

ADMINISTRATIVE JUSTICE IN EUROPE

PRELIMINARY QUESTIONS

1. Could you give the main dates in the evolution of the review of decisions and acts of Administrative authorities?

The Administrative Dispute Act (ADA) was adopted on 31st of July 1997 and was published in Official Gazette of the Republic of Slovenia, no. 50/97. ADA came into force on 2nd of September 1997. When ADA came into effect (on 1st of January 1998) the Administrative Court assumed its regular court function (it started functioning as the court of first instance in administrative disputes) and the Supreme Court continued its work as court of appeal against the decisions of the Administrative Court and in some cases as court of first instance (the competence of the Supreme Court changed from being the court of first instance to being the court of second instance). On 1st of January the Law on Administrative Disputes (Official Gazette of the SFRY, No. 4/77 and 60/77-amendment) ceased to be valid. Under that law only one level of judicial review of administrative acts was determined. ADA was amended on 19th of July, when The Law on amendments of The Administrative Dispute Act was adopted. It was published in Official Gazette of the Republic of Slovenia, no 70/00 and it came into force on 23 rd of August 2000.

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words to the rule of law? Alternatively, is it only a review of the good functioning of the administration?

In the constitutional system of the Republic of Slovenia the principle of separation of powers is established. Based on this principle judiciary has the authority to supervise the legality of individual acts and actions of administrative authority. This aspect of the principle of separation of powers is further elaborated in the right to judicial protection, which is one of the human rights, ensured by the Constitution. Pursuant to the Article 23 of the Constitution (right to judicial protection) everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. The power of judiciary to supervise administrative

authority is further detailed in Article 157 of the Constitution. Pursuant to this article a court having jurisdiction to review administrative acts decides the legality of final individual acts with which state authorities, local community authorities and bearers of public authority decide the rights or obligations and legal entitlements of individuals and organisations, if other legal protection is not provided by law for a particular matter (Paragraph 1). If other legal protection is not provided, the court having jurisdiction to review administrative acts also decides on the legality of individual actions and acts which intrude upon the constitutional rights of the individual (Paragraph 2). Article 157 of the Constitution therefore ensures that the executive power is subjected to independent judicial control of legality of its decision-making in individual matters. However, not only the relationship between executive and judicial power is defined by this provision. More importantly, this provision also defines the relationship between an individual and the executive power and ensures the protection of an individual against it, as an individual and an administrative body in administrative dispute act as equivalent opponents. The judicial review of administrative acts and actions through administrative dispute in the Republic of Slovenia therefore serves both purposes - it insures the protection of individual rights, that may be violated by administrative act or actions, and at the same time it establishes possibility of judicial control of the legality of administrative acts and actions. But primarily, function of judicial review is the protection of individual rights and ensuring the rule of law.

3. What is the definition of an administrative authority in your country? Does this definition include all public legal entities and private legal entities exercising public authority?

The definition of an administrative authority includes state authorities, local community authorities, bearers of public authority and public service contractors. Clearly, that the definition also includes private legal entities exercising public authority.

4. Is there a classification of administrative acts in your country?

Pursuant to the ADA an administrative act is an individual final act, but in theory of administrative law “administrative act” can mean an individual act (as opposed to a general act) or specific act (as opposed to a normative) act.

I-WHO REVIEWS ADMINISTRATIVE ACTS

A-COMPETENT BODIES

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts?

No, in Slovenia courts are competent to review administrative acts.

6. Could you describe the organisation of the court system in your country, indicating which courts or tribunals are competent to hear disputes acts of the administration?

The judicial system of the Republic of Slovenia includes courts of general and specialised jurisdiction. The courts of general jurisdiction are: 44 local courts, 11 district courts (both courts of the first instance), 4 higher courts (courts of appellate jurisdiction) and The Supreme Court of the Republic of Slovenia (as the highest court in the state). As mentioned, there are also specialised courts of the first instance. They are competent for determination of labour disputes, and one of them also for determination of social security disputes. In administrative disputes first-instance decisions (as a rule) come under the jurisdiction of the Administrative court of the Republic of Slovenia as a specialised court. Court of appellate jurisdiction in cases of administrative review is The Supreme Court of the Republic of Slovenia (Administrative Review Department of The Supreme Court). In cases of asylum and taxes The Administrative Review Department of the Supreme Court decides in specialised panels. The Constitutional Court in Slovenia is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms. Among other issues it decides on constitutional complaints, which can be filed by anyone, who believes that his human rights and basic freedoms have been violated by a particular act of a state body, local community or statutory authority. In also decides on conformity of the laws with the Constitution and on conformity of the general acts issued for the exercise of public authority with the Constitution, the laws and non-statutory regulations.

B-RULES GOVERNING COMPETENT BODIES

7. If the review of administrative acts and actions lies within the competence of the ordinary courts, is that competence delimited by texts (such as a Constitution, or parliamentary legislation) or by case-law?

The review of administrative acts and actions does not lie within the competence of the ordinary courts.

8. Of the review of administrative acts is carried out by administrative courts or tribunals, are the existence, competence and duties of those courts or tribunals governed by specific rules? Are such rules set out in texts or in the case law?

