

PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE

Replies to the Questionnaire by Malta

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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?**

In Malta we do not have a Supreme Administrative Court nor, indeed, a Supreme Court. We have, however, the Constitutional Court, the Court of Appeal (First and Second Section) and the Court of Criminal Appeal which, collectively, deal with what in other jurisdictions is dealt with by Supreme Courts. Appeals from judgements at first instance on judicial review of administrative action and governmental liability, and appeals from *ad hoc* administrative tribunals (where the parent act constituting the particular tribunal so provides) are heard by the Court of Appeal.

The application of appeal and any written pleadings to the Court of Appeal must be signed by a lawyer, and a legal procurator if any. The assistance of a lawyer is not necessary during the oral hearing. Nevertheless, the Court may order the party who is not assisted by a lawyer to engage one if, in its opinion, such party is unable adequately to plead his case; and if such party fails to engage a lawyer, the court can appoint one of the official curators for the purpose. However, in practice nearly in all cases there is a lawyer assisting the party during the oral hearing.

In all cases, a lawyer assisting a party in proceedings before the courts must possess a warrant to practice as an advocate in the courts in Malta issued by the President of Malta. However, there are no other qualifications or seniority issues.

- 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?**

In hearing appeals on judicial review of administrative action and governmental liability, the Court of Appeal is composed of three judges, and hears appeals on both points of fact and points of law. Naturally in appeals on judicial review, the appeal can only deal with the legality of the administrative decision concerned, and the Court of Appeal, like the first court, cannot substitute its own discretion for that of the administrative authority concerned.

The majority of appeals from decisions of *ad hoc* administrative tribunals are heard by the Court of Appeal composed of one judge. In the majority of cases the right to appeal from decisions of *ad hoc* administrative tribunals is limited to points of law only.

- 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.**

The right of appeal from judgements of first instance on judicial review of administrative action and governmental liability is provided for in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and there are no limitations to this right.

The right of appeal from decisions of *ad hoc* administrative tribunals is possible only where the parent act constituting the particular tribunal expressly provides for such a right of appeal. The parent act will also stipulate the limitations, if any, under which the right of appeal can be exercised.

- 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 Court of Appeal can award double costs against the appellant in favour of the respondent for frivolous or vexatious appeals. The double costs can be awarded either on the request of the respondent or by the Court of Appeal *ex officio*. The award of the double costs is made in the final judgement, and the reasons for the decision are included in that judgement. The Court of Appeal is not obliged to inform the applicant beforehand, that is before the final judgement, that it is considering awarding double costs against him.

- 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').**

There is no admission or authorisation procedure before the case is heard by the Court of Appeal. However, in the case of appeals from judgements at first instance on judicial review of administrative action and governmental liability, the appellant must, two days before the first hearing before the Court of Appeal, deposit in court the security for the costs of the appeal. If the appellant fails to do so, the Court of Appeal will declare his appeal abandoned. If the appellant, prior to the said first day of hearing, declares that he does not have sufficient means to deposit the said security, he will be heard on oath during the first hearing. If the Court is satisfied that the appellant was unable to raise the necessary security it must also, before admitting the appellant to the juratory caution, be satisfied that he has a *probabilis causa litigandi*.

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.).**

As in all other cases, the Court of Appeal can, for a just cause, order that the appeal be held with urgency. In such cases, the Court of Appeal can abridge any legal time and can order that an act be carried into execution from one day to another or from one hour to another or forthwith.

The request for the appeal to be heard with urgency is normally notified to the opposing party for his comments. Then the Court of Appeal will either issue a decree allowing or rejecting the request for urgency for the reasons stated in the decree, or else it will hold a sitting where oral submissions will be made by the contending parties on the request for urgency. Such a sitting will be presided by the same three judges, or the same judge (depending of whether the Court of Appeal is composed of three or of one judge), who are/is hearing the appeal. If such a sitting is held, the Court of Appeal will issue its decree allowing or rejecting the request for urgency after the sitting.

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

Apart from applying for a case to be heard with urgency, an appellant, or even the respondent, may apply for the appeal to be heard before its turn. The Court of Appeal in recent years has adopted the practice that, if it appears that the appeal is manifestly founded or manifestly unfounded, or where the normal delay in the time between the filing of the appeal and the hearing might seriously prejudice one or the other party, it will allow the request for the appeal to 'jump the queue'. Moreover, certain appeals e.g. appeals from a preliminary decision, and also where it is quite clear that the appeal is a straightforward case, are also automatically fast-tracked.

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

See answer to Question II, 2 above.

- 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?**

As already stated in the answer to Question I, 2, in hearing appeals on judicial review of administrative action and governmental liability, the Court of Appeal is composed of three judges, whilst the majority of appeals from decisions of *ad hoc* administrative tribunals are heard by the Court of Appeal composed of one judge. It is the parent act constituting the *ad hoc* administrative tribunal concerned which prescribes whether in hearing the appeal the Court of Appeal is to be composed of three judges or of one judge. As a general rule, where the issue before *ad hoc* administrative tribunal concerns a substantial amount of money, the parent act prescribes that the appeal is to be heard by the Court of Appeal composed of three judges.

