



CONFERENCE OF 7 JUNE 2010

« *PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE* »

QUESTIONNAIRE¹

One should focus on three key areas in our deliberations on speeding up the administrative justice process: techniques for limiting the number of appeals (I), techniques to speed up proceedings (II) and any criteria for evaluating court activity and the application of these criteria (III).

Preliminary remarks:

The court system in Austria so far comprises only one (Supreme) Administrative Court. There is no court of first instance to adjudicate on administrative matters. Thus the Administrative Court is not only the first but also the final judicial authority which can be appealed to in administrative matters.

There is only one important exception. In several administrative matters the Administrative Court functions as a second level above the so called Independent Administrative Tribunals. These administrative tribunals have been established in 1991 in order to respond to the European Convention for the Protection of Human Rights, especially its Art. 6. They are qualified as independent tribunals by the European Court of Human Rights, though they are not courts in terms of the Austrian Federal Constitution. The members of these tribunals are public servants and not professional judges, but their legal status is similar to that of professional judges. Their decisions are qualified under the Austrian Constitution as administrative decrees and are under review by the Administrative Court.

The legal protection of the citizen already begins within the administrative procedure, there is a remedy within the administration (the so called "Berufung"). The hierarchically higher authority has to decide on this remedy.

After having exhausted all possibilities for administrative rights of review petitioners may file a complaint before the Administrative Court.

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In a first step the Administrative Court examines if the complaint meets all provided formal and material conditions. If the complaint is not suitable for being heard, because the time allowed for filing has been exceeded or because it is inadmissible on another reason, it shall be dismissed by court order in private chambers without any further proceeding.

In cases in which the complaint proves suitable to be heard, the pre-trial proceeding shall be instituted. During the pre-trial proceeding the responding authority and possible third parties are involved in the procedure and may submit statements and replies in writing; the responding authority shall be instructed to submit the files of the administrative proceeding.

After termination of the pre-trial proceeding under certain conditions a hearing before the Administrative Court is to be held on the complaint, where the chairman as a rule shall immediately pronounce the decision. If there had been held no hearing, thus the procedure is conducted entirely in writing, or if the decision is not pronounced in the hearing the decision is made in a deliberation and voting procedure, which is not public.

I. Techniques for limiting the number of appeals

- 1) Must those wishing to refer a matter to the Supreme Administrative Court be represented by a lawyer? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority ?

Answer:

Complaints before the Administrative Court must be presented by a mandated lawyer or (in tax matters and tax penalty matters) by a tax consultant or a public accountant. This also applies to requests for reopening a proceeding and reinstatement into the previous legal position.

This obligation is not in force for complaints presented by a body of the federal administration, a Land, local governments and certain other institutions. In addition, complaints before the Administrative Court presented by a civil servant with legal training are exempted from this obligation.

With regard to the further proceedings, parties may, themselves, act or be represented by a lawyer or, in cases related to finance law, by a tax consultant or a public accountant. In certain cases, the Federal Ministry or the public Ministry for general State public prosecution ("Finanzprokurator") may represent the Federation, the Länder and other institutions.

The representation by a lawyer (tax consultant or chartered accountant) or by the public Ministry for general State public prosecution does not exclude that also the parties themselves appear and submit statements in their own name.

For lawyers there are no other requirements for representing before the Administrative Court than being registered in the list of lawyers.

Those petitioners who can not afford a lawyer may request legal aid for all or part of the legal proceedings before the Administrative Court according to provisions in the Code of Civil Procedure. Access to legal aid is subject to the petitioner's income and recourse chances for a successful outcome. Legal aid may notably include exemption from legal proceeding costs, including the "court office fees", as well as assistance of a lawyer appointed by the chamber of lawyers. A member of the Administrative Court grants legal aid. Refusal of legal aid cannot be subject to recourse.

- 2) Is the Supreme Administrative Court's jurisdiction limited to points of law ('administrative cassation') or can it also rule as an appeals court with cognizance of points of fact?

Answer:

The Administrative Court on the merits may not modify the contested administrative decision, it may either dismiss the complaint for being unfounded or repeal the ruling contested.

