



Association of the Councils of State and Supreme Administrative
Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives
suprêmes de l'Union européenne a.i.s.b.l.



Council of State of Belgium

**Association of the Councils of State and the Supreme
Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium**

**Increasing the efficiency of the
Supreme Administrative Courts' powers**

SLOVENIA

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ISSUE 1: The ‘administrative loop’, or the power to rectify the legality of an administrative decision

Question 1:

In your country’s legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to *rectify* a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

Answer:

1. Organization of administrative courts in Slovenia:

- one Administrative Court of Republic of Slovenia in Ljubljana with 3 dislocated departments: one in Celje, one in Maribor and one in Nova Gorica. This court is the court of first instance for the administrative disputes.
- The Supreme Court of the Republic of Slovenia in Ljubljana, with 5 departments, one of them is the Administrative Department others are: Civil, Criminal, Labour and Commercial. The Supreme Court is the highest court in Slovenia and in the administrative disputes it is the court of second instance. It decides about legal remedies filed by parties, in administrative dispute: appeal, revision and repeat procedure (article 127 of the Slovenian Constitution and article 9, 12, 14, 73, 83 and 96 of Administrative Dispute Act - ADP-1.

The administrative disputes are regulated in the Administrative Dispute Act - ADP-1 (Official Journal 105/2006 and 62/2010), and for the procedural questions, which are not solved in this act, we use Civil Procedure Act - CPA.

The procedure in administrative cases managed by administrative bodies is regulated in The Administrative Procedure Act - APA.

2. Based on article 273 APA **the administrative authority can change its decision** in administrative cases when the administrative dispute commence at the Administrative court. They can do so till the end of administrative dispute on first stage. In such cases the administrative body must send his new decision to parties of the case and to the administrative court as soon as possible. Further provisions for such cases are in the Article 39 of ADA.

Article 39

(1) If, during the court procedure, the body issues another administrative act that modifies or removes the contested administrative act or if, in the case of silence, it issues the act later on, it must notify the court in which the dispute was initiated.

(2) In cases from the preceding paragraph, the court shall request the plaintiff to

inform the court within fifteen days whether he will persevere, and in which part he will persevere, with the lawsuit, or if he will expand it to include the modified or new administrative act.

(3) If the plaintiff states that he will persevere with the lawsuit, the court shall continue the procedure; otherwise it shall stop the procedure with a resolution.

(4) If, in the event of the body of first instance not issuing and serving the administrative act to the party within the prescribed period (an act issued after the lawsuit was filed), the court shall stop the procedure with a resolution, if an appeal may be filed against the issued administrative act. If an appeal is not permitted, the court shall act in accordance with the second paragraph of this Article.

3. But there are **no provisions in Slovenian Constitution or act or other law** that would give the power to the administrative or supreme court to enjoin or to issue an interlocutory judgment in which it invites an administrative body to rectify the infringements made in its decision.

The Administrative Court judge (chairman) could just invite the administrative body to rectify the infringements during the preparatory procedure (article 45 of ADA), but this is not obligatory neither for judge neither for the administrative authority. So this possibility is not often used in the practice of administrative judges in Administrative court. Supreme Court judges do not have such possibility in the articles of ADA.

4. **The administrative court judge can by himself rectify the infringements made in the process or in the decision of the administrative body** (article 45 ADA). But this means that the procedure in the administrative court will last longer and that the main hearing (most likely) will be necessary.

But these specific powers the court can not apply when the infringement of the procedure are absolute (material): the decision is issued by an uncompetente authority; if the contradictory procedure was not applied; if a person who should be but was not included into the procedure; if the party was not represented by her legal representative or if the mandatory didn't have the right authorization; if the provisions of use of the language in the procedure were bridged; if the process was leaded or in the decision was made by the person who should be excluded; if the decision contains essential deficiencies and because of them the assessment of its legality is impossible .

The reasons for regulation in which the powers of the court are limited are probably:

- independence of administrative and court authorities (division of powers);
- apparent acceleration of process.

But this regulation is not necessary good for the claimant or other parties of the case, because it can mean an extension of the process.

Question 2:

Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

Answer:

The Administrative Court can reverse the decision of an administrative body under the article 64, 65, 67, 68 and 69. Under certain conditions even Supreme Court can do so under the provisions of article 80 and 94.

