



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?

The persons wishing to refer their case before the Supreme Administrative Court must be represented by a lawyer, be it a barrister or an attorney (*advokát*).

This requirement is not applicable if the complainant, his employee or a member acting for the complainant or representing the complainant has a university-level legal education which is required for the practice of law.

The persons lodging cassation complaint regarding social security matters are dispensed from this requirement.

- 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?

¹ The present Questionnaire has been prepared by Prof. Dr. Rusen ERGEC, University of Luxembourg

The Supreme Administrative Court's jurisdiction is limited to points of law stipulated in the Code of Administrative Justice. (CoAJ) A cassation complaint may be submitted only on grounds of the claimed (Art. 103 Para. 1 CoAJ):

- a) unlawfulness consisting in incorrect consideration of a legal issue before the court in the previous proceedings,
- b) fault of proceedings consisting in that the merits of the matter from which the administrative authority proceeded in the contested decision had no support in the documents or is in contradiction with them, or in that in determining the merits of the matter the law was violated in provisions on proceedings before the administrative authority in a way that could have affected its lawfulness, and for this justly claimed fault the court deciding on the matter should have quashed the contested decision of the administrative authority; such procedural faults include non-reviewability of the administrative authority's decision on grounds of its incomprehensibility,
- c) irregularity of proceedings before the lower court consisting in the absence of conditions for the proceedings, in the decision being made by an excluded judge, in the court being incorrectly staffed, or in the decision being made to the detriment of the party as a consequence of the judge's criminal act,
- d) non-reviewability consisting in incomprehensibility or lack of causes for a decision, or in some other procedural fault before the court, if such a fault could result in an unlawful decision on the matter itself,
- e) unlawfulness of the decision on rejection of the petition or on discontinuation of the proceedings.

- 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 to the Supreme Administrative Court is not an absolute right. The limitations are regulated by law. A cassation complaint is inadmissible (Art. 104 CoAJ):

- in electoral matters and in matters of a local referendum,
- if it is only opposing a statement on costs of proceedings or against causes for the court's decision,
- against a decision whereby the court decided after its original decision had been quashed by the Supreme Administrative Court; this does not apply if the reason for lodging cassation complaint is an objection that the court did not comply with the binding legal position of the Supreme Administrative Court,
- against a decision whereby the proceedings are merely adjusted, or which is, in keeping with its nature, only temporary,
- if it rests solely on other reasons than those specified in Art. 103 CoAJ (see above) or on reasons which the complainant did not put forward in the proceedings before the court whose decision is to be reviewed although the complainant could have done so.

Under Art. 104a CoAJ if the cassation complaint in matters of international protection does not significantly exceed the complainant's own interests the Court rejects the complaint as inadmissible.

The Supreme Administrative Court interprets these limitations in its case law restrictively (No. 8 Afs 48/2006²). The aim of Art. 104 CoAJ is not to restrict the access of natural and legal persons to justice but to preserve the nature of the cassation complaint. It is fair to demand from the participants of the previous proceedings that they raise all the grounds of unlawfulness of the administrative decision already in the proceedings before the first instance court which is consistent with the *vigilantibus iura* principle. Otherwise, in case that the participant wants to raise new arguments in the second instance he/she has to bear any negative consequences.

In the judgment No. IV. ÚS 136/06³, the Constitutional Court ruled that the provision of the Art. 104 Para. 3(a) CoAJ guarantees that the Supreme Administrative Court need not have to deal with the matter once already dealt where the legal opinion on interpretation of material law binding for lower courts was formulated in situation when the lower court complied with this legal opinion. Nevertheless, abovementioned provision can not be related to the situations when the Supreme Administrative Court censures the lower court with mere procedural errors or insufficiently ascertained facts. This would consequently lead to absolute disutility of the Supreme Administrative Court because thus the Court could reproach in every matter any (even petty) procedural errors always with the first cassation decision and later – in case of the second cassation proceedings – reject the cassation complaint and thus reject also material review (subject-matter review) of the contested decision from the viewpoint of material law application.

- 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?

No, there are no penalties for abuse of appeals. Rash or unjustified appeals shall be rejected. There is a possibility to impose the procedural fine of up to 50 000 CZK (approx. 2000 EUR) on a person who disobeys the call of the court or makes an offensive submission (e. g. cassation complaint) or speech; the fine is used as a revenue of the State budget (Art. 44 Para. 1 CoAJ).

