in particular decisions and measures of an organizational

nature and decisions and measures governing the internal ratios of the public authority which issued them,

- preliminary and procedural decisions and measures of public authorities, if they could not have resulted in a detriment to the participant's subjective rights,
- decisions and measures of public authorities that depend solely on the assessment of the health condition of persons or the technical condition of things, unless they imply a legal obstacle to the employment, business or other economic activity; this does not apply to decisions and measures in social matters,
- decisions and measures of public authorities on non-recognition or revoke of professional competence of a natural and artificial person, unless they imply a legal obstacle to the employment,
- decisions, measures, orders, and instructions, personnel orders and disciplinary orders of the public authorities whose judicial review excludes a specific regulation

- 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.

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

There is not any public authority, but the Constitutional Court decides on the compatibility of:

b) Government ordinances, generally binding legal regulations issued by ministries and other central bodies of the state administration with the Constitution, constitutional laws, international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law; and with laws,

c) generally binding ordinances issued by a municipality or a superior territorial unit in the matters of local self-administration and in order to provide for the tasks ensuing for the self-administration from the law, with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated as required by law, unless other court is making decision on them,

d) generally binding legal regulations issued by local state administration bodies and generally binding ordinances issued by local self-administration bodies within the execution of designated tasks of local state administration, paragraph 2 with the Constitution, constitutional laws and international treaties to which a consent was given by the National Council of the Slovak Republic and which were ratified and promulgated in a manner laid down by law, unless other court is making decision on them.

- 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, the administrative judiciary in both instances decides in matters of public authority's inaction, in election matters, procedure concerning the acceptance of a proposal for a candidate for the President of the Slovak Republic, in matters concerning political rights and political parties, in matters of self-government, decides on the enforceability of decisions of foreign public authorities. The Supreme Court decides competence conflicts (positive or negative) between the public authorities, including central government authorities, between a public authority and another entity other than a court.

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	

- 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, it doesn't.

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

No, he doesn't. The rule "first come, first served" applies for determining the order of the cases to decide. Only cases, for with is settled period to be decided are prior to the other cases. The same applies to both instances.

VII. Other measures

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

As a measure that simplifies access to the court may be considered right of public concerned to bring an action or to participate in the proceedings in the cases concerning environmental matters under a special law. This provision takes into account the wording of article 9 section 2 and 3 of the Aarhus Convention on access to justice.

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.
Case load 2016	8701	6117	
Cases decided 2016	10044	5697	
Case load 2017	4913	2255	
Cases decided 2017	4930	3535	
Case load 2018	4934	2155	
Cases decided 2018	4715	1032	