



THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

CONFERENCE OF 7 JUNE 2010

“PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE”

Answers to the questionnaire prepared by Prof. Dr. Rusen Ergec

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?**

There is no a requirement for an appeal to be signed by the lawyer or obligation for the appellant to be represented by a lawyer during litigation at the Supreme Administrative Court. According to the Law on Administrative Proceedings of the Republic of Lithuania (hereinafter - the Law on Administrative Proceedings), the parties to the proceedings may defend their interests in court themselves or through their representatives. By participating in the case the party does not forfeit the right to be represented in the case.

State institutions, agencies, services are entitled to obtain the assistance of representatives of the interested superior State institutions. The heads of the appropriate institutions, agencies, services, enterprises, organisations and, in the cases provided for by laws or other legal acts, other employees acting within the powers granted on the basis of law or other legal acts, may be heard as statutory representatives.

As a rule, attorneys may act as counsel of the parties (proxy representatives). The powers of the counsel or assistant counsel may also be confirmed by a warrant (proxy) of an attorney or an assistant attorney, or by an agreement concluded with the client. The powers of other representatives must be specified in the warrant (proxy) issued and executed according to the procedure laid down in the Civil Code and the Code

of Civil Procedure, according to which the representatives acting under a warrant of an attorney (proxy) in the appellate instance may only be attorneys at law, which means that the assistants to the attorneys at law are prohibited to participate in the appellate proceedings as representatives of the parties.

Where a party to the proceedings is a minor or a disabled person, their statutory representatives (parents, adoptive parents, foster parents, and guardians) have the right to represent their interests.

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 Administrative Court of Lithuania is not limited to points of law. This implies that the Supreme Administrative Court explores factual and legal circumstance and basis.

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

There are no limitations concerning the right of appeal, apart from the fact that an appeal must comply with formal requirements and that the appellant's complaint to the Supreme Administrative Court can not include demands which were not presented during the litigation at the court of the first instance.

If an appeal doesn't correspond to the requirements laid down in law for its form and substance and the indicated flaws are not eliminated by the appellant upon the request of the court, the appeal is not considered lodged and is usually returned by the court to the appellant.

The admission procedure under the above mentioned grounds is exercised by the President of the Supreme Administrative Court or other judge if the appeal was lodged directly to the Supreme Administrative Court. This question must be solved no later than during 3 days after the material of administrative case comes from the court of the first instance. The Supreme Administrative Court may refer the question of admission to the court of the first instance, the judgment of which is appealed. If the appellant lodges the complaint to the Supreme Administrative Court through the court of the first instance, the question of admission is solved by the latter court also not later than during 3 days after the appeal is brought before the court of the first instance. The court of first instance has to then send the case, along with the appellant's complaint, to the Supreme Administrative Court.

Furthermore, the Law on Administrative Proceedings allows for the appeal not to be admitted and be returned to the appellant if the following circumstances are met: 1) the appeal was lodged after the term of appeal had expired and the appellant did not apply for an extension of the term or such a request was rejected; 2) the appeal was lodged by a legally incapable person or a person who has no legal cause to do that under the cases indicated in the law (for example, appealing person was not a party in the case of the first instance); 3) the appeal was lodged by a person without a required warrant.

Where an appeal is filed with the appellate court, the chamber of three judges of the court passes a motivated order to refuse to admit the appeal under the above mentioned grounds.

The Law on Administrative Proceedings also lays down the situations when an appeal must be left unconsidered even if it was admitted by the court: a) the appellant did not follow the precedent order of case hearing (extrajudicial order) and it is still possible to exercise this procedure; b) the appeal was lodged by a legally incapable person; c) an appeal was lodged by a person (on behalf of the interested person) without a required warrant; d) litigation between the same parties on identical basis is pending before an another court; e) the court did not have enough evidence (material) to reach a decision and despite the fact that the appellant was informed about this, he did not participate in the case hearing. The latter ground usually is not applicable in the practice of the Supreme Administrative Court. The lack of clarity about the legal situation and circumstances of the case as well as the necessity to find additional evidence constitutes the Supreme Administrative Court's judgment to annul the decision that has been appealed and return the case for a repeated hearing to the court of the first instance.

- 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?**

The only negative consequence for an abuse of appeal stated in the Law on Administrative Proceedings is a court has a right to demand from appellant to pay the stamp duty, although a person under the law is not obliged to do so. The abuse of the right to the judicial defense is understood as an appeal without a legal cause or more than once a month. The mentioned procedural mean can be applied under the court initiative. The person who suffers loss because of the appellant's abuse may demand compensation by starting separate proceedings.

The question if the appellant should be obliged to pay the stamp duty is solved during written proceedings without the participation of the appellant, in accordance with the same rules applicable to the procedure of admission of the appeal.

