

**XVII^{ème} colloque entre les Conseils d'Etat
et les juridictions administratives suprêmes
de l'Union Européenne**

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R a p p o r t

Finlande

Supreme Administrative Court of Finland
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Answers to the Questionnaire for the XVIIth Colloquium between the Councils of State and the Supreme Administrative Judicial Bodies of the European Union

The impact of Article 6 (1) of the European Convention on Human Rights on the procedure of the Supreme Administrative Courts and State Councils

The answers are given, as far as possible, following the schedule laid down in the questionnaire.

1. Preliminary questions on the domestic law

1.1. As a general rule all administrative decisions made by Finnish state and municipal administrative authorities are subject to judicial review before an administrative court. There are eight Regional Administrative Courts and the Administrative Court of the Province of Åland acting as courts of first instance. Their judgments may be challenged before the Supreme Administrative Court. The administrative court system consists thus of two degrees. However, in some cases the Supreme Administrative Court is the first and final instance. This concerns mainly the appeals against the decisions of the Government and the Ministries.

The general provisions on the right of appeal and the procedure before the administrative courts are to be found in the Administrative Judicial Procedure Act of 1996. The basic provision on the right to a court is laid down in the Finnish Constitution. Its section 21 holds that:

"Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well

as the other guarantees of a fair trial and good governance shall be laid down by an Act."

Administrative judicial appeal is the general judicial recourse against administrative decisions. The appeal against decisions made by municipal authorities in certain fields related to the self-government of the municipalities is characterized by some special features concerning mainly locus standi and the scope of the acts subject to judicial review.

Section 6 of the Administrative Judicial Procedure Act determines what is meant with an administrative decision which may be appealed against. The provision provides for 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 may not be subject to appeal".

As regards decisions made by municipal authorities the scope of the acts which may be attacked by the so-called municipal judicial appeal is a slight wider since the law only excludes measures concerning the preparation and the execution of the case.

There are some prohibitions to appeal against an administrative decision. Such a prohibition has to be enacted by an Act of Parliament. These prohibitions concern decisions which have deemed to be of minor importance.

In addition, it may be noted that if administrative power is delegated to private persons or exercised by special organs outside the usual state and municipal administrative organization, the right to appeal against such a decision requires a special provision. Therefore, all such administrative decisions are not necessarily subject to administrative judicial appeal. However, it should be added that a special judicial remedy is in any case available against any administrative decision when the decision is spoiled by grave and manifest errors.

1.2. All final judgments of the Regional Administrative Courts are subject to appeal to the Supreme Administrative Courts. There are only a few exceptions where a specific provision prohibits the appeal. In tax matters and in certain other matters, a leave of appeal is required from the Supreme Administrative Court. The leave is granted if it is important to bring the matter to the Supreme Administrative Court in order to ensure the consistency of jurisdiction in similar cases or due to a manifest error in the lower decision or if there is ground to grant a leave for a weighty economic or other reason.

In the majority of cases, there is no special restriction to appeal to the Supreme Administrative Court against the judgment of the Regional Administrative Court.

1.3. If the Supreme Administrative Court finds the challenged decision illegal, the Court may not only quash the decision but also amend it (that is decide on the merits of the case on its own). However, if the decision-making involves consideration of points of expedience (reasonableness), the illegal decision is quashed and, where necessary, returned to the administrative authority for a new handling.

The powers of the Administrative Courts are more limited as to decisions subject to municipal appeal. In those cases the Court may quash the decision but not amend it. This limitation is related to the municipal self-government.

When the appeal has been lodged, the Supreme Administrative Court may prohibit the execution of the decision, order a stay or issue another order relating to the execution of the decision.

1.4. The Supreme Administrative Court is competent in various matters where an administrative sanction may be imposed (for example pecuniary sanctions in competition cases). Some of these sanctions may be qualified as falling under the notion "criminal charge" in the sense of Article 6 of the European Convention on Human Rights as interpreted by the Human Rights Court.

1.5. The decisions of the Regional Administrative Courts and of the Government and its Ministries are appealed against with the Supreme Administrative Court. In plus, there are some special organs the decisions of which are directly challenged before the Supreme Administrative Court.

1.6 and 1.7. There is no formal distinction in the procedural rules between cases falling or not within the scope of Article 6 of the Convention.

The procedural rule which has the most been influenced by Article 6 is that concerning oral hearing. But even on that point the national provision makes no specific distinction between the type of the case.

1.8. Although Article 6 of the Convention is directly applicable before the Administrative Courts, the correct application of national procedural rules

should guarantee the observation of the requirements of Article 6. Particular attention is paid to Article 6 notably when deciding on the oral hearing or when assessing whether the national rules guarantee the right to a court.

