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Challenges in Exercising the Right to Appeal – The Case of Slovenian Administrative Consultation

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ABSTRACT

Purpose: The article aims to identify systemic challenges in Slovenian administrative practice arising from an inadequately regulated right to appeal under the General Administrative Procedure Act (GAPA). For this purpose, an analysis of Administrative Consultation (AC), a legal clinic operating since 2009, was conducted. The study includes analyses of the content, complexity, and reasoning behind the occurring dilemmas as a ground for GAPA recodification.

Design/Methodology/Approach: Considering the nature of the topic in the scope of administrative law, a combined qualitative approach is applied, including normative and dogmatic methods, literature analysis, case law review, basic statistics, and axiological method. Empirical research is based on over one hundred cases with questions and answers regarding GAPA interpretation in administrative practice.

Findings: Administrative appeal serves multiple functions, from protecting the rights of the parties to ensuring consistent sector-specific legislation implementation. The analysis identifies systemic issues, such as: standing to file an appeal (especially for other affected persons or authorities), grounds for appeal, competence regarding appellate decisions, determining when the first-instance body can handle an appeal and when devolution is necessary, alternative dispute resolution in appeals, deadlines for lodging and deciding on appeals, and the possibility of waiving the right to appeal. In addition, the (lack of) options for digitalised proceedings is notable. These insights serve as an empirical basis GAPA recodification.

Academic Contribution to the Field: The article offers a regulatory and doctrinal analysis of the relevant legal provisions (including EU law, the Slovenian Constitution, and the GAPA) focusing on the aims, locus standi, time limits, grounds, and other elements of appeals. It also explores the key findings from Slovenian case law on administrative disputes regard-

ing appeals, as reflected in decisions by the Supreme and Administrative Courts as well as in administrative practice.

Research/Practical/Social Implications: The article provides a concise overview of the relevant literature and an analysis of the rules that underpin the implementation, evaluation, and improvement of GAPA as regards the right to appeal. Based on these insights, it proposes *de lege ferenda* solutions for a clearer GAPA. The findings can serve as a foundation for data-based decision-making.

Originality/Value: The article brings forward the study of AC as a source for systemic overview of problems in the field. With more than a hundred cases from the past 15 years analysed, it offers an objective insight into recurring dilemmas in administrative practice. The approach to identifying key challenges is consistent through the use of established and combined social sciences research methods.

Keywords: administrative procedural law, Administrative Consultation, right to appeal, GAPA codification, Slovenia

JEL: K23, K40

1 Introduction

Administrative procedures are an important part of contemporary society, regulating relation between the authority and private holders of substantive rights. To ensure the latter and limit potential misuse of power due to otherwise dominating public interest, the EU law, the Slovenian Constitution,[1] and the (hereby-Slovenian) General Administrative Procedure Act (GAPA)[2] are offering the right to appeal as a regular legal remedy (cf. Galetta et al., 2015; Avbelj et al., 2019; Dragos, 2023).

Administrative procedures play a crucial role in modern society, particularly within European and other traditions, providing a formal framework that defines the relationships between authorities and individuals. To maintain democracy and effectiveness, authorities must balance the public interest with the rights of the parties to these procedures. To ensure this balance, administrative procedures are governed by law, with various forms of legal protection against the misuse of power by administrative authorities. The latter is provided to parties in the GAPA, and laws governing judicial review over administrative acts (more in Stare and Pečarič, 2021).

In Slovenia, legal protection in administrative cases is founded on well-established international legal and constitutional guarantees available in the relationships between authorities and individuals. Various forms of legal protection exist, including ordinary and extraordinary remedies in administrative procedures and judicial reviews of individual and other administrative acts.

1 See Articles 41 and 47 of the Charter of Fundamental Rights of the EU. Cf. Galetta et al., 2015. See also Articles 23, 25, 157 and 158 of the Slovenian Constitution; more in Avbelj, 2019.

2 GAPA, General Administrative Procedure Act, Official Gazette of the RS, No. 80/99 and amendments.

These procedures are designed to protect both the public interest and the rights of the parties, and this dual protection extends to legal protection as well, though to a different extent. For instance, appeals and judicial reviews primarily benefit the parties by preventing authorities from abusing their otherwise superior position, while extraordinary remedies protect both public and private interests. These remedies enforce legality, a fundamental principle in (administrative) legal matters (Article 120 of the Constitution, Article 6 of the GAPA). Nevertheless, they are seen as exceptional interventions in issued decisions, as the primary concern for substantive and procedural legality (e.g., through the principle of hearing the party) lies in the first-instance procedure. In this way, legal certainty (the effect of and confidence in final decisions) is prioritised over legal correctness or legality. The exceptional nature of remedies is reflected in the restrictive provisions governing their use: only remedies provided by law may be employed, they may be employed only in specific cases of *locus standi*, on legally provided grounds, and within legally provided time limits. Any essential procedural errors must be addressed to protect legality, with administrative appeals serving as the first option in this regard. Under Slovenian law, administrative appeals are a prerequisite for judicial protection.

However, regulations alone do not suffice for legal remedies to be used effectively, as demonstrated by the Administrative Consultation (AC) project. Launched in 2009 (Kovač and Dečman, 2009; Kovač and Sever, 2015), suspended in 2014 due to high demand and limited resources and significantly redefined in 2022/2023, the AC is a joint research and educational project by the Ljubljana Faculty of Administration and the Ministry of Public Administration. It provides principled explanations of dilemmas concerning the application of the GAPA in individual situations. The project interprets provisions of sector-specific regulations and the GAPA with due consideration of the fundamental principles of public administration. The project gathers and addresses dilemmas in the implementation of the GAPA across various administrative authorities and fields. The project involves around 10,000 users, over 120 participating postgraduate students, and 20 practitioners as their mentors. With almost 1,200 questions and answers as of 2024, about one-fifth relate to legal protection, allowing to analyse cases specifically tackling appeals in an objective way since cases have arisen in various real-life situations and administrative fields (foreigners, social affairs, taxes, construction, inspections, personal data protection, etc.).

These cases – as shown further (see the results and discussion parts of this paper) – as well as comparative studies (e.g., Hoffmann et al., 2014; Sever et al., 2016; Đanić Čeko and Kovač, 2020) lead to a conclusion that there is a need for a systematic revision of the GAPA in terms of good administration. The above is relevant in the framework of better regulation since not all provisions of general law are intended to protect public interest or individual rights; hence, they generate red tape and/or open up basic dilemmas, hence not providing legal certainty. This means that it would be necessary to provide a new contemporary codification of the general administrative proce-

dure that would capture the majority of the spirit of the current GAPA when there is an established tradition to be valued. On the other hand, the renewed codification would shed a new light on truly important principles, distinguishing them from others that should be either deleted or moved to implementing or organisational rules, particularly regarding the legal remedies.

2 Methodological Framework

2.1 Research Question and Methods Applied

The purpose of this study is to identify the main dilemmas in administrative practice based on the AC analysis. Hereby, the usage of legal remedies, and excising the right to appeal in particular, was selected as a key safeguard reflecting also other the most important GAPA rules as reasons to appeal. Further, the aim of the research is to elaborate the identified gaps between the aim of the law and practical dilemmas according to their complexity and reasons for the respective gaps. Finally, recommendations for the GAPA amendments or even guidelines for a new codification are proposed to increase effective application of the right to appeal in future.

The research questions addressed in this article are therefore two: (1) *What are the main dilemmas regarding the rules regulating appeals in administrative procedures in Slovenian administrative practice according to AC cases? (2) And what are the reasons for these dilemmas, and what solutions exist to protect legal interests in administrative relations as effectively as possible?*

Hereby, the usual research process was applied. Firstly, a definition of the research problem and research questions was set. Secondly, a broader theoretical study with study the relevant scientific literature was carried out, including recent case law analysis. Thirdly, a design of the AC analyses with qualitative statistical elaboration and case studies was made, followed by a collection of data and their analyses and interpretations.

To address the above research question about the Slovenian GAPA modifications in the framework of not clear provisions regarding the right to appeal, a qualitative approach with several combined research methods was applied. The topic is highly legally determined; accordingly, various qualitative methods were used to answer the said research questions—such as the dogmatic, normative, and comparative methods and case studies of GAPA amendments—and the axiological method. Although scarce, these methods can provide an overall diagnosis of the situation.