- 5) Do appeals have to go through an admission or authorization 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 authorization ('leave of appeal').**

Appeals do not have to go through an admission or authorization procedure before being brought before the Supreme Administrative 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).**

The Law on Administrative Proceedings does not provide any accelerated procedures for emergency situations when the Supreme Administrative Court acts as a court of appellate jurisdiction.

However, the Supreme Administrative Court's practice and internal acts of the president of the court determine accelerated procedures for considering certain types of administrative cases. For example, internal Regulations on Distribution of Administrative Cases adopted by the President of the Supreme Administrative Court identify the cases which must be heard and judgments in which must be passed in urgent or significantly urgent need. These categories of cases are as follows: administrative cases considered following the court's decision to renew the proceedings; the court decisions in cases which deal with the question of imposing interim measures; other cases involving a significant public interest and where the questions of great importance for protection of human rights are considered.

What is more, the proceedings at the Supreme Administrative Court in the cases of administrative offences usually are comparatively shorter because of three main reasons: such cases are usually related to the

restriction or suspension of the person's right or ability to exercise some activity; the Law on Administrative Proceedings allows the court to hear appeals in such cases in written proceedings without the participation of the parties (however, the Supreme Administrative Court usually respects the principle of the right to be heard if the question of a penalty related to the restriction of the person's liberty (administrative arrest) is considered). The Code on Administrative Offences indicates a special term for considering appeals in such cases: an obligation to consider the appeal in 20 days after it is received at the court. Also, the mentioned internal Regulation on Distribution of Administrative Cases obliges the court to hear some types of the administrative offences cases more quickly, for example, cases where the question of administrative arrest is considered; cases related to the restrictions of the rights of the foreigners; cases where the question of the rejection of an appeal is considered, cases related to the question of restoration of the term for an appeal, etc. It should be noted that the mentioned proceedings are also written.

It is important that there are some categories of cases where the Supreme Administrative Court acts as a court of single instance and the laws of Lithuania recognize these cases as having specific features and significant manner. The Act on Administrative Proceedings indicates that the complaints against the infringement of the order of election and referendum must be considered during the special terms determined in the laws on elections and referendums. In accordance with the Law on Elections to the Local Government Councils, the appeal against the decisions of the Central Electoral Committee has to be considered within 5 days. Under the Law on Presidential Elections and the Law on Elections to Seimas (parliamentary elections), as well as the Law on the Referendum, appeals against the decisions of the Central Electoral Committee shall be considered not later than during 48 hours from the moment the appeal is received at the court. The Law on the Elections to the European Parliament indicates that the appeal against the decisions of the Central Electoral Committee must be considered in 3 days.

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

There are no accelerated procedures for clearly founded or unfounded appeals. The Act on Administrative Proceedings states that the court of appeal instance is not bound by the arguments provided in the complaint of the appellant and the court must review the case in whole. This means that the Supreme Administrative Court is in all cases obliged to consider the case on its merits even if the appellant does not demand it.

As it was already mentioned (see the answer to question I. 3), if a complaint of the appellant does not fulfill the formal requirements indicated in the law or has other flaws, the court finds it inadmissible in 3 days.

Also, if a complaint of the appellant can not be considered on its merits because of the circumstances (for example, the appeal was lodged after the term of appeal had expired and the appellant did not apply for an extension of the term or such a request was rejected) which emerge after the appeal is admitted at the court, the proceedings must be terminated without considering on the appeal's merits, which results in shorter proceedings.

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

There are no accelerated procedures for such cases.

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

The Supreme Administrative Court does not hear an appeal by a single judge. The court proceeds in chambers composed of three judges both for considering the case on its merits and issuing interim relief. In complicated cases - upon the notion of the President of the court or of the chamber of three judges - the case can be passed on to a chamber of five judges or to a plenary session (formed of at least 2/3 all judges of the court).

5) Can an 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.)

The law does not provide directly such grounds of relaxation in the court judgment. In accordance with Article 87 of the Law on Administrative Proceedings, the court judgment shall provide the statements indicating the facts determined by the court, evidentiary material affected the judgment, arguments about the denied evidentiary material and the legal acts as well as certain legal provisions that the judgment is based on.

The practice of the Supreme Administrative Court indicates some exemption and relaxes of the obligation to respond to all arguments in case when the court agrees with the reasoning of the court of the first instance. Such relaxation must not prejudice the clarity and entirety of the final judgment of the appellate

court. Anyway, the court shall give the reference to the certain arguments of the judgment of the first instance court.