1.9. Cf. point 1.1. There are some specific provisions, in a number of cases of minor importance, prohibiting the regular administrative judicial appeal. If administrative power is delegated to a private person or exercised by an organ outside the normal state or municipal administrative organization, the right to appeal requires a specific provision.

In this context, it may be added that general norms issued by administrative authorities may not be appealed against unless the decision by which the general norm has been taken affects directly a person's rights or obligations. There is no specific judicial remedy against norms of general character. An exception to this situation is the fact that a decision by a municipal authority consisting of issuing general norms may be challenged by any member of the municipality.

1.10. There is no special remedy for cases falling under the scope of Article 6 of the Convention.

2. Scope of application of Article 6

A The notion of civil rights and obligations in general

2.1. - 2.2. As, on the one hand, the national general procedural rules make no distinction between cases which fall or do not fall within the scope of Article 6 and, on the other hand, the application of national rules should guarantee the observation of the requirements of Article 6, the question of the notion of civil rights and obligations in administrative matters does not pose any serious problem before the Finnish administrative courts.

In practice, the situation is not always that clear. As observed already under 1.6 and 1.7. the application of Article 6 has particular significance especially when deciding on the organization of an oral hearing. Therefore, it is sometimes relevant to know whether the matter falls within the scope of Article 6.

It is difficult to raise a specific field of administration where the problems are the most acute. The case-law of the Human Rights Court illustrates well the practical problems to draw the line in administrative matters. If some fields

have to be mentioned, proceedings concerning civil servants, aliens and social matters may be put forward.

2.3. The handling of cases falling under Article 6 is the same as in other cases. As the procedure is mainly written, particular attention is paid to the point whether an oral hearing should be organized.

B "Dispute on civil rights and obligations" and other particular circumstances of the case"

The question whether a case forms "a dispute" has not come forward in the case-law of the Finnish Supreme Administrative Court.

C Specific fields of public administration

As, in practice, all administrative decisions taken in the field of planning or building may be challenged before an administrative court, this field of public administration has not posed any particular problem in respect of Article 6 of the Convention.

The same applies to tax matters. The national procedural rules do not make distinction between cases falling or not under the scope of Article 6. The Schouten and Meldrum judgment of the European Court of Human Rights has not led to any changes in the domestic legislation or the case-law.

Most social security cases belong to the competence of the Social Security Tribunal the decisions of which are not, with a few exceptions, subject to appeal. The procedure before that tribunal has recently been reformed. This reform has introduced the obligation to conduct an oral hearing if a party requests it. The lack of a right to oral hearing had obliged Finland to maintain until recently a reservation in respect of Article 6 of the Convention as regards the procedure before the Social Security Tribunal.

3. Main problems of a fair trial

3.1. - 3.2. There are no serious difficulties in the application of Article 6 before the administrative courts. This is mainly due to the fact that the national procedural rules take account of the requirements imposed by Article 6. That article has the most influence in the application of the national provisions on oral hearing (cf. below 4.).

3.3. Although the question of the impartiality of judges and civil servants is of present interest in Finland, it happens very rarely that a party raises an objection as to the impartiality of a judge. On the other hand, it is rather frequent that parties allege that a disqualified person has taken part in the decision-making before the administrative authority.

3.4. The procedure before Administrative Courts is characterized by the active role of the court to conduct the procedure and to investigate the matter (the so-called official principle). In this duty, the court has to ascertain that the procedure is impartial and fair. Thus, the role of the court in investigating the matter may depend on the respective possibilities of the parties to present evidence. Section 33 of the Administrative Judicial Procedure Act of 1996 provides for:

"The appellate authority is responsible for reviewing the matter. Where necessary, it shall inform the party or the administrative authority that made the decision of the additional evidence that needs to be presented. The appellate authority shall on its own initiative obtain evidence in so far as the impartiality and fairness of the procedure and the nature of the case so require".

4. Oral procedure

4.1. The Regional Administrative Courts have the obligation to conduct an oral hearing if a party so requests unless there is a special reason not to organize it. As to the Supreme Administrative Court there is no general obligation to hold an oral hearing in a case, even if the party demands it. The Supreme Administrative Court applies Section 37, paragraph 1, of the Administrative Judicial Procedure Act (1996) which provides for that "Where necessary, an oral hearing shall be conducted for purposes of establishing the facts of the case".