The Supreme Administrative Court in the decision No. 6 Ads 41/2008 ruled that the barrister (*advokát*) is responsible for the contents of an offensive submission (the cassation complaint where the person of a judge of the regional court and his physical and psychical capacities of decision-making were challenged) if it was written and submitted by him as a representative of a participant. Barrister – as a member of the Czech Bar – must satisfy high standards of manners and such submission to the court would be inexcusable. Thus the procedural fine was imposed on him justly.

² Decisions of the Supreme Administrative Court are available at www.nssoud.cz.

³ Decisions of the Constitutional Court of the Czech Republic are available at www.concourt.cz or <http://nalus.usoud.cz/Search/Search.aspx>.

- 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 official admission or authorisation procedure before the cassation complaint is brought before the Supreme Administrative Court. There is only a "technical" procedure by the regional court where the contested decision was issued at: if the cassation complaint has faults but is not apparently delayed, or submitted by a person who is patently not entitled to do so, the presiding judge sees to the faults being eliminated. If there are no reasons for a different proceeding, the court delivers the cassation complaint to the other parties to the proceedings and persons participating in the proceeding, gives them an opportunity to express their opinion on its contents and requests the documents of the administrative authority, or gathers further material necessary for making a decision. After that the court submits the cassation complaint together with the documents to the Supreme Administrative Court; when submitting the complaint the court expresses its opinion as to whether the time limit for the submission of the cassation complaint was met and whether the complaint was made by a person entitled to do so.

There is also special procedure to reject the cassation complaint in the international protection matters. To adopt resolution on rejection the cassation complaint in international protection matters as inadmissible the consent of all member of the chamber is needed (Art. 104a Para. 2 CoAJ).

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.).

There are some proceedings where shorter deadlines to decide are stipulated – e. g. in the matters of local referendum the court shall decide by a resolution within thirty days. Also in electoral matters the deadlines are shorter (3-20 days).

In matters of cancellation of the measures of general nature⁴ the Court shall decide within 30 days since the motion was delivered to the Court.

The Code of Administrative Justice contains the provisions on preferential dealing with matters stipulated in Art. 56 Para. 1 and 2 CoAJ: regardless of the chronological order in which petitions reach it, the court preferentially disposes of petitions for adjudication of suspensory effect, petitions for provisional rulings, petitions for exemption from judicial fees and petitions for

⁴ This is a special type of legal instrument used in administrative law primarily in German-speaking Europe and termed "Allgemeinverfügung" in German.

the appointment of a representative. The court furthermore preferentially deals with petitions and complaints concerning asylum, decisions on detention of a foreigner and decisions on the termination of special protection of and aid to witnesses and other persons in connection with criminal proceedings as well as in other cases, if provided for by a special law. Previous provisions are binding for Supreme Administrative Court, too.

The presiding judge can also fix a term for submitting the evidence (documents etc.).

All matters proceeded before Supreme Administrative Court are decided by chambers of at least three judges (Art. 16 CoAJ).

- 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 special procedures for such appeals (cassation complaints). The presiding judge shall only call on the petitioner (by means of a resolution) to correct or eliminate faults in the petition and shall set a time limit for this purpose. If the petition is not supplemented or corrected within this limit and the proceedings cannot continue on account of this fault, the court shall turn down the proceedings concerning such a petition (unless the Code of Administrative Justice provides for another procedural consequence).

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

No, there is no such procedure for straightforward cases before Supreme Administrative Court. However, the asylum matters are dealt preferentially even they are considered straightforward.

- 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?

Before regional courts a single judge decides in matters of retirement insurance, social security, sickness benefit insurance, sickness care in the armed forces, job applicants and their material benefits according to the regulations governing employment, and state social benefits, in matters of minor offences (infractions) as well as in other matters provided for by a special law.

The judge can not refer the case to be heard in a session presided over by several judges.

The Supreme Administrative Court makes decisions through chambers of judges or extended chambers of judges, unless the Code of Administrative Justice provides that a decision or specific action are to be taken by the presiding judge of the chamber (but he is always a part of the chamber deciding). Such is the case for some procedural actions to be taken, e.g. suspending the proceedings.

