



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

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



Council of State of Belgium

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

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

SLOVAKIA

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

What is meant by ‘administrative loop’, or the power to rectify?

In the Netherlands, an administrative court can invite (court) an administrative body by means of an interlocutory judgment or enjoin it (Litigation Division of the Council of State and Central Council of Appeal) to rectify or have rectified, within a set period, an infringement in the disputed decision unless such rectification would result in unfair treatment of the parties concerned who are not party to the case. The interlocutory judgment indicates insofar as possible how to rectify the infringement. In this case, the administrative body must inform the administrative court as soon as possible whether it intends to take up the option, offered by the court, of rectifying the infringement or having it rectified. Where the administrative body accedes to the request to rectify the infringement, it shall indicate in writing as soon as possible how it is going to rectify it. The parties may, within a set period following said written notification being sent, indicate their attitude to rectification of the infringement. A final judgment shall be handed down upon the first appeal against the flawed decision that has been (or has not been) rectified.

Question 1: In your country’s legal system do you know of a mechanism laid down in the constitution, in law or in regulations, or borne out of established case-law, that confers on an administrative court, in the course of proceedings, the power to *rectify* a flaw in a disputed decision rather than have that decision quashed and proceedings reopened? If so, what does this power consist of? How is it organised?

Based on complaints or remedies courts in the Slovak Republic review in administrative justice the lawfulness of decisions made by and procedures applied by the bodies of public administration.

The courts in the administrative justice decide on petitions for imposition of an obligation to bodies of public administration to act on rights and obligations of natural persons and legal persons in the field of public administration, and on measures to enforce fulfillment/performance of their decisions by a procedure stated in § 250b and 250u.

The courts in the administrative justice act on protection from a non lawful intervention of a public administration body and on enforceability of decisions of foreign administrative bodies. The courts act and decide on matters concerning elections and on matters of registration of political parties and political movements, in accordance with provisions of this part, within the extent delimited by special regulations.

The courts act and decide as appropriate (mutatis mutandis), in accordance with provisions of this part, also in case when this is stipulated by a special regulation, or in case when the review of decisions of public administration bodies results from the international treaties that the Slovak Republic is bound with.

[Section 244 paragraph 1,4,5,6 of Act No. 99/1963 Coll.- Code of Civil Procedure as amended (hereinafter referred to as "CCP")].

Matters that are not directly governed by this Part shall be governed, as appropriate, by the provisions of Parts One and Three of this Code (Section 246c paragraph. 1 CCP).

The use of the second part of CCP in case of interim measures can not be applied in administrative justice, it means that the administrative court can not issue an interim measure.

Secondly, CCP but mainly specific statutory laws determine time limits to issue certain decisions:

- The court decides on the claim to review the lawfulness of a decision and procedure of an administrative body in matters of expropriation, in accordance with a specific legal act, at the latest within three months since filing a petition (Section 247 paragraph. 4 CC).

- Legislation on administrative justice in CCP has lack of legal rules on cases of emergency, i.e. cases with a special legislation because of their urgency. In this respect it is considered as inappropriate to have a time limit within which a court should decide on dispute (decide on remedy), determined by other laws than procedural laws (e.g. Section 62 paragraph. 6, first sentence following the semicolon;

*- the Act No. 48/2002 Coll. on Aliens and on amendment of certain laws, as in force from 15.1.2010 - A court shall decide on the remedy without delay, or
Act. No. 480/2002 Coll. on asylum and on amendment of certain laws as in force from 1.1.2008 –*

Section 21 para. 3 – A regional court shall decide on remedy under paragraphs 1 and 2, within 90 days from its delivery;

and Section 21 para. 4. - A remedy against the decision of the Ministry to reject the application for temporary shelter or against a decision to cease granting of temporary shelter shall be filed by a court. The court shall decide on the remedy against such decision without delay. (Section 34 paragraph 1 of the Act 480/2002 Coll.)

Filing of remedy shall have suspensive effect (Section 250c + 250n CCP).

The claim has no suspensory effect on enforceability of the decision of the administrative body, unless a special legal act stipulates it otherwise. Based on a request of the party to the proceedings the presiding judge of the panel can suspend by his/her decision the enforceability of the decision, in case there would be the threat of a significant injury due to the immediate enforcement of the appealed against decision. In case the presiding judge of the panel does not approve with the request, the judge shall notify the party about that.