Article 64:

If the court grants the lawsuit and removes the contested administrative acts with ruling (among other reasons): if it concludes that in the procedure of issuing an administrative act, the procedural rules (point 2 of the first paragraph and the third paragraph of Article 27 thereof) were not followed and the court did not eliminate such violations during its procedure and the conditions for rejecting a lawsuit under the second paragraph of Article 63 thereof do not exist.

Article 65

(1) The court may remove the administrative act and decide on the matter with a ruling if this is permitted by the nature of the matter and if the data on the procedure provide reliable foundation for it or if only the facts of the case were established at the main hearing, particularly if:

1. The removal of the contested administrative act and the new procedure at the competent body would cause damage for the plaintiff which would be difficult to redress;
2. After the administrative act has been removed, the competent body issues a new administrative act, which is contrary to the legal opinion of the court or its positions on the procedure.

(2) In accordance with the preceding paragraph, the court may also decide when the competent body does not issue a new administrative act within thirty days of the removal of the administrative act, or within the period set by the court, or within seven days of a special request by the party, if the party with a lawsuit demands that the court rule on rights, obligations or legal benefits and if this is necessary in view of the nature of the rights or for the protection of a constitutional right.

(3) In the case from the preceding paragraph, the court shall request from the competent body an explanation as to why it did not issue the administrative act. The competent body must submit the explanation within seven days. If it does not, or if in the opinion of the court the explanation is not satisfactory, the court shall rule on the case; otherwise it shall reject the lawsuit.

(4) An appeal may be filed against the decision to reject from the preceding paragraph.

(5) Under the first paragraph of this Article, the court shall decide on rights, obligations or legal benefits when requested with a lawsuit, if the conditions from the first paragraph of Article 7 thereof have been met.

Article 66

(1) The court may, in an administrative dispute from the first paragraph of Article 4 of this Act, establish that the act or action is illegal, ban the continuation of individual actions, decide on the plaintiff's request to be reimbursed for damages, and order, when necessary, the removal of a violation of constitutional rights and the re-establishment of a legal state of affairs.

(2) If an illegal state of affairs has continued, the court shall, without delay, ban the continuation and adopt measures in order to establish the legal state of affairs with a resolution, against which an appeal may be lodged within three days. The Supreme Court shall rule on the appeal within three days of receiving the appeal.

(3) If the court is unable to decide on the matter without delay in a case from the preceding paragraph, it may pass *ex officio* a temporary decree, in accordance with Article 32 thereof.

Article 67

(1) By a ruling in which a court decides on the right, obligations or legal benefits of the defendant under Article 65 thereof, it shall decide also on the plaintiff's claim for the restitution of the alienated objects or reimbursement of damages.

(2) If the decisions on the request from the preceding paragraph require facts to be established which would essentially prolong the administrative dispute procedure or if the procedure of issuing the administrative act after the adjudication is continued, the court may instruct the plaintiff to enforce the claim in a civil lawsuit.

(3) When adjudicating on the damages, the civil court may not rule on the legality of an administrative act.

Article 68

If the court establishes that the reasons from point 4 of the first paragraph of Article 27 exist, it shall proclaim the administrative act void with a resolution. With this proclamation, the effects of the voided administrative act shall be removed.

Article 69

(1) If the lawsuit is filed due to silence and the court finds it justified, it shall grant it and, under the conditions from the first or fifth paragraph of Article 65 hereof, shall only rule on the matter or instruct a competent body which administrative act to issue, or, if the decision was not served, it shall order the service of the decision.

(2) If the competent body does not act in accordance with the instructions from the preceding paragraph, as a result of which the party files a lawsuit, the court shall act in accordance with the second and third paragraphs of Article 65 thereof.

Article 80

it can be used only when the Supreme Court decides about appeal

(1) If the Supreme Court only (by itself) conducts the main hearing and establishes facts, which are different to those established in the ruling of first instance, it shall, with a ruling, change the ruling of the court of first instance.

(2) In the case from the preceding paragraph, the Supreme Court may also, upon changing the ruling of the court of first instance, also change or remove the contested administrative act, as appropriate with regard to the circumstances of the case.

(3) Under the first and second paragraph of this Article, the Supreme Court shall decide without the main hearing:

1. If the assessment by the court of first instance of the documents or indirectly taken evidence is incorrect, and the decision is supported solely by these facts;
2. If the court of first instance drew an incorrect conclusion from the established facts concerning the existence of other facts, and its decision is supported solely by these facts;
3. If it considers that the facts in the ruling of first instance were established correctly but the court used substantive law incorrectly;
4. If it establishes that the contested administrative acts are void, and the court of first instance rejected the lawsuit as unsubstantiated.