In cases where the Supreme Administrative Court is the first and last judicial instance (this concerns mainly the appeals against the decisions of the Government and the Ministries), the rule is, however, the same as before the Regional Administrative Courts. According to Section 38 of the Administrative Judicial Procedure Act (1996) the Supreme Administrative Court shall conduct an oral hearing if a private party so requests in a case where the Court is considering an appeal against the decision of an administrative authority. Even then an oral hearing needs not to be conducted if the claim is dismissed

without considering its merits or immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.

4.2. The Supreme Administrative Court holds yearly only a few oral hearings. In addition to oral hearings the Court holds, especially in environmental matters, visits to a scene.

4.3. The Supreme Administrative Court has the possibility to quash the judgment of the lower court if that court has failed to hold an oral hearing. This concerns all cases and not only those falling within the sphere of Article 6 of the Convention.

4.4. A breach of a rule of procedure by the lower court may lead to the annulment of its decision by the Supreme Administrative Court.

4.5. It is possible that the Supreme Administrative Court holds itself the oral hearing. But it is more usual to return the case to the lower court for the arrangement of an oral hearing.

4.6. The oral hearings are public but there are a number of exceptions to this publicity. As in many cases (for example tax and social matters) confidential documents are presented before the administrative courts, the question of the publicity of those kind of cases pose some problems before the Regional Administrative Courts.

4.7. As explained under 4.1. the organization of an oral hearing depends largely on whether a party to the procedure demands it. If he does not request it, this has great importance on the consideration whether or not to hold it. The party has to request explicitly the oral hearing. If he does not do it, he is supposed to have renounced it. Of course, this is not meant to lead to the result that the court does not ever decide to organize an oral hearing on its own initiative.

5. Rules of evidence

5.1. - 5.2. The procedure is characterized by flexible rules on the presentation of evidence and other means of investigation of the case. As the procedure is mainly written, documents and written hearing of parties and the representatives of the administration have the most important role as material of investigation. Other means of investigation are oral hearing of parties and witnesses, visit to a scene and hearing of experts.

Under the above-described system the question of the admissibility of illegally obtained evidence is not pertinent. However, it has to be mentioned the provision of Section 39, paragraph 1, of the Administrative Judicial Procedure Act (1996) which prescribes that "If written evidence of a private nature is relied on in a matter, the witness shall be heard in person, unless this is unnecessary or unless there is a special impediment for the same".

5.3. In cases concerning the application of the Waters Act as well as in patent matters two expert members participate in the composition of the judgement with five ordinary members of the Court.

According to Section 40 of the Administrative Judicial Procedure Act (1996) the Court may obtain an opinion from an individual expert on a matter requiring special expertise. In practice, the Court does almost not at all use this means of evidence. The necessary expertise is normally acquired through the statements the administrative authorities submit in the case.

If a party calls an expert not appointed by the Court, the provisions on the hearing of witnesses apply to that expert. Parties do sometimes also present in writing opinions of experts.

5.4. There are no limitations with regard to the raising of new pleas in law or facts in the procedure before the Supreme Administrative Court unless the matter as a result changes in nature. In case of municipal judicial appeal, new pleas in law may not be presented before the Supreme Administrative Court since all pleas in law against the administrative decision have to be raised within the time-limit to lodge the appeal with the first appeal instance.

6. Parties to the case

Everybody whose rights, obligations or interests may be directly affected by the matter are entitled to take part in the procedure and to be heard. This right to take part in the procedure does not necessarily depend on the point whether the person has had the right to take part or has really taken part in the administrative phase although the parties are normally the same both in the administrative and judicial procedure.

The question who is party to the procedure depends largely on the subject matter and on the material legislation. The notion of a party is understood rather widely and in a flexible way. For example, in environmental matters, it

can be very large. A case may involve numerous parties whose interests are partly parallel and partly contradictory.

In municipal matters, the municipal judicial appeal may be initiated not only by the one whose rights are directly affected by the decision but also by any member of the municipality (*actio popularis*). In this respect the municipal judicial appeal is not only a legal remedy in the ordinary sense but also a means to exercise general control of the municipal administration.

7. The right to the public pronouncement of the judgment

As the procedure before the administrative courts is mainly written the final judgments are rendered in writing. The decision is sent by mail to the parties and it is accessible to everybody at the registry of the court on the day it is rendered.

8. Reasonable Delay of Definitive judgments in Administrative Law-Suits

8.1. Present situation in each country (considered from the point of view of judicial organization)

a) There is no general obligation to address first an administrative complaint to an administrative authority or a quasi-judicial authority. Thus, the main principle is that the matter may be referred to the Regional Administrative Court right after the initial administrative decision has been taken.

