SLOVAKIA

Review of administrative decisions of government by administrative courts and tribunals

1. Jurisdiction or competence

Current administrative judiciary of the Slovak Republic follows the historical tradition of the Hungarian and later the Czechoslovak administrative judiciary.

From 1953 to 1992 the institute of administrative judiciary was not exercised in Slovakia and it was constituted after the socio-political changes of the year 1989, when administrative judiciary in the Czech and Slovak Federative Republic underwent a revival through individual legislative adjustments, especially by adoption of the Bill of Rights in 1991 and with effect from the 1st January 1992 through amendment of the basic procedural rule in the civil procedure – Code of Civil Procedure by the Act No. 519/1991 Coll., which functioned as a supplement to the 5th part concerning the administrative judicature. Exercise of administrative judiciary was entrusted to general courts and administrative division was established on the level of the Supreme Court of the Slovak Republic.

After adoption of the Constitution of the Slovak Republic (hereinafter referred to as „constitution"), and its entry into force as of 1st October 1992 the scope of jurisdiction of the administrative courts was determined by the content of article 46, paragraph 2 of the constitution which provides that: *„the person who was deprived of his rights by the decision of public administration authority, may proceed to the court, to review legality of such decision, unless the law provides to the contrary. However, review of decisions concerning fundamental rights and freedoms may not be excluded from the court jurisdiction. "*

Administrative judiciary of the Slovak Republic is based on material understanding of the rule of law (article 1, paragraph 1 of the constitution) requiring, that the public administration is under the control of judicial power. It is based both on public administration control - whether it does not exceed the powers entrusted to it - and it provides protection of subjective rights of persons, which were interfered and being interfered in conflict with the law.

General jurisdiction of the administrative judiciary is based on the article 142, paragraph 1 of the constitution, according to which *"the courts are also reviewing legality of public administration authorities and legality of decisions, measures or other interventions of public authorities where the law provides"*.

Development of the administrative judiciary of the Slovak Republic through amendments of the Code of Civil Procedure was an appropriate reaction to requirements of the article 4, par. 1 and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "Convention").

Since 1992, i.e. for 17 years already, it has been exercising the administrative justice within Administrative Division of the Supreme Court of the Slovak Republic together with the specialized panels functioning in 8 regional courts. Special courts focused merely to fulfilment of administrative justice in Slovakia are not planned for the near future, although ideas of establishing the Supreme Administration Court are being considered.

The system of administrative judiciary exercised this way, plays an important role of a

guarantor of legality and respect of human rights and fundamental freedoms, and therefore meets the attributes of modern administrative justice.

1.1. Which categories of administrative decisions are eligible for review (administrative regulations/individual decisions)?

The subject of the administrative judiciary is the judicial review of legality of decisions and conduct of state administration authorities, authorities of territorial self-government as well as authorities of concernment self-government and other legal entities, as well as natural persons, as far as the law entrusts them to make decisions on rights in the public administration area.

According to the applicable legal regulations, decisions of administration authorities reviewable in the administrative jurisdiction shall mean **individual decisions**,

- which constitute, amend or repeal rights and responsibilities of natural persons or legal entities,
- which may directly affect the rights, legally protected interests or responsibilities of natural persons or legal entities.

Despite that, it does not matter, how these normative acts are terminologically denoted (except decisions it may concern measures, and even binding instructions or binding statements or letters bearing features of a decision). In terms of the European Council Recommendation Rec(89)8, which regulates the current judicial protection provided in administrative issues "the term: administrative act shall pursuant to the Resolution (77)31 on protection of an individual in relation to administrative acts of the administrative authorities mean every individual measure or decision made upon exercise of administration by the public authority, which directly interferes with the rights, freedoms or interests of persons",

According to the findings of the Constitutional Court of the Slovak Republic and decisions of the Supreme Court of the Slovak Republic, the subject of the court review may as well as be the decision of public administration authorities, which do not carry formalities, if they affect or if they may affect rights or legally protected interests of natural persons and legal entities.

As an exception, such decision does not in fact have to exist – e.g. fictitious decision pursuant to the Article 18, paragraph 3 and Article 19, paragraph 3 of the Act No. 211/2000 Coll. on Free access to information as amended. The purpose of established institute of fictitious decision was not to "legalise" failure of obligated persons bound by the act in decision-making on applications pursuant to the law hereof, or protect the person who addressed the liable person with a request to access information.

The court review in administrative judiciary comprises:

- control of illegal failure of official authority to act.
- control of legality of permanent interventions of public administration into the rights of individuals, if only actual acts of public administration are concerned (i.e. acts outside the decision-making process) and vice versa, and
- assessment of the enforceability of decisions of foreign administrative authorities

The area of administrative judiciary further includes specific procedures regarding elections, procedures concerning registration of political parties and political movements, and procedures concerning agreements of municipalities on cooperation with territorial units or authorities of other states, and membership in international associations.

Furthermore the Supreme Court of the Slovak Republic decides on dissolution of a political party or movement and in case of dissolution of a civil society by the Ministry of Interior of the Slovak Republic the Supreme Court decides on submitted remedy.

Courts in the administrative judiciary review normative legal acts, but exclusively those issued by the authorities of self-government – they concern procedure on review of legality of municipal, city or local authorities, or authorities of self-governing region (e.g. municipal budget, decision on development plan of the municipality) and procedure on accordance of generally binding regulation of the municipality and higher territorial unit with law, government decree and generally binding legal regulations of ministries and other central authorities of the government (e.g. generally binding regulations on observance of cleanliness and order on the territory controlled by self-government).