Article 81

The Supreme Court may not change the ruling of the court of first instance to the detriment of the party who appealed if that party is the only one to appeal.

Article 94

it can be used only when the Supreme Court decides about revision

(1) If the court establishes that substantive law was applied incorrectly, it shall grant the request for the protection of legality and change the contested decision.

(2) If the Supreme Court establishes that due to the erroneous application of substantive law the facts were established incompletely and that therefore no conditions exist for the changing of the contested ruling, it shall grant the revision with a resolution and wholly or partially annul the ruling of the Court and return the case for retrial.

The Administrative Court only some times reverse the decision of an administrative body, in most cases when it grants the lawsuit it removes the administrative act and returns the matter to the administrative body. The Administrative Court perform the main hearing very rarely that is why it can not reverse the decision of a administration. In most matters the Administrative court thinks that the reverse decision is not permitted by the nature of matter .

The Supreme Court reverse the decision of the court of first instance and the decision of administrative bodies mostly when the substantive law was applied incorrectly. In some of that cases the Supreme Court decides on the matter .

Question 3:

How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

ANSWER

If the Administrative Court removes the decision and returns the matter to the administrative body for the repeat procedure against such decision an appeal is allowed when a special law permits it, but the revision is not possible. In such cases the administrative decision is removed and there is no decision existing any more on the matter, so there is nothing to contest with revision. The administrative body must issue a new administrative act within 30 days. Against new decision the parties of the case can issue a new lawsuit (article 64 ADA).

If the Administrative Court rectifies the decision and decides on matter by itself, against its decision the parties of the case can issue an appeal (Article 73 ADA: when the decision of the Administrative court is based on new facts established on main hearing) or an revision (Article 83 ADA: when the decision changed because of the infringement of substantial law).

If the Supreme Court rectifies the decision and returns the matter to the court of first instance or to the administrative body or when it decides on a matter bay itself, against its decision there is no remedy allowed..

Question 4:

What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

Answer

Such power of the administrative court can be effective and can accelerate the procedure. In most cases the parties of the matter are longing for that kind of decision and they propose such decision. But sadly this power is not used very often. In cases when it is used in is mostly implemented successfully.

Question 5:

Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

ANSWER

Our Supreme Court hears appeals or revisions against the decisions of the administrative court in which the administrative court reverse the decision of the administrative body.

The Supreme Court decides on bases of Article 76, 77, 78 79 or 80 (about appeal) and on bases of Article 92, 93 or 94 (about revision) of ADA:

Article 76

The Supreme Court shall, with a ruling, reject an appeal as unsubstantiated and confirm the judgment of the court of first instance, if it establishes that the reasons under which the ruling may be contested or the reasons to which it must be attentive *ex officio* do not exist.

Article 77

The Supreme Court shall, with a resolution, annul the ruling of the court of first instance if it establishes that an essential violation of provisions on administrative dispute procedures has been committed but does not eliminate it by itself, and shall return the case to the same court of first instance or to the competent court of first instance for a repeat procedure. In the resolution, the court shall decide which actions, contained in the essential violation of provisions in administrative dispute procedure, and must be repeated.

Article 78

(1) The Supreme Court shall, with a resolution, annul the ruling of the court of first instance and reject the lawsuit if, in the procedure before the court of first

instance, the provision of the first paragraph of Article 36 of this Act was violated.

(2) The Supreme Court shall, with a ruling, annul the ruling of the court of first instance and remove the administrative act if, in the procedure before the court of first instance, the provision of Article 37 of this Act was violated.

(3) If the Supreme Court establishes that a person who may not be a party to an administrative dispute was involved in the first instance, or if the party was not represented in accordance with the law by a legal representative, or if the legal representative or proxy of the parties did not have the required authorization to perform actions in a procedure, unless individual actions in the procedure were approved later on, it shall annul the ruling of first instance with a resolution and, depending on the nature of the violation, either return the case to the court of first instance for re-adjudication or reject the lawsuit.

Article 79

(1) The Supreme Court shall annul the ruling of the court of first instance with a resolution and return the case for retrial if it believes that new facts must be established and new evidence taken in order to establish the correct facts of the case or if it believes that due to the erroneous application of material law the facts were established incompletely.