In case the proceedings were suspended in accordance with § 109, paragraph 1, subparagraph c), the court shall suspend the enforceability of the decision by a court ruling against which the appeal is admissible.

If not, what are the reasons that, in your country's law, lead to the power of the court to be limited to solely annulling the disputed decision or to denying the court the power to rectify an infringement that has been established or have it rectified?

The court shall cancel the challenged decision of the administrative body and according to the circumstances also the decision of the administrative body of the first instance, and the decision shall be referred back to the challenged administrative body for further proceedings, and if - after reviewing the decision and the procedure of the administrative body within the limits of the claim - the court reached the conclusion, , that

- a) the decision of the administrative body proceeded from an incorrect legal assessment of the matter,*
- b) the findings of facts from which the administrative decision resulted are in contradiction with the content of the files,*
- c) findings of facts are insufficient for assessment of the matter,*
- d) it is impossible to review the decision due to unintelligibility or due to lack of reasons, or it is impossible to review the decision due to incompleteness of files of the administrative body or due to the reason the files were not filed,*
- e) such a defect was ascertained in the proceedings of the administrative body which could have an influence on the lawfulness of the challenged decision.*

The court shall cancel the decision of the administrative body, and in accordance with the circumstances also the decision of the administrative body of the first instance and shall refer the matter back to the administrative body against which proceedings were launched for further proceedings, in case the decision was issued based on the ineffective legal regulation, in case it is impossible to review the decision due to incompleteness of files of the administrative body or due to the reason the files were not submitted. The court shall cancel the decision of the administrative body and it shall terminate the proceedings in case the decision was issued by a body which was not competent to do so according to the law. The court is not bound by the extent and reasons of the claim in such cases.

(Section 250j para. 2 and 3 CCP)

When reviewing the lawfulness of decisions on non - disclosure of information issued under a special regulation, the court may invite the challenged administrative body to determine grounds on which it is impossible to disclose the information within the time limit set by the court. If the existence of grounds for non-disclosure of information is not proved, the court may impose the obligation in the judgement, to the person in charge under a special regulation to disclose requested information (Section 250j para. 6 CCP in effect since 1.1.2012)

In the appellate procedure in case the court of appeal (the Supreme Court of the Slovak Republic) found that the challenged decision of the administrative body within the extent of the claim is not in conformity with the law and the court of the first instance rejected the claim, it may change the judgment of the court of the first instance in such a way that it cancels the decision of the administrative body and refers the matter back to the administrative body against which the proceedings were launched for further proceedings (Section 250ja paragraph 3 CCP).

If so, what specific powers does the administrative court have to rectify an infringement that has been established or have it rectified? Explain your answer.

In our legal system, there is not given such a specific power to the administrative court.

Do these specific powers of the court apply to any infringement that has been applied and to all decisions of the authority? Explain your answer.

At what stage of the proceedings and under what conditions can the administrative court exercise its power to rectify a flawed decision? Explain your answer.

Question 2: Can the administrative court itself exercise its power to rectify a flawed decision and itself rectify the infringement that has been identified (power to reverse decisions)?

If so, explain in brief how this mechanism works.

In case the administrative body decided on the dispute or on any other legal matter following from the civil law, labour law, family and commercial relations in accordance with a special legal act (§ 7, paragraph 1) or decided about imposing a sanction, the court, when reviewing this decision, is not bound by the facts ascertained by the administrative body. The court may result from facts ascertained by the administrative body, it can repeatedly render evidence already rendered by the administrative body, or it can carry out probation of evidence in accordance with the third part of Chapter Two. This is the competence of the administrative court to apply its full jurisdiction (Section 250i paragraph 2 CCP).

The court can decide in matters (stated in § 250i, paragraph 2) by its judgment on the compensation of damage, on the pecuniary performance or about the pecuniary sanction in case it came to a decision, that the dispute, another legal matter or imposition of a sanction had to be decided in a different way than it was decided by the administrative body. The judgment of the court replaces the decision of the administrative body to such an extent to which the decision of the administrative body is affected by the judgment of the court. This extent has to be stated in the verdict of the judgment, while the court shall change the affected verdict. The court shall decide on the costs of the proceedings, including the costs that arose in the proceedings before the administrative body (Section 250j paragraph 5 CCP).

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If not, is the authority required (obligation) – in the context of the exercise of this specific power to rectify a flawed decision– to rectify the infringement determined by the court? Explain your answer.