Review of compliance of normative legal acts of higher legal force (statutes, regulations of ministries and government decrees) with the Constitution remains within exclusive competence of the Constitutional Court of the Slovak Republic.

1.2. According to which criteria is the jurisdictional competence of the court or tribunal (hereafter „court“) determined? Are there certain decisions of the Executive or public authorities which cannot be submitted to review, by reason of the nature or substance of such decision?

. In administrative justice the right to access the court is defined by the principle of **general clause with negative enumeration**.

Decisions not reviewed by the courts in the administrative judiciary, are stated in Section 248 of the Code of Civil Procedure. They include decisions of administrative authorities

a/ **of interim nature and procedural decisions concerning conduct of proceedings,** (interim decisions are all those decisions which do not lead to the end of administrative proceedings of the case).

b/ **decisions, the adoption of which depends exclusively on review of health status or technical condition of a matter, if they themselves do not constitute obstacles to exercise of occupation, employment or business or other economic activity,**

c/ **decisions not to grant or withdraw qualifications of legal entities or natural persons, if they themselves do not constitute legal obstacle to exercise occupation or employment** and

d/ **decisions of the administrative authorities, whose review is excluded by certain laws.**

Judicial reviews exclude decisions on redundancy of the state property, on temporary redundancy of the state property and on withdrawal of administration of immovable state property and appointment of its administrator pursuant to the Section 3, par. 6 of the Act No. 278/1993 Coll. on State Property Administration as amended, decisions on granting of approval to dispose state property *(Section 8c, par. 4 of the above-cited act)*, decision on declaration of a bank failure to pay deposits *(Section 8, par. 4 of the Act No. 118/1996 Coll. on Protection of deposits and on amendment of certain acts as amended)*, decision on declaration of a professional dealer in securities failing to fulfil obligations towards the clients *(Section 86, par. 5 of the Act No. 566/2001 Coll. on Securities as amended)*, decision of statutory authority of the body governed by public law on unnecessary thing *(Section 5, par. 4 of the Act No. 176/2004 Coll. of 9th March 2004 on Disposal of Property of public institutions)*.

If a decision of administrative authority (regardless of its type of formal identification) concerns one of the fundamental rights and freedoms, its review may not be pursuant to the

Article 46, par. 4 of the Constitution of the Slovak Republic excluded from the jurisdiction of general courts irrespective of provisions of the Code of Civil Procedure or other laws.

The findings of the Constitutional Court imply that general courts may not exclude a decision of public administration authorities from review just because it is mentioned as unreviewable in the Code of Civil Procedure or in other regulations, but they at the same time have to assess its influence on fundamental human rights and freedoms.

Within the context of Article 6 (in particular paragraph 1) of the Convention, the courts should in such cases review, if the influence on fundamental human rights and freedoms is „direct and crucial" and if the decision concerns issues, which are by reason of nature „eligible as a subject-matter of the judicial decision-making".

1.3. Please provide relevant case-law illustrating the extent and limits of the scope of the competence of the court in charge of review.

Decisions not subject to court review shall mean the decisions of administrative authority of appeal, by which cancelled decisions of the administrative authority of the first instance and return the case for further proceedings, because of the fact, that the first instance administrative authority shall again deal with the certain case, shall enable further inquiry, must not deprive the petitioner of his rights (resolutions of the Supreme Court of the Slovak Republic over file no. 3 SžoKS/161/2006 dated 18th January 2007 and no.6 SžoKS/162/2006 dated 28th June, 2007).

On the other hand in the resolution file no. 1 Sž-o-KS 142/2005 dated 1st November, 2007 the Supreme Court of the Slovak Republic in its opinion considered, that although decisions adopted exclusively on the basis of technical condition assessment of a matter, are excluded from the court review, legality of the procedure preceding such decision may not be excluded from the review. That is why also decisions based on technical condition assessment of a matter (which involve specialized technical aspects) must be adopted within the process, where basic principles of administrative procedure were observed. Their observance can be identified only in the review proceedings for legality of a decision and conduct of the defendant.

According to resolutions of the Constitutional Court of the Slovak Republic, file no. II. ÚS 50/01 dated 8th November 2001 and file no. I. ÚS 52/02 dated 28th May, 2003 it is not ruled out, that even decisions given in Section 248 of the Code of Civil Procedure could not concern or even violate fundamental human rights and freedoms, therefore constitutionally conforming interpretation of the provision of Section 248 of the Code of Civil Procedure requires, that the court in administrative judiciary investigates, if the decision of public administration authority (administrative authority), submitted properly to the court review of its legality, as regards the substance, does not at the same time interfere with the fundamental rights and freedoms of the party of the proceedings, which are guaranteed to him by the Constitution of the Slovak Republic or the respective international treaty on human rights and fundamental freedoms.

2. <u>Judicial Procedure</u>

In Slovakia the substance of the administrative judiciary is understood as protection of individual's rights in question during administrative proceedings, under circumstances, when each person who feels affected or injured in his/her rights, appeal to the court as an independent authority and further proceedings, in which the administrative authority shall not

have dominant position, or it shall become a party of the proceedings defending its factual and legal conclusions (including its own conduct in the proceedings) with the same possibilities as the one, whose rights are concerned in the proceedings.

Competence of general courts to exercise judicial review of decisions of administrative authorities implies from Article 142, par. 1 of the Constitution of the Slovak Republic and from the Fifth part of the Code of Civil Procedure (in particular from Sections 244 to 250zg). Certain acts, such as e.g. the act on municipalities, act on association of citizens; offence act and other legal regulations lay down the competence of general courts to hear legal remedies against decisions of administrative authorities.