Being aware of the limitations of qualitative research, further analyses were envisaged. Quantitative insights are often not possible since no exact measurements (e.g. on the impact of GAPA modifications) are available. In order to overcome these deficiencies at least to a certain extent, various sources of literature and comparative studies are examined, while the Slovenian GAPA and its amendments are assessed in the light of respective findings, although

subjectively. Moreover, other methods were used to strive for objectivity, such as statistical overview based on app. 1,200 AC cases, with about 120 of them directly tackling the right to appeal. Another approach is facing theory, some insights of comparative studies abroad and case law in administrative disputes with the AC related administrative practice. In the latter part, not just basic statistical analysis is provided bit there are case studies emphasised that reveal systemic problems in implement the law effectively. The relevant GAPA modifications aiming at simplification and legal certainty are exposed only when and if they are to be considered a role model for amendments to the GAPA. Indeed, the analysis presented is therefore diagnostic, which calls for ongoing and upgraded research in the future. In the future, broader and empirically substantiated analyses are required in order to incorporate more countries and acquire empirical data. This approach has already been used as a good model, although national systems in various countries often express a lack of quantitative measurements (see Auby et al., 2014; Koprić et al., 2016; Dragos et al., 2020).

The article first presents the methodological framework applied, including a brief presentation of the AC as a research and educational project, serving as an empirical basis for the analysis of current trends, with over one hundred dilemmas of administrative practice related to appeals only. The third section is dedicated to regulatory and theoretical framework of appeals in administrative cases under the GAPA, as well as the relevant recent case law from the Slovenian Administrative and Supreme Courts. The section on analysis of the AC cases in the results, the relevant cases are categorised into specific sub-groups, identifying key problems and grounds for amending the GAPA towards more effective protection of both the public interest and the rights of the parties. Further, a discussion is provided based on the selected systemic case studies with suggestions how to change the law in future. Finally, there is a conclusion.

2.2 AC as a Mechanism of Collaborative Administration and Source for Evidence Based Decision-Making

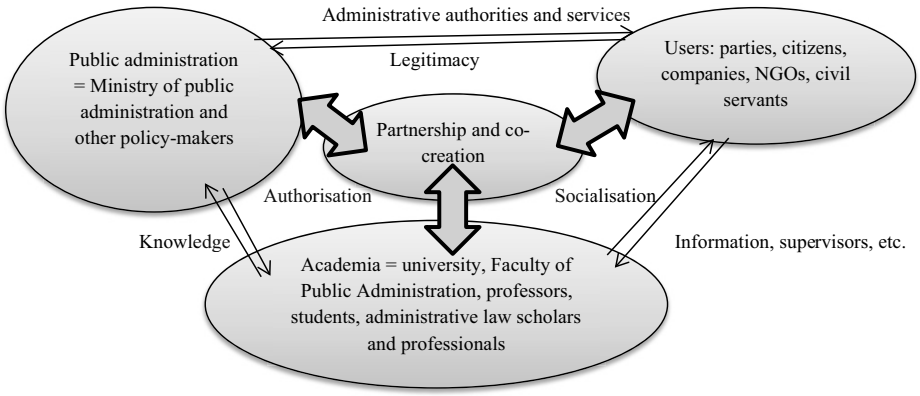
The Administrative Consultation (AC) is a research and educational project that has evolved significantly since its inception as a (administrative) legal clinic. Established in 2009 and revitalised in 2022 and 2023, it now serves as a comprehensive framework for various activities, including evidence based decision-making. The project's findings provide a basis for decision-makers to improve regulation and practice. Run by the Faculty of Administration and the Ministry of Public Administration, the AC involves the collaboration of academia, state authorities, and postgraduate students. By publishing questions and answers, the web portal pursues the principles of participation and digitalisation (Kovač and Dečman, 2009; Kovač et al., 2023).

The primary purpose of the AC project is to provide advice on specific issues of administrative procedure, facilitating a systematic collaboration among various stakeholders. The question is first generalised – anonymising details

about the user, authority, and field (unless the specifics of a regulation are of particular interest, in which case the field and the leges speciales are indicated). A general, reusable answer is then provided. Therefore, the project aims to resolve specific dilemmas in administrative procedural law and generalise solutions for broader application across different authorities and related fields. The focus is on offering expert guidance to officials and parties on how to respond to dilemmas regarding the interpretation of specific rules in given situations, in accordance with the principles of collaborative governance (see Figure 1) and constitutional and administrative procedural law. In addition to the users (officials, parties, NGOs, rule-makers), the project involves faculty professors and senior officials from public administration. These experts act as mentors within the MPA working group, guiding mainly postgraduate students responsible for drafting responses. This setup provides students with the opportunity to address real-life problems. The collaboration among all participants ensures high quality and professional responses (Kovač et al., 2023).

In this respect, the Faculty of Administration conceived the AC as a combination of practical needs and theoretical understanding of participative-collaborative administrative relations in contemporary society. Namely, a key function of the administrative procedure rules that regulate the (co)operation of the administration with parties is to ensure balanced protection of the subordinate party; public interest should of course prevail over private interests, yet not absolutely. Administrative procedure can thus be seen as the basic tool of legitimacy and democracy (Hoffman et al., 2014; Kovač and Sever, 2015).

Figure 1. Collaborative governance as the framework of AC activity



Source: Own.

The AC portal – adding 3 to 5 new cases per week in 2023 and 2024 – is frequently used in administrative practice; in some instances, it is regularly and systematically used as a complementary resource by public authorities (e.g., administrative units or ministries). Data on its usage show around 100 clicks per working day until 2002, increasing to around 300 clicks per working day

from 2023 onwards, with over 10,000 total users (Kovač et al., 2023). About a quarter of the users are parties to administrative procedures, while the remainder includes officials who conduct the procedures or draft specific procedural rules in sector-specific regulations. Given the diversity and volume of cases, the portal provides a valuable resource for analysing whether and how the GAPA is applied in practice and identifying areas where modifications may be needed. It thus serves as a basis for analysis and evidence-based development of new public policies and improvements to regulations.

Networks, in general and within public administration, are important for solving and overcoming social and public challenges. We can distinguish cooperative, coordinative, and finally collaborative networks, which differ by the type of relationship, degree of risk, the commitment involved, the network's focus, and the end result (more in Kovač and Sever, 2015). Collaborative networks occur when dealing with very complex problems, as is the case in the GAPA and related statutes (non)implementation. The contribution of academia and administrative science in this sense is twofold, first, by pointing out theoretical considerations and conceptual grounding for data based decision-making; and second, by reconfirming discussion on collaboration – in both cases leading to mutual social efforts and increased participation in public governance.

By coherently resolving multidimensional dilemmas in a certain life-event, the AC pursues an evolving cross-disciplinary understanding, and within evidence-based future decision-making a pivotal mechanism. The AC is a knowledge-providing legal source for all stakeholders involved (private and public), as well as a co-creation platform. Namely, one of the main benefits of the AC is the extensive usability of solutions as both questions and answers are generalised and made publicly available, providing individual as well as systemic solutions and as such contributing to society as a whole. It enables the legitimate and effective identification of the concrete administrative/legal dilemmas of parties in practice, which serves as important feedback to public authorities.

3 Theory and Case Law on an Administrative Appeal

3.1 Generally on Legal Protection in Administrative Affairs

Legal remedies provided by law, such as the GAPA or sector-specific laws, are the only means by which a decision can be changed, annulled, or abrogated, which is defined in Slovenia under Article 158 of the Constitution. In this, respect, a better understanding of the dynamics between constitutional and administrative law, particularly in the digital state, in terms of what is known as 'digital constitutionalism' is advocated (Ranchordas, 2024). In terms of remedies, the GAPA has not undergone substantial amendments since its adoption in 1999, with only minor changes made in 2004 regarding absolute essential errors, the time limit for reopening the procedure, and supervisory bodies, and in 2007 concerning the waiver of the right to appeal (see Kovač, 2020).