Rules about existence, competence and duties are set out in ADA. ADA determines competence and organisation of the courts, that decide in cases of administrative review, and procedure in administrative disputes (parties, deadlines, costs of procedure, procedure before the court of first instance, legal remedies, writ of execution).

C-INTERNAL ORGANIZATION AND COMPOSITION OF COMPETENT BODIES

9. If judicial review is assumed by ordinary courts, describe their internal organisation and specify if they comprise specialised chambers, and how these are composed?

Judicial review is not assumed by ordinary courts.

10. If judicial review is assumed by administrative courts, present their internal organisation. Distinguish between the highest and the lower courts.

In administrative disputes decisions are made by the Administrative Court of the Republic of Slovenia and by the Supreme Court of the Republic of Slovenia. Adjudication of first instance is carried out by the Administrative Court, unless otherwise stipulated by law, the decisions on complaints against the decision of first instance in administrative disputes are made by the Supreme Court. The decisions on extraordinary legal remedies are made by the Supreme Court, unless otherwise stipulated by law. In certain cases the Supreme Court decides as court of first instance. The head office of the Administrative Court is located in Ljubljana. The Administrative Court adjudicates at the head office and in at 4 branch offices (Celje, Maribor, Nova Gorica, Koper).

D-JUDGES

11. Do the judges who review administrative acts belong to a specific category? Specify whether different categories of judges exist according to the various kinds of control of administrative authorities.

The judges who review administrative acts do not belong to a specific category. ADA stipulates, that the provisions of the Judicial Service Act (which in general regulates judicial service) also apply to the office, election, appointment or dismissal of Administrative Court judge. There is a special criteria, that one must fulfil to be elected as an Administrative Court judge. That criteria, stipulated by ADA, is, that a person has to meet conditions set for high court judge or, in addition to the general requirements for the election to the office of a judge, also has to have at least ten years of experience in making decisions in administrative matters.

12. How are judges in charge of judicial review of administrative authorities recruited?

There is no difference between the procedure of the election and appointment for administrative court judges or judges of courts of general jurisdiction. The recruitment of judges is made by vocational selection and there is no additional examination.

13. What is the professional training of judges in general?

A judge must have a university-level legal education (law degree) and must have passed bar examination. Those are two basic requirements under the law regarding the professional training of judges.

14. How is their career structure organised?

Promotion of a judge is possible in 3 ways: promotion in higher payment rang, promotion in higher judicial rang (district, high, supreme court judge) and promotion in position of senior judge. Judges are promoted in higher payment rang every 3 years, under provisions of The Judicial Service Act. The Judicial Service Act also determines possibility for a accelerated promotion of judges if special conditions are fulfilled.

15. How is their professional mobility organised?

A judge can be transferred to another court or assigned to work at the Constitutional Court, the Supreme Court, High Court, Judicial Council or Ministry of Justice. Judicial office is not compatible with office in other state bodies, in local self-government bodies and in bodies of political parties, and activities as provided by law (Article 133 of The Constitution of the Republic of Slovenia).

E-ROLE OF COMPETENT BODIES

16. What are the different kinds of recourse against administrative acts and actions in your country?

In an administrative dispute the administrative court would usually rule on the legality of individual final acts and actions issued by state bodies, local communities bodies or other bearers of public authority (the review of lawfulness). In such cases (when it only reviews the lawfulness) the court has the power to annul an administrative act and return the matter to the body which issued the administrative act for a repeat procedure, but it can not decide on the matter itself. When issuing a new administrative act the competent body is bound by the legal opinion of the court and its position on the procedure. In certain cases (when the conditions determined by ADA are met) the Administrative Court may annul the administrative act and decide on the matter with a ruling (full review). In such cases the court itself adjudicates on the rights, obligations or legal benefits of an individual or legal entity. It is also possible for a claimant to request the return of items which have been seized and request to award damages caused by the execution of the disputed administrative act.

17. Do mechanisms exist for the delivery of a preliminary ruling (apart from the procedure under the Article 234 of the Treaty establishing the European Community)?

There are no such mechanisms in Slovenia.

18. Does the competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature? In the affirmative, specify the various aspects of these consultative functions, and if they are exclusive to the body or the highest jurisdiction.

The competent body (The Administrative Court) has only judicial function.

19. Where the body plays both a judicial and an advisory role, how are its respective duties organised?

The body does not play both a judicial and an advisory role.

F-ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN COMPETENT BODIES

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law?

One of the important tasks of the Supreme Court is also safeguarding the uniformity of judicial practice. The Supreme Court adopts in plenary meetings: 1. memorandum opinions on questions of judicial practice (i.e. accepts and gives a generalised significance to interpretations of law given in the statements of reasons of a judgement, or another decision, of the Supreme Court or a court of the second or the first instance); 2. memorandum opinions of principle (i.e. it accepts interpretations of law, important in view of the uniformity of judicial practice, proposed by one of the Departments of the Supreme Court of its own accord or upon the proposal of a lower court). According to the law, all these interpretations of law are binding on all the panels of the Supreme Court, but only by them, while there is no legal obligation for the lower courts to respect them. Nevertheless, the lower courts usually accept these memorandum opinions as correct interpretations of law. There are no proceedings analogous to the French “avis contentieux”.

II-HOW ARE ADMINISTRATIVE ACTS AND ACTIONS REVIEWED BY THE COURTS?