Case-law doctrine, including the principle of court precedent is not applied in Slovakia. The Supreme court of the Slovak Republic is with respect to rule of law principle responsible to individuals for uniform interpretation of legal order (*iura novit curia*), which is ensured through publication of its fundamental decisions or adopting statements to uniform interpretation of laws in case of different judicial decisions declared in the same subject matter of the same kind (fact).

2.1. General description of applicable procedural rules:

Current wording of the administrative justice in strict functional terms is with respect to law constituted as an independent part of the Code of Civil Procedure, while certain parts of the legal regulation of administrative justice refer to general provisions of civil judicial process institutes.

The Fifth part of the Code of Civil Procedure (hereinafter referred to as "CCP") is divided into seven titles, which means that administrative justice is according to presently applicable regulation exercised in these basic forms:

1. **General provisions on administrative judiciary** (first title of the fifth part of the CCP)
2. **Decision-making on actions against decisions and conduct of administrative authorities** (second title of the fifth part of the CCP)
3. **Decision-making on remedies against decisions of the administrative authorities before they become effective** (third title of the fifth part of the CCP) - then the court has been playing the role of an appellate authority
4. **Proceedings for failure of the authority of public administration to act** (fourth title of the fifth part of the CCP)
5. **Proceedings for protection against unlawful act of the authority of public administrations** (fifth title of the fifth part of the CCP)
6. **Feasibility of the decisions of foreign administrative authorities** (sixth title of the fifth part of the CCP)
7. **Specific procedure** (seventh title of the fifth part of the CCP) is divided into:

A. Election procedure, which contains:

- procedure relating to electoral rolls and lists of citizens entitled to vote in referendum
- procedure relating to registration of candidates lists
- procedure relating to registration of candidates lists for elections into the municipal self-governing bodies
- procedure relating to adoption of suggestions for candidates to the position of the President of the Slovak Republic
- procedure relating to the registration of candidates lists for elections into the

authorities of self-governing bodies

B. Procedure relating to political parties and movements

- procedure relating to registration of political parties and political movements

C. Procedure relating to municipal affairs

- procedure on examination the lawfulness of resolutions of municipal, city, local authorities or the authorities of higher territorial unit
- procedure on conformity of the generally binding regulation of municipality and higher territorial unit with the law, government decree and generally binding legal regulations of ministries and other central authorities of the state administrative *and*
- procedure relating to agreements of municipalities on co-operation with territorial units or authorities of other countries and memberships in international associations.

Where can these rules be found; by which statute or regulations are they defined?

As given under the point 1, the competence of courts to conduct proceedings and decide in administrative judicature laid down by the Constitution of the Slovak Republic – in particular from the:
Article 46, par. 2 – persons who claim to have been deprived of their rights by decision of authorities of public administration, may address the court in order to review legality of such decision unless otherwise provided by the law. The jurisdiction however may not exclude review of decisions concerning fundamental rights and freedoms and
Article 142, par. 1 – courts decide in civil and criminal matters; courts also review legality of decisions of public administration authorities and legality of decisions, measures or other interventions of public authorities where the law provides.

Code of Civil Procedure shall be the procedural regulation, which provides the court and party procedure in claim, assurance and execution of the fundamental right to judicial protection.

Code of Civil Procedure shall to this effect be confronted with article 6, par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Notice No, 209/1992 Coll. – hereinafter referred to as „Convention“), according to which, each person has the right to just, public proceedings within reasonable time and by independent and impartial tribunal established by the law, which shall decide about his civil rights and obligations.

The aim of the Code of Civil Procedure is expressed as the procedure of the court and participants which ensures just protection of rights and legitimate interests of participants.

Code of Civil Procedure provides, that in the civil judicial proceedings the courts review as well legality of decisions of public authorities and decide on conformity of generally binding regulations of self-governing region authorities in matters of territorial self-government with the law and in performance of tasks of the state administration and with government decrees and with generally binding legal regulations of ministries and other central state authorities, unless they are pursuant to the law in the procedure and decision-making of other authorities (Section 7, par. 2 of the CCP).

Regulation of administrative judicature itself is laid down in the fifth part of the Code of Civil Procedure (see point 2.1.).

Jurisdiction in the administrative judiciary to review decisions and procedures of public administration authorities is also provided by certain special regulations (e.g. Act No. 162/1995 Coll. on Real Estate Cadastre and the Entries of Ownership and Other Rights to the Real Estates (The Cadastre Act), Act No. 18/1996 Coll. on Prices, Act No. 34/2002 Coll. on

Foundations, Act No. 461/2003 Coll. on Social Insurance, Act No. 586/2003 Coll. on Advocacy et al.)

Are the various procedural steps in the hands of the parties and/or the court and which role do they respectively play?

Proceedings in the administrative judicature are based on the non-mandatory principle. Proceedings in the administrative judicature therefore always begins with an application (filing an action, remedy, lodging of an application),

Applicant is authorized to bring an action. The applicant shall be natural person or legal entity, who as a party of the administrative proceedings has been deprived of his rights by the decision and procedure of administrative authority. Action may be filed by natural person or physical entity, who was not involved in administrative proceedings as a party, although it should have been. This shall apply mutatis mutandis to claimant in the proceedings for remedies. Conceptual features of legal entity are satisfied also by administrative authority (state administration authority or territorial and concernment self-government), who himself was a party of the administrative proceedings before the other administration authority and in those proceedings e.g. he was imposed a sanction. Besides general definitions of a proceedings party the Code of Civil Proceedings in so-called specific procedures (e.g. procedures relating to elections) determines directly, who shall be the party of the proceedings. The standing of natural persons or legal entities to an action is a formal procedural condition of the proceedings.