The GAPA defines appeals as ordinary remedies and provides for five additional extraordinary remedies. Sector-specific laws may offer further remedies, but these apply only to substantive acts and decisions. For instance, *restitutio in integrum* can also be considered a legal remedy, although the GAPA refers to it in the context of time limit (cf. Kovač and Kerševan, 2020/1). Procedural acts, on the other hand, are subject to appeal only if specifically provided by law, with extraordinary remedies only under exceptional circumstances as outlined in the Administrative Dispute Act.[3]

The 1999 GAPA offers six remedies, which are more extensive than those in other procedural laws or APAs in other countries (see Dragos, 2023;Auby et al., 2014; Koprić et al., 2016; Sever et al., 2016; Kovač, 2020; Đanić Čeko and Petrašević, 2020; della Cananea, 2022). This is characteristic particularly for an arrangement under the 2016 proposal for a 'European APA' with only two remedies (Hofmann et al., 2014; Đanić Čeko and Kovač, 2020). These are meant as one in favour of the parties and the other interfering with their legal status. Unlimited remedies can lead to irresponsible decision-making by authorities, eroding confidence in the law (and the state or the authorities), potentially undermining the rule of law. Legal remedies can thus be viewed as remedies to cure certain ailments of the procedure or administrative acts (Kovač, 2013, also referring to the 1923 code known as Steskov postupnik, which defined legal remedies as remedies for ailments of the procedure). However, not every procedural error constitutes unlawfulness, necessitating the use of remedies or judicial procedures in favour of the appellant. Only major errors – such as misapplication of substantive law, incomplete or incorrect fact-finding and essential procedural errors – constitute grounds for appeal (Article 237 of the GAPA). Generally, administrative decision-making in Slovenia is a two-instance procedure, which can then be followed by judicial protection.

In employing remedies, it is necessary to differentiate errors in contested decisions based on their severity. Errors are classified as more or less severe. For instance, a decision lacking the operative part or the signature of the official who made the decision is automatically invalid and therefore not subject to challenge through legal remedies. Conversely, the absence of the instruction on legal remedies is not considered an essential error; the decision remains valid as long as the errors do not disadvantage the party.[4] However, a deci-

3 Article 5 of the Administrative Dispute Act provides for judicial protection only in case of procedural acts by which the procedure has been reopened, concluded (e.g., rejection order), or stayed. There have been several examples of case law in recent years on when appeals are not allowed: e.g., there is no appeal against a record, a reprimand, or a second-instance act, in which case the appeal is rejected (see Administrative Court cases II U 337/2020-31, 3 May 2023, II U 195/2020-11, 20 February 2023, I U 1087/2019-12, 18 May 2021, I U 129/2018-9, 30 April 2019).

4 Supreme Court, case U 672/96-8, 11 December 1996: An administrative dispute may be initiated against an administrative act adopted at second instance, or against an administrative act adopted at first instance, if no appeal has been lodged in the administrative procedure. If the applicant files an action because the first-instance authority provided an incorrect instruction on available remedies, contrary to Article 259 of the GAPA, the court will dismiss the action, and the 15-day time limit for the applicant to lodge an appeal starts from the day after the order dismissing the action has been served.

sion lacking the statement of reasons is considered an essential procedural error under Article 237 of the GAPA[5] and is subject to appeal within 15 days of the service of the individual first-instance administrative act. Likewise, failure to allow all participants with legal standing to participate in the procedure constitutes an essential error and thus grounds for appeal and extraordinary reopening of the procedure up to three years after the decision was issued.

From a constitutional perspective, legal protection must not only be lawful but also effective (Kovač, 2013; Moldovan and Bucătariu, 2019; Kovač and Ribič, 2022). To understand the notion of effectiveness, or assess the mechanisms provided by the GAPA as more or less effective, the mechanism in question must be evaluated in the context of the administrative system or the (current) social adequacy of applicable norms. An effective mechanism can be defined as one that, in practice, achieves the objective of the norm. In administrative procedure, effectiveness is what contributes to the essential purpose of administrative procedure, i.e., balancing the rights of the parties and promoting the public interest. Effectiveness also depends on the implementation of the rules in the real world. An effective legal mechanism is one that is applied to the extent intended by the norm (e.g., extraordinary remedies only in exceptional circumstances) and in line with its purpose. Key criteria for evaluating the effectiveness of legal remedies include their admissibility or exclusion (in particular, appeal as an ordinary remedy and exceptions to the fundamental principle of the right to appeal under Article 13 of the GAPA and Article 25 of the Constitution), (non-)devolution, (non)suspensiveness, etc. In particular, the notion of effective protection has emerged in recent years in relation to (semi-)automated decision-making. Various authors and case law emphasise that the party must be informed of such an approach and held accountable for the decision, as provided by Articles 5 and 22 of the GDPR. Parties must generally be guaranteed fair procedures or good administration under Articles 41 and 47 of the EU Charter of Fundamental Rights and Articles 6 and 13 of the European Convention on Human Rights. These rights of defence include access to the file, the right to be heard, the right to be given reasons, and the right to an effective remedy (Galetta and Hofmann, 2023; Ranchordas, 2024).[6]

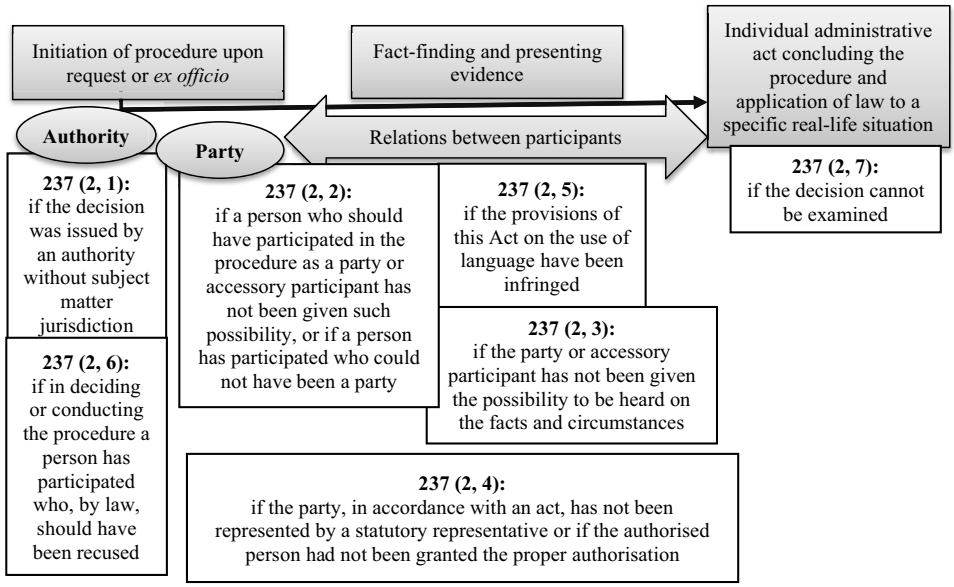
Remedies have different effects; they can either annul or replace a decision or declare it void, which has a retroactive effect (*ex tunc*) and applies in case of serious errors, or modify and abrogate it, in which case the effect is prospective (*ex nunc*). In any case, it is necessary to strike a balance between the exceptionality of interference and legality. It is not possible to *a priori* define,

5 This is one of the most common errors also according to administrative case law. See, e.g., cases of the Administrative Court I U 1439/2014, 22 September 2015, or I U 922/2021-12, 18 September 2023. Among the seven essential procedural errors under Article 237(2) (see Figure 1), the most common in Slovenia is violation of the right to be heard (see Administrative Court case II U 123/2021-13, 7 August 2023). Note that the right to be given reasons (together with the right to be heard) is one of the key standards provided by Articles 41 and 47 of the EU Charter of Fundamental Rights, cf. della Cananea, 2022, and specifically for (semi) automated decision-making Galetta and Hofmann, 2023.

6 For the right to good administration in composite procedures, see also C-604/12, H. N. *v.* Minister for Justice, Equality and Law Reform and Others of Ireland, 8 May 2014, and regarding automated decision-making Schuffa case, C-634/21, 7 December 2023.

for example, the reopening of procedure, which is a non-devolutive remedy, as less effective than the devolutive and, in principle, suspensive appeal. This view is supported by empirical comparative studies (see Dragos and Neamtu, 2014; Koprić et al., 2016; Moldovan and Bucătariu, 2019). Hence, it is the provisions on remedies to reveal which provisions of the (rather detailed) GAPA are most relevant. These include, foremost, Article 237, which defines (absolute) essential procedural errors or, *a contrario*, essential rules that constitute formal legality (as illustrated in Figure 2).

Figure 2. Essential procedural errors by stage of procedure as grounds for legal protection



Source: Own.

The GAPA also provides five more extraordinary legal remedies, some of which share grounds with appeals. This overlap raises concerns about effective legal protection in the application of the law, highlighting the need for optimal regulation and addressing sometimes questionable administrative practices. Typical of the extraordinary remedies under the GAPA is that they can be employed based on specific grounds listed for each extraordinary remedy: ten grounds for reopening, six grounds for declaring a decision void under Article 279, five grounds for the application of the supervisory right under Article 274, and one ground for extraordinary annulment of a decision under Article 278. In practice, the most frequently employed extraordinary remedy is the reopening of procedure (more in Kovač and Jerovšek, 2023; Dragos and Neamtu, 2014).