In other cases (if it is not a case of full jurisdiction of the court) Section 250j para.3 and 3 CCP is applied + Section 250j paragraph 7 of the CCP – The court only shall cancel the challenged decision of the administrative body and according to the circumstances also the decision of the administrative body of the first instance, and the decision shall be referred back to the challenged administrative body for further proceedings (the principle of cassation)

The administrative bodies are bound by the legal opinion of the court.

Question 3: How is the action to quash affected if the decision involving an infringement is rectified? Is the appeal still valid? Must or can the rectified decision be disputed in another appeal? How do the proceedings continue once the court decides to exercise or has exercised its power to rectify a flawed decision? Explain your answer.

Question 4: What are your experiences of the administrative court having such a power to rectify? Is it implemented successfully?

The courts in the administrative justice in the cases of full jurisdiction shall apply the right of moderation. The right of moderation is applied by the court in cases, where it is reasonable.

This right is the exception from the principle of cassation [Section 250j paragraph 5 CCP (already cited above)].

According to the procedure pursuant to Section 250j paragraph 2 CCP, in the light of the case - law of the Supreme Court of the Slovak Republic it should be taken into consideration, that if the administrative body imposing the sanction has assessed not only the severity and duration of the violation of law, but also its nature - its procedures for imposing sanctions were in accordance with the law. Court's right of moderation, i.e. the possibility to waive punishment or reduce the amount of the penalty imposed is reasonable when the penalty imposed for an administrative offense seems inappropriate.

The use of court's right of moderation under Section 250j paragraph 5 CCP in the matters referred to in Section 250i paragraph 2 CCP it is appropriate, if the administrative court may decide on waiving the punishment or reduction of penalties based on the facts found by the administrative bodies, respectively on the basis of evidence made by the court. However, evidence cannot be supplemented in the basic direction (judgment of the Supreme Court of Slovak Republic 2Sž-o-KS 56 /2006).

Question 5: Does your court hear appeals against decisions that are rectified in this way and, if so, how are such appeals dealt with?

When deciding on remedy, the Supreme Court of the Slovak Republic as the Appellate court shall proceed according to the principles of the Appellate system (for example, the court may execute the evidence) with the specifications concerning administrative justice

In case the court of appeal arrived to the conclusion that the challenged decision of the administrative body within the extent of the claim is not in conformity with the law and the court of the first instance rejected the claim, it may change the judgment of the court of the first instance in such a way that it cancels the decision of the administrative body and refers the mater back to the administrative body against which proceedings were launched for further proceedings. Otherwise it shall decide about the appeal in accordance with §§ 219 to 221 of this legal act (Section 250j paragraph. 3 CCP).

ISSUE 2: Power to award compensation and action for annulment

The power to award compensation is laid down in Section 250j para. 5 CCP (already cited above), but the action for such compensation has never been lodged to the court.

Within matters with the full jurisdiction the provision of 250i para 2 CCP shall be applied.

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

We have not had such a case so far.

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

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

This is not used in our system.

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

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

We have not had such case so far.

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

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

Does the plaintiff have to submit the application for compensation at the same time as the

annulment request or can it be made subsequently, after annulment?

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

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

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

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

The execution of administrative decisions is provided by administrative authorities themselves or by executor (under the provisions of Code on Execution Procedure)

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

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

- *Not completely, it is applied in two types of proceedings in our legal system, namely:*
- *proceedings against inaction of a public administration body – Section 250t, 250u CCP*
- *proceedings on protection against unlawful intervention of public administration body – Section 250v CCP*

Proceedings against inaction of a public administration body:

The natural person or the legal person that claims that the public administration body does not act without any serious reason in a manner stipulated by the corresponding legal regulation, due to the fact that it is inactive in the proceedings, can request from the court to express an obligation applicable to the public administration body to act in the given matter and to decide. The petition is not admissible in case the petitioner has not exploited all means the use of which is made possible by a special regulation. The public administration body against which this petition is directed is obliged to submit to the court immediately after the delivery of the petition its statement to the petition and the corresponding file. The court may request a standpoint of the superior administrative body for the decision concerning the petition. The court shall decide about the petition without (oral) proceedings by a court ruling. In case the court approves the petition, it shall state in the verdict the denomination of the body to whom this obligation is imposed, the subject and the number of the administrative proceedings and adequate period of time, nevertheless not longer than three months, within which the public administration body is

obliged to decide. The court may prolong this deadline based on a petition of the public administration body. Unjustified or inadmissible petition shall be refused by the court. The remedy against the decision of the court is not admissible (Section 250t CCP).

