

Finland's report for the conference in Stockholm 15 to 17 June 1998

2 The field of application of the legal review

2.1

Finnish legislation contains no definition of administrative decisions. On the other hand, the concept of administrative decisions has been given a rather sharply defined and well-established substance in the case-law of the Supreme Administrative Court. In this case-law administrative decisions are outlined as decisions with effect in administrative law, made by authorities exercising their powers under public law.

2.2

Section 5 of the Finnish Administrative Judicial Procedure Act (586/1996) contains a general provision on the admissibility of appeal against administrative decisions. It states that any measure by which a case has been resolved or dismissed may be challenged by an appeal. An internal administrative order concerning the performance of a duty or another measure shall not be subject to appeal.

2.3

A general criterion for assessing whether an administrative decision can be subject to appeal is to ascertain if the decision has legal effects outside the decision-making body, and if, therefore, persons subjected to them may require legal protection.

2.4

There is only one significant special provision concerning the admissibility of appeal against administrative decisions. It is contained in Section 90 of the Local Government Act (365/1995), laying down that decisions by municipal authorities or intermunicipal authorities may be appealed against on the following grounds: the decision has not been made in the proper legal order, the decision-making authority has exceeded its powers or the decision is contrary to law. Furthermore, Section 91 of the Act contains a supplementary provision laying down that municipal appeal is not admissible against decisions that only concern preparation or enforcement.

2.5

The point of departure is a general right of appeal, ensuring the possibility to review any administrative decisions by means of an appeal. Apart from what is stated above in 2.2, a general condition for admissibility of appeal is held to be that the decision must be final and its effects must be binding and, as such, an appellant must be able to seek immediate legal protection against the decision, since legal protection granted at a later date or in a different context would no longer be sufficiently effective.

2.6

As the point of departure is general admissibility of appeal against administrative decisions, there is no reason to present here other categories of administrative decisions than those which cannot be appealed against. Such acts are, for instance, proposals by one authority to another in matters falling within the latter authority's power of decision, and other acts of the authorities designed to institute proceedings. Measures relative to the preparation and conduct of a case, such as evidence requested by the authorities and statements to the authorities, cannot be the object of legal review. Nor can an appeal be lodged against an act by which an authority has transferred a case outside its competence to a competent authority for decision. Nor can decisions confirming principles, plans or programmes on a general level be appealed against. Requests and reminders from authorities performing their inspection and supervision duties, containing only references to obligations under law and not involving legal consequences, cannot be appealed against.

2.7

The general appeal period laid down in Section 22 of the Administrative Judicial Procedure Act is 30 days. The period is calculated from the date when the appellant has received notice of the decision. There are very few exceptions to the general appeal period. In certain cases concerning taxation, water rights and patents, the time limit according to special regulations is, however, 60 days. On the other hand, the time limit laid down for certain construction matters is 14 days.

2.8

The Administrative Judicial Procedure Act entered into force on 1st December 1997. Yet, the act did not involve changes in substance to these procedural norms: their contents have been reasonably stable for quite a long time. There are no amendments in process in this field.

3 The substance of the legal review.

3.1

According to administrative court procedure applicable in Finland, issues of law and matters of fact relating to a case must always be examined. Issues concerning the requirements for examining and settling a case (procedural requirements) must also be examined.

3.2

The extent of the review does not vary in different fields of administrative law.

3.3 The powers of the court

3.3.1

The main rule states clearly that the court has reformatory powers. In other words, the court may modify the substance of a decision subject to legal review.

3.3.2

In cases where an appeal based on the Local Government Act concerns a decision by a municipal or intermunicipal institution, the power of the court is cassatory. In that case, the court may only quash the decision appealed against.

3.3.3

If the Supreme Administrative Court finds that an appeal concerns a case where the decision in the main proceedings principally depends on evaluation of the expediency of the decision or measure in question, the matter shall be referred to the Government for decision (Section 5 of the Act on the Supreme Administrative Court, 22nd July 1918). Courts of first instance (County Administrative Courts) can also base their decision-making on expediency, except in cases concerning a complaint laid down in the Local Government Act. In such cases, only the legality of the decision can be decided under administrative court procedure.