The reference for a ruling on review of legality of resolutions of municipal, city, local authorities or the authorities of a higher territorial unit and reference for ruling on conformity of generally binding regulation of a municipality and higher territorial unit with law, government decree and generally binding legal regulations of ministries and other central state administration authorities may be filed exclusively by the **prosecutor**.

General Prosecutor of the Slovak Republic is exclusively authorized to file an application for dissolution of a political party to the Supreme Court of the Slovak Republic.

Proceedings concerning agreements of municipalities on cooperation with territorial units or authorities of other countries and membership in international associations may commence only based on application of the **district office in the seat of the region**.

Public administration authority acting in judicial proceedings in administrative judiciary as defendant (respondent) acts in the proceedings in the position of a party with equal rights and obligations (principal of equal treatment of parties).

Is there a prosecutor? If so which role does he/she play?

Prosecutor has a specific position in the proceedings within the administrative judiciary, if he uses the application competence pursuant to the Section 35, par. 1, letter b) and c) of the Code of Civil Procedure, pursuant to which the *„prosecutor may file an application to commence proceedings, as regards review of legality of public authority decisions in cases, where prosecutor's protest was refused and under conditions stated in this law, or as regards failure of the public administration authority to act in cases where prosecutor's notice was refused under conditions provided in this law"*.

Legal condition of filing an application by the prosecutor is that his protest was refused. Prosecutor shall upon filing an application pursuant to Section 35, par. 1, letter b) of the CCP

take care, that the rights acquired in good faith, if they relate to the contested decision of the administrative authority, were the least affected.

Prosecutor exclusively is competent to file an application for proceedings to review legality of resolution of the municipal, city, local authorities or authorities of higher territorial unit and application to commence proceedings for conformity of generally binding regulations of municipality and higher territorial unit with the law, government decree and generally binding legal regulations of the ministries with other central state administration authorities and General prosecutor of the Slovak Republic exclusively is competent to file an application to the Supreme Court of the Slovak Republic on dissolution of political party.

Prosecutor's competence to file an application in the administrative judicature further implies from the provision of the Section 27, par 2 and 3 of the Act No. 153/2001 Coll. on Prosecution as amended.

Are the court proceedings mainly written or oral i.e. do the parties communicate by exchanging written presentations or in the form of an oral debate?

Court of the first instance in the administrative judiciary for hearing of a matter shall normally hold **oral hearing**. The hearing does not need to be called, if procedural decision was taken in the matter of if parties of the proceedings virtually identical proposal, or if they agree with it and it is not contrary to the public interest). The Code of Civil Procedure amended by the Act No. 273/2007 Coll. effective as of 1st July, 2007 has extended the reasons, based on which the administrative court may decide on application against decisions and procedure of administrative authorities without hearing, i.e. in case the contested decision of the administrative authority and as the case may be, also a decision of the administrative authority of the first instance cancels and returns the matter to the administrative authority for further proceedings on the grounds, that the decision was made on the basis of ineffective legal regulation, that the decision is unreviewable due to lack of clarity or due to lack of reasons or that the decision is unreviewable due to incompleteness of files of the administrative authority or on the grounds, that the files were not submitted).

If administrative court calls a hearing, it shall summon parties and may request necessary documentation, or further written statements of the parties. If the parties do not appear, the matter may be heard in their absence; the proceedings may not be interrupted on these grounds.

Hearing is essentially public and except parties of the proceedings anybody may take part. The court may exclude public in cases subject to confidentiality pursuant to the specific regulations. It concerns exceptional cases.

The Supreme Court of the Slovak Republic as a Court of Appeal normally decides without hearing.

However, judgment must always be pronounced publicly and orally**.** Here, even the administrative judicature shall without reservation apply the constitutional order contained in the Article 142, par. 3 of the Constitution and repeated in Section 153 of the CCP.

Is the case determined by a single judge or a panel of judges?

The courts within administrative judiciary in principle act and decide in panels of

judges consisting of the presiding judge and two judges unless otherwise provided. In the administrative judicature the decisions are always made by professional judges.

Panel of the administrative court is:

- three members in the regional court
- three members in the Supreme Court of the Slovak Republic, if it decides in the first instance or on appeal against decision of the regional court
- five members in the Supreme Court of the Slovak Republic, if it decides on remedy against decision of the Supreme Court – as regarded in particular pension cases, which seized the Supreme Court of the Slovak Republic by 1st July, 2007.

Single judge decides in exactly defined matters (Section 246b, par. 2 of the CCP)

a) at the regional court on remedies against decisions of the public administration authorities pursuant to the third title and in matters pursuant to the sixth title of this part,
b) in matters in district court jurisdiction,
c) in cases, where the law provides (i.e. either separate Code of Civil Procedure or e.g. Section 27, par. 2, point 1 of the Act No. 369/1990 Coll. on municipalities as amended, pursuant to which *„remedies against decision of the mayor are decided by the court unless otherwise provided by a special regulation“*).

2.2 What conditions must be fulfilled in order to confer the right to make a claim for review? Must the plaintiff show some form of personal interest? If so, is it defined in a broad or narrow manner? Please provide relevant case-law?

The non-mandatory principle the court is governed by, the applicant is based on the provision of the Section 249, par. 2 of the CCP legally obliged to state except general formalities of the application (Section 42, par. 3 and Section 79, par. 1 of the CCP) identification of the scope, where the decision is contested, where the applicant sees the illegality of the decision and what final proposal shall he make.

The applicant must state in the application, that he has been deprived of his material and procedural rights by the decision or conduct of the administrative authority, while the particular general binding legal regulation was infringed. An obligatory formality of the application is the applicant’s obligation to claim that the administrative decision or its part contradicts the particular general binding legal regulation and justify this argument legally.