Where the law prescribes that the appeal is to be heard by the Court of Appeal composed of three judges, no sittings can be held where the Court of Appeal is composed only by one judge. On the other hand, where the law prescribes that the appeal is to be heard by the Court of Appeal composed of one judge, that judge cannot refer the case to the Court of Appeal composed of three 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.)

The Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) provides that the application for appeal must contain a reference to the claim and to the judgment appealed from together with detailed reasons on which the appeal is entered and a request that the said claim be allowed or dismissed. Where the appellant appeals for the variation of a judgment, the application of appeal must contain a reference to the claim and to the judgment appealed from and must distinctly state the heads of the judgment complained of, together with detailed reasons for which the appeal is entered and, in conclusion, must state, specifically, the manner in which it is desired that the judgment be varied under each head. The respondent must file his reply containing the reasons why the appeal cannot be dismissed.

These requirements are mandatory. Thus for example, if an appellant fails to raise a ground of appeal in his application for appeal, he cannot raise it at a later stage.

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

No, the Court of Appeal is obliged to hold at least one oral hearing. It is not uncommon, however, for counsel for the parties at this hearing to declare that they have nothing further to add to the written pleadings.

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

Any party not cooperating with the procedure can be penalised in various ways. For example, if a party does not file the written pleadings within the time-limit stipulated by law or by the Court of Appeal, he will be barred from filing them at a later stage. In the case of the appellant, if he does not file the application of appeal within the time-limit prescribed by law, the appeal will be declared inadmissible.

The appellant must notify the respondent with the application of appeal within one (1) year from the date of filing of the application of appeal. If he fails to do so, the appeal will be declared to have been abandoned. However, if this time-limit lapses, the Court must once only give such orders which it may deem fit so that the application of appeal is notified to the respondent. If after such orders have been given, the application of appeal is still not served upon the respondent, the appeal will be declared deserted.

If, when a case is called for the oral hearing, neither of the parties nor their advocates appear, or if only the respondent or his advocate appears, the Court may declare the appeal abandoned. Nevertheless, on an application by the appellant, filed within eight (8) days from such declaration, the Court will order that the case be again put on the list for hearing and determination, provided the appellant deposits, within the said time, the amount of costs occasioned by his non-appearance, as stipulated by law in the relevant tariff.

If, when a case is called for oral hearing, the appellant and his advocate appear, but the respondent and/or his advocate do/does not appear, the hearing will still be held.

The Court of Appeal may, when delivering judgement, order that the appellant or respondent in a case pay increased costs to the Registrar of Courts of not less than €82.34 and not more than €329.37 if the Court deems that the application of appeal or the reply was frivolous or vexatious or that either of the parties has unnecessarily prolonged the proceedings and in such case such sum will not be recoverable from the other party.

The Court of Appeal may, when delivering judgement, also refer to the Commission for the Administration of Justice the advocate of the appellant or respondent if the Court deems that the advocate is responsible, wholly or partly, for the frivolous or vexatious act of procedure or for prolonging the proceedings.

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?

Not necessarily. If the judge or one of the judges raises a legal argument of the court's own motion, the law of procedure does not oblige the Court of Appeal to inform the parties of this fact, and technically the Court of Appeal can raise the legal argument for the first time in the final judgement itself, and decide it in that judgement without hearing the submissions of the parties on the legal issue raised by the Court. However if the Court were to do so, this could be a ground for a new trial under Section 811(f) (g) of the Code of Organisation and Civil Procedure (judgment given on a matter not included in the demand or given in excess of the demand); and the judgment could also be challenged on constitutional grounds (lack of fair hearing).

However, normally in such cases, the Court of Appeal will inform the parties of the legal argument raised by the Court of its own motion during the oral hearing, or if the case has already been adjourned for judgement, the Court of Appeal will suspend the publication of the judgement, and order that another oral hearing be held, wherein the parties are informed of the legal arguments raised by the Court of its own motion, and allowed to make submissions on it.

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

Deadlines set down by the law itself can be shortened only in those cases where the Court of Appeal accepts a request for the appeal to be heard with urgency, in which case the procedure described in answering Question II, 1 applies. Deadlines set by the Court can be shortened if a valid reason is subsequently shown to the Court.

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? If so, are there any exceptions to this rule?

Written submissions and documents must strictly be submitted within the time-limit prescribed by law, otherwise the written submissions and/or documents will be removed from the court record. For instance, if the appellant does not file his appeal application within the prescribed time limit, his appeal will be declared inadmissible. However, the failure by the respondent to file the reply within the prescribed time-limit does not preclude him from appearing before, or making submissions to, the Court during the hearing of the appeal.

Where the Court of Appeal imposes a time-limit for the submission of additional written pleadings and/or documents, the party concerned can file an application requesting the Court to extend the time-limit. Normally the Court of Appeal will accede to the request, if he proves that he has a valid reason why he cannot abide by the time-limit originally imposed.