- 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.)
- A resolution (not a judgment!) whereby the proceedings are not concluded and which do not impose a duty on anybody need not contain a justification (so-called decisions related to the proceedings, i. e. not rulings on the merit of the case). The resolution under the Art. 104a CoAJ on the inadmissibility of cassation complaint in international protection matters need not contain a justification. However such resolution nowadays contains justification regarding to the case law of the Constitutional Court of the Czech Republic (Pl. ÚS 1/03). The Constitutional Court repealed a provision of the Code of Civil Justice stipulating that the decision that rejected the review of an appeal need not contain a justification. The Constitutional Court held that one of the parts of constitutional framework of judicial independence is their duty to ensure the equality in rights as stated in Art. 1 of the Charter of Fundamental Rights and Freedoms (No. 2/1993 Coll.) and thus the justification shall eliminate eventual willfulness of law and decision-making. This is the reason why the resolutions on the inadmissibility of cassation complaint in international protection matters contain grounds. Nevertheless, every judgment must always contain grounds.
- 6) Is it possible to conduct procedures entirely in writing, with no need for a hearing?
- As a rule, the Supreme Administrative Court decides on a cassation complaint without a hearing. If the Supreme Administrative Court sees fit or if it produces evidence, the Supreme Administrative Court orders a hearing to determine the cassation complaint.
- In cases where the Supreme Administrative Court decides in the first and last instance, the hearing should be held, unless the parties consent with purely written proceedings.
- 7) Can any party not cooperating with the procedure be penalised?
- Yes, the party can be penalised by imposing the abovementioned procedural fine up to 50 000 CZK (approx. 2000 EUR) on a person who disobeys the call of the court (...). The fine may even be imposed repeatedly, or it may be by a resolution subject to partial or complete exemption on the basis of a justified request submitted before the decision concluding the proceedings comes into force.
- According to the Court's case law (6 As 2/2003), the participants – in case they want to be successful – must contribute actively that the court had ample factual material for its decision. They can do so by performing their duty to prove. If the party does not meet its obligations the court's decision will end up detrimental. In addition, if the defendant does not provide court the files the court shall quash the contested decision.
- 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?

No, they have not. The Constitutional Court (in the series of matters related to the French retirement pensions) ruled that the court decisions can not be surprising and courts can not assess duties that the addressees of legal provisions in the determining times could not have known of. Protection of action taken in reliance on law assumes that legal or natural person acts not only in confidence in the text of the relevant laws but, in particular, also in confidence in the persisting and continuous interpretation of such legislation by public authorities, including the practice of administrative bodies and legal interpretation of administrative courts (I. ÚS 520/06). This is the reason why the court's own motions should be notified to the parties and the parties should have occasion to submit their conclusions.

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

Documents and statements must be submitted before the investigation is closed. When the hearing is adjourned or listed the presiding judge can determine time limit for submitting the evidence.

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

The procedure allows submitting the documents electronically via so-called *data boxes*. Every public administrative body (incl. courts) and legal persons registered in a Company Register must have an active data box and is obliged to use it and communicate (and deliver) this way (should the addressee be holder of a *data box*). Citizens can have the *data box* established, too. Other possibility is to send petition (including an act determining the proceedings or their subject-matter) via *e-mail* with certified electronic signature, or without electronic signature but with obligation to confirm the petition within three days by a written submission of the same contents or its original must be submitted, otherwise it shall be disregarded.

- 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 cassation complaint must be submitted strictly within two weeks after the notification of the decision, and if a rectifying resolution was issued the time limit again runs from the notification of this resolution. Default of time may not be waived for the submission of a cassation complaint.

The default of time may not be waived either in the matters of filing a complaint (to the regional courts) – 2 months, protection against inactivity of administrative body – 1 year, protection against unlawful interference, instruction or enforcement from an administrative authority – 2 months, and in matters of justice in electoral matters and in matters of a local referendum.

On the other hand – unless otherwise provided for by the law – the presiding judge of the chamber may on request waive the neglect of time for performing the act on account of serious justifiable reasons. The request has to be

submitted within two weeks after the obstacle ceases to exist and has to be linked to the neglected action.

Time limits for other submissions shall be prescribed by the court. Similarly, the presiding judge of the chamber may extend the time limit prescribed by the court.

