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Judicial review of competition cases in Slovakia:
Looking for identity

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There is nothing as stable as change …

- procedurals rules
    - 2004 reform – new rules
        - for grounds for annulment of administrative decision
        - for appeal by the administrative body
    - 2016 new rules on judicial review of administrative decisions
- Institutional setting
    - by 2004 – the Supreme Court of the Slovak Republic as 1st and 2nd instance
    - 2004-2021 – Regional Court in Bratislava as 1st instance and the Supreme Court as 2nd instance (appellate -> cassation)
    - 2021 – the Supreme Administrative Court of the Slovak Republic established
    - 2023/2024- new 1st instance administrative courts will be created

"Asynchronous" development

<table>
<tr><th></th><th>1st instance</th><th>2nd instance</th><th>Review</th><th>Act in force</th></tr>
<tr><td>By 2004</td><td>Supreme Court of the SR</td><td rowspan="3">Supreme Court of the SR</td><td>Review system</td><td rowspan="3">O.s.p. (1963)</td></tr>
<tr><td>2004-2016</td><td rowspan="3">Regional Court in Bratislava</td><td>Review system
Power/duty to replace 1st instance judgment by 2nd instance</td></tr>
<tr><td>2016-2021</td><td rowspan="3">Cassation system</td><td rowspan="3">SSP (2016)</td></tr>
<tr><td>2021-2023</td><td rowspan="2">Supreme Administrative Court of the SR</td></tr>
<tr><td>2023/2024-?</td><td>Administrative Court Bratislava</td></tr>
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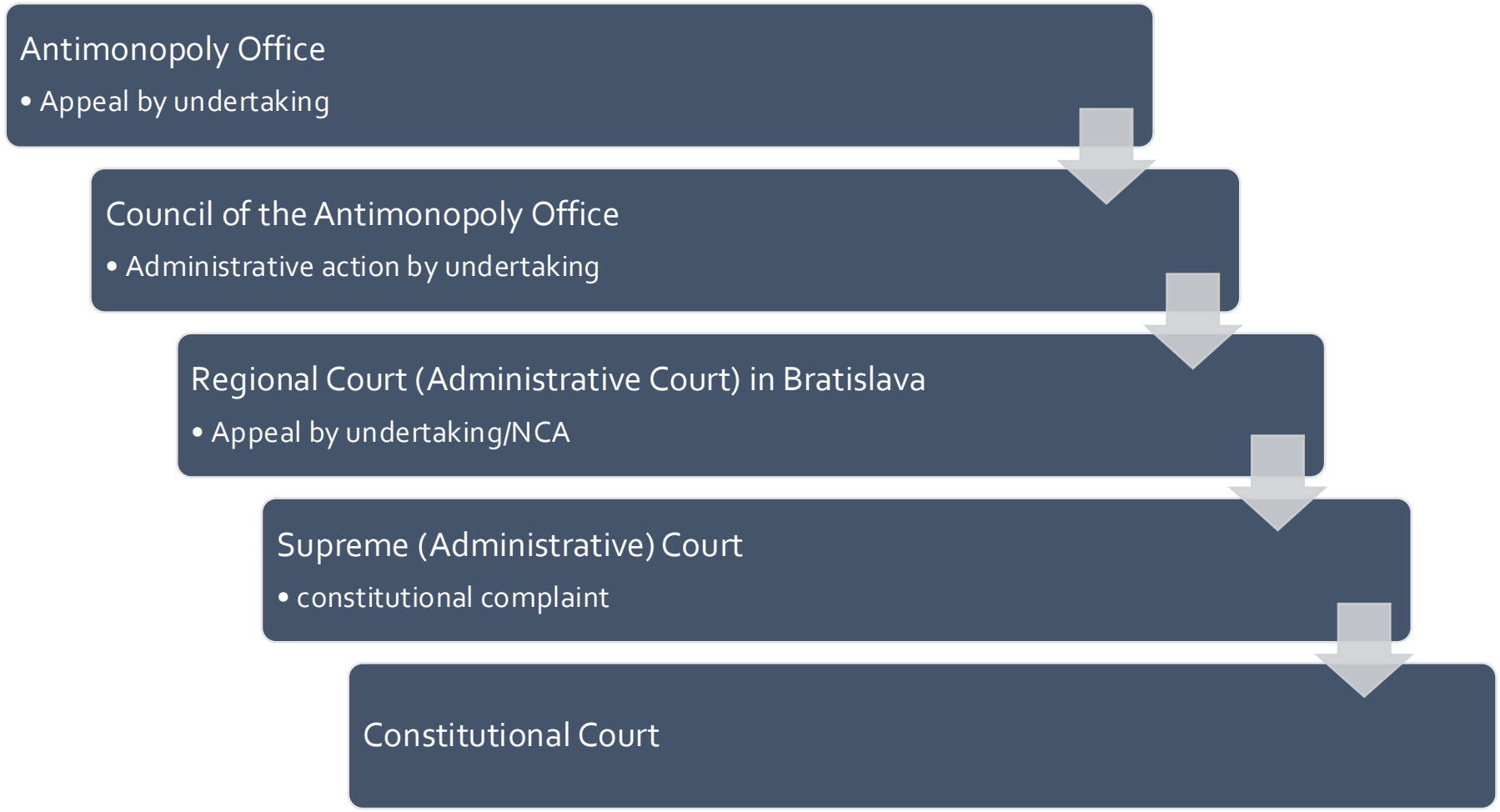
Let’s appeal!


