

<< Preventing backlog in administrative justice >>

*Answers to the questionnaire prepared by Prof. Rusen Ergec for the conference of 7
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I. Techniques for limiting the number of appeals

1. The party submitting a claim for a review procedure at the Supreme Court must be represented by a lawyer. Beyond that there are no further requirements regarding the lawyer's qualification or seniority.
2. The jurisdiction of the Supreme Court is basically limited to points of law.
3. An appeal may be filed with the Supreme Court only against an order passed in respect of a procedural issue that does not affect the merits of the case (e.g. against an order of the court of second instance refusing an application for the suspension of execution, or an order refusing a claim for appeal ex officio).
4. In administrative cases judgements on the merits cannot be appealed, an extraordinary appeal in the form of a review procedure might, however, be filed with the Supreme Court. Upon request of any of the parties, the court holds a hearing. The court proceeds in chambers of three professional judges.
5. If the claim for a review procedure exceeds the deadline or it concerns a decision that cannot be appealed, or if the party fails to submit documents requested by the court, the claim is refused ex officio.

II. Techniques to speed up proceedings

1. In cases requiring prompt judgement (e.g. cases involving issues that concern a great number of parties) the parties might submit a request for proceedings out of turn. The request is decided upon by the President of the Supreme Court upon advise by the Head of the Department and the Head of Chamber proceeding in the case. In election cases law provides deadlines of one or three days. In cases out of turn the general rules shall be applied.
2. At the Supreme Court there are no accelerated proceedings.
3. See item 2.
4. The Supreme Court always proceeds in chambers composed of three judges.

5. The Supreme Court examines final decisions from the aspect of points of law. Therefore, if the party refers to facts and circumstances not examined in previous proceedings, or the request contests the discretion of evidence, the request shall be refused without detailed reasoning.
6. As a main rule the Supreme Court examines cases out of trial but upon request of any of the parties it shall conduct a hearing.
7. The Court may impose a fine upon a party or a representative who delays proceedings and causes unnecessary expenses by not submitting required documents in time. If the party fails to comply with the court's order for supplementation of documents, the claim is refused ex officio.
8. The Supreme Court proceeds exclusively based on the request and examines alleged violations of law as set forth in the request.
9. In cases of emergency the party might be called upon to submit documents within shortened deadlines.
10. Documents have to be submitted on paper, except in cases where law allows documents to be submitted electronically.
11. If the claim for a review procedure at the Supreme Court is submitted late and the party does not submit a reasoning for late submission, or the court refuses the reasoning, it shall refuse the claim for the review procedure ex officio. If the party fails to comply with the court's request to submit documents or he submits them late, the court shall also refuse the claim ex officio as well.
12. There is no limit to the number of documents, the parties and others involved in the case might submit documents until the consideration of the claim.
13. It is not compulsory to sum up written submissions.
14. New documents can be submitted without restriction throughout the procedure until the making of the decision.
15. New evidence and arguments cannot be raised at the Supreme Court.
16. New evidence or facts can be raised during the first instance proceeding only if the party learnt about the new evidence/fact after the administrative decision had been made, and only if it would have led to a more favourable decision for him.

17. If the party notices a breach of the requirement of finishing the case within a reasonable time, he may submit a claim for damages by referring to the violation of his fundamental rights if the violation cannot be remedied in an appeal procedure. In certain cases the party, the intervening party, and the prosecutor may raise an objection concerning the length of the case before the proceeding court. The objection is examined by the higher court.
18. In administrative proceedings law stipulates that the first hearing shall be scheduled within sixty days.

III. Performance criteria

1. Judges' performance is measured based on monthly, six monthly and annual statistics. The National Council of Justice sets forth guidelines concerning expected performance and is currently drafting a new unified set of requirements. The quality of judges' work is checked by means of regular surveys that are carried out by the management of courts based on the opinion of higher courts.
2. The average length of proceedings at the Supreme Court in administrative cases is 10-12 months. As from 1 January 2009 the Supreme Court shall decide in administrative matters within 120 days from the arrival of the claim. First instance courts finish administrative cases within 6 months.
3. The length of administrative cases depends on the nature of the case. There are certain types of cases, e.g. review of the decision of the guardianship authority, that the court shall finish within shorter deadlines.
4. Judges may request the opinion of the Supreme Court directly. The Court sends its opinion agreed upon by administrative judges to every administrative judge of the country electronically within a couple of days.
5. On average a judge finishes 120 cases annually.
6. A chamber composed of three judges has one court secretary (with legal qualification) and one typist.
7. There are chambers dealing with tax/financial matters, the remaining chambers have general jurisdiction. This kind of specialisation is a result of internal work distribution and is not based on any legal regulation.