Description of applicant’s claims constitutes the pleas in law binding to the court. In principle, the applicant does not identify new evidence, he just remits the evidence taken or not taken in the administrative proceedings, which are an integral part of the administrative file. Proof of deprivation of the applicant’s rights is a formal procedural condition of the proceedings.

Formal procedural condition in the proceedings for review of legality of final decisions of the administrative authorities is that the applicant exhausts the ordinary appeal in the proceedings before the administrative authority. It concerns one of the basic principles of the administrative judiciary. In case of proceedings against failure of the administrative authority to act and proceedings for protection against illegal intervention of the public directorial authority, the formal procedural condition is to exhaust remedy, which may be used following a special regulation (act on complaints).

In terms of legal certainty there is a time limit for lodging of an application or remedy.

Relevant case-law:

Pursuant to the provision of the Section 247, par. 1 of the Code of Civil Procedure another special formality of an application shall be a particular argument of the applicant, that he has been deprived of his rights by illegal decision and conduct of the administrative authority while it must concern subjective rights implicit from the legal regulation. General argument, that the law was infringed is not sufficient. The applicant must prove with particular facts, on the base of which he draws the conclusion that the law was infringed (e.g. judgment of the Supreme Court of the Slovak Republic, file no. 1 Sž-o-KS 132/2004).

The court does not investigate particular reasons for illegality of a decision of the administrative authority, which pursuant to the Section 249, par. 2 of the Code of Civil Procedure shall represent the content of the application and define the scope of review of the decision in the court, which pursuant to the Section 250h of the Code of Civil Procedure shall be binding for the court (e.g. judgment of the Supreme Court of the Slovak Republic, file no. 4 Sž 114/99 dated 29th February, 2000 or the judgment of the Supreme Court of the Slovak Republic, file no.1 Sž-o-KS 132/2004).

2.3. Does the plaintiff have direct access to the court, or is he/she obliged to submit his/her demand through a counsel/attorney?

Specific feature of the proceedings in the administrative judiciary results in the fact, that if the party in the administrative judgement acts as an applicant, he must be **represented by the attorney**, unless he himself or his employee (member) acting on his behalf does not have legal education.

Compulsory legal representation results from the nature of the administrative judicature, whereas it reviews legality of decisions and conducts of public administration authorities and largely deals with legal issues. Lack of a condition of compulsory legal representation may be removed the way, that the applicant chooses a qualified representative and attaches power of attorney to the application. If the applicant fails to act in that regard despite the instructions from the court concerning consequences of such failure to act, there is no need to adjudicate.

Obligatory representation by the attorney does not apply in matters with district court jurisdiction or if the matter concerns review of decision and conduct regarding health insurance, social insurance including sickness insurance, pension insurance, state social benefits, social assistance benefits and unemployment insurance, active labour market and guarantee fund policy, provision of health care, in matters of offences, asylum and subsidiary protection. Obligatory legal representation is not required even in the proceedings for remedies against decisions of the administrative authorities before they become effective pursuant to the third title of the fifth part of the CCP.

Attorney shall mean a person registered in the list maintained by the Slovak Bar Association pursuant to the Act No. 586/2003 Coll. on Advocacy and on amendment of the Act No. 455/1991 Coll. on Licensed Trading (Trade Licence Act) as amended.

Employee (member) or statutory authority with legal education may represent legal entity (in administrative judicature legal authority in procedural position of an applicant), if the legal entity proves that they are authorized to act on its behalf). Judicial practice allows representation by a person with legal education, who concluded a contract of work. Legal

education means university education attained in the legal field of study in the form regulated in the Act No. 131/2002 Coll. on universities and on amendment of certain acts as amended, completed by passing of state examination or defence of diploma thesis or equal education pursuant to earlier regulations.

2.4. Can a legal demand be submitted to an administrative court using electronic technologies (internet)?

Action (application) may be lodged in writing, oral form into minutes, by electronic means or telefax. Application itself, which was made by electronic means, has to be added in written or oral form into the minutes no later than within 3 days; the submission, which was signed by guaranteed electronic signature, does not have to be added. The submission made by telefax has to be added no later than within 3 days from submission of its original. Submissions, which were not completed within this time limit, shall not be considered.

At the moment no technical possibilities for maintaining of the file in electronic format have been created. The file is maintained exclusively in written form. Possibility to lodge an action by electronic means, is regulated, however it serves exclusively for early submissions of applications. In other case documents are dealt in written format. Communication of the court with the parties in electronic way especially in removing of action defects is considered.

2.5. Is there some form of public or private legal aid system aimed at providing assistance to a person who cannot afford an attorney?

Public or private legal assistance may be executed on the basis of the following legal regulations:
1. Act No 327/2005 Coll. on providing legal aid in material need and on amendment of the Act No. 586/2003 Coll. on Advocacy and on amendment of the Act No. 455/1991 Coll. on Licensed Trading (Trade Licence Act) as amended by the Act No. 8/2005 Coll., entered into force the 1st January, 2006.

The purpose of this act is to create a system of providing of legal act and ensuring its provision in the scope provided by this act to natural persons, who due to their material need cannot employ legal services for proper claim and protection of their rights and in asylum. This act relates to provision of legal aid in civil, employment and family matters (hereinafter referred to as „national disputes“) and asylum matters.

2. Act No. 586/2003 Coll. on Advocacy and on amendment of the Act No. 455/1991 Coll. on Licensed Trading (Trade Licence Act) as amended – Section 24, par. 4 – attorney may provide legal services for lower remuneration or free of charge, if personal and material circumstances of the client justify it or there is another compassionate reason.