The Administrative Court exercises detailed control on questions of law raised in the case and an overall appreciation of facts, meaning control of respect for procedural standards to be applied by the administrative authority. The Administrative Court is bound by facts and circumstances established by the administrative authority from whence the contested decision was issued. It may only control these elements insofar as the administrative authority did not duly respect provisions governing administrative procedures. The parties can no longer claim new material facts. If the Administrative Court considers the administrative decision lacks essential material elements, it repeals the administrative decision for procedural fault. The administrative authority is then obliged to establish required facts and to find a solution to decision loopholes. This explains why the inquiry procedure before the Administrative Court whose control is essentially related to questions of law and not facts is relatively limited in importance.

However, insofar as the facts required for legal proceedings before the Court are to be established (e.g. respect of for contentious deadlines, the petitioner's failure to maintain an action in court, circumstances related to Court competence, etc.) the Administrative Court must establish these elements ex officio, what is very common.

As soon as the ruling contested is repealed, the case returns to the situation in which it was before the ruling contested had been issued.

The only (very rare) case the Administrative Court has to establish facts to decide on the merits is in the event of a complaint for breach of the onus to take a decision by administrative authorities including the independent administrative tribunals. There the Administrative Court may at first restrict its decision to resolving a number of single relevant legal issues and instruct the authority to issue the decision not rendered in due time on basis of the legal view thus established within a determined period of time not exceeding eight weeks. In case the Administrative Court does not make use of this possibility or the responding authority does not comply with the order, the Court will decide on the complaint of breach of the duty to reach a timely decision by deciding in the matter itself, using in this case also the discretion at the disposal of the administrative authority.

- 3) Is the right of appeal to the Supreme Administrative Court an absolute right or are there limitations? If there are, under what circumstances? Provide a short summary of how your Court interprets these limitations.

Answer:

The Administrative Court pronounces on complaints which allege illegality of rulings by administrative authorities including the independent administrative tribunals, or breach of the

onus on administrative authorities including the independent administrative tribunals to take a decision, furthermore on complaints against certain instructions.

In principle, all administrative decisions ("Bescheide") aside from their significance - either limited or on the contrary significant due to decision relationship with the political sphere - may be contested before the Administrative Court. However, all decisions of a judicial nature made by some tribunals and cases before the Constitutional Court or invention patents are beyond Administrative Court capacity.

Any physical person or entity alleging he/she is prejudiced in his/her rights by an administrative decision may submit a complaint before the Administrative Court (called "complaint for parties").

The petitioner must exhaust the administration internal rights of review before submitting a complaint before the Administrative Court. Exhausting all possibilities for administrative rights of review constitutes a condition for complaint admissibility before the Administrative Court in any type of dispute.

In certain cases, the federal and Land bodies may claim objective prejudice of rights and file recourse against an administrative decision before the Administrative Court (called "ex officio recourse"). The Law often provides such a possibility when cases lying within the competence of the independent administrative chambers of the Länder are in question.

In cases relating to implementation of the supervisory power on the parish exercised by the federal and Land authorities, the parish functions as a party. It may take recourse against decisions by the supervisory authority before the Administrative Court to defend its administrative autonomy right.

Summarized the above the right of appeal to the Administrative Court is neither limited by restrictions in the person of the complainant nor by the type of the case.

- 4) Are there any penalties for abuse of appeals (e.g. fines for rash or persecutory appeals)? If so, are they applied at the request of the respondent or by the court as a matter of course? Does the procedure respect the principle of the right to be heard? Are reasons provided for the decision? Is the session heard by several judges or just one?

Answer:

Abusive and unjustified complaints before the Administrative Court may be ratified with a fine of up to 726 €. Persons who in an apparently frivolous manner request the service of the court or who give false information in order to delay a matter can be fined by the court ex officio, a request of the respondent is not required. In practice, such fines are almost never imposed.

Proceedings before the the Administrative Court created in order to meet conditions of Article 6 CEDH (see also Article 47 [Right to an effective remedy and to a fair trial] Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have according to Article 6 of the Treaty on the Functioning of the European Union the same legal value as the Treaties), have a contradictory nature and respect the principle of defence rights and equal footing between the parties implicated in legal proceedings. These principles originate in European and in national law (constitutional law and national provisions that guarantee the parties the right to be heard), where the right to be heard is for example explicitly mentioned, if new arguments are raised. The violation of the right to be heard may lead to a reopening of the proceeding.

In the written part of the proceedings the right to be heard is respected insofar, as the complaint, the reply and all further statements and replies in writing have to be served to the opponent, who may take position.