(2) In the case from the preceding paragraph, the Supreme Court may also, upon annulling the ruling of the court of first instance, remove the contested administrative act and send that matter to the competent body for a repeat decision, as appropriate with regard to the circumstances of the case.

Article 80

(1) If the Supreme Court only conducts the main hearing and establishes facts, which are different to those established in the ruling of first instance, it shall, with a ruling, change the ruling of the court of first instance.

(2) In the case from the preceding paragraph, the Supreme Court may also, upon changing the ruling of the court of first instance, also change or remove the contested administrative act, as appropriate with regard to the circumstances of the case.

(3) Under the first and second paragraph of this Article, the Supreme Court shall decide without the main hearing:

1. If the assessment by the court of first instance of the documents or indirectly taken evidence is incorrect, and the decision is supported solely by these facts;
2. If the court of first instance drew an incorrect conclusion from the established facts concerning the existence of other facts, and its decision is supported solely by these facts;

3. If it considers that the facts in the ruling of first instance were established correctly but the court used substantive law incorrectly;
4. If it establishes that the contested administrative acts are void, and the court of first instance rejected the lawsuit as unsubstantiated.

Article 92

The Supreme Court shall reject the revision as unfounded if it establishes that the reasons, on the basis of which it was filed, are not given, nor the reasons to which it must be attentive *ex officio*.

Article 93

- (1) If the Supreme Court establishes an essential violation of provisions of administrative dispute procedure, which permits the revision, and it did not eliminate such violations in its procedure, it shall wholly or partially annul the ruling of the court of first instance and return the case to the same or another panel of the court of first instance or another competent court for retrial.
- (2) If in the procedure before the court of first or second instance, point 3 of the second paragraph of Article 339 of the Civil Procedure Act was violated, the Supreme Court shall annul the issued decisions and reject the lawsuit by a resolution, except if it was decided on the claim that is already being litigated.

Article 94

- (1) If the court establishes that substantive law was applied incorrectly, it shall grant the request for the protection of legality and change the contested decision.
- (2) If the Supreme Court establishes that due to the erroneous application of substantive law the facts were established incompletely and that therefore no conditions exist for the changing of the contested ruling, it shall grant the revision with a resolution and wholly or partially annul the ruling of the Court and return the case for retrial.

ISSUE 2: Power to award compensation and action for annulment

Question 1: Are you familiar with the system of compensation as an alternative to annulment?

If so, is this system applied to the exclusion of annulment? Does the system only work for certain illegalities or only the most serious ones? Is it available in appeals on any grounds or

is it limited to appeals on only the most serious grounds? Is it applied to regulations and individual decisions? Is a choice between annulment and compensation available and if so, based on what criteria and who makes this choice (the legislator through the effect of the law, one of the parties, the court?) and when (at the time the appeal is lodged, during proceedings (how does this impact on adversarial proceedings))? Does the administrative body itself still have the option to annul its decision when compensation is asked or granted in Court?

ANSWER:

In our legislation there are not provisions of compensation as an alternative to annulment.

But there are provisions in our Constitution (Article 26) that the state or the local community must give a compensation for the damage caused by the decisions of their authorities. Further provisions are in article 7, 30 and 67 of ADA :

Article 7 paragraph 2 of ADA :

(2) In an administrative dispute, the plaintiff may request the return of items, which have been seized, and request to be reimbursed for the damages caused by the execution of the contested administrative act.

Article 30 paragraph 2 of ADA:

(2) If the lawsuit calls for a decision on a right, obligation or legal benefit, or the return of items or reimbursement, the claim must contain a definite request with regard to the main and side claims, the facts supporting the plaintiff's claim, and the evidence substantiating the facts.

Article 67

(1) By a ruling in which a court decides on the right, obligations or legal benefits of the defendant under Article 65 thereof, it shall decide also on the plaintiff's claim for the restitution of the alienated objects or reimbursement of damages.

(2) If the decisions on the request from the preceding paragraph require facts to be established which would essentially prolong the administrative dispute procedure or if the procedure of issuing the administrative act after the adjudication is continued, the court may instruct the plaintiff to enforce the claim in a civil lawsuit.

(3) When adjudicating on the damages, the civil court may not rule on the legality of an administrative act.

Question 2: What is the extent of the compensation and how is it calculated?

Does it cover all the damage sustained or is a lump sum awarded, e.g. in the case of a fair satisfaction?

In the latter case, does the award of the lump sum preclude action for further compensation to cover all the damage caused or may such action still be taken, where appropriate before another court? Can the plaintiff or the defendant initially request a decision *in principle* as regards compensation and only move to proceedings concerning the actual amount thereof once the principle has been acknowledged by the court?

