



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? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority ?

Persons may refer matters to the Supreme Court without being represented by a lawyer. If a person wishes to have professional legal aid, sworn advocates or senior clerks of sworn advocates² may be representatives in the Supreme Court pursuant to § 51(1) of the Code of Administrative Court Procedure (hereinafter "the CACP").

Pursuant to § 51(2) of the CACP agencies, officials or other persons performing administrative functions in public law, as well as supervisory agencies and state or local government agencies involved by the court may be represented by the head or an authorized official (employee) thereof.

- 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 Supreme Court shall verify on the basis of an appeal in cassation whether the circuit court and the court of first instance have observed the provisions of court procedure and

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² In Estonia, pursuant to § 22(1) of the Bar Association Act, sworn advocates, senior clerks of sworn advocates and clerks of sworn advocates are members of the Bar Association (advocates).

applied the substantive law correctly (§ 64(1) of the CACP). A judgment of the Supreme Court shall be based on the facts established by the judgment of a lower court. The Supreme Court shall not establish facts which constitute the cause of an appeal (§ 64(2) of the CACP).

- 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.

Pursuant to § 52(1) of the CACP the parties and third persons have the right to appeal against a judgment of a circuit court to the Supreme Court in cassation proceedings if the circuit court has applied a provision of substantive law incorrectly or has materially violated a provision of court procedure.

§ 52(2) of the CACP provides that the parties and third persons have the right to appeal against a ruling of a circuit court prepared as a separate document, unless otherwise provided by this Code.

The parties and third persons may appeal against a judgment of a circuit court within thirty days after the court judgment is made public, or within thirty days after receipt of the judgment if the matter is adjudicated in written proceedings. The term for filing of an appeal against a ruling is fifteen days. An appeal in cassation must meet the formal requirements established in § 54(1) of the CACP, and security on cassation in the amount of 400 kroons (71 EUR) must be paid.

- 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?

A fine may be imposed on a participant in a proceeding for the abuses of procedural rights, misleading the court or delaying the proceedings in bad faith. No sanctions have been established for rash or persecutory appeals in the strict sense.

As regards the procedural aspects of imposition of fines see reply under II 7.

As there is a leave of appeal system upon accepting appeals in cassation and appeals against rulings, it is possible to refuse to accept unjustified appeals.

- 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').

Pursuant to § 60(1) of the CACP the Supreme Court shall accept an appeal if:

- 1) the appeal contests the correctness of application of a provision of substantive law or requests annulment of a court decision due to material violation of a provision of court procedure which has or may have resulted in an incorrect court decision;*
- 2) regardless of the provisions of clause 1) of this subsection, adjudication of the appeal in cassation has fundamental importance with respect to guaranteeing legal certainty and developing a single judicial practice or for the further development of a right.*

An appeal shall not be accepted if the Supreme Court is convinced that the appeal is obviously unjustified.

Pursuant to § 26(2) of the Courts Act acceptance for proceedings of matters which fall within the jurisdiction of the Supreme Court shall be decided by a panel of at least three members of the Supreme Court. A matter is accepted for proceedings if the hearing thereof is demanded at least by one justice of the Supreme Court.

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.).

An administrative court shall hear an action against a decision on extradition of a person to a foreign state within five working days after the action in compliance with the requirements is accepted by the administrative court. No other procedural peculiarities for hearing this type of action have not been established. The valid Code of Administrative Court Procedure does not provide for accelerated procedures at the level of cassation or appeal. § 53(1¹) of the CACP only stipulates that the term for filing an appeal in cassation against a judgment of a circuit court on extradition of a person to a foreign state shall be shorter (10 days) than in other types of proceedings.

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

No.

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? Can this single judge refer the case to be heard in a session presided over by several judges?

In administrative courts of first instance, as a rule, actions and protests shall be heard by judges sitting alone. By a ruling of an administrative court, an action or protest may be referred for hearing in an administrative court by a panel of three judges.

An appeal shall be heard collegially in a circuit court with the participation of at least three judges. A judge sitting alone may only issue procedural rulings or hear appeals against administrative court rulings (in procedural issues).

At the level of cassation, administrative matters shall be heard by a three-member panel of the Administrative Chamber of the Supreme Court or, in the cases provided for in this Code, by the full panel of the Administrative Chamber (5 judges) or by a Special Panel of the Supreme Court or by the Supreme Court en banc. In cassation proceedings a judge has no competence to hear matters sitting alone.

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.)

In appeal proceedings, if the circuit court agrees with the opinions of the administrative court, it does not have to repeat these.