Reasons for the decision: Each decision shall contain the reasons. If the legal issue is clear on basis of decisions rendered so far, it is sufficient to just mention them.

Decisions by the Court are usually motivated in great detail. Documents have a paramount role in proceedings. As the Courts are entitled in many cases to decide without a hearing, most of the decisions by the Administrative Court are not publicly given.

The hearing before the Administrative Court as well as the session (deliberation and voting) is part of the duties of the panel.

- 5) Do appeals have to go through an admission or authorisation procedure before being brought before the Supreme Administrative Court? If so, describe the procedure and the main conditions that would lead to an appeal being refused admission or authorisation ('leave of appeal').

Answer:

There is no admission or authorisation procedure before complaints being brought before the Administrative Court. The screening procedure is carried out by the Administrative Court itself after receipt of the complaint generally in the pre-trial proceeding.

Complaints against an administrative decision must be filed directly before the Administrative Court within six weeks after the petitioner was notified of the decision. In certain cases, the petitioner may file for recourse before the Administrative Court before being notified of the administrative decision on legal proceedings already indicated to another party. Recourse must simply be sent by post by the last day of the deadline. The postmark date is taken into account. Judges are not empowered to extend contentious deadlines.

Action for failure to act may be filed before the Administrative Court only once the deadline to be respected by the administrative authority elapsed, in order to issue an administrative decision (generally 6 months). Other than this, there is no deadline to be respected concerning action for failure to act.

Complaints not suitable for being heard, because the time allowed for filing has been exceeded or because the Administrative Court obviously has no jurisdiction or which obviously have to face the defence of res iudicata or the lack of authority to file the complaint or because the petitioner did not exhaust administrative rights of review or because it is excluded that the petitioner might be prejudiced by the contested administrative decision through indicated law in recourse or because the petitioner did not contest an administrative decision (but another act) shall be dismissed by court order in private chambers without any further proceeding.

Complaints not in conflict with these circumstances, however not complying with the provisions regarding form and contents shall be remanded for remedying the defects within a short period of time to be granted for this purpose; exceeding this period shall be deemed a withdrawal.

The Administrative Court may refuse to process complaint against a decision of certain authorities, if the Administrative Court decision does not depend on a legal question of public significance which is presumed if the decision varies from Administrative Court jurisprudence, if such jurisprudence does not exist or if the relevant legal question was not solved by Administrative Court jurisprudence. In matters of administrative contraventions, the Administrative Court may only refuse to process recourse if the fine imposed on the petitioner does not exceed 750 €. This decision is made by a Administrative Court chamber, usually without a public hearing and is motivated. Considering this provision only applies to decisions

issued from a Land independent administrative chamber or from the federal authority competent in relation to public contracting, decisions therefore reached by administrative authorities with the function of courts in the sense of Article 6 CEDH, this provision is not likely to raise any problems with regard to Article 6 CEDH.

In the case of “complaint for parties”, for complaint admissibility the petitioner must show an interest in decision annulment as well as a legal interest in decision annulment. The petitioner is not obliged to prove prejudice of his/her rights, but, that he/she was prejudiced by the contested decision by Law indicated in complaint must be possible. Complaints, the contents of which reveal that the violation of the law claimed by petitioner is not given, shall be dismissed, as lacking merits, in private chambers without any further proceeding.

The obligation to vindicate a subjective legal interest does not exist in the case of a complaint of a municipality and in the case of “ex officio recourse” where, through the same nature of recourse, the petitioner may not have any subjective interest in decision annulment or, in the case of a complaint of a municipality, administrative autonomy right is prejudiced by any illegality in exercise of supervision power.

The Administrative Court suspends legal proceedings if the petitioner’s request was met (e.g. if the administrative authority from whence the contested decision was issued or an authorised administrative authority quashed the contested decision, if the petitioner withdrew his/her recourse before the Administrative Court, if the Constitutional Court quashed the administrative decision or if the administrative decision no longer has prejudicial effects for the petitioner). With regard to actions for failure to act, the Administrative Court suspends legal proceedings if the administrative authority subsequently issues the requested administrative decision or if another administrative decision whose effects meet the legal interests of the petitioner was issued or if the petitioner withdrew his/her request before the administrative authorities.