Under the Art. 71 Para. 2 CoAJ the complainant shall attach one counterpart of the contested decision to the complaint. The complainant may at any point during the proceedings restrict the counts of charges. The complainant may extend the complaint to statements of the decision not yet contested or to extend it by further grounds only within the time limit for filing a complaint (so-called *concentration of the points of appeal* principle).

Another time limit is stipulated in the Art. 106 Para. 3 CoAJ that provides if the cassation complaint does not have all elements on its submission, the elements must be supplied within one month from the delivery of the resolution whereby the complainant was called on to complete the submission. The complainant may extend the cassation complaint to include statements so far uncontested and extend its grounds only within this time limit. This time limit may be extended by the court at the complainant's timely request for serious reasons by one more month at the most (*concentration of the reasons* principle).

- 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 written submissions. Also additional statements can be submitted, but in the proceedings on cassation complaint the Supreme Administrative Court shall not take into account facts which the complainant put forward after the contested decision was made [see I. 2) and II. 8)].

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

No, it is not compulsory. A kind of summary can be included as a part of grounds for cassation complaint.

- 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 hearing is closed by presiding judge, it's not possible to submit new statements or proposals. At the close of the hearing, the parties must be given the floor to express their opinion on the final proposals.

- 15) Can new arguments be raised during the procedure?

No, the complainant can not raise new arguments and facts during the cassation complaint proceedings. Under the Art. 104 Para. 2 CoAJ The Supreme Administrative Court shall not take into account facts and grounds which the complainant put forward after the contested decision of the first instance court was made (*concentration of proceedings* principle). New

arguments are taken into account when the Supreme Administrative Court investigates them *ex officio*.

16) Can new arguments be raised on appeal?

Again, new arguments can not be raised on appeal (in a cassation complaint). It is possible to raise them only in the first instance proceedings, during a time limit for lodging a cassation complaint at the latest. Nevertheless, new arguments are taken into account when the Supreme Administrative Court investigates them *ex officio*.

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?

To accelerate the course of the procedure there is possibility to file a motion to determine the time limit for fulfilment of a procedural act under the Art. 174a of the Act on Courts and Judges (No. 6/2002 Coll.) in case that participant or a party of the process considers there are delays in the proceedings. The relevant court to decide in the administrative matters is the Supreme Administrative Court (in case of the motion against the Supreme Administrative Court decides the other chamber of the Court).

A disciplinary sanction may be imposed on a judge who caused the unreasonable delays.

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.

There have been no sanctions applied to the Supreme Administrative Court for violation of Article 6 of the European Convention on Human Rights. The President of the Supreme Administrative Court states that the desired reasonable time before the supreme judicial body is 6 months. The statistical data are available further. But generally speaking, one year is an acceptable time.

The Constitutional Court ruled (IV.ÚS 208/04) that the period of more than 3 years to deal with a (administrative) complaint (including the cassation complaint before the Supreme Administrative Court) can not be considered as reasonable.

In 2008, the Supreme Administrative Court became a disciplinary tribunal for all Czech judges and prosecutors (on the basis of Act No. 314/2008 Coll.). The judge causing serious delays and backlogs can be sanctioned by the disciplinary chamber of the Court when committing a disciplinary misconduct (under the Law No. 6/2002 Coll., on Courts and Judges).