ANSWER:

There are not such provisions and so there are not such cases.

Question 3: What is the impact of penalising an unlawful decision by awarding compensation on the decision itself?

Is an unlawful decision which has been penalised in the form of the award of compensation subsequently assumed to comply with the law? What is the extent of this assumption? To what extent does a final decision awarding compensation impact on the power of other courts to control the lawfulness of that decision?

ANSWER:

There are not such provisions and so there are not such cases.

Question 4: Does your court have the power to settle compensation for the damage caused by the unlawful decision it has previously annulled? If so, is this an exclusive power or is that power also granted to other courts?

Does the plaintiff have to submit the application for compensation at the same time as the annulment request or can it be made subsequently, after annulment?

ANSWER:

Under the provision of Article 67 of ADA administrative court is entitled to decide also on the plaintiff's claim for restitution of the alienated objects or reimbursement of damages in the same ruling in which it decides on the right, obligations or legal benefits of the defendant. The plaintiff must submit the application for the reimbursement at the same time as annulment request when he requests the reimbursement in administrative dispute. If he requests the reimbursement of the damage, caused by the administrative decision or its execution, in civil procedure, he can do it after the annulment of the decision but before the final limitation.

Question 5: What is the extent of the compensation and how is it calculated?

Does this compensation have to be fault-based? Does it have to remedy all the damage? Is a lump sum involved and if so, can an action for compensation to cover all damage incurred subsequently be brought before another court?

ANSWER:

Till now there were not such cases.

ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts

Question 1: Do the administrative courts in your country have the means to ensure actual implementation of their rulings and judgments by the authorities?

If so, describe in brief these means and how exactly they are implemented. If not, what are the reasons for the absence of such means?

ANSWER:

The administrative courts in our country have the means to ensure actual implementation of their rulings and judgments by the authorities

Under the provisions of Article 64 of ADA (Paragraph (4): In cases from the first paragraph of this Article, the competent body must issue a new administrative act within thirty days of the day it received the ruling, or within the period set by the court; in this, it shall be bound by the legal opinion of the court regarding the application of the substantive law and its positions on the procedure.

Paragraph (5): All other administrative bodies deciding on ordinary or extraordinary legal remedies against the new administrative act issued on the basis of the court's ruling are also bound by the legal opinion and positions of the court as referred to in the preceding paragraph)

administrative bodies must decide in new procedure in 30 days or in time limit ordered by court's previous decision and are bound by the court's instructions about procedure and substantive law.

If they don't follow the instructions the plaintiff can file a new lawsuit and in that cases the court can operate on the provisions of Article 65 of ADA:

Article 65

(1) The court may remove the administrative act and decide on the matter with a ruling if this is permitted by the nature of the matter and if the data on the procedure provide reliable foundation for it or if only the facts of the case were established at the main hearing, particularly if:

1. The removal of the contested administrative act and the new procedure at the competent body would cause damage for the plaintiff which would be difficult to redress;

2. After the administrative act has been removed, the competent body issues a new administrative act, which is contrary to the legal opinion of the court or its positions on the procedure.

(2) In accordance with the preceding paragraph, the court may also decide when the competent body does not issue a new administrative act within thirty days of the removal of the administrative act, or within the period set by the court, or within seven days of a special request by the party, if the party with a lawsuit demands that the court rule on rights, obligations or legal benefits and if this is necessary in view of the nature of the rights or for the protection of a constitutional right.

(3) In the case from the preceding paragraph, the court shall request from the competent body an explanation as to why it did not issue the administrative act. The competent body must submit the explanation within seven days. If it does not, or if in the opinion of the court the explanation is not satisfactory, the court shall rule on the case; otherwise it shall reject the lawsuit.

(4) An appeal may be filed against the decision to reject from the preceding paragraph.

(5) Under the first paragraph of this Article, the court shall decide on rights, obligations or legal benefits when requested with a lawsuit, if the conditions from the first paragraph of Article 7 thereof have been met.

Question 2: Do the administrative courts have the power to order the authority to enforce their rulings and judgments (power of injunction)?

If so, at what stage of the action can this power of injunction be asserted?

Where the court can decide to issue such an injunction at the time of handing down its ruling, who may apply for such an injunction and by what means, and what will its scope be (can the court indicate to the authority how it can rectify the illegality?)? Can a deadline be imposed in respect of such an injunction and what happens if the authority fails to adhere to the stipulated deadline?