Proceedings on protection against unlawful intervention of public administration body:

The natural person or the legal person that claims about oneself that rights belonging to this person and interests protected by law were curtailed by an unlawful intervention of the public administration body which is not a decision, and this intervention was directed directly against this person or as the consequence of this intervention it was directly executed against this person, this person may demand in front of the court to be protected against the intervention, in case such intervention or its consequences continue or there is the threat of its repetition. The body against which the petition is directed is the body which according to the statement stated in the petition executed the intervention; in case of an intervention of armed forces, of armed corps or of any other public corps, it is the body that controls these corps or to which such corps are subordinated. The petition is not admissible in case the petitioner did not exploit means the use of which is made possible by a special regulation, or in case the petitioner requests only that it is determined whether the intervention was or is unlawful. The petition must be submitted within 30 days from the day when the person affected by the intervention got to know about it, but at the latest within one year from the day when it occurred. The court shall decide on such a petition by its judgment. In case the court does not comply with the petition, it shall state in the verdict of the judgment the denomination of the body to whom this obligation is imposed, the subject and the number of the administrative proceedings and the deadline to which the public administration body has the obligation to carry out that duty. The duty lies in the prohibition to continue infringing the right of the petitioner and in the order, if possible, to restore the state of matters that existed before the intervention. The provision of § 250u is valid in the same way. The court shall refuse the petition, in case it is not justified, or in case the petition is not admissible. The remedy against the decision of the court is not admissible (Section 250v).

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

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

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

Is this power of injunction also applied when the authority in question is ordered to pay a sum of money (e.g. damages) and if not, how does this recovery work?

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

No, they have not.

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

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

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

Our legal system regulates the power to impose a penalty to public administration body only in proceedings against inaction of a public administration body.

The court may, for not observing the deadline stated in the court ruling, in accordance with § 250t, based on a repeated petition of a party, in case the administrative body continues to be inactive, impose a fine up to 3280 EUR; and that even repeatedly. The court shall request from the superior administrative body its standpoint before the decision concerning the fine (Section 250u CCP)

If the administrative body fails to comply with the obligations imposed, penalty shall be imposed.

If the administrative body fails to observe the deadline stated in the court ruling under Section 250t, to rectify its inaction, and it continues to be inactive, the court may impose a fine up to 3280 Euro.

1. The court shall impose a fine under the conditions:

- the administrative body failed to observe the deadline stated in the court ruling to decide the case or to rectify another inaction*
- in a case of repeated petition of a party against the inaction of of a public administration body*
- the administrative body continues to be inactive*
- the court shall request from the superior administrative body its standpoint before the decision concerning the fine.*

The decision concerning the fine is subject to repeated application of the party (plaintiff or prosecutor), two such proposals are obviously sufficient to impose a fine.

2. The decision to impose a fine may be repeated, the amount of fines imposed may not exceed the statutory amount. The Act does not limit the number of penalties imposed. Imposition of a penalty does not relieve the public administration body of the obligation to act according to decision of the administrative court.

From the case-law:

Resolution of the Constitutional Court - SP II. U.S. 517/2010: The provisions of Section 250u and 250t of the CCP regulate a special kind of procedure in administrative justice, the proceedings against inaction of a public administration body, in which the natural person or the legal person claims that the public administration body does not act without any serious reason in a manner stipulated by the corresponding legal regulation, due to the fact that it is inactive in the proceedings, can request from the court to express an obligation applicable to the public administration body to act in the given matter and to decide. In case the court approves the petition, it shall state in the verdict also the adequate period of time, within which the public administration body is obliged to decide. In case of not observing the deadline stated in the court ruling, in accordance with Section 250t, based on a repeated petition of a party, in case the administrative body continues to be inactive, the court shall impose a fine up to 3280 Euro; and that even repeatedly.

Resolution of the Supreme Court of the Slovak Republic - 5Sžnč 13/2008 : At the same time, the Supreme Court is obliged to notify the defendant with the effect the provisions of Section 250u CCP whereby the court may, for not observing the deadline stated in the court ruling, in accordance with Section 250t, based on a repeated petition of a party, in case the administrative body continues to be inactive, impose a fine up to 3 280 Euro; and that even repeatedly.

- Otherwise not

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

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

The execution of a judgement exists in our legal system only in two cases:

- execution of a judgement about the custody of minor children*
- execution of a judgement concerning legal claims*