3.4

The Administrative Judicial Procedure Act has not brought any changes in this respect either, and there are no amendments in process or planned.

4 Courts exercising legal review

4.1 A summary description of the court organization

4.1.1

The court organization is divided into two branches: general courts handling civil and penal cases on one hand and administrative courts handling administrative cases on the other. In addition to these, there are special courts, such as the High Court of Impeachment (charges brought against ministers and justices of the supreme courts), the Insurance Court, the Labour Court (matters concerning collective labour contracts) and the Land Courts and Water Rights Courts. There are also various quasi-jurisdictional appeals boards (appeals committee for customs matters, appeals board for rural industries).

4.1.2

As a general rule, there are three instances for civil or penal cases and two for administrative cases.

4.1.3

Civil or penal cases are handled in first instance by 68 District Courts, in second instance by 6 Courts of Appeal and in last instance by the Supreme Court. Administrative cases are handled in first instance, possibly after an internal rectification procedure of the administrative sector in question, by 11 County Administrative Courts and their hierarchical equivalent, the administrative court of the Åland Islands, and in last instance by the Supreme Administrative Court.

4.1.4

The different categories of courts function separately.

4.2 The career of judge

4.2.1

Nearly all judges have undergone court training in a District Court early in their careers. Later, judges normally have separate careers in the different categories of courts.

4.2.2

There are no legal obstacles to transfers from one category of courts to another. In actual practice, transfers are quite exceptional after the early stages of the career. Yet, there have been cases where this has happened even in last instance.

4.2.3

The career of judge is not a closed one in a judicial sense. Prosecutors or barristers in the early stages of their careers are quite often appointed to lower judicial offices. Judges for intermediary judicial offices are mostly recruited among judges holding lower offices. On the other hand, perhaps half of the justices of the Supreme Court and the Supreme Administrative Court have been recruited among lawyers outside the court organization, such as solicitors, university professors and persons attending law drafting duties.

4.3

Lower civil and penal courts are composed of one professional judge and three laymen when penal cases and ordinary civil cases are tried. Laymen also attend some of the special courts. Moreover, in certain cases requiring special expertise, such as water rights issues and patent issues, persons with no legal training can act as expert justices within the Supreme Administrative Court.

4.4

The fields of competence between civil and penal courts on one hand and administrative courts on the other is defined by general provisions, complemented by numerous special rules. The competence of special courts has been defined by detailed regulations.

4.5

Civil and penal courts deal with civil action, including issues on contracts of employment, on marriage, on inheritance and guardianship, as well as damages and criminal cases.

Administrative courts handle appeals against decisions of state administrative authorities and municipal authorities, administrative litigations (disputes arising from legal relationships governed by public law) and, for instance, cases concerning competition and public procurement. The administrative courts also deal with certain cases of submission (taking children into care, involuntary placement in mental hospital).

4.6

Appeals against a decision of a state administrative authority or a municipal authority and administrative litigations are handled in first instance by County Administrative Courts and in last instance by the Supreme Administrative Court. However, an appeal against decisions of the Council of State or a ministry is lodged directly in the Supreme Administrative Court. Cases concerning competition and certain cases concerning public procurement are normally handled in first instance by the appeals board for competition matters, with right of appeal to the Supreme Administrative Court. Certain cases dealing with the Civil Service are handled in first instance by the appeals board for public servants. Appeals against its decisions can be lodged in the Supreme Administrative Court. Issues concerning the application and interpretation of collective bargaining contracts are dealt with by the Labour Court, which is the only instance. Besides this, there is the appeals committee for customs matters and the appeals board for rural industries for matters of agricultural subsidies. The highest instance for these cases is the Supreme Administrative Court. As a rule, cases of damages involving the government or local authorities are handled by civil and penal courts, in certain exceptional cases also by administrative courts. Water rights matters are handled in first instance by the Water Rights Courts and in second instance by the Water Rights Appeal Court. In last instance, part of the water rights matters, including damages, are handled by the Supreme Court and part by the Supreme Administrative Court.