Where the injunction can be implemented at the stage of enforcement of the ruling or of the judgment, who can request it, by what means and at what time? What scope will it have? Does the authority have a certain period to enforce it? What happens if it has to be enforced urgently?

Is this power of injunction also applied when the authority in question is ordered to pay a

sum of money (e.g. damages) and if not, how does this recovery work?

ANSWER:

Yes, they have the power to order the authority to enforce their rulings and judgments (power of injunction). It is all included into the provisions of Article 65 of ADA.

If the administrative body doesn't follow the instructions of the previous judgment and decides regardless the instructions, the plaintiff can file a new lawsuit against the new decision in 30 days since he received the new decision. In this lawsuit he proposes that the court decides in a dispute of full jurisdiction, that means that the court decide on the right obligation ... or that the court order to the administrative body what kind of decision must it issue and in what period of time. But the court decides what decision will be issued.

This power can be used also when the authority in question is ordered to pay a sum of money. In that case the judgment is executed under the provisions of special act Execution of Judgments in Civil Matters and Insurance of Claims Act (see Article 102 of ADA).

Article 102

(1) The ruling, with which the court replaces the administrative act, shall be executed in accordance with the provisions of the Administrative Procedure Act.

(2) The decision issued on the basis of the third paragraph of Article 32 of this Act and the decision issued on the basis of the third paragraph of Article 66 of this Act, shall be implemented under the provisions of the UL RS, No. 44/06 – official consolidated text).

(3) The rulings of the Court by which an obligation is imposed to the state, local community or their bodies or organizations, shall be implemented under the provisions of the Execution of Judgments in Civil Matters and Insurance of Claims Act.

Question 3: Have all your country's administrative courts been granted this power of injunction?

Can an injunction be enforced even in case of appeal or cassation complaint? In other words, in the case of an appeal or cassation complaint does the administrative court of first instance retain the power to ensure that its ruling is enforced or does the higher court become competent? Where the court of first instance court retains this power, what happens if the decision in respect of which it is seeking enforcement is annulled on appeal or quashed following a cassation complaint?

ANSWER:

In Slovenia the plaintiff is allowed to apply such demands only in lawsuit, not in the appeal or request for revision. The power to ensure that its ruling is enforced is given to the court of first instance (the Administrative Court). But when supreme court grants the appeal or revision and decides instead of court of first instance and reverse its decision the Supreme court can order to the administrative authority what kind of decision must it issue.

Question 4: Can your country's administrative courts sentence the offending authority to pay a penalty or a fine?

If so, is this penalty or fine independent of the court's power of injunction? Explain the mechanism that has been put in place and the conditions under which the penalty or fine will be imposed. If this penalty is combined with implementation of a power of injunction, explain how the two mechanisms interact. Does this penalty or fine benefit solely the litigant who has won the case?

ANSWER:

No we don't have such provisions.

Question 5: What happens where the authority has enforced the ruling or judgment but this enforcement is not in line with the authority of *res judicata*?

Can the litigant in the case in question make an application for enforcement of the judgment or ruling to the competent court? Furthermore, if the administrative court considers that it cannot implement the power of injunction because the judgment or ruling has been enforced, can the litigant lodge an appeal against this decision? And to conclude, are there circumstances in which an authority can refuse to enforce a judgment or ruling despite an injunction to enforce having been issued?

ANSWER:

If the administrative authority has enforced the ruling or judgment and this enforcement is not in line with the authority *res judicata*, nothing happens. The enforced decision is valid only for the case in question and has no impact on the *res judicata*.

The litigants in *res judicata* cases have no right to file a lawsuit or other applications.

If the litigant in the case in which the enforced decision was issued on the bases of court decision thinks that because of this decision he is in worse situation, he can file a new lawsuit to the Administrative court or an appeal or request for revision to the Supreme Court (depends of the phase of the procedure). In some cases he can file an application to the Constitutional Court of Republic of Slovenia because of the bridge of his constitutional rights to be equally treated (Article 14 of the Slovenian Constitution).

An administrative authorities can refuse to enforce judgment or ruling despite an injunction to enforce having been issued, when they find the facts that lead to the different conclusion and request a different decision than the previous judgment enforced; or when they think that their decisions were correct and based on the correct application of the law while the instructions of court were based on incorrect application of the law, and they explain their reasons in details in their decisions.