Antimonopoly Office
• Appeal by undertaking
Council of the Antimonopoly Office
• Administrative action by undertaking
Regional Court (Administrative Court) in Bratislava
• Appeal by undertaking/NCA
Supreme (Administrative) Court
• constitutional complaint
Constitutional Court

Let's appeal!

Figure 2(a): first instance judgments

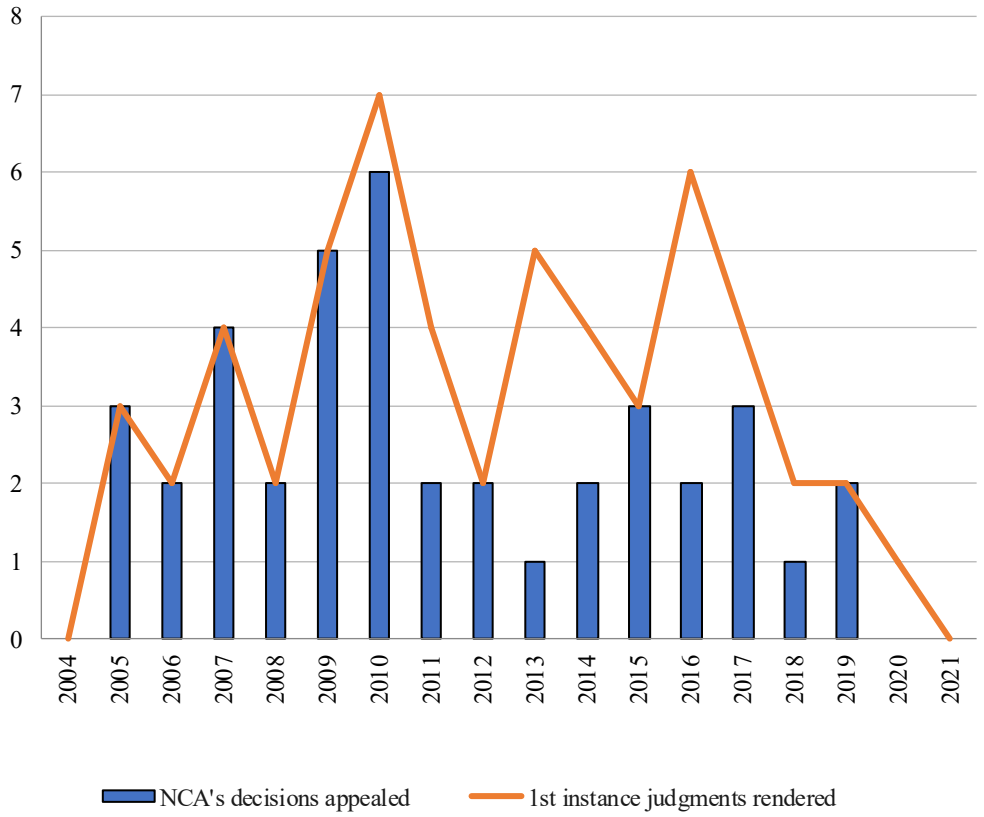
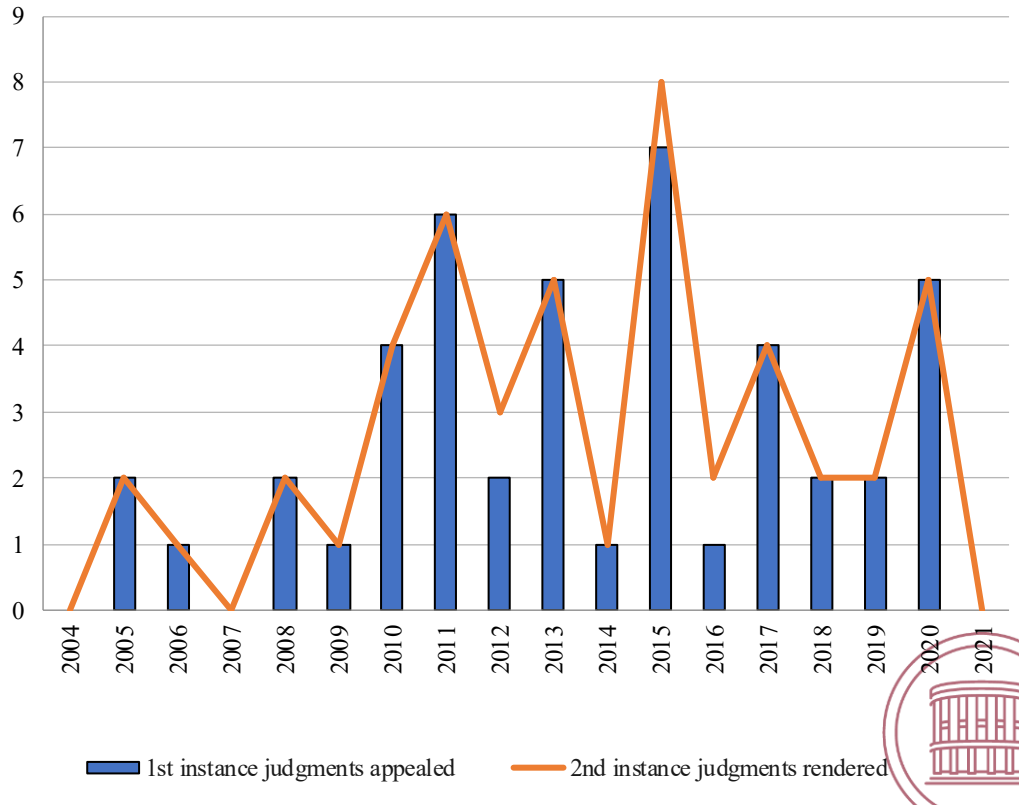
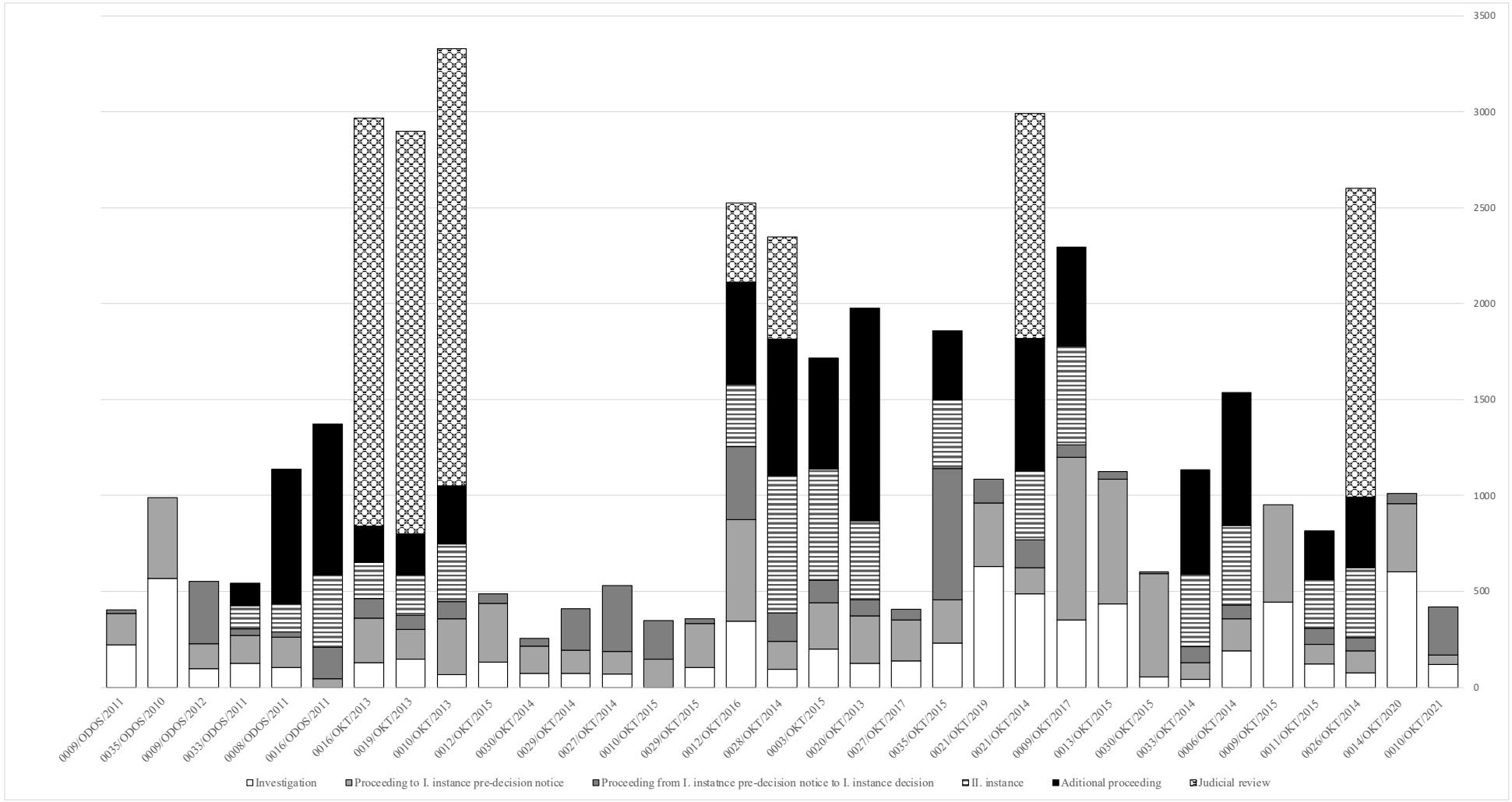