3. Code of Civil Procedure – Section 30 of the CCP, pursuant to *which „the judge or authorized employee of the court at his request appoints a representative from among attorneys for the party, who is supposed to be exempt by the court from court fees, if necessary for the protection of the party's interests. The party shall be instructed on this possibility by the court“*.

The prerequisites for appointment of the representative from among attorneys are:
- request of the party of the proceedings,

- the party meets the prerequisites for exemption from the court fees on the basis of the court decision, i.e. such decision shall be justified by the circumstances of the party and (cumulative) if this does not concern arbitrary or prima facie claiming or hindering of the exercise right.
- necessity to protect interests of the party of proceedings in direct connection with the subject-matter of proceedings, regardless of the fact if a dispute or any other legal matter or public jurisdiction is concerned. This necessity may be assessed only individually and it shall usually be related to the fact and legal complexity of the matter.

The party must be instructed on the possibility to request an appointment of the representative from among attorneys. The method of instruction depends on the court and the particular procedural situation. The meaning of this special instruction obligation is to fulfil positive commitment of the state towards persons (Article 47, par. 2 of the Constitution) for legal aid in the proceedings before the court. Therefore the instruction has its place at the time, when the judge comes to the conclusion, that such aid shall be inevitable for the party and its absence would make it difficult to claim basic rights for judicial protection of the party.

The attorney must agree with such provision. Remuneration, reimbursement of cash expenses and compensation for loss of time is paid from the court budget funds pursuant to the provisions of the Regulation No. 655/2004 Coll. on Remuneration and Reimbursement of Attorneys for the provision of Legal Services. If the party is successful in the proceedings, the state becomes entitled to reimbursement of such paid sums pursuant to the Section 148, par. 1 of the CCP towards the unsuccessful party.

2.6. When a claim is made to a court, is the right of the relevant public authority to implement the decision stayed or suspended until the court has determined the case?

Suspension of enforceability of the administrative decision is decided by the administrative court.

Pursuant to Section 250c, par. 1 of the CCP the application does not have suspensor effect to feasibility of the decision of the administrative authority, unless otherwise provided by a special law.

The Chairman of the Board may at the request of the party suspend operation of the decision, if the immediate exercise of the contested decision would cause a particularly serious harm. The applicant must mention the particular argument of a threat of serious harm in the request and the court is competent to investigate the threatening serious harm within the given context.

The basic purpose of the suspended enforceability of the administrative decision by the court is protection of the person, who applied for it, while respecting basic rights of the person, the decision is affecting. Therefore the court must make sure, that the decision on suspension of operation of the administrative decision does not violate fundamental right of material nature relating to third persons.

Pursuant to the third title of the fifth part the suspension of enforceability is appropriate within review proceedings, when the court reviews non lawful decision, which pursuant to the special legal regulation became executable. This includes cases, where special law does not grant suspension of enforceability to a remedy or if the administration authority may exclude the suspensor effect. Suspension of enforceability of the contested decision is decided by the court only upon application of the party, who applies for remedy (applicant). Application for suspension of enforceability must be submitted together with remedy;

however it shall not be ruled out, that it may be submitted even after the commencement of judicial proceedings. The application for suspension of enforceability must contain and justify, that by the execution of the contested decision the purpose of the review would be defeated. If the remedy is not submitted together with the request for suspension of enforceability of the decision, the court shall stay the proceedings due to lack of jurisdiction.

The court shall decide on suspension of enforceability by means of resolution. If the Chairman of the Board refuses the application, the party shall be notified. In such cases the decision is not issued.

In case of stay of proceedings in connection with the application addressed to the Court of European Community to decide on preliminary question pursuant to the international treaty, the court shall suspend the enforceability of decision by means of resolution, against which an appeal shall lie.

2.7. Can the court deliver an injunction ordering the Executive or a public authority to produce a document to which the other party could not previously have access? (Please, provide relevant case-law).

Act on free access to information in general enables citizens or their associations to request information on handling of public funds from executive authorities and self-government. In case such request is refused, the requestor files an action to the court for review of eligibility of reasons for refusal.

In particular legal dispute every party must prove their arguments by relevant evidence (burden of proof).

2.8. Are there emergency or interim procedures? Are they simply aimed at delivering preliminary injunctions (such as a Temporary Restraining Order) or at taking provisional measures, or can they also resolve a fundamental question?

Application of the second part of the Code of Civil Procedure – interim measure and ensuring of proof within the administrative judicial system is excluded; therefore in the proceedings pursuant to the fifth part of the Code of Civil Procedure (Administrative judiciary) no interim measure may be taken. The issue of ensuring proof after the commencement of the proceedings pursuant to Section 102 of the CCP shall remain open (e.g. regarding protection of competition or rights related to intellectual property).

Interim measures may be taken in the administrative proceedings (Section 43 of the Act No. 71/1967 Coll. on administrative proceedings (administrative procedure), pursuant to which the *„administrative authority may before conclusion of the procedure in extent*
a) impose the parties to take action, to refrain from an act or to tolerate an act;
b) to order securing of things which are to be damaged or made redundant, or which are necessary for taking evidence“.

3. <u>The powers of the administrative judge</u>

Judges who are appointed in administrative colleges in regional courts or into the Administrative College (Division) of the Supreme Court of the Slovak Republic have equal

position as the other judges of the general court, they shall not enjoy any advantages, they do not demonstrate any particular features, nor are they assigned to special category of judges.

In order to perform their function, they have to prove prior to their appointment by the President of the Slovak Republic, that they satisfy the general conditions imposed on any judge of the Slovak Republic, so called Slovak citizenship, legal education obtained in the Slovak Republic, aged 30, good character, health capacity and taking of special judiciary exam.