II. Techniques to speed up proceedings

1. Are there accelerated procedures for emergency situations (apart from proceedings for interim relief, which do not issue preliminary rulings on the merits of the case)? If so, describe the main conditions (whether these are adversary procedures, the reasoning behind the decision, whether the session is heard by one or more judges, whether the advisory body – if there is one – is involved, whether there is an investigation, whether there is a hearing, shorter deadlines for submitting documents or statements, etc.).

Answer:

No, such an institution does not exist. The reporting judge of the legal inquiry may only grant suspensive effect of recourse action so as to avoid creating a prejudice difficult for the petitioner to rectify.

However, the Administrative Court generally give priority to cases raising questions requiring an urgent decision because of their actual importance and significance (e.g. with regard to elections and community law, etc.).

2. Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? If so, refer to the questions listed under II,1.

Answer:

As regards the dismissal (rejection) of complaints before the pre-trial proceeding is instituted (as inadmissible) and the corresponding procedure - not only for emergency situations but for all cases - see in detail question No. I. 5. (the Administrative Court may reject complaints as inadmissible by court order in private chambers without any further proceeding because the contentious deadline was not respected, because the Administrative Court already judged the case, because the petitioner did not exhaust administrative rights of review, because it is excluded that the petitioner might be prejudiced by the contested administrative decision through indicated law in recourse, because the petitioner did not contest an administrative decision (but another act), etc.).

The Administrative Court may refuse to process recourse under certain conditions also before the pre-trial proceeding is instituted (see also question No. I. 5.).

Complaints, the contents of which reveal that the violation of the law claimed by petitioner is not given, shall be dismissed (before the pre-trial proceeding is instituted), as lacking merits, in private chambers without any further proceeding.

In the case the contested ruling already reveals that the violation of the law claimed in the complaint does exist ("clearly founded"), it is to be revoked in private chambers without any further (pre-trial) proceeding, provided that no third parties would have to be called in the proceeding and the responding authority does not submit within a reasonable term granted to it anything suitable to judge the existence of the subject violation of the law as not given.

If at any point in the proceeding it becomes obvious that petitioner's claim has been accepted (e.g. if the administrative authority from whence the contested decision was issued or an authorised administrative authority quashed the contested decision, if the petitioner withdrew his/her recourse before the Administrative Court, if the Constitutional Court quashed the administrative decision or if the administrative decision no longer has prejudicial effects for the petitioner), the court shall, after having heard the petitioner in camera, declare the complaint to be irrelevant and suspend the proceeding.

The same applies if the complaint has been withdrawn.

With regard to actions for failure to act, the Administrative Court suspends legal proceedings if the administrative authority subsequently issues the requested administrative decision or if another administrative decision whose effects meet the legal interests of the petitioner was issued or if the petitioner withdrew his/her request before the administrative authorities.

If the complaint is based on a legal view in contradiction with previous decisions of the Administrative Court, the reporting judge may, with the consent of the chairman, request petitioner, with reference to the relevant decisions or orders of the Administrative Court and by granting an adequate period of time, to amend the complaint by the reasons why he deems the legal view being the basis of previous court decisions not to be right; exceeding this term granted shall be considered to be withdrawal.

3. Are there accelerated procedures for cases that should be straightforward? If so, refer to the questions listed under II,1.

Answer:

See question No. II. 1 and No. II. 2.

4. Other than for proceedings for interim relief that do not issue preliminary rulings on the merits of the case, are there sessions where appeals are heard by a single judge and if so, for what kinds of cases? Can this single judge refer the case to be heard in a session presided over by several judges?

Answer:

As a rule decisions are taken by panels consisting of five members (panel of five).

The procedural opportunities of a single judge are strictly limited. Only instructions governing the handling of the proceeding before and during the pre-trial phase and orders serving just to prepare the decision, as well as decisions and orders concerning only legal aid, as well as decisions on the motion to grant suspending effect to the complaint shall be issued by the reporting judge without resolution of the panel.

Panels of three members shall decide on administrative penal matters (penal panel), on rejecting complaints, on the setting of the proceeding, on a motion to reopen the case if it concerns a proceeding decided by the panel of three, on the motion for reinstatement to the previous position if a proceeding was not pending or if it concerns a proceeding decided by the panel of three, on the claim for reimbursement of cost filed only after termination of the proceeding, on objections against the claim resulting from a decision or an order of the Administrative Court, upon request of the chairman or of the reporting judge regarding complaints whose legal matter is particularly simple or clarified by previous decisions.