3.2 Basic Rules on the Right to Appeal According to the Slovenian GAPA

Appeal, as a regular remedy, is crucial for legal protection in administrative cases. It is the only ordinary remedy under the GAPA, i.e., a remedy that is employed before the administrative finality (and, as a rule, enforceability) of the decision, unless explicitly excluded by law (the GAPA or a sector-specific law) (e.g., when a ministry decides at first instance and the law does not provide for an appeal or an appellate body).[7] According to administrative statistics, appeals are filed in only about 3% of cases in Slovenia, translating to roughly 300,000 appeal procedures against up to ten million administrative decisions issued at first instance per year.[8] Appeal is a fundamental legal remedy defined by Articles 13 and 229 et seq. of the GAPA with three complementary objectives (Kovač, 2013; Kovač and Jerovšek, 2023). First, with its dispositive, devolutive, and generally suspensive nature, appeal serves to protect the rights of the parties involved in an administrative procedure (in addition to the main party, also accessory participants and individuals with a legal interest who could not participate earlier). This function aligns with EU and comparative law, according to which appeal, together with other rights of defence in administrative procedures, ensures the protection of citizens from arbitrary exercises of power and public policy implementation (della Cananea, 2016; Avbelj et al., 2019; Ranchordas, 2024).

Second, since the right to appeal is also available to the defenders of public interest (e.g., public prosecutors and state attorneys, as well as public interest associations as a hybrid between a public interest representative and an accessory participant),[9] the appeal also protects legality, which is further confirmed by the authority's power to modify a decision against the appellant in an appeal procedure, since the prohibition of *reformatio in peius*[10] is not established. Third, appeals promote administrative system coherence and equality before the law, particularly through the power of the appellate authority to review *ex officio* absolute essential procedural errors and errors of substantive law. This part concerns, inter alia, the positive control of government agencies by branches of government with sovereign authority in law-making (on the mixed role of certain state authorities in rulemaking and decision-making see Hofmann et al., 2014; Galetta and Hofmann, 2023; Ranchordas, 2024). Fourth, appeals help reduce the overload on the courts, as bypassing this stage often leads to the rejection of judicial review. Appeals known in Slovenia are therefore similar to hierarchical or mandatory appeals within the so-called objection procedures or *recours hiérarchique* or *Widerspruch* (Dragos

7 Appeals and other legal remedies cannot be regulated by implementing regulations – they are *materia legis*, see e.g. Administrative Court cases I U 340/2013, 10 December 2013, I U 74/2013, 17 September 2013, I U 1919/2012, 7 May 2013, I U 407/2011, 16 October 2012 (e.g. with the rules on the implementation of the budget).

8 See https://upravnastatistikaweb.azurewebsites.net/.

9 The same applies to extraordinary remedies; e.g., an environmental NGO has the right to file legal remedies based on the Environmental Protection Act (Administrative Court case I U 1305/2020-12, 25 November 2022).

10 This is exceptionally possible under Article 253 if specific grounds for extraordinary remedies are provided (Administrative Court case I U 1995/2013, 26 August 2014).

and Neamtu, 2014; cf. Puškar case, C-73/16, 27 September 2017, and Kovač and Kerševan, 2020/1, pp. 53ff).

An appeal is always devolutive, meaning that it is not decided by the authority that issued the contested decision but by another, higher authority (i.e., a line ministry or mayor in municipal cases, or another authority under *lex specialis*). Generally, appeals are suspensive, halting the execution of the contested act unless otherwise provided by a sector-specific law (e.g., in tax or inspection matters) or for the sake of public interest protection (Article 236 of the GAPA). To achieve a non-suspensive effect, a specific clause must be included in the operative part of the judgment (more in Kovač and Kerševan, 2020/2). Upon appeal, a decision can be annulled, replaced (already at first instance, through Article 242 of the GAPA), changed, or declared void.

The right to appeal is available to parties to the administrative procedure and all persons in such position, e.g., representatives and (potential) accessory participants, as well as senior state attorney and state prosecutor, but not to authorities. The appeal must be lodged within 15 days from the actual or fictitious service of the first-instance decision and is time-barred. A common dilemma in case-law concerning the time limit is when the first-instance act was served, since the time limit for appeal only runs from the actual or fictitious service of the contested act (Kovač and Kerševan, 2020/2).[11] A party can also waive the right to appeal in a dispositive procedure. A waiver by all individuals with the status of a party results in administrative finality and finality from the date of the (last) waiver.[12] The appellant must state the grounds of appeal, even if only in lay terms, and must have regard to the legal possibilities for challenging the decision by this remedy. The grounds of appeal are (according to Article 237 of the GAPA) substantive, factual, procedural, or due to administrative silence at first instance. In Slovenian administrative law, administrative silence results in the presumption of a negative decision, allowing the parties to consider their case as rejected and pursue legal remedies accordingly (more in Dragos, Kovač and Tolsma, 2020). The matter is also frequently discussed in case law (e.g., Supreme Court case I Up 121/2021, 25 October 2021). The procedural position of the accepted jurisdiction establishes justified grounds for the party to expect a decision within the prescribed time limits. If a decision is not made within these limits, the party may seek the legal remedies provided under Article 222(4) of the GAPA and Article 28 of the Administrative Dispute Act.

The appeal is filed with the authority that issued the decision at first instance, which is due to examine its admissibility, standing, and timeliness; inadmissible appeals are rejected. The first-instance authority may also issue a substitute decision if it finds that the appellant's case is justified. However, a high proportion of substitute decisions may indicate fundamental flaws in

11 For instance, Administrative Court case I U 854/2021-10, 8 September 2023. Parties cannot raise objections only in the action if they have missed the time limit for appeal or if they could have raised the facts already in the administrative appeal procedure (Administrative Court case I U 327/2020-21, 24 March 2021).

12 Payment of liabilities does not yet mean waiving the right to appeal (Administrative Court case I U 770/2018-13, 12 March 2019).

first-instance procedures, which is contrary to the purpose of the GAPA rules and, in particular, the objective of the appeal and the substitute decision, even though the latter may be seen as an ADR tool (see Dragos and Neamtu, 2014). The substantive decision is to be taken by the second-instance authority, which may reject, dismiss or uphold the appeal, determining itself whether to refer the case back to first instance for a new decision (Article 251 of the GAPA).

While the exhaustion of appeal is crucial for the administrative finality and, as a rule, enforceability (Articles 224 and 282 of the GAPA), finality (Article 158 of the Constitution, Article 225 of the GAPA) and hence immutability of decisions are conditional on the impossibility or exhaustion of judicial review of individual administrative acts. Most individual administrative acts can be subject to administrative dispute under the Administrative Dispute Act, adopted in 2006 and amended in 2010, 2012, 2017, and 2023. However, an administrative dispute can even replace an administrative appeal in the sense of Article 25 of the Constitution, provided the grounds are equally broad (Avbelj et al., 2019). This judicial procedure is usually decided at first instance by the specialised Administrative Court and at second instance (if an appeal is allowed) by the Supreme Court, which also decides on review and sometimes reopening of procedure. Social matters fall under the jurisdiction of the Social Court. Judicial review cannot be ruled out but is contingent on the exhaustion of ordinary remedies in administrative procedure. Courts rule by a single judge or in panels, but normally do not decide in administrative cases as these only involve supervision (a dispute of full jurisdiction is exceptionally possible only in specific situations, e.g., where constitutional rights have been violated). After the conclusion of an administrative or social dispute, if violations of the Constitution or the European Convention on Human Rights are alleged, the case may be pursued by filing a constitutional complaint with the Constitutional Court or bringing an action before the European Court of Human Rights.

4 Empirical Results on Administration Consultation Cases

In order to identify key dilemmas in the GAPA implementation in administrative practice, an analysis of the AC cases, addressing particularly this institute was carried out. The analysis is twofold, firstly, statistical overview in made, followed by in depth analysis of the selected case studies in the discussion part.