A.ACCESS TO JUSTICE

21. How significant are the pre-conditions for access to the courts in your system of control of administrative authorities?

It is necessary for a claimant to file a complaint against the administrative act before going to court. The administrative body of second instance decides on the complaint against administrative act, issued by administrative body of first instance. If the party who had opportunity to file a complaint against the administrative act did not file it or had filed it too late the administrative dispute shall not be permitted. If it is stipulated by law that a complaint against a decision taken by an administrative body at first instance is excluded (single-instance procedure), a party may appeal against the administrative act to the Administrative Court directly.

22. Who may bring a case before the court?(natural persons, legal entities such as associations, companies, etc., local authorities or other administrative bodies or authorities).

Any individual, legal entity, organisation, group of people and others that believe that any of their rights and legal benefits have been violated by an administrative act may bring a case before the court. It is also possible for the state attorney to act as a claimant in cases when grounds exist for believing that a law has been violated by an administrative act to the detriment of the public interest. The defendant can be a state body, a holder of public authorisation or a local community body whose act is being contested. A proceeding for judicial review in which both the applicant and the defendant are state bodies is not possible.

23. For every situation, specify the conditions that must be satisfied in order for an application for judicial review to be admissible.

An administrative dispute is permitted if the claimant is claiming that his rights or legal benefits have been affected by an administrative act or because the administrative act was not issued and served on him within the prescribed period. If a claimant was a party to the administrative procedure in which the administrative act that is being contested in administrative dispute has been issued, he is not required to demonstrate a particular interest

in the annulment of this act. However, that is not the situation if a claimant did not participate in administrative procedure as party. In such cases he has to demonstrate that his rights or benefits directly based in law have been violated by an administrative act. When grounds exist for believing that a law has been violated by an administrative act to the detriment of the public interest, the state attorney may also act as a claimant. Regarding the protection of public interest it needs to be mentioned that a copy of every action is submitted by the court to the representative of the public interest (as a rule, this role is assumed by the attorney general) who can register his participation in the procedure before the court.

24. Is recourse to the courts subject to time-limits?

Under the provisions of the ADA an action must be filed within thirty days of the receipt of the administrative act. Special laws can stipulate different time-limits for filing an action (for example Law on asylum - 15 days). Prescribed time-limits for filing an action are explicit and it is not possible for the court to grant an extension. Under the provisions of the General Administrative Procedure Act an administrative act has to contain information on the right of lodging a legal remedy (action) and the prescribed time-limit for doing it. Time-limit determined in days begins to run on the first day after the occurrence (the receipt of the act) and it expires on the last day of the time-limit.

25. Are there certain administrative acts or actions that are not open to review by the courts?

There are no administrative acts or actions that are not open to review by the court because of the reasons of unimportance of political sensitivity.

26. Are applications for review by courts subject to screening procedures? Distinguish between first instance appeal, and highest jurisdiction.

There is no screening procedure for applications filed before the Administrative Court (as court of first instance) or the Supreme Court (as court of second instance).

27. How must the application be presented? Are there specific forms or is the applicant free to choose the format?

In the action the name, the surname and the place, or the title and main office of the claimant, the administrative act, challenged by the action, and reasons for the action need to be given, and a proposal made as to how and in which parts the administrative act should be annulled. The original, written copy or photocopy of the act must be appended to the action. There is no specific form required for the action.

28. Has the possibility of bringing proceedings via Internet been envisaged in your country or is it already possible? Are there reflections or plans for the introduction of tele-procedures or e-procedures (e-registry office)?

At this time bringing proceedings via Internet is not yet possible.

29. Is there a pecuniary charge for lodging an application for judicial review (in the form of stamp duty, tax, or registry fees)?

There is a pecuniary charge for lodging an application for judicial review (court fee). It is stipulated by the Court Fees Act that in court proceedings payment of court fee is obligatory. Court fee can be paid in the form of stamp duty, in cash or by other valid means of payment.

30. Is recourse to a solicitor/lawyer or counsel compulsory?

The assistance of a lawyer is not compulsory, except in cases of extraordinary legal remedies. There is no difference between the procedure before the Administrative Court (as court of first instance) and the Supreme Court (as court of second instance) regarding that question.

31. As regards the costs of the proceedings, can they be paid through legal aid?

The costs of the proceedings can be paid through legal aid. There are special conditions for access to legal aid. The Free Legal Aid Act stipulates to whom legal aid can be granted and determines criteria that have to be met in order for the application to be approved. The criteria include the financial resources of the applicant. Legal aid shall be granted to an applicant who considering his financial position and financial position of his family could not afford to pay the costs of the proceeding without worsening his social status and social status of his family. What is considered as worsening one's social status is precisely determined by law. On applications for granting legal aid decide Presidents of District Courts, President of the Administrative Court and President of the Labour and Social Court in administrative procedure. A decision on the application may be challenged before the court in administrative dispute.

32. Is there a fine for abusive or unjustified applications?

There is no fine for abusive or unjustified applications.

B. MAIN TRIAL

33. Which fundamental principles govern the main trial hearing? The right to inter partes proceedings, the rights of the defence/the right to a fair hearing, the balance of the written and oral elements in the proceedings. Do these principles derive from national law (legislation or/and case-law) or European law (Convention for the Protection of Human Rights and Fundamental Freedoms for example) or both? [15 lines max.]