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

As a rule, the Supreme Administrative Court considers the cases by conducting an oral hearing. However, in certain types, of cases there is a possibility to conduct procedures entirely in writing. The Act on Administrative Proceedings allows the court to examine the case of administrative offence in written proceedings. Also the court may not hold an oral hearing in the following cases:

- 1) When it appears to be evident that the court of first instance had to decline for an appeal to be lodged;
- 2) When it appears that the judgment of the court of the first instance is void because of the absolute invalidity grounds, for example, the case was considered by an unlawfully composed panel of judges or the judgment was not signed by a judge (judges);
- 3) When the parties do not appear before the court in an oral hearing despite the fact that the parties were properly informed about the place and date of the hearing;
- 4) When the petition for renewal of proceedings is considered;
- 5) When the Supreme Administrative Court *sua sponte* initiates proceedings for testing the legality of a normative administrative enactment in relation to an individual case.

As a rule, the court hears the appeals against separate inconclusive decisions of the court of the first instance as well as claims for interim relief without summoning the parties to the proceedings.

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

The Law on Administrative Proceedings enables the court to impose upon any party of the process a fine for not cooperating with the procedure in these occasions:

- 1) Party who fails to appear without a substantial reason or rejects to testify, clarify or submit the conclusions may be fined up to 1000 litas (approximately 290 EUR) or be arrested for a term of up to one month;
- 2) Where the injunctions specified in the interim relief are not complied with, the guilty persons may be imposed a fine by a court order in the amount of up to 1000 litas (approximately 290 EUR);
- 3) If the parties and its representatives fail to notify the court about a change of its residence and this violation stipulates postponement of the hearing, a fine up to 200 litas can be imposed (approximately 58 EUR);

4) If officers or other persons do not fulfill the requirement to submit replies and documents or other requirements related to the hearing within the given time; if a witness, specialist or expert is not present at the preparatory stage of the procedure or at the hearing without substantial reasons; if the participating parties talk out of turn during the court session following a warning, offend other persons or the court; if the parties violate rules in the courtroom or do not obey the requirements of the chairman of the panel to follow the rules. In the mentioned occasions, a fine imposed upon a natural person can be up to 1000 litas (approximately 290 EUR), officers and representatives of institutions or agencies might be imposed a fine of up to 2000 litas (approximately 580 EUR).

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 court informs the parties and other persons suggesting to submit their opinion when new arguments are raised.

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

The exact time limit for submitting the documents (for example, a reply to the appeal) is set in the Law of Administrative Proceedings and there is no possibility to shorten it. However, in practice, some deadlines determined by the law could be shortened. This could be done when the nature of a case is related to the protection of the public interest.

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

The possibility to submit an appeal or other documents electronically is not available. Generally an appeal must be submitted in writing on paper. If an appeal is sent as a facsimile message, the original copy of the appeal must be delivered at the court within three days.

However, such amendments in the Law on Proceedings (related to the possibility to appeal, submit documents, statements and other material electronically) are already submitted to the Government and awaiting its approval. If such an approval is received, they will be registered and await consideration and as well as approval (adoption) at the parliament (Seimas).

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.

The law provides a strict deadline for the submission of an appeal. Past the deadline the appeal shall be refused as inadmissible unless the deadline is renewed by the court. This applies to all written statements and documents.

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?

There is no limit to the number of statements or other documents submitted to the court.

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

There is no requirement for the submission of a summary statement.

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

Once the investigation has been closed such a possibility is not provided. However, when the court decides to reopen the hearing, new documents may be submitted.

15) Can new arguments be raised during the procedure?

In the appeal proceedings, the appellant may not raise new demands and evidence if they had not been raised (see item I. 3) or investigated before the court of first instance. However, the court of appeal can admit new evidence and investigate it if the court of the first instance refused to accept or investigate it gratuitously. New evidence, which had not been presented before the court of the first instance, may be investigated if the court of appeal states that the reasons for it to not have been investigated are well-founded or the necessity of introducing new statements emerged later.

16) Can new arguments be raised during appeal?

There is no possibility of raising new arguments (demands) in a court of appeal if these arguments had not been raised before the court of the first instance. Arguments, which are closely connected to the arguments, which had been raised before the court of the first instance, are not considered as new arguments.

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

The national law does not provide any mechanism to accelerate the course of the procedure. However, the Supreme Administrative Court, following the jurisprudence of the European Court of Human Rights, assesses each case according to its special features, such as the complexity of the case, the conduct of the appellant and of the relevant authorities. Exclusively, the provisions concerning the disciplinary liability of judges could be applied. In accordance with the Article 83 of the Law on Courts of the Republic of Lithuania, a disciplinary action may be brought against a judge for an action demeaning the judicial office; for violation of the requirements of the Code of Ethics of Judges; for non-compliance with the limitations on the work and political activities of judges provided by law. However, this mechanism does not impact the procedure of the case.