When comparing the number of AC cases by category, based on the stages of the procedure, there over 230 cases in the section on remedies, of which app. 120 in September 2024 concern appeals. Most cases are categorised into one or, at most, two primary categories. The majority are found in the section concerning communication between the parties to the procedure (approximately 300 cases), followed by the sections on Administrative Matter and Fundamental Principles (about 270 cases) and Participants (around 250 cases). However, in Table 1, each case is assigned to only one dominating subcategory. These cases often reflect the rules and mechanisms from earlier stages of the proce-

dure since the appeal serves as a litmus test for the first-instance authority's (mis)conduct. Analysing these cases thus provides a clear picture of practical application of various rules, particularly those crucial for formal legality or the protection of the parties' rights and public interest, which are considered absolute procedural grounds for appeal under Article 237 of the GAPA. As expected, correlations between the section on appeals and other sections are most frequent concerning absolute essential rules, such as the competence and impartiality of officials, the legal standing of the parties and their representatives, the right to be heard (including issues related to the use of language), and the components of decisions necessary for reviewability. In administrative practice and case law, appeals based on procedural grounds are most frequently justified when there is a violation of the right to be heard (more in Kovač and Kerševan, 2020).

The AC cases are further broken down by sub-categories based on subject matter (see Table 1) to provide a more detailed analysis and gain insight into the current dilemmas related to appeals. In addition to classifying cases by subject matter, an analysis has also been conducted regarding their complexity and whether they relate to the rules of the GAPA or specific procedural rules in sector-specific laws, which are often partial and constitutionally questionable (by unclear supposed justified reason to differ from the GAPA is). These indicators provide feedback on the source and extent of the problem, as merely raising an issue does not necessarily indicate that the GAPA is inadequate.

Table 1. Cases involving appeals by sub-category, complexity, and source of the problem

No.	Theme	% of cases	Complexity of the cases	Problem source: the GAPA or leges speciales
1	Proceeding and costs in case of appeal	18	high	GAPA
2	Admissibility of appeal	17	high	sector-specific laws
3	Grounds for appeal (e.g., violation of the principle of hearing the party, impartiality, etc.)	16	high	both
4	Waiver of the right to appeal and treating the appeal as an application	14	medium	GAPA
5	Legal standing of the party/ appellant	11	high	sector-specific laws
6	Correlation between appeal and other remedies, especially reopening of procedure	10	high	both
7	Time limits (incl. administrative silence), administrative finality and enforceability	9	medium	both
8	Jurisdiction in appeal	5	medium	both
	Total	*100*		

* In dark gray, there are topics emphasised that are attributed to GAPA (mainly) and rather complex, therefore requiring recodification.

Source: Own.

As shown by the table above, most cases concern three main thematic areas:

- the procedure for assessing the merits of an appeal, including when a substitute decision can be issued, when a second-instance decision is to be given, when the case is referred for a new procedure, what is the correct wording of the operative part of a second-instance decision, what are the costs of procedure in case of an appeal, etc.;
- the admissibility of appeals on various legal grounds and for various types of act;
- various grounds of appeal, including essential procedural errors.

These areas are highly complex, with dilemmas arising from a combination of sector-specific rules and the GAPA.

The second group of cases, with app. 10 cases per sub-category, involves highly complex issues such as standing for appeal and the correlations between various forms of legal protection. Here, too, a combination of sector-specific rules and the GAPA is often at play. Specifically related to the GAPA are issues such as waiver of the right to appeal, the treatment of the appeal as an application, and the appeal procedure itself, including the competence and conduct of the appellate authority in terms of timing and subject matter. There is no clear correlation between the degree of complexity and the source of the problem – i.e., whether the GAPA is inherently more or less complex. However, it is logical that higher complexity tends to arise when both substantive or special regulations and the GAPA are involved.

The use of legal remedies is generally the most frequently occurring concept in AC cases, as procedural errors often serve as grounds for employing such remedies. The term "appeal" appears more than 500 times among the 200 most-read cases in 2023 (Kovač et al., 2023). This is unsurprising given that responses to questions on various legal concepts (e.g., jurisdiction, parties, representatives, the right to be heard, service of documents, etc.) aim to demonstrate what certain misunderstandings mean in terms of illegality or the use of legal protection. The AC prepares responses on a principled level, making the connection between the treatment of rules and the consequences of violations its guiding theme. On the other hand, the citation of multiple legal remedies for the same type of concept or error raises the question of the appropriateness of multiple legal mechanisms for the same inconsistency, particularly in terms of frequency. Furthermore, specific issues arise, such as the waiver of the right to appeal or the relationship between appeal and reopening of proceedings, which, according to comparative sources (e.g., Hoffman et al., 2014; Koprić, 2016; Đanić Čeko and Petrašević, 2020), leads to conclusions regarding systemic competition and an excessive number of legal remedies for ensuring legal certainty in administrative relationships.

5 Discussion and Recommendations on the GAPA Recodification

The administrative appeal is a multifunctional legal remedy whose purpose is to protect the rights of the parties vis-à-vis the authorities and provide – through a generalisation of cases – a regulatory feedback loop leading to better sector-specific regulations. The administrative appeal is thus a constitutional guarantee of democratic governance, as well as a mechanism of good administration and effective public policies, as long as it is implemented in line with the purpose of regulation (Sever et al., 2016; Kovač and Ribič, 2022). Therefore, codification of the right to appeal is crucial for its effective implementation.

Collaborative PA is one of the foundations of modern society, being defined by societal and political processes, normative bases, as well as new theories aimed at solving "wicked problems" – i.e. complex and ambiguous interdisciplinary challenges in governance (Kovač and Sever, 2015). Therefore, mechanisms such as AC provide excellent grounds to better administrative environment based on the dilemmas opened and discussed.

Looking at particularly challenging dilemmas that have been raised in recent years and which are also the most frequently visited, case studies highlight systemic issues that should be addressed by the GAPA either *de lege ferenda* or through appropriate interpretation of existing regulations. Namely, the AC measures and publishes the most frequently visited cases – mainly topical issues but also some 'classic' dilemmas – on a monthly and aggregated basis via Google analytics. About ten dilemmas, which are perceived in recent Slovenian case law and are of high systemic importance, are highlighted as the most visited cases in 2023 in 2024.

One of the cases that illustrate the necessary correlation between procedural institutions, particularly standing and service, as well as the time limits for appeal or enforceability, is the case where the (tax) authority sent a tax notice to a minor, followed by an enforcement order. The parents, as the minor's legal representatives, were unaware of the liability until the child handed them the enforcement order against which they subsequently appealed. It is crucial to note that legal effects can only arise and rights can only be exercised by a person with the capacity to litigate. In this case, the authority had no grounds for enforcement because the enforcement order was not properly served if it was not served on the applicant's legal representative. Namely, the GAPA expressly provides for the legal representation of minors, as well as for service on minors through their parents, to which the authority must pay attention ex officio (Article 47, 49, 88, etc.). Thus, the time limit could not commence until (correct) service had occurred. Consequently, the appeal filed by the legal representative against the enforcement order should be upheld, and the enforcement procedure must be stayed. The enforcement order must first be served on the parent, and if the obligation is not fulfilled within the time limit running from the date of service on the legal representative, the order must be reissued. However, this case underscores the importance of correct implementation of the GAPA rather than highlighting its shortcomings.

Other examples involve specific rule making in healthcare or social welfare, where the same act is issued with a statement of reasons to some participants and without it to others, under the claim that such a distinction is necessary for protecting sensitive data. For instance, while sector-specific laws confer legal standing on individuals whose health or social situation is at stake, as well as on employers, allowing them to participate in the procedure and exercise rights such as lodging appeals, employers receive the decision without a statement of reasons. This practice is both unconstitutional and contradictory because an appeal cannot be effectively pursued by means of counterarguments without a statement of reasons, i.e., in the absence of arguments

from the authority. If the law grants legal standing also to parties other than the main party, it must also provide them with (full) legal protection. Therefore, amendments to the GAPA are being considered to allow for a statement of reasons to be provided only when an appeal is announced, rather than in every case, which would alleviate the burden on authorities. Such considerations are justified, provided they do not undermine the right to an (effective) appeal. This means that the GAPA or a special law should specify that a statement of reasons is not required unless an appeal is announced, at which point the authority must provide a full statement of reasons for its decision.

Partial regulation by sector-specific laws often leads to a problematic combined interpretation of *lex specialis* and the GAPA. One issue in such regard is which form of legal protection is applicable when the first-instance decision-maker is a holder of public authority, a *sui generis* body. For instance, the Matura Examination Act applies when the National Matura Committee (i.e., the holder of public authority, which in this case is an independent body) decides whether a candidate can take the *matura* examination in two parts. Conversely, the GAPA applies when the line ministry handles appeals against decisions made by such body. According to the Matura Examination Act, candidates who, for justified reasons, cannot participate in the *matura* or individual exams within the same examination period may take the *matura* in two parts. A decision thereon is taken by the National Matura Committee and the possibility of appeal is not explicitly excluded. However, administrative and case law[13] have treated this as a single procedure rather than a two-stage decision-making process. The Committee and the Court view the Committee's decision as administratively final, with no possibility for appeal, and the party can only seek legal protection through a non-suspensive action before the Administrative Court. Given the absence of specific rules in the *lex specialis* that exclude the right to appeal, and considering the exceptionality of excluding appeals compared to the usual two-instance system (a fundamental principle laid down in Article 25 of the Constitution and Article 13 of the GAPA), an appeal should be permitted and should have suspensive and devolutive effects. Here again, the issue is not with the GAPA itself but with the unsystematic regulation by the sector-specific law. This suggests that consideration should be given to limiting such interventions through the GAPA to ensure regulation that is more systematic.