5. Can the obligation to provide grounds be relaxed? (e.g. relaxation of the obligation to respond to all arguments or statements; grounds provided simply by referring to the relevant provisions, etc.)

Answer:

See also question No. I. 4.

Each decision shall contain the reasons. Judgments are motivated in detail or more succinctly according to case complexity and questions to be solved. Motivation of judgments should enable petitioners to understand the meaning and scope of the decision. The question of consideration is taken in account.

The Court mentions standards (both national and international) applying to the case which necessarily motivate the decision. Standards applied are often mentioned verbatim. In any case the legal situation is exposed in detail.

Only if the legal issue is clear on basis of decisions rendered so far the obligation to provide grounds is relaxed inasmuch, as it is sufficient to just mention the former decisions.

6. Is it possible to conduct procedures entirely in writing, with no need for a hearing?

Answer:

As a rule procedures are conducted entirely in writing.

A hearing before the Administrative Court is to be held on the complaint after termination of the pre-trial proceeding, only if petitioner has, within the term allowed for filing the complaint, or the responding authority or a third party involved has, within the term allowed for submitting the reply, requested a hearing to be held. Such a motion can be withdrawn only with the consent of the other parties; a hearing before the Administrative Court is also to be held, if the reporting judge or the chairman deems holding the hearing to be suitable or the panel decides to hold it.

Irrespective of any motion filed by a party, the Administrative Court may dispense with a hearing if the proceeding is to be dismissed or the complaint to be rejected, the ruling contested is to be repealed because the responding authority does not have the respective jurisdiction, the ruling contested is to be repealed because rules of procedure have been violated, the ruling contested is to be repealed in accordance with continuous decisions of the Administrative Court because of unlawfulness of its contents, neither the responding authority nor any third parties involved have submitted a reply and the ruling contested is to be repealed, the writings of the parties of the Administrative Court proceeding and the administrative proceeding files presented to the Administrative Court reveal that oral discussion is not expected to further clarify the matter and if this is not in conflict with Article 6 CEDH.

7. Can any party not cooperating with the procedure be penalised?

Answer:

No, there are no corresponding provisions.

8. Do judges raising legal arguments of the court's own motion always have to order deliberations to be begun again or do they have to authorise the parties to submit new conclusions?

Answer:

The reporting judge prepares the final decision and makes it send to all members of the panel. Legal arguments of the court's own motion may be raised by any member of the panel at any point of the proceeding. Deliberations and votings have to take place in any case. If the new legal arguments are raised during the deliberations on the case and the deliberations can not be finalized the case has to be declared adjourned. Only if the panel finds that for the decision on the unlawfulness of the ruling in one of the items of the contestation or within the scope of the declaration on the contents of the appeal there may be relevant reasons which so far have not been notified to one of the parties, the parties shall be heard and, if necessary, the hearing - if there is one -adjourned.

9. Does the procedure allow the deadlines for submitting statements and documents to be shortened?

Answer:

The time allowed for submitting a complaint against the ruling of an administrative authority is six weeks. The responding authority and possible third parties involved are requested to submit a reply within a term to be fixed at a maximum of eight weeks. Judges are not empowered to extend contentious deadlines.

Other than this, there is no deadline to be respected concerning submitting statements and documents; however an adequate period of time has to be granted.

10. Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically?

Answer:

Filing requests before the Administrative Court via the Internet is not possible. As for proceedings before the administrative authorities; there are several projects related to teleprocedure and e-procedure (e-registry) and some have already been carried out in the context of the "e-government" project.

11. Must statements, written submissions and documents be submitted in strict accordance with the deadlines, with the case being inadmissible if they are not submitted in time? If so, are there any exceptions to this rule?

Answer:

See also question No. 9.

Complaints not suitable for being heard, because the time allowed for filing has been exceeded shall be dismissed by court order in private chambers without any further proceeding.

Complaints not complying with the provisions regarding form and contents shall be remanded for remedying the defects within a short period of time to be granted for this purpose; exceeding this period shall be deemed a withdrawal.

The authority shall make the files available, failing which the Administrative Court may decide on basis of petitioner's statements, provided the authority's attention has been expressly drawn to the consequences of such default.

