



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: Sweden



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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.

*Sweden has two major parallel court systems: general courts and general administrative courts. In addition there are migration courts, real estate and environmental courts, patent and marketing courts, a special military intelligence court and a labour court dealing with both private and public employees.*

- 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 | Administrative Courts of Appeal | Supreme Administrative Court |
| Number of courts | 12                             | 4                               | 1                            |
| Number of judges | 236                            | 221                             | 16                           |

- 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.

*Around 1 225 full judges. Another 1 080 junior judges under training.*

**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 | no | no  | no   |

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

- 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)?

*Not applicable, see a).*

- 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?

*Not applicable, see a).*

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

*Not applicable, see a).*

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

*Not applicable, see a).*

- 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?

*Not applicable, see a).*

- 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?

*Not applicable, see a).*

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

*Not applicable, see a).*

- 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?

The absence of any fees makes it very easy for individuals to complain to the administrative courts, also in cases with little or no hope of legal success.

### 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 general, the costs of the proceedings are not compensated as there is no legal ground for such compensation in administrative proceedings. An important exception is tax-law proceedings, where compensation may be awarded if the individual wins or the case is of general importance or there are extraordinary reasons for such compensation, all under the general provision that the costs are reasonable. The same applies to cases on public procurement. There is also a general law on help to cover legal costs that gives a possibility for private persons to get support if their financial circumstances are very small. This is of limited importance in cases before the administrative courts.*

- 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*

- 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?

*As follows from a), yes in cases where the costs are not reasonable.*

- 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?

*See a)*

- 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)?

*It is decided on basis of a price stipulated by the attorney, subject to the evaluation of the court as to being reasonable in light of the particular case. No limit as such, but the courts are generally quite strict in their evaluation of the necessity of costs.*

**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)?

*Only in particular types of cases, compulsory care of children, drug addicts and the mentally ill, being the main examples.*

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

*That it is a type of case where such aid is given, see b).*

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

*Not applicable.*

**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?

*Yes, there are several such acts, mainly in different systems of public economical support that is granted freely by the state on grounds that are not very precise or legal, but rather like a “first across the post” –system.*

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

*The central Governments' (cabinet of ministers') administrative acts to the extent they do not affect individuals' civil rights as defined by article 6 of the European Convention on Human Rights. Furthermore, the King as head of state has legal immunity, but does not take part in or decides administrative acts.*

- 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. Cases of labour law on public employment (termination etc.) will be tried by the Labour Court, not the administrative 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)?

*No*

**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 | 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?

*We understand the question to concern a system of leave to appeal, in which a court may deny to try a complaint on basis that is not given leave to appeal. Conditions for leave to appeal are laid down in administrative procedural law for each type of court and whether such a system is applied is stated in the legislation on each area of substantive administrative law. In the court of appeals these conditions are a need to correct the lower court's decision, a need to more carefully study the case in order to evaluate the correctness of the lower court's decision, a need for guidance in a particular legal question raised in the case, or extraordinary reasons to try the case again (such as new evidence of certain nature). In the Supreme Administrative Court the reasons for leave to appeal are limited to the two latter.*

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

*In the second instance (courts of appeal) there are areas of law where no leave to appeal is necessary, for example tax-cases. As indicated above (b)) this follows from special legislation and not from any general provisions. In the Supreme Administrative Court, leave to appeal is almost always mandatory, with a few exceptions for certain atypical cases.*

- 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.

*There is no general concept in Sweden of administrative criminal law, although certain sanctions that are considered criminal under Article 6 of the European Convention on Human Rights fall under the administrative courts' jurisdiction such as tax surcharges and revocation of driving licences on the ground of traffic crime. The conditions for leave to appeal in the Supreme Administrative Court are the same in those cases.*

- 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?

*It is the appellate court that that tries if leave to appeal is given. It is done in special compositions of fewer judges than in cases that are tried in full. The lower court does not participate in any way, but its decision is the basis of the higher courts evaluation.*

- 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 always taken and sent to the petitioner.*

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

*Yes, but they can be brief when not giving leave to appeal.*

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

*Not applicable in administrative procedure in Sweden.*

- 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?

*Yes, generally although much depend on the order in which the registry lawyers prepare the cases, which in its turn is based on rules on priority. It is also possible for an individual appellant to request priority handling, which may be granted if the case has become unduly delayed.*

## **VII. Other measures**

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

## **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 | 143000 | 34000 | 7000 |

|                    |        |       |      |
|--------------------|--------|-------|------|
|                    |        |       |      |
| Cases decided 2016 | 134000 | 32000 | 7000 |
| Case load 2017     | 162000 | 39000 | 7500 |
| Cases decided 2017 | 146000 | 45000 | 7000 |
| Case load 2018     | 166000 | 45000 | 7000 |
| Cases decided 2018 | 161000 | 42000 | 7500 |