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

The Supreme Administrative Court understands “reasonable time” according to the legislature of the Council of Europe and the jurisprudence of the European Court of Human Rights. In one of the decisions, concerning the judicial review of an administrative act, the Recommendation of the Committee of Ministers of the Council of Europe 2004 (20) was invoked. It was mentioned that, according to this document, the procedure of the review of an administrative act should be performed considering the right to fair trial. The time within which the tribunal takes its decision should be reasonable in the light of the complexity of each case and of the procedural steps or postponements attributable to the parties, while respecting the adversarial principle. Each party should be given an opportunity to present his or her case without being placed at a disadvantage. These requirements are enshrined in the national law as well. In practice, the length of the proceedings at the Supreme Administrative Court does not go beyond what is considered reasonable, therefore, there is no jurisprudence concerning the delay of such proceedings before the Supreme Administrative Court.

III. Performance criteria

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

Performance of a court is measured in accordance with such quantitative and qualitative criteria as the number of the cases filed at the Supreme Administrative Court, number of cases decided and decisions adopted by subject matter, amount of pending cases at the court, and the length of the proceedings at the Supreme Administrative Court.

The Supreme Administrative Court issues an annual report, which provides the statistical data concerning the activity of the Supreme Administrative Court, in accordance with the above mentioned and other criteria. As a rule, the annual report is presented to the society and the main state authorities. It also can be found on the web-site of the court.

Also, data about an activity of the Lithuanian courts, are collected by the National Courts Administration (a national institution, independent from the executive and aimed at providing services to the institutions of self-governance of courts in pursuance of ensuring the efficiency of the court system, its government and organisation of work as well as the independence of judges and self-governance of courts).

The National Courts Administration gathers and analyses the statistical data of the courts’ performance, based on the criteria mentioned above. Each year, it publishes the Review of Activities of Courts and Institutions of Self-governance of Courts, which includes the data considered to be most important by the National Courts Administration.

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?

Such statistical data on the average length of proceedings in the Supreme Administrative Court is gathered constantly. The mean period of the proceedings at the court was 9,96 months in 2009, 8,66 months in 2008, 7,55 months in 2007, 5,65 months in 2006, 3,93 months in 2005.

There is official no statistical data on the average length of a judicial procedure from the court of the first instance to the final decision by the Supreme Administrative Court. However, based on approximate calculations, the average period of proceedings at the first instance of the administrative courts is 6 months. Hence the whole duration of the court proceedings at lasts approximately one year and 3 months (in 2009).

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

There are differences in the lengths of proceedings depending on the nature of the case, though not significant. For example, in 2009, the mean period of hearing appeals on interim rulings of administrative courts of the first instance was **1,26** months, a case of administrative offence - **8,39** months, appeals on decisions of administrative courts of the first instance - **9,96** months, a case concerning the lawfulness of normative administrative acts - **8,60** months.

4) During proceedings, are lower courts authorized 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?

Lower courts are not authorized 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 Law on Administrative Proceedings lays down the possibility for the Supreme Administrative Court to consult judges of administrative courts of first instance on questions of interpretation of law, when such consultations are not related to specific cases. However, the implementation of this clause is complicated.

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

In 2009, on average, there were 600 administrative cases per each of the 15 judges of the Supreme Administrative Court when serving as the reporting judge in the judicial chamber (in 2008 – 443 administrative cases). Most of these cases were cases of administrative offences, which are usually considered without oral hearing and participation of the parties. Also, on average, each of the judges of the court took part in an additional 1154 case hearings (in 2008 – 873 administrative cases) when serving as the member of a judicial chamber.

The increasing number of cases heard has determined the fact that in 2009 the mean case load of judges also increased more than 33 percent.

The number of settled case and the number of cases heard by one judge in the years 2003 – 2009:

Year	Settled cases (including the backlog from previous year)	Number of cases heard by a judge (in average):	
		As a member of chamber	As a reporting judge
2009	8723	1154	600
2008	5727	873	443
2007	4690	1108	369
2006	5851	1100	365
2005	3949	561	271
2004	3498	486	264
2003	3693	662	307

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

The ratio between the number of judges and the number of assistants is approximately 2 members of legal personnel per 1 judge. Currently, the Supreme Administrative Court employs 16 judges and 17 assistants. However, the judges of the Supreme Administrative Court are assisted not only by assistants, but also by other judicial personnel consisting of advisors and consultants of the Department of Judicial Practice. All in all, at present, there are 30 members of judicial personnel assisting sixteen judges.

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?

The President of the Supreme Administrative Court sets the specialization of judges for certain categories of administrative cases, for example, taxation, administrative offences, building and territorial planning, etc. The specializations of the judges is distributed and established by an internal act – an order of the President of the court. However, such specializations are not permanent and are subject to change based on different circumstances.

The possibility to ascertain the specialization for the judges is provided in the Law on Courts under which courts may establish specialization of judges for hearing certain categories of cases. The description of the procedure specifying the specialization of judges and the basic principles thereof is approved by the Judicial Council.