However, there are numerous exceptions to this main principle. In municipal matters, an administrative complaint has to be made within the municipal administration before the matter can be brought to the Regional Administrative Court. This does not concern the decisions of the municipal council (which is the highest municipal authority).

In tax matters and some other fields of administration, where the number of cases is high, an administrative complaint has to precede the judicial appeal, as well.

c) cf. point 1.

d) In certain matters, the law prescribes that the appeal has to be handled with dispatch.

The Rules of Procedure of the Supreme Administrative Court provides for that the cases are handled in the order they have come in; however the cases which, according to the law, have to be handled with dispatch or which have been ordered to be handled with dispatch are given priority over others. There may be various reasons, generally put forward by the parties, why some cases are given priority even if the law does not require a quick handling. The current practice is rather flexible

Particular attention is paid to the follow-up of the oldest pending cases.

8.2. Present situation in each country (considered from the point of view of mechanisms for neutralizing some effects of delays): instances

a) The State and the municipalities and their employees are responsible for damages caused by errors or omissions in their activities. This responsibility has some limitations and the annulment of an illegal administrative decision by a court of justice does not necessarily, in law or in practice, entitle to compensation. On the other hand, a pre-condition for the right to initiate a claim for compensation is normally that the person has first challenged the legality of the administrative decision, which has caused damages, before an administrative court. The right to compensation is governed by rules incorporated in the Damages Act of 1974.

The official is liable to full compensation only if he has caused the damage intentionally. If the damage was caused by mild negligence the official is not liable to compensation. If there were gross or normal negligence the compensation is adjusted taking account of various elements.

The State and the municipalities are responsible for damage caused by their officials and other employees as a result of errors or omissions in the discharge of their duties which do not involve exercise of public authority. If the activity, which has caused the damage, involved exercise of public authority the State or municipality is liable to compensation without it being necessary to demonstrate that some particular official has been guilty of an error or omission. A condition for the responsibility is, however, that the reasonable requirements which may be imposed on the exercise of that activity, taking account of its nature and purpose, have not been met.

The competent courts in questions of indemnity liability of the State and municipalities and their employees are the civil courts. The action has to be initiated within the time-limit of ten years.

b) The annulment of a decision which has put an end to the service means normally that the person in question recovers his post and gets payment of past salaries.

8.3. Present situation in each country - statistics

a) The average duration of proceedings in cases decided in 1998 by the Supreme Administrative Court was ten months.

Before the Regional Administrative Courts the average duration of proceedings was about six months.

b, c and f) The number of new cases in 1998 before the Regional Administrative Courts was 19122. They rendered in the same year 19476 judgments. The number of cases pending as at 31 December 1998 was 9014.

d, e and f) The number of new cases in 1998 before the Supreme Administrative Court was 4904. The Court rendered in the same year 3565 judgments. The number of cases pending as at 31 December 1998 was 4054.

8.4. Action to be taken by the Supreme Administrative Court

There is a continuous follow-up of each pending case based on a register system. Each phase of the procedure is entered in the system which allows to create various lists, tables and statistics.

If there are two or more similar cases pending at the same time, they are judged, as far as possible, by the same composition and at the same time.

9. The decision of the Supreme Administrative Court

9.1. Cf. point 1 and 3.

9.2. There is no express rule saying that the judgement has to be taken by the same composition which had conducted the oral hearing. However, the practice is that the composition does not change after the oral hearing has been hold. It is not possible to answer how strictly this practice is or should be observed in case where one judge or more judges present at the oral hearing are no more able to participate in the deliberations resulting in that the quorum is not met.

9.3. In the field of the self-government of the municipalities, where the municipal judicial appeal is the legal remedy available, the administrative court may only consider the legality of the administrative decision.

Similarly, the decisions of the Government and the Ministries may be challenged before the Supreme Administrative Court exclusively on grounds of legality.

The procedural rules are not that explicit as to the power of the Regional Administrative Courts in respect of decisions of the state administrative authorities subordinated to the Government and the Ministries. The rules do not expressly restrict this power to the consideration of the legality. This is due to the historical fact that before the establishment of the courts of first instance in administrative matters, the administrative appeal was, in the first instance, examined by the hierarchically superior administrative authority. If the decision was brought to the Supreme Administrative Court, the Court referred the matter to the Government if the decision on the case depended primarily on a consideration of expediency (reasonableness). In practice appeals founded on grounds of expediency are very rare and the role of the Regional Administrative Courts limits in practice to a consideration of the legality of the challenged decision. On the other hand, it may be observed that the scope of the examination of the legality seems to have expanded and the question of the dichotomy between legality and expediency has lost much of its earlier importance.