Figure 2(b): second instance judgments



Effectiveness of enforcement (2011-2021)



Preparedness of the judges

- 2004 – new agenda for judges of regional court
- "Harabinocracy" – transfer to an administrative panel as form of punishment
- Continuous education, criticism of academia helps
- 2021 – reshuffling judges of the Supreme Court again
  - New expert judges at the Supreme Administrative Court

Is it necessary to train judges?

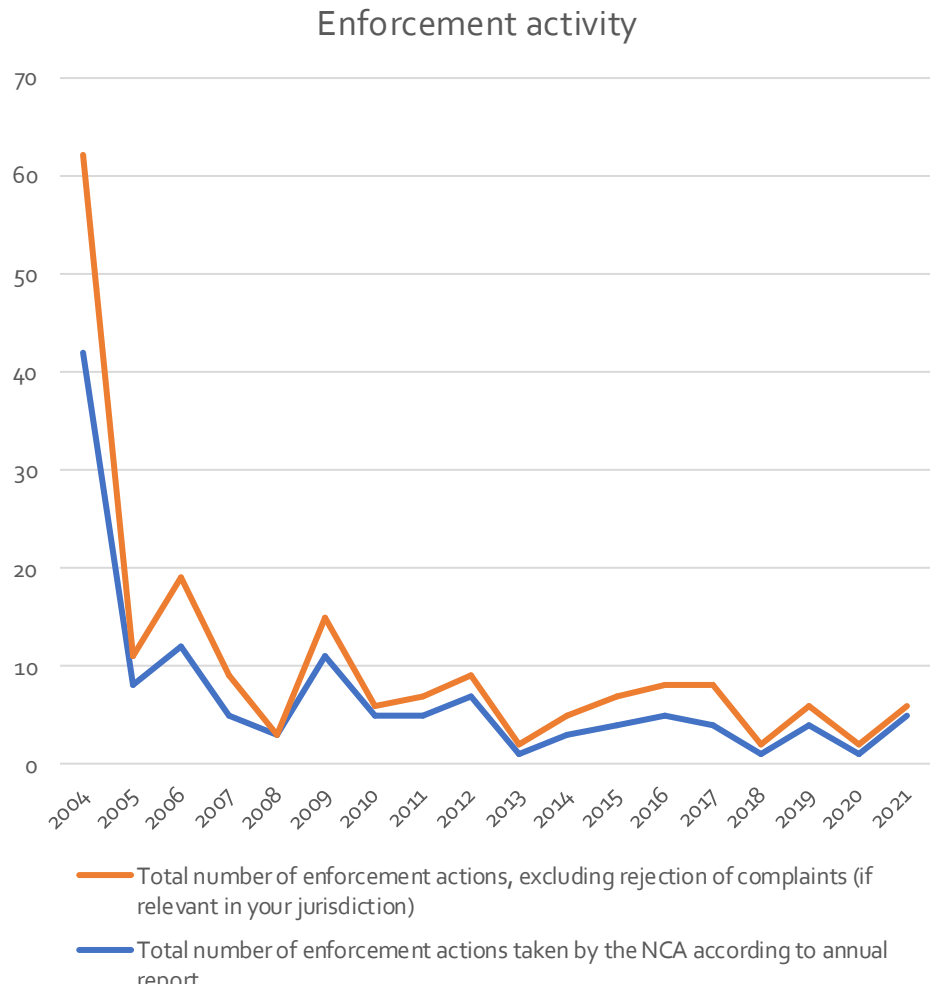
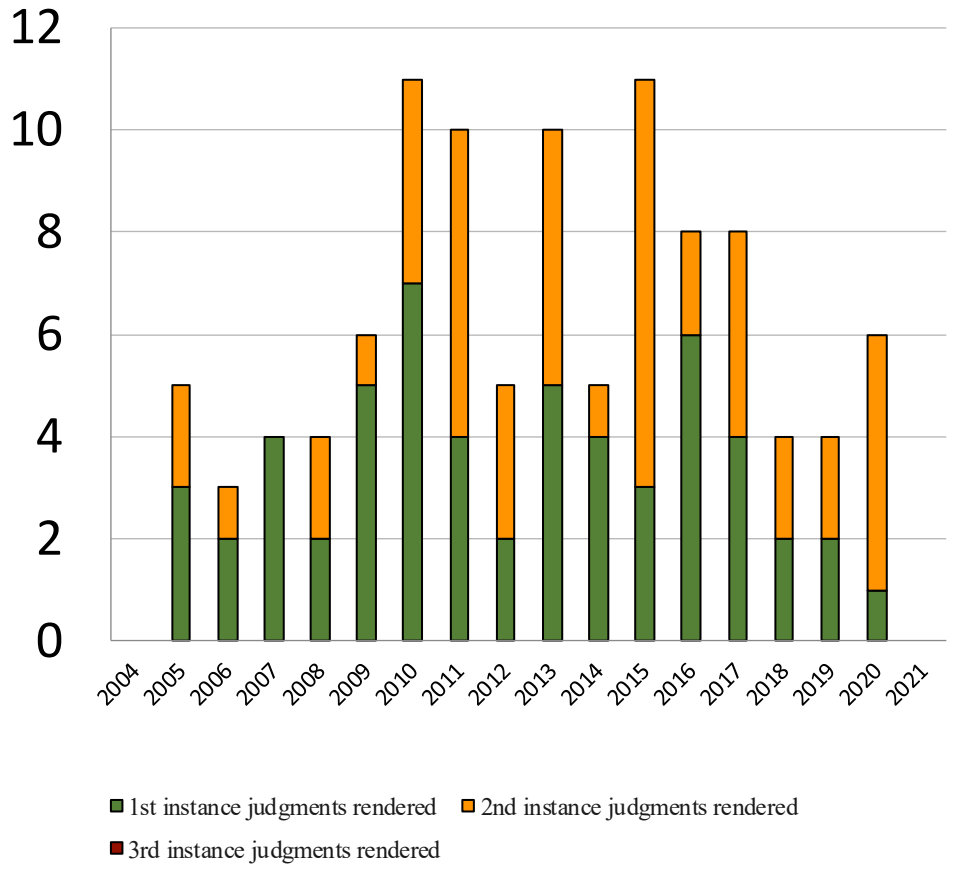