The Administrative Court may request the parties to submit further statements and replies in writing (other than the complaint and the reply) and within an adequate term. There are no procedural consequences if the parties do not meet such a request. The parties are also free to submit unsolicited statements and replies in writing.

12. Is there a limit to the number of statements or written submissions that may be submitted? Can additional statements or written submissions and documents be submitted?

Answer:

See also question No. 11.

The Administrative Court may request the parties to submit further statements and replies in writing and within an adequate term. The parties are also free without a limit to the number to submit unsolicited statements and replies in writing.

13. Is it compulsory to submit a summary statement closing the written submissions?

Answer:

There are provisions only for the complaint, that shall contain inter alia the facts of the case, definition of petitioner's right he considers having been violated (points of complaint), the reasons on which the claim of unlawfulness is based, a specific motion, the information required to determine whether the complaint has been filed in due time. A summary statement is not provided.

14. Once the investigation has been closed, is it possible to submit new documents, written submissions or written observations at the last minute?

Answer:

As a rule there is no investigation procedure before the Administrative Court. New documents, written submissions or written observations can be submitted until the decision was adopted and served to any party.

15. Can new arguments be raised during the procedure?

Answer:

The Administrative Court shall, unless it finds unlawfulness for lack of jurisdiction of the responding authority or violation of procedural rules, review the ruling contested within the scope of the claims submitted or within the scope of the declaration on the scope of the appeal on the grounds of the facts assumed by the responding authority. From there any new facts may be alleged during the procedure before the Administrative Court that exercises an overall appreciation of facts, meaning control of respect for procedural standards to be applied by the administrative authority. The Administrative Court is bound by facts and circumstances established by the administrative authority from whence the contested decision was issued. It may only control these elements insofar as the administrative authority did not duly respect provisions governing administrative procedures. The parties can no longer claim new material facts but may contest the free evaluation of evidence as inconclusive, inasmuch new arguments concerning the established facts may be submitted. If the Administrative Court considers the established facts as a consequence of an inconclusive evaluation of evidence or the administrative decision lacks essential material elements, it repeals the administrative decision for procedural fault, what frequently happens. The administrative authority is then obliged to establish required facts and to find a solution to decision loopholes.

However, the petitioner may claim new legal means after complaint has been filed. In this very case, the other parties in legal proceedings are notified of the petitioner's explanatory memorandum and have the possibility of pronouncing on the new means claimed by the petitioner.

16. Can new arguments be raised on appeal?

Answer:

See also question No. 15.

17. Are there appeal channels for accelerating the course of the procedure or applying a penalty for exceeding 'reasonable time', in accordance with the judgement in the case of *Kudla v. Poland*, delivered on 26 October 2000 by the European Court of Human Rights?

Answer:

No, there is no specific legal avenue whereby an applicant could complain of the length of the proceedings. An applicant has no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 CEDH.

18. What does the court understand by 'reasonable time' for a hearing within the meaning of Article 6 of the European Convention on Human Rights? If applicable, mention some cases where sanctions were applied because a hearing did not take place in reasonable time.

Answer:

According to case complexity and questions to be solved the length of procedures differs. The Administrative Court generally gives priority to cases raising questions requiring an urgent decision because of their actual importance and significance. For the average length of proceedings see question No. III. 2.

In the case *Almesberger v. Austria*, delivered on 10 December 2009 (where the applicant as responsible person for the Almesberger Transport Company was found guilty of failing to carry, as the owner of the truck a fire extinguisher), the European Court of Human Rights considered an overall length of the proceedings more than seven years and seven months including two years and five months before the Administrative Court as excessive and failed to meet the "reasonable-time" requirement. The Court responded in the judgement to the Government's arguments in respect of the overburdening of the Administrative Court - as before in many similar cases - that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes within a reasonable time (see also *G.S. v. Austria*, 21 December 1999; *Ludescher v. Austria*, 20 December 2001).

In this connexion it should be mentioned that the European Court of Human Rights has noted in several cases a violation of Article 6 CEDH by the Administrative Court, because an oral hearing before the Court as first and only tribunal was not held (e.g. *Koottummel v. Austria*, delivered on 10 December 2009).

III. Performance criteria

1. Are there quantitative and qualitative criteria for measuring the 'performance' of court activity? What is the judicial value of these criteria and what body issued them?

Answer:

A monthly internal report presents an ongoing overview on new requests, the number of pending cases and the number of files that were processed.