Main trial hearing in the judicial review of administrative acts is governed by the same principles as main trial hearing in civil procedure, since Civil Procedure Act (Official Gazette of the Republic of Slovenia, no. 36/04 – officially consolidated version, 2/04 and 69/05; CPA) applies by analogy for the procedural issues not regulated by ADA (Paragraph 1 of Article 16 of ADA). Fundamental principles thus derive from national legislation, which is in compliance with the European legal standards.

Complying with the Recommendation of 2004, the proceedings are adversary in nature. This fundamental principle ensures that each party to the litigation shall be granted the opportunity to be heard on the opposing party's claims and assertions. The claims in respect of which the opposing party has not been heard may only be decided upon if the CPA so stipulates (article 50 of the ADA relating to article 5 of CPA). The equality of arms is guaranteed by the same provision.

Generally, the court decides upon the claim on the basis of an oral, immediate and public main hearing (article 50 of the ADA relating to article 4 of CPA). Only under conditions specified by ADA, claims may also be determined without a main trial (trial at a session) on the basis of procedural acts made in writing.

When the judgement is announced after the main hearing, the presiding judge reads in open court the ordering part of the judgement and give a brief statement of reasons. Even if the public has been exceptionally excluded from attending the main hearing, the ordering part of the judgement is always read out in open court. After the ordering has been read out, the court decides whether and if so to what extent the public is to be excluded from hearing the statement of grounds. (article 322 of CPA).

34. How is the judicial impartiality ensured in your country? [10-15 lines]

In Slovenia, judicial impartiality is ensured with the constitutional right to judicial protection, which is in conformity with the stated provision of the Recommendation R (2004) 20. Constitutional right is further detailed by article 70 of the CPA, which stipulates that a judge is prohibited to exercise the judicial function, if he has a certain conflict of interest in that particular case – *iudex inhabilis* (e.g. he is a party to the litigation or he has taken part in the proceedings before a lower court...) or if other circumstances render his impartiality doubtful (*iudex suspectus*). Immediately after learning of the existence of any of the former grounds for disqualification, the judge must discontinue forthwith any activity in the proceedings and must notify thereon the president of the court, who appoints a substitute judge. The acts of procedure which he has performed after having learnt of the existence of such ground have no legal effect. However, if a judge believes that other circumstances exist which put his impartiality into doubt, the judge may continue to take part in the proceedings until the president of the court passes a resolution on his disqualification. The disqualification of a

judge may also be moved for by the parties. The motion for disqualification is decided upon by the president or the chief judge of the court.

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the proceedings? [5 lines]

In proceedings of first instance the claimant may not state facts and supply evidence, if he was given an opportunity to state the facts and supply the evidence in the administrative procedure prior to the issuing of the administrative act (Paragraph 3 of Article 14 of ADA).

In appeal proceedings the claimant may only supply new facts and evidence, if it has been plausibly demonstrated that he was unable, through no fault of his own, to supply them by the end of the main hearing, and if proceedings have been conducted without a main hearing until the end of the proceedings of first instance (Paragraph 1 of Article 71 of ADA).

36. Which other persons can intervene during the main hearing? [5 lines]

In addition to the claimant and the defendant the other parties involved in an administrative dispute may also be the defender of public interest (Article 19 of ADA), a person who has suffered direct damage as a result of the annulment of the contested administrative act (Paragraph 1 of Article 20 of ADA), third persons, if the regulation of the contested relationship could interfere with their rights or legal benefits (Paragraph 2 of Article 20 of ADA) and third person that is involved in the contentious legal relationship in such a manner that only a uniform decision which covers this person as well can be adopted (Paragraph 3 of Article 20 of ADA).

37. Is there a representative of the State (“ministère public”) who may submit pleadings in cases concerning administrative law? [10 lines]

The representative of the State may submit pleadings in cases concerning administrative law for the protection of public interest as an intervenient or for the protection of state interest as a claimant.

The public interest is generally represented by the state defender; however, the government may appoint another representative of the public interest for an individual dispute or individual type of dispute. A person who meets the requirements for a circuit judge may be appointed as the representative of the public interest from the preceding paragraph (Article 19 of ADA).

The state interest is always represented by the state defender, who may act as a claimant when there are reasons for believing that a law has been violated by an administrative act to the detriment of the public interest of the Republic of Slovenia (Paragraph 2 of Article 18 of ADA).

38. Is there, in your legal system, an institution or a person who plays a role analogous to that of role played by the French “commissaire du gouvernement” before the Conseil d’Etat, that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought properly to be disposed of in a case? [10 lines]

Slovenian legal system is not familiar with such an institution or a person.

39. How can proceedings come to an end before a decision is reached by the Court? [5 lines]

Pursuant to the Paragraph 1 of the Article 34 of ADA the court shall reject an action with a resolution if it has been established that:

1. rendering decision is not within the jurisdiction of the court;
2. an action was filed late or prematurely;
3. the act contested with an action is not an administrative act or an act that may be contested in an administrative dispute;
4. an administrative dispute, contested with an action, does not clearly violate the claimant’s right or legal benefits;
5. an appeal against the contested administrative act was allowed, but has not been filed or was filed late;
6. a claim had already been finally determined by an administrative act.