Similarly, when a sector-specific law, such as one governing inspections, stipulates that an appeal does not suspend the enforcement of a decision providing an obligation for the party (e.g., to remedy a situation), it remains unclear whether this also applies to other inspection decisions or procedural decisions as formal acts. Since the exclusion or non-suspensiveness of appeals affects the constitutional effectiveness of appeal, and given that a regulation diverging from the GAPA must be justified by the specificities of the administrative field (Avbelj et al., 2019, commentary to Article 25 of the Constitution), such special rules should be interpreted restrictively. It is argued that even when a statutory basis for certain measures exists; a prerequisite

13 See Administrative Court cases I U 487/2015, 22 April 2015, I U 780/2015, 14 September 2016.

for the non-suspensive effect is that such effect is expressly specified in the operative part of the decision.[14] If the same law provides for various types of decisions in terms of content and type of decision-making (e.g., inspection measures and the granting of licences at the request of the parties), the authority may include a clause on the non-suspensiveness of appeals only in the operative part of decisions explicitly provided for by the law (e.g. measures but not licences). Again, the core issue is that sector-specific laws to often treat the GAPA as merely supplementary. However, this is not an absolute stance, as the GAPA frequently operationalises constitutional rights, including the right to appeal, and the Constitution prevails over sector-specific laws. Therefore, a sector-specific law may only introduce specific procedural rules where there is a compelling reason for differentiation, which should be clearly justified in the draft law.

The 2007 GAPA amendment introduced the possibility of waiving the right to appeal (Article 229a) to expedite enforceability if all parties agree on the waiver. However, in practice, as suggested by the AC, dilemmas arise regarding this option, such as the possibility of waiving such a right in procedures initiated *ex officio* or even before the decision is served. A specific question is whether it is possible to waive the appeal between the time of dispatch of the decision for which the law provides a fiction of service (e.g., on the 15th day after dispatch) and before the fiction of service takes effect, if the party has actually received the decision before that time. In this case, although the GAPA (or sector-specific laws) favour the fiction of service, the question arises whether an actually proved service takes precedence over the fiction, since the latter is only provided for in the event of impossibility and evasion of actual service. Furthermore, dilemmas concerning the waiver as an application by a party are often linked to time limits and the impact on administrative finality, enforceability, and finality. The waiver of appeal is effective as of the day of receipt of a written or oral waiver by the authority. Under the GAPA, such an application is deemed to have been lodged on the date it is received by the authority, unless it is time-stamped, in which case the date of lodgement is deemed to be the date of sending. Where there are multiple parties to the procedure, the first-instance decision becomes administratively final when the last party waives their right to appeal, as the waiver of the right to appeal cannot be revoked. At that point, both administrative finality and finality occur, since exhaustion of the appeal is a procedural prerequisite for the exercise of judicial protection. The fact that this procedure is a mandatory predecessor of the judicial one and not an alternative means of dispute resolution seems to significantly impede its efficiency and effectiveness (Moldovan and Bucătariu, 2019). Given the importance of waiver, the GAPA should be amended in this part to require that authorities inform parties of all consequences of waiver, as well as of the procedure to be followed in the event of fiction of service and prior appeals or waivers.

In practice, authorities often exceed the prescribed time limits for decision. In such cases, the GAPA provides for negative fiction, allowing the possibility

14 E.g., Supreme Court case U 638/92, 8 April 1993, and the following.

of filing an appeal or bringing an action (more in Dragos, Kovač and Holsma, 2020). One case presented in the AC involved a party questioning what steps to take if a requested (e.g. building) permit has not been issued even after six months from the date of the request. The dilemma is when the time limit for appeal begins to run and what grounds for appeal can be presented in such a case. Is it merely the failure of the first-instance authority to take a decision within the prescribed time limit, or does it also include an essential error referred to in Article 237 of the GAPA? Additionally, is a weeks-long strike by staff members a legitimate reason for delay?[15] Since a strike is not a reason for suspending the procedure, the time limits do not stand still, even though there is an instruction period for issuing a decision. After two months, administrative silence can be claimed, allowing the party to lodge an appeal. This period, however, is not limited to 15 days, as is the case of an appeal against a decision, because no service has taken place in the case of administrative silence. Therefore, administrative silence lasts as long as the silence continues. In the event of administrative silence, no reason can be presented since the decision has not yet been made, nor can any arguments be put forward and challenged by way of the applicant's counter-arguments. Thus, in an appeal on the grounds of administrative silence, the grounds are limited to the date on which the procedure was initiated (submission of a complete application) and the expiry of the time limit for a decision without a decision (decision on the merits or procedural decision staying the procedure). Moreover, where appropriate, risks to the legal or public interest due to the delay in taking a decision. Such cases highlight the recurring problem of administrative silence, a combination of regulatory and organisational-managerial factors, which could be at least partly solved by setting more realistic time limits for decision-making in individual administrative areas. While this is indeed *materia leges speciales,* it could be the subject of an instructional reference in the GAPA. However, according to theory and constitutional case law, following Article 22 of the Constitution on equal protection of rights, there must be reasonable grounds for differentiation between sector-specific laws and the GAPA, which may include more complex factual and legal decision-making, e.g., in the case of the construction of complex buildings (Avbelj et al., 2019).

In appeal procedures, applications are also made; the appeal itself is an application, as is the waiver or withdrawal (of the appeal). This means that the provisions of the GAPA on appeal and applications (Articles 229–259 and Articles 63–68) must be applied together. However, in practice this often leads to problems of interpretation of the GAPA. For example, the question arises as to how the authority should proceed if it receives an incomplete appeal for which the law provides for a limitation period of 15 days from the date of service of the decision. The law also provides for incomplete applications to be given an additional period of time for the applicant to complete the incom-

15 In Slovenia in spring 2024, there was a months-long strike indeed in several parts of the public administration over an outdated and disproportionate pay system. This strike has escalated in some units, beginning with refusals to work on Wednesdays and expanding to all days, although by law they are still required to carry out urgent tasks as defined by line ministries. Issuing building permits, which was the case here, is not considered an urgent task under these definitions.

plete application. If the authority fails to invite the party or other person with legal standing to complete the application and rejects the appeal, it is acting prematurely and contrary to the rules of procedure, which is considered an essential procedural error. The question is whether any time limit under Article 67 of the GAPA or only the time limit within the limitation period for appeal under Article 235 of the GAPA is set in the call to complete the application. As regards the obligation to call for completion or the right to rectify deficiencies, it should be noted that the formal completeness of the appeal must be considered in the context of (non)eligibility for procedure. According to the GAPA, an appeal must indicate the decision that is being challenged (the authority that issued it, the number, and the date) and (the reasons) why it is being challenged. Thus, any time limit – as long as it is sufficient to allow completion – may be set for the first deficiencies. However, by completing the application, the appellant will not be able to raise additional or supplementary grounds of appeal, i.e. those not previously raised, or otherwise extend (amend or supplement) the consideration of the appeal.

As regards the withdrawal of an application, the GAPA (Articles 134 and 135, providing that in such case the procedure is stayed) does not expressly state that the provisions on withdrawal also apply to appeal. Consequently, only a combined interpretation leads to the conclusion that the withdrawal of an appeal is also permissible, whether at the stage of the formal examination of the appeal at first instance or in the context of the appeal procedure. Given the withdrawal of the request, there is no longer a basis for a decision on the administrative matter, since the existing will of the party with active standing is a prerequisite for the initiation, conduct, and conclusion of the administrative procedure (more in Kovač and Kerševan, 2020/2). The procedural decision to stay the procedure is taken by the authority that considers the appeal once the withdrawal has been made. This means that a new appeal is allowed against the staying of the procedure at first instance; in fact, staying is not automatic, and the option of continuing the procedure must be examined in the public interest. Of course, when an appeal is withdrawn, the same applies as in the case of waiver – the decision becomes administratively final as well as final from that date, and judicial protection is no longer admissible. In this respect, the GAPA should also be amended, e.g. to explicitly indicate in the provisions on appeal the *mutatis mutandis* application of the provisions on applications and to warn of the consequences of withdrawal of an appeal.