4.7

The general trend is to concentrate cases of administrative law in first instance to the County Administrative Courts, which will become local administrative courts, and in last instance to the Supreme Administrative Court. The general tendency is towards suppression of most specialized courts and boards of appeal.

4.8

The Administrative Judicial Procedure Act entered into force about 1.5 years ago and it includes the principal regulations on administrative court procedure and administrative courts. The overall reform of the Constitution Act now in progress will further clarify constitutional provisions on the status of the administrative courts. According to plans, the County Administrative Courts will become local administrative courts and their status will be strengthened by, for instance, suppressing the Water Rights Courts and certain boards of appeal.

5 *Court proceedings*

5.1

Civil and penal proceedings are initiated by summons, administrative proceedings by appeal or petition.

5.2

Proceedings in civil and penal cases are conducted orally. In administrative cases proceedings are conducted in writing, unless oral proceedings are requested by a party or deemed necessary by the court. In most administrative cases proceedings are conducted exclusively in writing, although there is a tendency toward increasing oral hearings and inspections on site.

5.3

The role of the court is rather passive in civil and penal cases. In administrative cases the court has a responsibility based on law to ensure that facts are investigated where necessary.

5.4

In matters of administrative law, documentary evidence is much more significant than in civil or penal matters.

5.5

In civil and penal cases as well as administrative cases, the party initiating the proceedings shall pay a general fee for court proceedings, covering only a fraction of the court's expenses (a maximum of 1000 FIM at the Supreme Administrative Court). Fees are not collected from persons of limited means or in certain cases laid down by specific regulations, such as social welfare issues.

5.6

Public legal aid can be obtained from municipal legal aid offices or, secondly, when the court handling the main issue grants the right to engage a legal adviser through public funds. The right to municipal legal aid is the same for civil or penal cases and for administrative cases. The right to a legal adviser engaged through public funds in administrative cases concerns only certain separately enumerated issues.

5.7

A party can represent himself in court. There is no obligation to use a lawyer as counsel. This concerns civil or penal cases as well as matters of administrative judicial procedure, from first to last instance.

5.8

Normally, matters of administrative judicial procedure are not two-party processes. The most important exceptions are tax cases and administrative litigations.

5.9

In cases of administrative judicial procedure, compensation claims for costs can be served on the adverse party or the authority in charge of an incorrect decision, following the same principles as in civil or penal matters. Administrative courts have wider discretion to rule on compensation for costs than civil and penal courts. The practice of imposing litigation costs is more limited in administrative matters than in civil or penal matters.

5.10 and 5.11

No.

6 The relationship between the civil or penal courts and the administrative courts

6.1

There is no method to harmonize judicial procedure. Normally the last instances establish each others' court practices before deciding a case, and they endeavour to avoid differentiated practices of application — unless there are weighty reasons against it.

6.2

There are no general provisions on this. Other courts may, however, ask the opinion of the Labour Court in matters relating to the interpretation of collective bargaining contracts.

6.3

No.

6.4.1

Civil and penal courts have competence.

6.4.2

Administrative courts have competence.

6.4.3

Administrative courts have competence.

6.4.4

Administrative courts have competence to rule on the legality of the authorization to expropriate and civil and penal courts have competence to decide the amount of redemption.

6.4.5

Administrative courts have competence.

6.5

No. There are a few single provisions. For instance the right to compensation for damages in civil and penal courts due to erroneous action by a government authority may require an administrative court to confirm that the action has been erroneous.

6.6

No.

6.7

Problems are extremely rare. About once a year there may occur a situation where a civil servant has been subject to administrative termination of employment due to reprehensible conduct, and the same reprehensible conduct is under assessment in a civil and penal court. Certain matters relating to the equality of the sexes may also come up both in civil and penal courts and in administrative courts. Problems arise if the question of evidence is evaluated in an essentially different manner in different courts of law.

6.8

No.