In cassation proceedings, the Supreme Court, when serving a copy of the appeal in cassation on the other participants in the proceedings, may demand a written response to the appeal in cassation from the participants in the proceedings within the term specified by the Supreme Court, whereas it is not mandatory to demand a response in every single case. Nevertheless, in day-to-day practice of the Supreme Court, with the aim of guaranteeing the principle of equality of parties, a written response is demanded to all appeals in cassation and to the majority of appeals against rulings.

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

Adjudication of matters by way of written proceedings is possible in all court instances, unless the parties request the hearing of the matter in a court session.

In cassation proceedings the Supreme Court hears matters in court sessions if at least one participant in the proceeding so requires or if the court deems it necessary to organise a court session. In other cases the Supreme Court adjudicates appeals in cassation by written proceedings (§§ 61(1), 59(2) of the CACP). The Supreme Court may hear an appeal against a ruling in written proceedings regardless of the requests of the participants in the proceedings (§ 61(2) of the CACP).

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

Pursuant to § 100(1) of the CACP an administrative court may impose a fine on a participant in a proceeding, a witness or a person present in the courtroom who:

1) causes the adjournment of the hearing of the matter by abusing procedural rights, misleading the court or delaying the proceedings in bad faith, including failure to appear in court without good reason;

2) fails to perform an obligation provided for in subsection 12 (6) of this Code (an agency or official or other person performing administrative functions in public law who an administrative court requests to submit evidence or written explanations shall submit the evidence or explanations within a specified term) or to comply with other demands of the court;

3) as a witness, fails to appear without good reason when summoned;

4) fails to comply with an order of the presiding judge during a court session or disturbs a court session or obviously expresses contempt for the court or a judge.

The procedural Code does not give rise to significant differences as regards the procedure for imposing fines, including in regard to the composition of court. The law establishes that before imposing a fine, a court shall warn the person that a fine may be imposed. The law does not establish the obligation to hear the person before imposing a fine, but it requires that a copy of a ruling imposing a fine must be sent promptly to the person fined, or to the person's representative if neither is present upon the imposition of the fine.

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 administrative court procedure in Estonia does not regulate such a situation. The court may request explanations from participants in the proceeding about facts but the law does not require that in such a case the deliberations must be begun again.

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

The procedural Code leaves the courts discretion in requesting the statements of parties and imposing the terms for filing documents.

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

Documents may be submitted to courts electronically if signed digitally or submitted in another technically safe manner which permits to identify the sender. An electronic document must be submitted to court in the form of a printout or transmitted to court electronically in such a format that allows the documents to be examined and safely recorded in the information system of the court.

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?

A difference must be made between filing actions (also appeals and appeals in cassation and appeals against rulings) and submitting other supplementary documents, for the submission of which the court sets terms during the proceedings.

Upon filing an action the terms established in procedural codes must be observed. If an appeal does not conform to the formal requirements provided by law or some documents that should be annexed to it are missing the court shall set a term for the elimination of these deficiencies. If a person filing an action or protest fails to eliminate the deficiencies within a specified term, the administrative court shall, by a ruling, return the action or protest to the person filing the action or protest. If a participant in the proceeding files a petition, a request, an evidence or an objection after the term set by the court, the court shall hear it only if the court is of the opinion that this does not delay the adjudication of the matter or if the participant in the proceeding proves having had a good reason for delay.

In cassation proceedings the appellant in cassation must eliminate the omissions in the appeal in cassation or appeal against a ruling by the term set by the Supreme Court. If the appellant in cassation fails to comply with the orders of the Court by the due date and the matter cannot be heard in cassation proceedings due to the omission, the Supreme Court shall refuse to accept the appeal in cassation and return the appeal to the appellant in cassation by a ruling (§ 57(2) of the CACP).

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?

The procedural Code does not limit the number of submissions and allows to submit alternative claims, i.e. the person filing an action requests that a certain claim be satisfied only if the first one can not be satisfied.

A person filing an action or protest may amend a request set out in the action or protest until the summations in an administrative court or expiry of the term for the submission of

additional requests and evidence in written proceedings if the rest of the participants in the proceeding consent to the amendments or if the court deems the amendments purposeful.

Additional documents or submissions can be filed until the summations in an administrative court or expiry of the term for the submission of additional requests and evidence in written proceedings.

No new evidence can be submitted to the Supreme Court. A judgment of the Supreme Court shall be based on the facts established by the judgment of a lower court. The Supreme Court shall not establish facts which constitute the cause of an appeal (§ 64(2) of the CACP). The Code does not exclude the possibility of submitting other documents important for conducting of proceedings. The Code and the judicial practice do not exclude the possibility of amending requests in cassation proceedings in exceptional cases (on the principle of procedural economy and purposefulness).