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?

Normally the written submissions consist in the application of appeal and the reply thereto. The parties can make further written submissions, provided they obtain the prior approval of the Court of Appeal to do so. However, in

practice, the Court of Appeal allows the submission of further written pleadings only in very exceptional circumstances.

All documents in support of the appeal or the defence should be submitted together with the application of appeal or the reply, as the case may be. If any document is not submitted, as aforesaid, its production at a later stage will only be allowed -

(a) if, notwithstanding all due diligence, the document could not be obtained before the filing of the pleading with which it should have been produced, and the filing of such pleading could not, without prejudice, be delayed; or

(b) if the Court is satisfied of the necessity or expediency of having the document before it; provided that, in any such case, the Court may, in adjudging the costs of the cause, take into account the tardy production of the document; or

(c) if the opposite party, by a separate note, or by an annotation in the margin or at the foot of the note by which the document is produced, gives his consent thereto; or

(d) if it is proved, by oath or otherwise, that the party producing the document, had not been aware of it, or could not, with the means provided by law, have produced it, in due time; or

(e) if the document to be produced is a book or other paper in the original, copies whereof or extracts wherefrom, relating to the matters at issue, were produced in due time.

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

No. The law only provides that the application of appeal and the reply must contain the information described in the answer to Question II, 5 above.

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

First of all the Court of Appeal does not undertake any investigation – the procedure is purely adversarial.

As regards the submission of documents not with the relative application of appeal or reply, and the submission of additional written pleadings, please refer to the answer to Question II, 12. However, after the case has been put off for judgment, a party may, for very exceptional reasons, request the suspension of the publication of the judgment and for further submissions to be made.

15. Can new arguments be raised during the procedure?

Once the application of appeal and the relative reply have been filed, the appellant and the respondent can raise new arguments either in the oral pleading or in any additional written pleadings, in order to further support their submissions in their respective appeal application and reply. In particular, the new arguments of the appellant must reasonably fall within the parameters of a ground of appeal specifically stated in the application of appeal, because the appellant cannot add new grounds of appeal which were not expressly stated in the application of appeal. In the case of the respondent, he cannot raise new pleas which according to law and/or case-law, should have been raised in the beginning of the procedure, that is in his reply to the appeal, or in the beginning of the procedure before the court of first instance/administrative tribunal.

16. Can new arguments be raised on appeal?

There is case-law to the effect that as a rule no new argument can be raised at the appellate stage, which the party could have raised in the proceedings before the court of first instance (**Carmelo Dingli et v. Comptroller of Customs et** decided by the Court of Appeal on the 27th March 2009). The reason is that the raising of such new argument would amount to a surprise to the opposing party and would deprive him of the right of double examination (i.e. that the validity of the argument is reviewed both by the court of first instance/administrative tribunal and by the Court of Appeal). Moreover, the defendant in the proceedings at first instance, cannot, at the appellate stage, raise new pleas which according to law and/or case-law, should have been raised in the beginning of the proceedings at first instance.

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?

Apart from the procedures described in answering Question II, 1, 2 and 3, there are no other modes of accelerating the appeal proceedings. The Court of Appeal itself cannot take cognisance of, or provide a remedy, where one of the parties alleges a breach of the requirement of “reasonable time”.

However, if one of the parties feels that the proceedings have exceeded the “reasonable time” requirement, he can file proceedings before the First Hall of the Civil Court claiming that his right to a fair hearing within a reasonable time as protected by the Constitution of Malta and by the European Convention on Human Rights (Chapter 319 of the Laws of Malta) has been, or is being, violated, and claim financial compensation. In such cases, the court

can award both material and moral damages. There is a right of appeal from the judgement of the First Hall of the Civil Court to the Constitutional Court.

- 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 Constitutional Court and the First Hall of the Civil Court have interpreted the concept of “reasonable time” on the same lines as the case-law of the European Court of Human Rights. There have been several instances, where the Constitutional Court and/or the First Hall of the Civil Court found violations of the “reasonable time” requirement in various proceedings, and awarded financial compensation. However, none of these cases concerned appeals to the Court of Appeal on administrative law issues.

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 are no such criteria in Malta.

- 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?**

No such statistical data is available. One has to bear in mind that the legal system in Malta makes no distinction between cases concerning administrative law issues and other civil cases, but they are all grouped together.

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

No information on this subject is available.

- 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 such procedure is contemplated under Maltese law.

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

No information is available on the ratio between the number of judges in the Court of Appeal and the number of cases on administrative law settled each year. As already stated the Maltese legal system makes no distinction between cases on administrative law and other civil cases, and they are all grouped together.

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

On an average, each judge has one judicial assistant assigned to him.

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?

In practice, as a result of internal work distribution, appeal cases dealing with administrative law matters and which are to be heard by the Court of Appeal composed of three judges (i.e. the Chief Justice and two other judges) are channelled to the Second Section of the Court of Appeal.