Pursuant to the act on judges the special judiciary exam means lawyer's exam, prosecutor's exam, notarial exam and special exam of a commercial lawyer. Minister of Justice of the Slovak Republic may pardon judiciary exam in those, who proved himself scientific or otherwise eminent persons in the area of law and have been active for at least 20 years in legal occupation.

In the Slovak Republic the principle of career advancement of judges dominates. Therefore it is the basic and logical condition, that each judge performs his function on the lowest stage of the general judicature such as district court. District courts however do not decide in administrative matters but criminal, commercial and civil. Whereas judges handling administrative agenda operate in regional courts, it is logical, that previously they handled civil or commercial or (very rarely) criminal agenda. If a judge of the district court shows interest in becoming a judge in administrative justice, then based on the successful selection procedure for the administrative division of the respective regional court (including a demanding language interview), he may take up the position.

In Slovakia the concept of professionals from practice has not been accepted. Such concept would enable lawyers who operate specialized long-term agenda to enter the regional court directly as they would except of lack procedural practice would be too specialized in comparison with the wide scope of administrative judiciary dealt in regional court.

3.1. What is the hierarchy of legal standards (Constitution, international law, statutes) that the court takes into account when carrying out review?

Pursuant to the Article 144 of the Constitution as well as Section 2, par. 3, first sentence of the Act No. 385/2000 Coll. on Judges and Lay Judges as amended by certain acts) judges are in the course of their operation independent and bound in their decision-making by the Constitution, Constitutional law, international treaty pursuant to Article 7, par. 2 and 5 of the Constitution and law. This implies that the judge is not bound by the secondary legislation, and therefore in case of its contradiction to the law may directly apply the law.

It applies to administrative judiciary as well, that if the court assumes, that other generally binding legal regulation or its part or individual provision related to the present case, contradicts to the Constitution, it shall stay the proceedings and file an application for commencement of proceedings at the Constitutional Court based on Article 125, par. 1 of the Constitution *(Article 144, par. 2 of the Constitution).* Legal expertise of the Constitutional Court contained in the decision is binding.

In practice the courts of lower instance respect expertise of boards of administrative college of the Supreme Court even if their decisions do not represent an official source of community law and the courts shall accept them due to strong evidence and good argumentation of their legal conclusions. The courts shall as well be informed about decisions of the European Court of Human Rights and of the European Court of Justice whose decisions are respected in the decision-making process.

3.2. When the Executive or public authority gives its interpretation of a statute, can the lawfulness of such interpretation be challenged in court? If so, according to which standards and criteria? Is the court bound by policy decisions of the Executive or a public authority?

Interpretation and enforcement of law in individual cases belongs exclusively to the competence of courts, which includes judicial reviews of conducts and decisions of state administration authorities and self-governments as given above.

Pursuant to the article 128 of the Constitution *„the Constitutional Court provides interpretation of the constitution and constitutional law if the case is disputable. The decision of the Constitutional Court on interpretation of the constitution and constitutional law shall be announced the method provided for announcement of laws. The interpretation is generally binding from the day of its announcement"*.

3.3. If the Executive gives its interpretation of treaty law, is the court bound by such interpretation?

Courts of the Slovak Republic are bound by the decision of the Constitutional Court in terms, whether a certain legal regulation is in contradiction to the constitution, law or international treaty, the Slovak Republic is bound by [Section 109, par. 1 letter b) of the CCP]. The court is likewise bound by a decision of the Constitutional Court or European Court of Human Rights regarding fundamental human rights and freedoms. Further, the court is bound by the decision of the respective authorities in terms, that crime, offence or other administrative offence punishable pursuant to special regulations has been committed, and who committed them as well as the decision on personal status, establishment and winding up of a company, on registration of capital, the court shall not however be bound by decision in administrative hearing (Section 135, par. 1 of the CCP).

Courts shall not be bound by the law interpretation made by executive authority or public administration.

3.4. Insofar as discretionary measures are concerned, which type of review does the court exercise? Provide, if possible, relevant case – law to show how the court verifies the reasonableness of a decision of the Executive or a public authority and checks whether the reasons are consistent with the substance of the decision.

Pursuant to the Section 245, par. 2 of the CCP upon decision made by the administrative authority on be basis of legally permitted discretion (discretion of the administration), the court only reviews, whether such decision came within the limits and terms provided by the law. The court shall not consider purpose and suitability of the administrative decision.

Assessment of evidence in terms of the principle of free consideration of evidence may not be optional. The administrative authority may need to assess the evidence in terms of the principle of free consideration of evidence only after it has executed all acts aiming at removal of existing contradiction in evidence. This applies to administrative authorities of

appeal, whereas in terms of settled case-law of the administrative judiciary there is unequivocal legal consideration, that the administrative proceedings of the first and second instance form one whole.

Administrative discretion shall be excluded in cases, where legal regulation relates certain facts only to a single possible legal solution and the administrative authority does not have other choice.

In case of administrative penalisation the court monitors, whether the administrative authority duly justified imposing of sanction in certain amount, if the law permits a range of sanctions, whether it has taken into account circumstances related to the subject, the fact itself and its consequence.

In addition to cases of administrative penalisation and in disciplinary case-law the court must be pursuant to the case-law of the European Court of Human Rights authorized to replace the discretion of the administration in questions of a punishment or sanction with its own discretion.