Figure 1: No. of judgments according to instances



Shortcomings of institutional and procedural setting

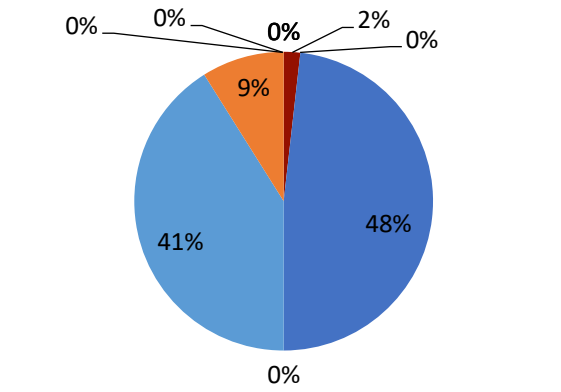
- Power/duty of 2nd instance court to change 1st instance judgment if necessary has not shorten judicial proceedings
- Lack of specialization
  - Too many possible judges
- Few cases
  - Almost every is a "precedent"

Ebbs and flows of intensity and quality of judicial review

- beginning of judicial review (until 2006)
  - short, several-pages judgments, formal and superficial review
- courts unprepared for judicial review (2006-2013)
  - new „theories"
    - Exact place and time of cartel agreement
    - Nulla crimen sine lege
    - Margin sgueeze as a new practice
    - Abuse of essential facility is not abuse of dominance
- consolidation (2013 onwards)

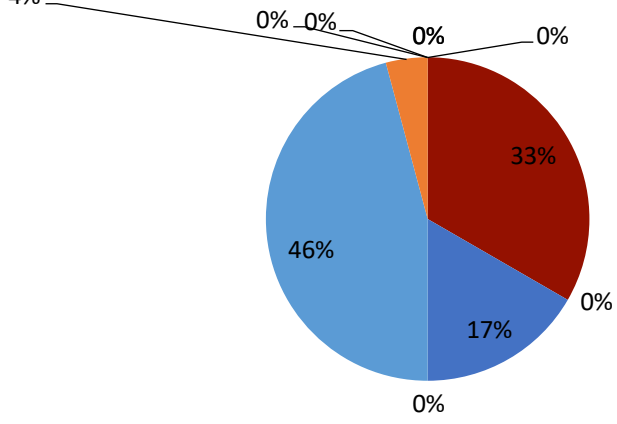
Probability of success of judicial review 50:50

Figure 4a: first instance outcome



- fully annulled
- partially annulled
- fully replaced
- partially annulled, partially replaced
- fully annulled, returned
- partially annulled, returned
- fully rejected (exc. withdrawn)
- amended only with respect to fines
- The application for leave to appeal was rejected
- Withdrawn

Figure 4b: second instance outcome



- fully annulled
- partially annulled
- fully replaced
- partially annulled, partially replaced
- fully annulled, returned
- partially annulled, returned
- fully rejected (exc. withdrawn)
- amended only with respect to fines
- The application for leave to appeal was rejected
- Withdrawn
- Other

Grounds for review

- Usually whole "package"
  - NCA erred in law because it failed to bear the burden of proof and therefore the fine is too high or wrong
- Standard of proof
  - 8Sžh/3/2016 Cargo: "…if national rules require higher standard of proof than the EU rules, the national rules shall apply…"
    - Administrative procedure Code: "…beyond any doubt…"
  - 4Sžhk/1/2019 VUMAT SK, s.r.o. et al.
    - …. direct evidence is rare..
    - Circumstantial evidence fulfil the requirements of the Admin. Procedure Code .

Conclusion remarks

- Substantial changes of legal environment (2021, 2023 recent)
- More qualified judges at the Supreme Administrative Court

- Relatively small number of cases (and there will not be more soon)
- “Ancient” Administrative Procedural Code

Thank you for your attention

"Power of truth is invincible if it is armed with the light of knowledge"

Johannes Amos Comenius

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