40. Does the court registry itself forward the various written applications and pleadings to the parties? [5 lines]

The court register does not have the right to forward any written applications and pleadings to the parties. Such tasks are reserved for the judge himself.

41. Who is responsible for providing the evidence? The parties or the court? [5-10 lines]

The parties are responsible for providing the evidence. If an action claims a decision on a right, obligation or legal benefit, refund of items or reimbursement, the claim must contain a specified relief or remedy claimed in respect of the cause of action, the lateral claims, the statement of facts constituting the cause of action, and the statement of evidence proving these facts (paragraph 2 of Article 28 of ADA).

At the main hearing the court shall order the production of evidence when it is necessary for the determination of the administrative dispute, if the production of an evidence was not ordered in the administrative procedure issuing the contested administrative act, or if other facts indicate an assessment of evidence different from the one made by the administrative authority, which passed the contested administrative act.

42. How is the hearing conducted? Is it public? Can it take place in camera and in which circumstances? Who can take part in the hearing and how (in writing, orally)?

The court of first instance renders decisions after the main hearing (Paragraph 1 of Article 50). The court notifies the parties to all hearings for the production of evidence (Article 52 of CPA).

The main hearing is held in an open court and may be attended only by persons of full age (Paragraph 1 and 2 of the Article 293 of CPA). However, the court panel may exclude the public from all or part of the main hearing, where so required by the interest of official, business or personal secrets, or for moral considerations. The panel may also exclude the public from the main hearing also when by application of measures for maintenance of order it cannot secure an undisturbed progress of the proceedings (article 294 of CPA). Exclusion of the public shall not apply to the parties, their statutory representatives, attorneys and intervenients (article 295 of CPA).

The court of first instance may render a decision without a main hearing (trial at a session) if after a preparation proceedings was established that the facts of the case have been completely and correctly asserted during the administrative procedure issuing the administrative act, or such facts are not contentious neither did the parties request a main hearing in the an action or in the answer to the an action (Paragraph 2 of the Article 50 of ADA). When the court renders a decision at a session, the session is not public (Paragraph 3 of the Article 50 of ADA), but is conducted in camera.

43. When and how is judicial deliberation conducted? Who can take part in it? [10-15 lines]

The court adopts a judgement or a resolution with a majority of votes. Special minutes on consultations and voting are kept and they must be signed by all members of the panel and by the recording clerk. Dissenting opinions are possible, however are only marked in the minutes on consultation, and not attached to the rendered decision. The court shall consult and vote in the absence of the parties (Paragraphs 2,3,4 of Article 57 of ADA). All the members of the panel take part in the deliberation, whereas the member who delivered an opinion plays an active role as a judge rapporteur. Judge acting as a rapporteur cannot at the same time be a judge presiding the panel. Rules governing deliberation are set by CPA without any recent modifications influenced by the case-law of the European Court of Human Rights.

C. JUDGEMENT

44. How are the grounds of the decision given? In details or more briefly? [5-10 lines]

Decisions of the court of first instance are generally given in details, indicating the claims raised by the parties, the facts asserted to give rise to these claims, the evidence, and the law applied in the rendering of the decision (Paragraph 4 of Article 324 of CPA). Nonetheless, the court of first instance does not have to cite the reasons for the decision if it follows the grounds of administrative authority who issued the administrative act and asserts this in the judgement (Paragraph 2 of Article 67 of ADA).

Grounds of the Appellate court decisions also contain all the mentioned elements, but may be shorter, especially if they follow the grounds of the judgement of the court of first instance.

Grounds of every judgement aims to be as specific and clear to enable applicants to understand the meaning and the scope of the decision.

45. What are the reference norms [international norms, European norms (Convention for the Protection of Human Rights, Community law), constitution, law, jurisprudence, personal conviction]? [10 lines]

Generally, most often used reference norms are those contained in national laws (and in executive acts based thereon) and jurisprudence, all of which are in accordance with the community law. After the entering of Slovenia into the EU, there is increasing number of cases where European norms (Community regulations) are used directly (e.g. in asylum law). In cases alleging the breach of constitutional rights, the lawfulness of administrative acts is evaluated by reference to the Constitution of the Republic of Slovenia and to the Convention for the Protection of Human Rights. Since national norms should normally be in compliance with European norms, the type of referenced norms used also notably depends on norms that were cited in an action by the claimant. Personal conviction is important where judge interprets these norms.

46. Which criteria and methods of review are used by the court? [15-20 lines max.]

Specific review of the administrative authorities' appreciation of situations may only be exercised in an administrative procedure, whereas only global control is reserved for the review of administrative courts. Both the court of first instance (Administrative Court) as well as to the appellate court (the Supreme Court) may carry out only global control on appreciation of situations and cannot compare advantages and drawbacks of the decision in any situation where the decision is legally grounded. Pursuant to Paragraph 2 of Article 25 of ADA discretionary decisions are not considered to violate administrative regulations, if such a decision has been rendered by the competent authority based on an authorisation granted by the regulations, within the limitations of the authorisation and in compliance with the purpose for which it was granted the authorisation.