At the end of each year the Administrative Court prepares a report on its activity and the experience gathered thereby and forwards this report to the Federal Chancellor.

2. Are there statistical data on the average length of proceedings in the Supreme Administrative Court and the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court?

Answer:

As concerns complaints against administrative decisions, the delay for judgement was 21 months in 2005, 20 months in 2006, 19 months in 2007 and 20 months in 2008.

With regard to actions for administration failure to act where the Administrative Court was to adjudicate in the case itself, the average delay was 20 months in 2005, 27 months in 2006, 25 months in 2007 and 20 months in 2008.

Statistical data on the average length of proceedings from the authority of first instance to the final decision by the Administrative Court is not available.

3. Are there significant differences in the length of procedures depending on the nature of the case?

Answer:

According to case complexity and questions to be solved the length of procedures differs.

4. During proceedings, are lower courts authorised to request the Supreme Administrative Court's opinion on a new point of law in the aim of guaranteeing judicial security and preventing an influx of disputes?

Answer:

Lower authorities are not authorised to request the Administrative Court's opinion, but if a substantial number of proceedings and complaints against rulings of administrative authorities,

in which legal issues of the same kind are to be resolved, is pending before the Administrative Court, or if there is reason for the assumption that a substantial number of such complaints will be filed, the Administrative Court may issue a respective court order. Such court order shall contain the provisions of the law applicable in such proceedings and the legal issues to be resolved on basis of such legal provisions. By the lower authorities only such legal acts may be taken or decisions or rulings be rendered which cannot be affected by the decision of the Administrative Court or do not finally settle the issue and do not allow for delay. The Administrative Court shall summarize its legal view in its decision in one or several legal rules which shall be immediately publicized. Upon expiry of the day of the publication a suspended deadline of a complaint starts again.

An opportunity to request the Administrative Court's opinion is provided to the Asylum Court that is competent to pronounce judgment after exhaustion of the administrative appeal stages on the ruling of an administrative authority in asylum cases and on appeals for actions for failure to act in asylum matters. A grand chamber panel of the Asylum Court is provided to decide in cases of fundamental importance, that is if the decision would mean a deviation from former decisions of the Administrative Court or if the legal issue to be resolved has not been decided so far or it has been decided by the Administrative Court in various ways differing from each other as well as to respond legal questions that are important for a significant number of cases (landmark decision). At the request of the Federal Minister of Internal Affairs a landmark decision has to be rendered. Every landmark decision officially has to be transmitted onward (passed) to the Administrative Court. The Administrative Court has to decide on the merits. If the Administrative Court does not decide within six months after submission of the fundamental decision, the fundamental decision is considered as confirmed. Fundamental decisions are binding for all cases in which the same legal problem has to be solved.

5. What is the ratio between the number of judges in the Supreme Administrative Court and the number of cases settled each year?

Answer:

Currently (since 1st May 2008), the Administrative Court is made up of 68 members: the President, the Vice-President and 66 judges (13 chamber Presidents and 53 reporting judges). The Verwaltungsgerichtshof sits in 23 chambers chosen by the plenary session.

From 2005 to 2008 following number of new requests were registered with the Administrative Court registry: 2005: 9,361 2006: 11,254 2007: 15,293 2008: 12,913

From 2006 to 2008 following stock piles of unprocessed briefs from the previous years at the Administrative Court were registered: 2006: 9,430 2007: 11,976 2008: 13,017.

From 2005 to 2008 (1st May 2008) following number of files were processed by 62 members of the Administrative Court (President, Vice-President, 12 chamber Presidents and 48 reporting judges): 2005: 9,242 2006: 9,674 2007: 12,885 2008: 12,119.

6. What is the ratio between the number of judges and the number of assistants?

Answer:

About 25 jurists assist the 68 Administrative Court members. The assistants must have completed their law studies. Apart from this, their training can vary.

7. Are there specialised judges within the Supreme Administrative Court who only deal with a certain kind of cases? Does this specialisation have a basis in law or is it a result of internal work distribution?

Answer:

The judge decides on the various cases assigned to them in accordance with the distribution of business. In each panel formed in accordance with the Federal Act at least one of its members must be qualified to hold judicial office. In the panels involving matters of fiscal administration, at least one member must be qualified for higher level service in financial administration, in all other panels one member must be qualified for service in the general civil administration.