

“PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE”

Questionnaire

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?

Those wishing to refer a matter to the Supreme Administrative Court (the Senate Department of Administrative Cases of the Supreme Court of the Republic of Latvia) do not have to be represented by a lawyer.

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 Administrative Court’s jurisdiction is limited to points of law. It is a cassation court.

But there are exceptions. An ancillary complaint in the Supreme Administrative Court shall be adjudicated in accordance with the procedures prescribed for the adjudicating of cases in the appellate court. There are also some types of cases in which the Supreme Administrative Court is a court of first instance. In those cases points of facts are examined.

3) Is the right to 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?

The right to appeal to the Supreme Administrative Court is not an absolute right. There is a screening procedure initiating cassation proceedings. The screening procedure involves a preliminary admission of the cassation complaint decided by the collegium of three judges. According to the Article 338¹ of the Administrative Procedure Law:

1) The cassation complaint must be refused to accept if it does not correspond to the requirements of the Administrative Procedure Law;

2) The cassation complaint may be refused to accept if the judgment of the inferior court conforms with the case law of the Supreme Administrative Court; or if there is no doubt about the correctness of the judgment of the inferior court and if the case has no value for the case law.

According to the statistics approximately one half of the cassation complaints are refused to accept – mainly because there is no doubt about the correctness of the judgment of the inferior court and because the case has no value for the case law.

4) Are there 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?

No, there are no penalties for abuse of 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').

Yes, there is such procedure. A cassation complaint shall be submitted to the court which rendered the judgment. The judge of that court refuses to accept the cassation complaint if it has been submitted by a person who has not been authorised to do this or if it has been submitted after the expiration of the time period prescribed for appeal. An ancillary complaint may be submitted regarding a decision of the judge to refuse to accept a cassation complaint.

If the judge of the court which rendered the judgment forwards the cassation complaint to the Supreme Administrative Court, then the cassation complaint's preliminary admission must be decided (see answer under I, 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)? 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 – of there is one – is involved, whether there is an investigation, whether there is a hearing, shorter deadlines for submitting documents or statements, etc.).

There are no specific accelerated procedures for emergency situations, but there are accelerated procedures for some types of cases, for example, for cases which are connected with:

1) The rights or best interests of a child;

- 2) Decision of the minister for internal affairs to include an alien in the list of those persons for whom the entry in the Republic of Latvia is prohibited;
- 3) Decision of the Central Election Commission regarding the Saeima (parliament) elections;
- 4) Privatization of State and local government immovable property.

The main conditions of these accelerated procedures are the same as for ordinary proceedings (these are adversary procedures, the session is heard by three or more judges, there is a hearing, the decisions are reasoned). The only difference is that the case must be adjudicated as soon as possible. In some cases the law itself specifies term in which the case must be adjudicated, for example, the Immigration law provides a two months term.

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

According to the Article 338¹ of the Administrative Procedure Law the cassation complaint may be refused to accept if the judgment of the inferior court conforms with the case law of the Supreme Court; or if there is no doubt about the correctness of the judgment of the inferior court and if the case has no value for the case law.

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

There are accelerated procedures for some types of cases (see answer under II, 1).

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

Any case in the Supreme Administrative Court is heard before three judges – including the proceedings for interim relief.

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.)

According to the case law of the Supreme Administrative Court the obligation to give reasons for court decisions cannot be understood as requiring a detailed answer to every argument. The court is entitled to respond only to those

arguments which are essential. However, the court may respond also to all the arguments if it is necessary.

The Supreme Administrative Court is aware that according to the case law of the European Court of Human Rights the obligation to state reasons is relaxed in situations when the admissibility of the appeal is decided (*Gorou v. Greece*). However, the Supreme Administrative Court provides rather extensive grounds, especially, when the cassation complaint is rejected because there is no doubt about the correctness of the judgment of the inferior court and if the case has no value for the case law.

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

Yes, the court can conduct procedures entirely in writing, if there are both of those conditions:

- 1) The court considers that the documents in the case are sufficient;
- 2) The applicant and the third party (i.e., those participants in administrative proceeding which are private persons) agree that the case will be adjudicated in writing; consent of the defendant – an institution – is not necessary.

An ancillary complaint shall be adjudicated in writing, if only the court does not consider that an oral procedure is preferable.

7) Can any party not cooperating with the procedures be penalized?

According to the Article 140 of the Administrative Procedure Law a court may apply the following procedural sanctions: a warning, expulsion from the courtroom, pecuniary penalty, forced conveyance to the court.

The judge shall give a warning to a person who disturbs order during the adjudicating of the case.

If a participant in an administrative proceeding, a witness, an expert or an interpreter disturbs order repeatedly, they may, pursuant to a court decision, be expelled from the courtroom.