47. How are legal costs apportioned? [5 lines]

If the court in an administrative dispute renders a decision on a right, obligation or legal benefit (full review), it shall apply the provisions of the CPA for the decision relating to the costs of the procedure (Paragraph 1 of Article 23 of ADA).

The party shall always bear the costs arising due to default of, or the accident occurring to him (Paragraph 2 of Article 23 of ADA).

If the court in an administrative dispute only rules on the legality of an administrative act and in disputes from the paragraph 3 of article 2 of ADA (disputes between the state and local communities, among local communities, and between them and the holders of public authorisations), each of the parties each party bear their own costs of proceedings.

If joint costs occurred, the court rules on the proportion of costs to be born by each party (Paragraph 3 of Article 23 of ADA).

48. Is it more usual for the case to be decided by a single judge or by a number of judges? [5 lines]

Generally, the proceedings before the Administrative court are conducted by a panel consisting of three judges. However, single judge rules on resolutions (article 11 of ADA).

The first instance proceedings before the Supreme Court are conducted by a panel consisting of three judges (paragraph 1 of article 12 of ADA).

In deciding upon appeals against resolutions of administrative courts, the Supreme Court sits in a panel consisting of three judges. In deciding upon appeals against judgements of administrative courts, the Supreme Court sits in a panel consisting of five judges (paragraph 2 of article 12 of ADA).

In deciding upon appeals against decisions from the first instance proceedings before the Supreme Court, the Supreme Court sits in a panel consisting of five judges, and In deciding upon other legal remedies the Supreme Court sits in a panel consisting of seven judges (paragraph 3 of article 12 of ADA).

49. Where the case is heard by several judges, is the expression of individual judicial opinions allowed (dissenting opinions?) [5 lines]

The court adopts a judgement or a resolution with a majority of votes (Paragraph 2 of the Article 57 of ADA), therefore the dissenting opinions are possible, however they are not very common in practice. When a member of a senate is overruled by the majority decision, his dissenting opinion it is not indicated in the grounds of the decision, rendered to the parties, but it is only revealed in the voting minutes. The same practice applies to both court of the first instance as well as to the appellate court.

50. Is the decision delivered in writing, or orally? [5 lines]

When the decision is reached after the main hearing has been concluded, the court decision is delivered orally. Generally, the decision is publicly pronounced by the judge presiding the

panel at the end of the main hearing. In complicated cases, however, the decision is delivered in writing in eight days after the main hearing.

When the decision is reached at a session, the court decision is delivered in writing.

D. EFFECTS OF DECISIONS AND EXECUTION OF JUDGEMENT

51. What is the authority of the decision? Res judicata, stare decisis? [5 lines]

Final decisions of the court become res judicata and produce effects only for the parties (inter partes authority). The nature of the challenged act does not influence this authority. The solution given is formally limited to the present case. In practice, however, the courts try to rule on similar legal situations in the same way due to the principle of legal certainty.

52. Can the court limit the effects of the judgement in time? [5 lines]

Generally, the judgement rendered by the court has an unlimited effect in time. In regulatory interim measures, however, court may limit the effects of the judgement for the time that he finds appropriate, since he has an authority to temporarily regulate the legal relation in dispute.

53. Is the right to the execution of judicial decision guaranteed in your country? Specify if it is informally guaranteed, or through a specific judicial procedure. Indicate if there is a distinction between implementation of the judgement by administrative authorities and implementation of the judgement by private persons. Specify if the court has the power of injunction, possibly completed by coercive fine, in order to secure compliance with the judicial decision. [10 lines max.]

Execution of judicial decisions is guaranteed through a specific judicial procedure. The implementation of the judgement by administrative authorities is regulated in ADA, whereas the implementation of the judgement by private persons is regulated through separate execution proceedings.

If the court renders a judgement satisfying the claim and annulling the contested administrative act, the competent administrative authority must issue a new administrative act within thirty days of the day it receives the judgement, or within the period set by the court,

whereas they are bound by the legal opinion of the court and its procedural view (paragraph 3 of article 60 of ADA). If the competent administrative authority does not issue a new administrative act within thirty days of the annulment of the administrative act, or within the period set by the court, or within seven days of a special request of the party, the court requests from the competent authority and explanation as to why it did not issue the administrative act. The administrative authority must submit an explanation within seven days. If it does not submit it or if an explanation submitted is not satisfactory, the court rules on the case (full review), otherwise it dismisses the claim (article 61 of ADA). Same consequences apply to situations where administrative authority does not act in accordance with the legal opinion of the court.

54. Is there a policy in your country to reduce the length of time needed for the proper disposal of cases before the courts? If so, how is that policy implemented? [10 lines]

There are several legal basis to ensure that cases are dealt with within reasonable time. In all cases, which are not yet finally disposed, a party concerned may file an action for before the Administrative Court. After all legal remedies have been exhausted, a constitutional appeal may also be filed. Furthermore, according to the Courts Act (Official Gazette of the Republic of Slovenia, no. 23/05– officially consolidated version, and 72/05; CA) a claimant may file a supervisory appeal to the president of the relevant Court, which may request a written report from the judge, request a priority treatment of the case, set the appropriate deadline to reach a decision or reallocate the case to another judge. Recent proposal for modification of Courts act also provides for the fair compensation of damages. However, this Act has not yet been introduced into the legislative procedure.

