



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).

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? By way of introduction it should be understood that the Danish Supreme Court is the highest court instance in all matters, be it civil or criminal, and that the Court is not a specialized administrative court. Administrative cases are dealt with as ordinary civil matters. Normally cases are prepared by the exchange of a limited number of briefs prepared by counsel and an oral hearing during which the facts and legal points are presented and argued by counsel. Proceedings are adversarial and the court undertakes no investigations by itself. There is no general obligation to be represented by a lawyer, but the court can require a party to be represented by a lawyer, if the party is unable to conduct the case properly. If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority? The lawyer must be admitted to the Supreme Court. It means that the lawyer must have practised regularly before the High Court for five years.

¹ The present Questionnaire has been prepared by Prof. Dr. Rusen ERGEC, University of Luxembourg

- 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? The jurisdiction of the Supreme Court covers points law as well as of fact. Is the right of appeal to the Supreme Administrative Court an absolute right or are there limitations? There are limitations. If there are, under what circumstances? Provide a short summary of how your Court interprets these limitations. The Supreme Court is the court of 3rd instance, and The Appeals Permission Board (Procesbevillingsnævnet) grants leave to appeal to the Supreme Court as the third instance in cases involving matters of principle. The district court can refer a case of matters of principles to the high court. In that case there is no limitation in the right of appeal from the high court to the Supreme Court.
- 3) Are there any penalties for abuse of appeals (e.g. fines for rash or persecutory appeals) **No**. 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?
- 4) 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'). Cf. the answer to question 3.

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)? No. 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.).
2. Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? In case of certain procedural issues such as lack of permission or deadline overruns a decision to turn down an appeal can be decided by three judges or in some matters by a single judge. If so, refer to the questions listed under II,1.
3. Are there accelerated procedures for cases that should be straightforward? If

so, refer to the questions listed under II,1. No.

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? No. Can this single judge refer the case to be heard in a session presided over by several judges?
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.) Yes.
6. Is it possible to conduct procedures entirely in writing, with no need for a hearing? Yes.
7. Can any party not cooperating with the procedure be penalised? Cf. the answer to question I.3.
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? The judges are bound to decide the case within the limits defined by the parties' claims, their allegations and the evidence of the facts provided by the parties. As to the law the principle of "jus novit curia" applies. Within these limits the court may, during the oral hearing, seek to clarify the positions of the parties.
9. Does the procedure allow the deadlines for submitting statements and documents to be shortened? Yes, except for the statement of defence.
10. Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically? No.
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? **Generally, deadlines must be observed. Reactions in case of non-observance may depend on whether it is the appellant or the defendant who has not complied with the deadline.** Non-observance by the appellant may lead to dismissal of the appeal. If so, are there any exceptions to this rule? Yes, the court may extend the deadline.
12. Is there a limit to the number of statements or written submissions that may be submitted? Yes. In principle the number of briefs is limited to the appeal and the statement of reply. Can additional statements or written submissions and documents be submitted? Yes, with the permission of the Court which is given rather liberally.
13. Is it compulsory to submit a summary statement closing the written submissions? It is compulsory to submit a summary statement 2 weeks before the oral hearing.
14. Once the investigation has been closed, is it possible to submit new documents, written submissions or written observations at the last minute? **No. However the Court may, prior to the rendering of the decision, permit such new material to be produced. This is only done very rarely and will lead to a resumption of the case.**

15. Can new arguments be raised during the procedure? Yes, with the permission of the Court , but practice is very restrictive.
16. Can new arguments be raised on appeal? Yes.
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? No
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? **The position of the Court reflects the jurisprudence of the European Court of Human Rights cf.** for instance:

Case: *Iversen v. Denmark* (5989703): In this case a claim was brought to the City Court in first instance march 1994 and ended in the high Court eight years and nine months later. It was not within a "reasonable time" according to Art. 6. The applicant was awarded 6,000 EUR in compensation.

Case: *A and others v. Denmark* (60/1995/566/652): In this case a claim was brought before the High Court in first instance December 1987 and ended in The Supreme Court September 1996. It was not a "reasonable time" according to Art 6. The applicants was awarded 100,000 DKR in compensation.

If applicable, mention some cases where sanctions were applied because a hearing did not take place in reasonable time. The jurisprudence of the Supreme Court in administrative matters contains no decision, where sanctions have been applied.

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? **No.** The "productivity" is monitored by continuous attention to caseload by the President and the judge in charge of the preparation of the cases. There are no absolute targets but the objective of the Supreme Court is to bring down the processing time.
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? The Supreme Court handles not only administrative cases but all kinds of civil cases. Statistics for the court do not distinguish between administrative cases and other civil cases. In 2009 the number of administrative cases was 35. The average length of proceeding in all civil cases was 20.7 months. For cases decided after oral hearing the average length of proceedings was 23.8 months; for cases decided after written proceedings the average length of proceedings was 12.3 months. This group of cases is

- limited in number (in 2009 30 cases out of 170 civil cases) and will not involve cases of complex factual matters.
3. Are there significant differences in the length of procedures depending on the nature of the case? Cases where expert opinion, for instance from the Medico Legal Council, is required, or where reference for preliminary ruling by the ECJ is made, have a longer duration. This may also be the case where a party wishes to provide new evidence.
 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? No.
 5. What is the ratio between the number of judges in the Supreme Administrative Court and the number of cases settled each year? There is no such formal ratio. The "capacity" of the Court, i.e. the number of judges appointed (pt. 19), is determined by law.
 6. What is the ratio between the number of judges and the number of assistants? The legal assistants (pt.12) of the Court do not provide assistance to the judges in their work with the cases set for oral hearing - which is the case in the vast majority of cases - except to the four most junior judges. They assist with the cases dealt with on written basis and deal with a number of other matters. There is no fixed ratio between the number of judges and number of assistants. Their number is fixed based on other considerations.
 7. Are there specialised judges within the Supreme Administrative Court who only deal with a certain kind of cases? NO. Does this specialisation have a basis in law or is it a result of internal work distribution?