According to the Article 214 of the Administrative Procedure Law the court may impose on participant a pecuniary penalty, if he or she has failed to attend a court sitting and has not notified the court of the reason for his or her failure to attend in good time or the court finds the reason unjustified.

The court may take a decision concerning the bringing of a witness to the court by forced conveyance.

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 authorize the parties to submit new conclusions?

The obligation of the court is to hear the parties both about the facts, and the legal norms. But the evaluation of the facts and the interpretation of the legal norms is completely the competence of the court. Therefore the court is entitled to raise legal arguments in its own motion without giving a chance for the parties to submit new conclusions.

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

In written procedure the court determines a deadline for submitting documents by its own discretion. In oral procedure the last deadline for submitting statements and documents is the court sitting.

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

The procedure allows submitting electronic documents (including appeal, statements and written submissions) with secure electronic signature.

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?

Every written submission (for example, written explanations regarding the cassation complaint) must be submitted considering the deadline which is prescribed in the Administrative Procedure Law. Written submissions which are submitted after the deadline are rejected.

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?

Written submissions must be accepted – irrespective of the number – whenever the deadline is observed.

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

No, there is not such requirement.

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

No, there is not such possibility. (See answer under II, 11).

15) Can new arguments be raised during the procedure?

In general an applicant and a defendant have the right to express their arguments and considerations in written or oral form until commencement of the adjudicating of the case. Nevertheless a defendant – an institution – is bounded to the grounds that have been stated in an administrative act. Accordingly an institution may raise new arguments only if they do not modify the grounds of an administrative act.

16) Can new arguments be raised on appeal?

The parties are allowed to raise new arguments in all court instances with the exemption that new arguments regarding the facts may not be raised in the cassation court.

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

The participant in administrative proceedings may ask the court to accelerate proceedings if there is any special reason. He or she may also claim to the Chair of the court if he or she thinks that the case has been delayed without reason. The Chair of the court can initiate disciplinary proceedings against the judge acting as rapporteur in the particular administrative case if the judge has failed to perform his or her office duties.

The person may also bring an action in the court of overall jurisdiction demanding compensation for failure to adjudicate an administrative case in ‘reasonable time’. Such action should be substantiated directly on a Article 92 of the Constitution of the Republic of Latvia. This Article establishes that “Everyone, where his or her rights are violated without basis, has a right to commensurate compensation”. Thus any person has a right of compensation whenever his or her rights to trial within a reasonable time have been violated.

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.

The reasonableness of the length of the proceedings is to be assessed according to the particular circumstances and having regard to the criteria stated in the case law of the European Court of Human Rights, especially the degree of complexity of the case, the applicant’s behavior, the conduct of the relevant authorities and the importance of what was at stake for the applicant.

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?

The quantitative criteria for measuring the ‘performance’ of court activity are:

- 1) The length of proceedings;
- 2) The amount of backlog.

The qualitative criteria are:

- 1) The quality of court decisions;
- 2) The number of appeals;
- 3) Public trust in the courts.

The ‘performance’ of court activity is weighed against the criteria mentioned above, for example, in the annual reports of the Supreme Court, in the scholar researches, and in the documents of policy planning. These criteria are not prescribed in any legal act.

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 length of proceedings in the Supreme Administrative Court depends on the type of the matter:

- 1) The ancillary complaints are adjudicated on average in 2 month;
- 2) The refusals to accept the cassation complaints are made on average in 3 month;
- 3) The cases on the merits are adjudicated on average in 6 month.

The average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court is 40 month.

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

There are no statistical data regarding the length of procedures depending on the nature of the case. In general the length of proceedings is shorter if an ancillary complaint is adjudicated and longer if the case is adjudicated on the merits.

In exceptional cases if the court establishes that the case is particularly complicated the court can prolong a 30 day term for drawing up a judgment by another 30 days.

If the panel of three senators does not reach a unanimous opinion, or all senators consider that the case should be adjudicated in a plenary sitting, the case is referred to be adjudicated in a plenary sitting before all the senators of the Supreme Administrative Court. Consequently the length of procedure more or less depends on complexity of problem question which the case involves.

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

No, there is not such option.

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

A judge in the Supreme Administrative Court on average settles 125-136 cases each year.

6) What is the ratio between the number of judges in the Supreme Administrative Court and the number of assistants?

In the Supreme Administrative Court there is one assistant for each judge.

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

There are not judges who only deal with certain kind of cases. Although each of senators specializes in a certain field of law, for example, human rights, tax law, social law, environmental law. In accordance with the Case division plan the cases generally are divided in alphabetical order by senator's last name. The Chair of the Supreme Administrative Court may step back from the principle mentioned before and divide the cases depending on senator's specialization. The specialization is a result of internal work distribution and does not have a basis in law.