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

There is no requirement to submit a summary statement. Subsections (1)6 and (1)7 of § 54 of the CACP establish that an appeal in cassation shall set out which provision of substantive law was incorrectly applied by a circuit court, or which provision of court procedure was materially violated by the circuit court, and what constituted the violation; and the clearly expressed request of the appellant in cassation.

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

If a court session is held, documents and submissions can be submitted during the session. If the matter is adjudicated in written proceedings the court sets a term during which additional requests and submissions may be submitted by participants in the proceeding.

15. Can new arguments be raised during the procedure?

The law does not prohibit this.

16. Can new arguments be raised on appeal?

The Supreme Court shall verify on the basis of an appeal in cassation whether the circuit court and the court of first instance have observed the provisions of court procedure and applied the law correctly (§ 64(1) of the CACP). An appeal in cassation shall set out which provision of substantive law was incorrectly applied by a circuit court, or which provision of court procedure was materially violated by the circuit court, and what constituted the violation; and the clearly expressed request of the appellant in cassation (§ 54(1) 6 and 7) of the CACP).

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?

The valid administrative court procedure law does not provide for this possibility. If the cases are dragging it is possible, in principle, to take disciplinary measures against the judge responsible.

As regards the duration of proceedings in administrative cases in the Supreme Court, it must be pointed out that the current work-load has posed no difficulties in hearing matters within reasonable time.

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.

So far no such cases have taken place in the judicial practice of administrative courts of Estonia. The unreasonable length of administrative court proceedings does not constitute a serious problem in Estonia, especially not in the Supreme Court.

In its ruling of 15 November 2004 in administrative case no. 3-3-1-58-04 the Supreme Court has worded the following criteria for determining reasonable time: "To measure whether judicial proceedings have taken place within reasonable time, the complexity of the dispute as well as the conduct of participants in the proceeding and of the court have to be assessed."

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?

There is no regulatory framework establishing legally binding criteria for measuring the performance of courts/judges. The Estonian court en banc³ shall discuss the necessity/possibility of qualitative criteria for measuring the performance of courts in February 2010.

The general efficiency of courts is measured on the basis of statistics. Twice a year the Ministry of Justice prepares a report on the proceedings in the first instance courts and presents it to the Council for Administration of Courts. Comparative tables containing the basis statistical indicators are drawn up – incoming cases, resolved cases, ratio of resolved cases to incoming cases, i.e. clearance rate. The figures are then compared to those of previous periods. The average clearance rate per judge is also taken into account, i.e. how many incoming cases there were during the period per a full-time administrative judge and how many cases the judge managed to resolve.

The described measures and the conclusions reached on the basis thereof bring about no legal consequences, they are of assistance in the organisation of administration of justice and in the planning of the budget.

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 average length of the administrative cases in regard to which a judgment entered into force in 2009 and which came through all three court instances (i.e. including cassation) was 345 days.

³ Pursuant to § 38 (1) of the Courts Act the Court *en banc* is comprised of all Estonian judges.

In regard to length of proceedings in the first instance administrative courts what is examined is how quickly the resolved cases had been adjudicated as well as what is the average 'age' of cases unresolved by the end of reference period (e.g. year) (calculated disposition time), and on the basis of the latter the efficiency of courts in resolving old cases can be measured.

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

As regards the duration of proceedings by types of cases, comparative data can be presented on the proceedings in the first instance administrative courts.

In 2009, the average length of proceedings in the first instance courts was 122.5 days and in 2008 – 122.9 days. Whereas, e.g. an average tax case took 344.7 days in 2009 (in 2008 the figure was 197.9), and a planning and construction dispute took 213 days (in 2008 – 219.4 days). At the same time, the adjudication of an average dispute concerning judicial administration (the complaints of imprisoned persons against the acts and procedures of prisons) took 60.3 days to adjudicate (68 days in 2008), and adjudication of disputes concerning refugee issues took 57.7 days (27.7 days in 2008).

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?

The valid procedural law does not provide for such a possibility.

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

*There are five justices in the Administrative Law Chamber of the Supreme Court; as a rule, they adjudicate cases in the panel of three justices. Number of administrative cases (resolved by a judgment or ruling on merits)
in 2009 - 122
in 2008 – 92*

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

In the Administrative Law Chamber of the Supreme Court there are 5 justices, 8 full-time and 3 part-time law clerks, i.e. 1.8 positions of law clerk per justice.

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?

The law does not provide for a basis for a distribution of work within courts. In practice there is partial specialisation, but bearing in mind the small number of judges specialisation to the extent that one judge could only deal with certain types of cases is not possible.