E. REMEDIES

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts? [15-20 lines]

Adjudicating in first instance is generally executed by the Administrative Court, except for the following disputes that are adjudicated by the Supreme Court:

- the legality of acts issued by election authorities at elections to the National Assembly, the National Council and the presidency of Slovenia;

- disputes concerning the legality of a candidacy, and the election, appointment and dismissal of persons who have been elected, appointed or dismissed by the president of Slovenia, the National Assembly, the National Council or the Government;
- disputes concerning the decisions of the judicial council or personnel council regarding the rights and obligations of judges and state prosecutors;
- the legality of regulations, issued by state bodies or by holders of public authorisation at the state level, if they apply to specific relations;
- the legality of administrative acts issued by the Government, the Bank of Slovenia or any other state authority of equal status.

The Supreme Court adjudicates on disputes regarding the division of jurisdiction between an administrative and other court.

The Supreme Court adjudicates the appeals against the decisions of the Administrative Court.

56. Are there remedies to challenge a judgement before a higher court? Describe these remedies and their functioning [10 lines, a chart is possible]

An appeal may be filed against a judgement rendered in an administrative before the court of first instance. However, an appeal is not permitted in disputes concerning the legality of acts issued by election authorities for elections to the National Assembly, the National Council and the presidency of Slovenia, and disputes over the legality of acts passed by local election authorities. For disputes that are directly referred to the Supreme court at the first level an appeal to the Supreme Court panel of five judges is also possible (see answer # 48).

Higher court may always review points of law. However, findings of fact may only be reviewed whether and when contested judgement is based on factual findings that were established in a judicial proceedings, and not in an administrative procedure.

In addition to an appeal, extraordinary legal remedies may also be filed. A supreme state prosecutor may file a request of review of legality and a claimant may file a motion for a reopening of proceedings.

F. EMERGENCY PROCEEDINGS AND SUMMARY JURISDICTION / APPLICATIONS FOR INTERIM RELIEF

57. Are there emergency and summary jurisdiction proceedings? [10 lines max.]

ADA recognises two different kinds of emergency jurisdiction proceedings.

Firstly, a claimant may suspend the implementation of the administrative act, if the implementation would cause damage to the claimant that would be difficult to redress, if the suspension is not detrimental to the public interest, and there is no danger that the opposite party would suffer even greater irreparable damage.

Secondly, a claimant may request an interim measure to temporarily regulate the situation in connection with the contentious legal relationship, if such a regulation appears to be necessary in order to prevent more serious damage or a threat of violence, particularly in permanent relationships, from being caused. The judge hearing an application for interim relief is the same as the judge hearing the main proceedings. The interim measure is granted by the three Judges of a panel of the court that is responsible for making decisions in the matter. Decision on interim measure is subject to appeal before the appellate court.

58. What types of requests can be made to the emergency and summary jurisdictions?

Ascertainment of a situation? The obligation for administrative authorities to communicate a document? The suspension of the execution of an administrative act? The payment of a provision? [10 lines]

In emergency and summary jurisdiction a claimant may request that the court temporary regulates the contentious situation, that the execution of an administrative act is suspended or that the administrative authorities issue the requested administrative act.

The first two requests were already explained in the answer #57 and the third type of request was explained in answer #53.

59. Are there different kinds of summary jurisdiction? General or specific to certain litigants? [5-10 lines]

The ADA only distinguish one type of summary jurisdiction regardless to the nature of litigants.

III. CAN ADMINISTRATIVE DISPUTES BE SETTLED BY NON-JUDICIAL BODIES?

60. Can disputes be settled by administrative authorities themselves? How? [5-10 lines max.]

Disputes can be settled by administrative authority that issued the contested administrative act under the conditions of a specific legal remedy called “modification or removal of contested administrative acts related to administrative dispute” regulated in the General Administrative Procedure Act. Administrative authority may annul or modify the issued administrative act for the same reasons as administrative court by the end of administrative dispute proceedings, if it grants all the claims without violating the rights of third parties.

61. Can administrative disputes be settled by independent bodies (offices, agencies, ombudsman, mediators, regulation authorities) [5-10 lines]

In Slovenia, alternative administrative disputes resolutions by independent bodies are not yet possible, however there is political will present to adopt legal bases needed for any future actions in this field.

62. Can administrative disputes be resolved by means other than recourse to the courts? [10 lines]

As mentioned in the preceding answer, currently there is no possibility to resolve administrative disputes by means other than by recourse to the courts.

IV. ADMINISTRATIVE OF JUSTICE AND STATISTIC DATA

A. Financial resources made available for the review of administrative acts?

63. On average, what proportion of the State budget is allocated to the administration of justice? Specify for administrative justice when it exists and is distinguished from ordinary justice? [5 lines max.]

Administration of justice / Total State budget	= 1,7 % (2003)
	= 1,6 % (2004)
Administrative justice / Administration of justice	= 2,3 % (2003)

	= 2,3 % (2004)
Staff and operation / Administrative justice	= 80,7 % (2003)
	= 81,2 % (2004)
Material costs / Administrative justice	= 19,1 % (2003)
	= 18,4 % (2004)
Small investments / Administrative justice	= 0,2 % (2003)
	= 0,3 % (2004)

64. Specify the total number of magistrates and judges working within the legal system concerned. [5 lines max.]

Administrative Court: 28

The Administrative division of the Supreme Court: 12

65. What percentage of judges is assigned to the review of administrative authorities?

The total number of judges is 955 and the number of administrative judges is 40. The percentage of administrative judges is 4,2%.