Under the GAPA, a substitute decision is issued if the authority recognises the merits of the appeal at first instance (Article 242). In practice, however, several challenges arise in this respect, ranging from potential bias of the officials if they have already conducted the initial procedure, namely whether they are allowed to assess the existence of grounds for a substitute decision and participate in such procedure. This is not controversial since the GAPA only provides for disqualification in the event of devolution at the level of the authority. Another issue appears when there is a coincidence of the appellant's and the authority's assessment, leading to the adoption of a substitute act. No regulation can address all possible scenarios, which often results in

the use of vague concepts that require subjective discretionary interpretation on a case-by-case basis. However, a teleological interpretation suggests that a substitute decision should be given only if the appellant's request is granted in its entirety. That decision is again open to appeal, which can rectify any deviations. In our view, the GAPA is sufficiently clear in this respect, but its provisions must be interpreted functionally. The only thing that should be added to this law is that it is also possible to issue a substitute procedural decision, not only a decision on the merits, which can replace, for example, even a decision in a procedure initiated *ex officio* if the measure is found to be unlawful on appeal. The fact that a procedure initiated ex officio is concluded by a procedural decision and not by a decision when there are no conditions for imposing an obligation is because such an act is given only formal finality. Therefore, there is no ne bis in idem and, in the public interest, e.g. in the case of inspections, the same matter can be dealt with again at any time (more in Kovač and Jerovšek, 2023).

There are two other systemic issues where, in terms of legal certainty and equality before the law as well as efficiency of administrative decision-making, the GAPA should be amended, as the case law is also inconsistent. First, Article 251 of the GAPA provides that, in the event of a well-founded appeal, the second-instance authority decides the case itself or, using its procedural discretion, refers the case back to the first-instance authority for a new decision. However, this distinction is unclear and various bodies, including the Ombudsman in 2017 and the National Council in 2018, advocate for an amendment of the GAPA requiring the appellate authority to decide the case itself to promote early enforceability. As regards the discretion of the appellate authority, it should be noted that the primary purpose of reviewing cases at two instances is review rather than decision-making, but there is nevertheless a systemic need to conclude procedures promptly. Therefore, the second-instance authority generally remedies the deficiencies arisen in first-instance procedures itself, potentially issuing a final decision on the appeal.

However, if remedying the deficiencies requires reopening the entire first-instance procedure or a substantial part thereof, it is more effective for the first-instance authority to handle it (e.g., because its seat is closer to the residence or seat of the party or the immovable property involved). This approach is employed when the second-instance authority believes the first-instance authority can address the deficiencies in procedure more quickly and effectively (Kovač and Kerševan, 2020/2, pp. 608ff; Kovač and Jerovšek, 2023, p. 245). There is no basis for the appellate authority to have to decide itself, since the function of the appeal is (only) to review the lawfulness of the conduct of the first-instance authority, not to replace it, especially in cases of errors by the latter. The function of the appeal is, *inter alia*, to provide feedback to competent authorities. Namely, it is giving the second-instance authority a better picture of the (in)efficiency of the rules of sector-specific legislation, while the first-instance authority – when the appeal is justified and particularly when the case is referred for a new decision – receives guidance and instructions on how to act in future similar cases.

The second issue concerns the dilemma of whether the facts and rules applicable in the reopened procedure should be those in force at the time when the now-annulled first-instance decision was issued, or those in force at the time of issuing the new decision, which could be years later. The argument for using the facts and rules from the original decision is that the appeal primarily serves to review compliance with the principles of lawfulness and equality of the parties in the original decision, precluding the parties from presenting new facts during the appeal (Article 238 of the GAPA). Conversely, the argument for using the facts and rules in force at the time of the new decision is that the original decision is no longer valid. This aligns with the general rule that for each decision made, the facts and rules in effect at the time of that decision should be applied, especially if years have passed since the original decision. Additionally, the GAPA stipulates that if the appeal is well founded, the first-instance authority is to follow the appellate authority's view on the conduct of the procedure but not necessarily on the facts of the case. Conversely, most of the judgements on the reopening of procedure are very strict (see Kovač and Kerševan, 2020/2).[16] This is an important systemic guideline, making it crucial for the GAPA to address both dilemmas explicitly.

To wrap it up, from AC cases, Slovenian case law, and comparative trends (see Hofmann et al., 2014; Koprić et al., 2016; Đanić Čeko and Petrašević, 2020; Dragos, 2023), such as the ReNEUAL model rules it is evident that an overabundance of remedies does not necessarily enhance the protection of the rights of the parties or the public interest. That is why the jurisdictions rather favour a single remedy for and a single remedy against the party due to the protection of the public interest (della Cananea, 2022, whereby national legislators may thus take model rules into account because they deem them more satisfactory than national law). Instead, it reduces legal certainty and creates dilemmas regarding competing legal remedies (e.g., appeal, reopening of procedure, and *restitutio in integrum* for the same procedural errors). It would be therefore advisable to consider reducing the six remedies currently provided under the GAPA and additional remedies under *leges speciales*.

As for concrete proposals for amendments or highlighting dilemmas that may present challenges in the application of the existing GAPA, particularly regarding significant procedural errors as grounds for appeal, are particularly as follows (cf. Kovač et al., 2023):

16 See Administrative Court case I U 1519/2011, 19 February 2013: "*If, on the basis of new facts and new evidence, a different state of affairs is established in the new procedure, the first-instance authority is obliged, in accordance with the fundamental principle of substantive truth, to take account of the new state of affairs …*". Or case I U 1515/2018-9, 21 July 2020: "*Reopening does not mean that the procedure starts anew but is rather intended to remedy the irregularities of the earlier decision, in accordance with the instructions given by the second-instance authority in the appellate procedure.*" And Supreme Court case X Ips 109/2016, 16 January 2019: "*If the tax authority at first instance finds a different state of affairs in the new procedure, it must also take a different legal decision, which may even be to the detriment of the individual.*"

- Review of the set of absolute significant procedural errors and the question of extending them to violations of procedural prerequisites under Article 129 of the GAPA.[17].
- When a party submits an incomplete appeal, it is not clear from the GAPA that the supplementation under Article 67 of the GAPA is only possible within the 15-day deadline; this can only be inferred from case law.
- Article 237 of the GAPA does not clarify that there are also relative significant procedural errors and what qualifies as such errors.
- Article 238 of the GAPA does not clarify that the party can only challenge the operative part of the decision. Although it follows logically that only the operative part becomes final, enforceable, and res judicata, and that the decision stems from the operative part.
- Silence of the authority – clearly state what applies: a minority holds the view that the first instance can issue a decision even after an appeal has been filed; the majority view, however, does not allow such an action given the appeal's devolutive effect.
- Clarify which facts to consider in repeated proceedings or in the reopening of proceedings, i.e., those existing at the time of the issuance of the original decision or in the new proceedings (even after several years).

Finally, an analysis of AC cases in terms of digitalisation or automated decision-making reveals a relative absence of such cases in the appeals section, though they are present in other sections of AC, particularly in relation to handling applications, formality of acts, and service. A notable issue in such regard is the legal effects and liability of officials when automated certificates are issued, which poses restrictions on automated decision-making and subsequent appeals (cf. Galetta and Hoffman, 2023; Benjamin, 2023). AC cases involving automated issuing of certificates reveal that the existing law does not support the purely automatic issuance of administrative acts, requiring decisions and certificates to be issued by competent, authorised, and impartial officials. Therefore, automated certificates do not have the same legal status and effects as those signed by an authorised official (e.g., an automated certificate does not have the force of a public document with presumption of truth of its contents, although it may nevertheless serve as evidence).