E.g. in the judgment – file no. 5 Sž 19-21/00 date 31st May, 2000 the Supreme Court of the Slovak Republic stated, that "determination of the sum of penalty within the (legally) determined range is otherwise left to discretion, which however does not mean, that the penalty may be imposed in any amount. Discretion in such decision-making means process of thought where the respective authority shall consider severity of infringement of regulations in relation to every finding, its consequences, duration of the infringement, so that the imposed penalty meets the requirements of repression, but also a preventive purpose with the forecast of a future positive conduct of the person concerned. Nevertheless, the range of penalty itself may not tempt to imposing of a penalty of inadequate to nature and results of the activity of the penalised person, because a penalty of liquidation nature cannot carry out the preventive functions".

Institute of the discretion or discretion of the administration has to be distinguished from the cases, when the law allows the administrative authority to decide on requests for performance which is not legally claimable or requests of removal of law hardship, or in cases when the content of the administrative decision depends on non-legal aspects (e.g. assessment of health status or technical condition of a thing, qualifications). These cases, even if they are equally underpinned by discretion of the administrative authority, they have no obligation of judicial review (Section 248 of the CCP). The decisions on performance, which cannot be legally claimed, occur frequently in the tax, custom area or question of obtaining citizenship.

3. 5. Is the court simply empowered to quash (to declare null and void) the decision or to dismiss the legal demand ? Instead of quashing the decision, is it within the authority of the court to amend or modify the decision? Can the court substitute an entirely new and different decision? Can the court reconsider the merits of the decision?

Administrative court shall assess merits of the action of legality of decisions of public administration authority in proceedings for a remedy against the decision of the public administration authority.

Beyond the merits of the action the court also assesses non-existent legal actions and further issues, reasons, which justify repeal of the contested decisions.

The administrative court is competent to repeal the decision of the administrative authority for the nullity even if the applicant has not contested.

The court shall in decision-making within administrative judicature follow the material principle. It is based on administrative files and in case the taking of evidence is not considered sufficient, the administrative authority may be ordered to do so, or the court may take evidence by itself. It does not consider suitability and purpose of the decision, however it assesses taken evidence on the basis of free consideration of evidence, it makes sure that the discretion of the administration comes within the limits of the law and that the consideration of evidence does not contradict principles of logical thinking nor the content of the files. It assesses appropriateness of sanction for an infringement of legal obligations (particularly regarding administrative penalisation). Normally the court respecting the principle of division of state powers applies the principle of cassation and repeals reviewed decision, if it is illegal. The Supreme Court reviews on appeal the conduct and decisions of the regional courts within the scope of the submitted appeal. Regarding imposed sanctions it may replace the decision of the administrative authority and decide by itself instead.

Review competence of the administrative courts has been enshrined in the fifth part of the Code of Civil Procedure by its amendment – Act No. 424/2002 Coll. with effect from 1/1/2003. Requirement of „full jurisdiction“ in terms of the Convention for the Protection of Human Rights and Fundamental Freedoms relates to cases of so called private-legal nature corresponding to the current provision of the Section 7, par. 1 of the Code of Civil Procedure and administrative sanctions (offences, administrative offences of natural persons – entrepreneurs and administrative offences of legal entities). Option of moderation, i.e. enforcement of review competence of administrative courts should be considered a significant change in competence of administrative courts compared to the current status. Until the effect of this amendment the court could only examine, whether legal framework of discretion of the administration has not been infringed, on the other hand, it may presently decide on range of sanctions. This means, that the court shall after completion of evidence consider appropriateness of a sanction as regards seriousness of the irregularity and its consequences and it shall individually assess sanction for administrative offence according to circumstances of the particular case. The provision in question without dispute contributes to enhanced protection of natural persons and legal entities against illegal decision of the public administration authority.

The adopted amendment of the Code of Civil Procedure, enabling review of decisions on sanctions for administrative offences in so called „full jurisdiction“ (including taking of evidence) indisputably contributes to the fact, that the administrative judicature of the Slovak Republic meets European standards.

In the case-law, where the administrative court has full jurisdiction, the contested decision may be changed the way, that it shall oblige to indemnification, payment or financial penalty, if on the basis of taken evidence it concluded that the dispute or other legal case or imposing of sanction should be decided otherwise than it has been decided by the administrative authority. The court judgment replaces the decision of the administrative authority to such extent to which the decision of the decision of the administration authority is affected by the judgment of the court. This extent must be given in the operative part of the judgment while the court shall change the affected operative part (Section 250j, par. 5 of the CCP).

3.6 When the court quashes a decision taken by a public authority, does this take effect retroactively, when the original decision was made, or simply when the court rules? Does the judge have power to fix the time from which the annulment operates? On what principles is a date chosen?

If the administrative court repeals **the contested decision of the administrative authority** (and according to circumstances also the decision of the administrative authority of the first instance), **it shall return the case to the defendant administrative authority for further hearing.** In case of the repeal of the decision and returning of the case to the administrative authority for further hearing the administrative authorities shall be bound by the legal consideration of the court.

3.7. What means are available to a judge to compel the administration to enforce a decision which the executive does not wish to carry out?

If the administrative authority does not observe the time limit determined by the court for service of the administrative decision or if the case shall not be submitted to the court for hearing even after repeated invitation, the court may decide on penalty imposed to the administrative authority up to 1.640 EUR, even repeatedly. An appeal may be brought against the decision on the imposition of a sanction (Section 250b, par. 4/ CCP).

The court may on repeated proposal of a party, impose a penalty up to 3.280 EUR, repeatedly for non-observance of the time limit given in the court resolution pursuant to the Section 250t of the CCP and for the failure of the administrative authority to act. Before deciding on penalty the court shall request the statement of the superior administrative authority (Section 250u of the CCP).

This shall also apply to proceedings against illegal intervention.