66. Apart from registry staff, are judges helped by assistants in their research and decisions? Specify the number of assistance (overall and per judge) and their professional training (university, the Bar, etc.).

The Administrative Court judges and the Supreme Court judges are assisted by judicial advisors. At the Supreme Court the assistance is provided also by judges of lower courts who are assigned to work at the Supreme Court. There are 6 judicial advisors at the Administrative Court and 4 judicial advisors and 1 district court judge at the Administrative Review Department of the Supreme Court. That makes total of 0,28 assistant available for each judge. A judicial advisor is required to have law degree and Bar exam.

67. Do you have a library, and what kind of works and documentary resources can be found there?

The Central Judicial Library is organised as a unit within the Registry Department of the Supreme Court. It is a professional and scientific (and publicly accessible) library specialised in legal issues. It is aimed at all lawyers (judges, state prosecutors, professional staff, barristers) and is available also to students of law and other users from the general public. In the library mostly monographs and serial publications, journals, proceedings of professional conferences (including non-published materials), training seminars and study visits abroad, gifts from Slovenian and foreign institutions, electronic publications, etc. are available. The Library also procures foreign-published legal literature and monthly publishes notice of newly acquired monographs and serial publications.

68. Do you have access to information technology? In which proportion? And for which kind of tasks (file management, data bases, computer assistance for writing decisions? [10 lines]

Slovene judicial system has access to information technology in substantial proportion. Information technology is mainly used as a computer assistance for writing decisions and for legal research through on-line legal resources, both national (Ius-info), European (Evropa server, jurifast) and international (lexis-nexis). File management system in the Administrative Court is already in computerised form, however, file management system in the Administrative division of the Supreme Court is currently still under development. Digital communication through e-mails is not yet widely used and drafts of legal decisions is still prepared in paper form.

69. Do competent bodies and courts have a web-site to publicise themselves and to communicate with the public? [5-10 lines max.]

The court system in the Republic of Slovenia has a homepage called www.sodisce.si, where the contact and personnel information regarding all Slovenian courts can be found. One can also access case-law of the Supreme Court of the Republic Of Slovenia, gain information of publicly accessible character, list of laws regulating the Slovene judiciary system and up-to-date notices for the public.

B. Other statistics and figures

70. How many new applications are registered every year with the court registry or the authority in charge of registering them? [5 lines]

See the following chart.

71. How many cases are heard every year by the court or other competent bodies? [5 lines]

See the following chart.

72. Could you provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of? [5 lines]

See the following chart.

73. What is the average time taken between the lodging of a claim and judgement?

Administrative Court

Reference years	Cases lodged	Cases disposed of	Cases pending	Average time to judgement
2003	4078	765 cases, started in 2003	911 cases, started in 2003	20 months
2004	3621	1611 cases, started in 2003, and 804 cases, started in 2004	1754 cases, started in 2004	18 months

The Administrative division of the Supreme Court of the Republic of Slovenia

Reference years	Cases lodged	Cases disposed of	Cases pending	Average time to judgement
2003	1518	1332	2647, of that 2461 from previous years	18 months
2004	1490	1360	2777, of that 2647 from previous years	18 months

74. Indicate the percentage and rate of the annulment of administrative acts decisions against administrative authorities by the lower courts. [5 lines]

Annulment of administrative acts decisions/total number of decisions = 33,1 % (2003)

= 33,5 % (2004)

75. Could you indicate the volume of litigation per field (asylum, foreigners, tax, urban planning, etc.).

The number of actions filed before the Administrative Court (1.1.2003 – 31.12.2003)

<i>No</i>	<i>Field of litigation</i>	<i>Total number of litigation</i>
1	Duties	987

<i>No</i>	<i>Field of litigation</i>	<i>Total number of litigation</i>
2	Tax	455
3	Denationalisation	513
4	Citizenship	74
5	Social security	35
6	Urban planning	294
7	Inspection measures	229
8	Intellectual property	56
9	Victims of war	178
10	Foreigners	73
11	Asylum	108
12	Others	1078
	TOTAL	4080

The number of actions filed before the Administrative Court (1.1.2004 – 31.12.2004)

<i>No</i>	<i>Field of litigation</i>	<i>Total number of litigation</i>
1	Duties	503
2	Tax	529
3	Denationalization	419
4	Citizenship	65
5	Social security	29
6	Urban planning	278
7	Inspection measures	209
8	Intellectual property	41
9	Victims of war	142
10	Foreigners	35
11	Asylum	189
12	Others	1180
	TOTAL	3619

C. The economics of administrative justice

76. Do studies by researches or work produced by practitioners demonstrate particular concerns by the courts, for example about orders for damages; do they deal with the influence of heavy awards against administrative authorities on public budgets? Do they consider the implications in terms of costs for public finances?

For determining cases on state liability for damages the civil procedure rules apply (civil courts jurisdiction). It is expected that the number of such cases shall increase in the future.