Despite advanced automation – eGovernment, eTaxes, eWelfare, etc. – and use of artificial intelligence in social transfers and agricultural subsidies, the GAPA lacks adequate provisions in this respect, thus lagging far behind. The GAPA allows for the automated issuing of decisions, but only under the provision of Article 210 specifying that, if a decision is generated automatically, it may contain a facsimile instead of the official's signature or the authority's stamp. Yet, this provision has never been evaluated regarding the fact that,

17 Here, the violation of ne bis in idem would be particularly relevant since the rest is at least indirectly covered by other grounds for appeal (e.g., the issue of party status; missed deadlines) or nullity (e.g., if the procedural prerequisite of an administrative matter is not met, but it falls within the jurisdiction of courts, or it is not possible to decide in administrative proceedings at all).

with "automatic" generation of decisions, decision-making is effectively transferred to the information system. Moreover, an e-signature actually misleads by implying that the decision is based on the will of the person legally authorised to issue it (Articles 28, 29 of the GAPA), rather than the "judgment" of the information system. The law also does not provide for the possibility that an information system could legally substitute the decision-making authority of a competent (physical) person. It is therefore imperative to adopt appropriate regulations, considering the liability for accurate content and limitations of information under Articles 5, 16 and 22 of the GDPR. This will ensure the regulation of administrative procedures in compliance with EU law, whether through a single regulation or through effective national measures (della Cananea, 2022, listing various national approaches, all with remedies as the key *materia*). Therefore, even in the digital age, they should be standardised to avoid having different appeal procedures and thus specialised legal support and supranational judicial review needed.

6 Conclusion

An analysis of cases through the AC project, which has been addressing administrative procedural issues in practice since 2009, reveals that in recent years, particularly 2023 and 2024, around one hundred dilemmas have arisen in relation to appeals. In light of the research questions posed in the introduction, the conclusions of the analysis are as follows: first, the main dilemmas in Slovenian administrative practice concerning appeals or those that escalate during the appeal procedure stem from a combination of rules regulating applications, service, time limits, application of various remedies, and administrative finality as well as enforceability. Second, many problems arise due to only partial sector-specific rules, resulting in issues of complementarity between these rules and the GAPA. This is evident in questions of admissibility of an appeal and jurisdiction. It is worth considering whether the GAPA should specifically regulate when and to what extent-specialised rules are permissible. Third, there are frequent dilemmas concerning the waiver of the right to appeal in relation to the effects of finality and lack of access to justice or non-suspensiveness. These situations can render an appeal ineffective and should be addressed by the GAPA. Fourth, the systemic shortcomings of the current GAPA include competing legal remedies, the definition of the relationship between the first- and second-instance authorities, the use of facts and rules over time, and the gap created by the under-regulated yet increasingly intense digitalisation of administrative procedures.

The national legislature should advance on these issues, also considering comparative solutions within the EU. Furthermore, Slovenia is beginning to see potential reductions in rights related to legal protection linked to digitalised or automated decision-making. This is undoubtedly a universal challenge that no country can escape. Based on experience, it is better to anticipate difficulties than to seek solutions *post festum*. In conclusion: in a democratic system, particularly in administrative relations where the authority or public interest

supersedes the rights of the parties, the right to appeal is a fundamental right and an international legal or constitutional guarantee. It should, therefore, be adequately regulated to minimise the practical difficulties in implementing its rules. Only in this way can good governance as a concept of effective public policy be guaranteed, while respecting democratic postulates.

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References

Administrative Consultation (2024). At <https://upravna-svetovalnica.fu.uni-lj.si/index.php>, accessed 21 September 2024.

Androjna, V. and Kerševan, E. (2006). Upravno procesno pravo [Administrative Procedural Law]. Ljubljana_ GV založba.

Auby, J. B. (ed.) (2014). Codification of Administrative Procedure. Brussels: Bruylant.

Avbelj, M. (ed.) (2019). Komentar Ustave Republike Slovenije [Commentary to the Constitution of the RS]. Nova Gorica: New University, European Faculty of Law.

Benjamin, J. (2023). Safeguarding the Right to an Effective Remedy in Algorithmic Multi-Governance Systems: An Inquiry in Artificial Intelligence-Powered Informational Cooperation in the EU Administrative Space. Review of European Administrative Law, (2), pp. 9–36.

Đanić Čeko, A. and Kovač, P. (2020). Comparative analysis of an administrative appeal in Croatian, Slovenian, and EU law. In D. Duić and T. Petrašević, eds., EU and comparative law issues and challenges: EU 2020 - lessons from the past and solutions for the future, International Scientific Conference, Osijek, Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek, pp. 1065–1096. https://doi.org/10.25234/eclic/11940.

Đanić Čeko, A. and Petrašević, T. (2020). Lack of one common administrative procedure? Is regulation on the EU administrative procedure necessary in the EU? Balkan social science review, 15(2020), pp. 93–117. https://doi.org/10.46763/BSSR20150094djc.

Della Cananea, G. (2022). Administrative Procedure in Europe: National and Supranational Legislation. Program on Regulation Research Paper Series, No. 22-02. Penn.

Dragos, D. C. (2023). Administrative Procedure. In A. Farazmand , ed., Global Encyclopaedia of Public Administration, Public Policy, and Governance. Springer Nature, pp. 363–369.

Dragos, D. C. and Neamtu, B. (eds.) (2014). Alternative Dispute Resolution in European Administrative Law. Springer.

Dragos, D. C., Kovač, P. and Tolsma, H. D. (eds.) (2020). The Sound of Silence in European Administrative Law. Cham: Palgrave Macmillan.

Galetta, U.D. and Hofmann, H. C. H. (2023). Evolving AI-based automation – the continuing relevance of good administration. European Law Review, 48(6), pp. 617–635.

Galetta, U.D., Hofmann, H. C. H., Puigpelat O. M. and Ziller, J. (2015). The General Principles of EU Administrative Procedural Law. Brussels: European Parliament.

General Administrative Procedure Act, Official Gazette of the RS, No. 80/99 and amendments.

Godec, R. (ed.) (1993). Upravni zbornik [Administrative Compendium]. Ljubljana: Institute for Public Administration.

Hofmann, H.C.H., Schneider, J.-P. and Ziller, J. (eds.) (2014). The ReNEUAL Model Rules. www.reneual.eu/.

Koprić, I. (ed.) (2016). Legal Remedies in Administrative Procedures in Western Balkans. Danilovgrad: ReSPA.

Kovač, P. (2013). Effective Adjudication through Administrative Appeals in Slovenia. Utrecht Law Review, 9(3), pp. 39–50. https://doi.org/10.18352/ulr.235.

Kovač, P. (2020). Codification of Administrative Procedure in Slovenija and the EU. Teorija in praksa, 57(3), pp. 848–866.

Kovač, P. (ed.) (2023). Upravni postopki med teorijo in prakso [Administrative Procedures between Theory and Practice]. Ljubljana: Faculty of Public Administration of University of Ljubljana.

Kovač, P. and Dečman, M. (2009). Implementation and change of processual administrative legislation through an innovative Web 2.0 solution. Transylvanian Review of Administrative Sciences, 28, pp. 65–86.

Kovač, P. and Sever, T. (2015). Collaborative public administration and administrative procedures: the Administrative Consultation. Teorija in praksa, 52(5), pp. 971–992.

Kovač, P. and Jerovšek, T. (2023). Upravni postopek in upravni spor [Administrative Procedure and Dispute]. Ljubljana: Faculty of Public Administration of University of Ljubljana.

Kovač, P. and Kerševan, E. (eds.) (2020, 2022). Komentar Zakona o splošnem upravnem postopku, 1., 2., 3. knjiga [Commentary to the GAPA, Books 1, 2 and 3]. Ljubljana: Official Gazette of the RS.

Kovač, P. and Ribič, U. (2022). Effectiveness of administrative appeal in Slovenia and Croatia. The NISPAcee journal of public administration and policy, 15(1), pp. 39–60. https://doi.org/10.2478/nispa-2022-0003.

Moldovan, O. and Bucătariu, G. (2019). Effectiveness and Efficiency of Administrative Appeal Procedures: a Case Study on Tax Disputes in Romania. Central European Public Administration Review, 17(2), pp. 9–34. https://doi.org/10.17573/cepar.2019.2.01.

Ranchordas, S. (2024). The Invisible Citizen in the Digital State: Administrative Law Meets Digital Constitutionalism. In J. De Poorter, C. Oirsouw and G. van der Schyff, eds., European Yearbook of Constitutional Law (forthcoming). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4674932.

Sever, T., Đanić, A., and Kovač, P. (2016). Effective legal protection against the excessive length of administrative decision-making: the cases of Slovenia and Croatia. The NISPAcee journal of public administration and policy, 9(1), pp. 135–166. https://doi.org/10.1515/nispa-2016-0007.

Stare, J. and Pečarič, M. (eds.) (2021). The Science of Public Administration. Ljubljana: Faculty of Administration of University of Ljubljana.

The Court of Justice of the European Union (2024). At <https://curia.europa.eu/jcms/jcms/j_6/en/>, accessed 2 September 2024.

The Supreme Court of the RS (2024). At <www.sodnapraksa.si>, accessed 21 September 2024.