III. Performance criteria

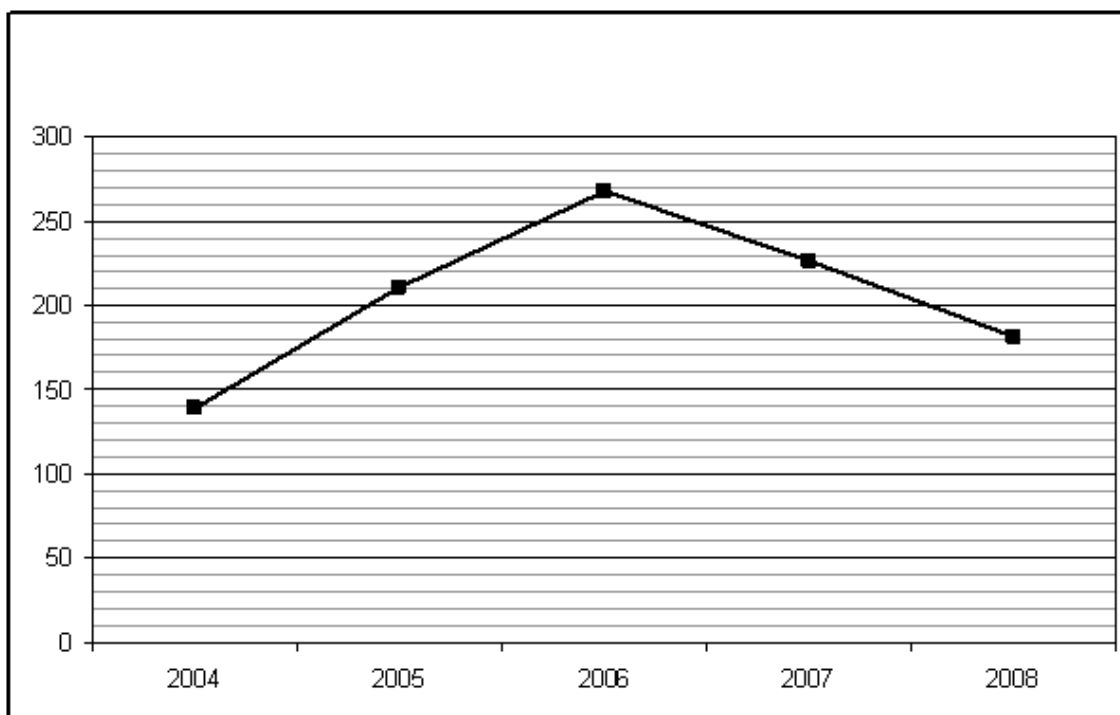
- 1) Are there quantitative and qualitative criteria for measuring the 'performance' of court activity? What is the judicial value of these criteria and what body issued them?

There are no official qualitative criteria for measuring the performance of the Supreme Administrative Court. One of unofficial criterions can be number of constitutional complaints against decisions of the Court:

Total number of constitutional complaints against the decisions of SAC	Decisions taken by the Constitutional Court					Complaints pending
	Granted			Rejected		
	Number	% of decisions on complaints against SAC	% of annulled decisions of SAC out of the total number of SAC decisions	Number	% of decisions on complaints against SAC	
1,690	125	7,40 %	0,43 %	1,420	92.60 %	145

The quantitative criteria are regulated by the Ministry of Justice by setting the numbers of cases per month for one judge. A judge of the Supreme Administrative Court has to decide in average 20 cases per month (incl. rejections of the complaints), the judge of regional court (in a administrative branch) has to deal with about 30 cases per month (incl. rejections). There are backlogs in both regional and supreme instances anyway.

- 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?



Average length of proceedings (in days) which were terminated in individual years. This represents the average length of decision-making in all fields, i.e. the time from the registration of a matter in the Court's registry until the date of decision. In 2003 the length of proceedings was not monitored, since in that year a part of the High

Courts` agenda was transferred upon the Supreme Administrative Court. The final figures disregard periods of discontinuation of the proceedings.

The average length of proceedings before the Supreme Administrative Court in 2008 was 181 days. The average length of proceedings before regional courts (administrative courts in the first instance) is 309 days (in 2008).

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

Yes, there are significant differences depending on the complicity of the case. The length of procedures also differs in dependence on individual chambers of the Court.

- 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, they can not. The independence of the judiciary shall be protected. Case law of the Court are published in the Collection of Decisions of the Supreme Administrative Court and are binding only for the Court and regional courts in the same case. Regional courts can only ask the Research and Documentation Service of the Supreme Administrative Court to elaborate analysis or to conduct a legal research. The output of the Service can not anticipate the Court's decision.

The Supreme Administrative Court shall either follow and assess the final decisions of courts of administrative justice and, on the basis of these decisions in the interest of uniform judicial decision-making, shall adopt a position (legal opinion) on judicial decision-making in matters of specific kinds. The Art. 19 Para. 1 CoAJ states that in the interests of uniform decision-making by courts the President of the Supreme Administrative Court, the head of a court division of the Supreme Administrative Court or an extended chamber of judges may – on the basis of the appraisal of final court decisions – propose that the competent division adopt a particular legal position. The adoption of a legal position requires the approval of the majority of all members of that court division.

If the issues under review concern more court divisions or if the court divisions disagree, the President may, in the interests of uniform judicial decision-making, on the basis the appraisal of final court decisions, propose the plenary session to adopt a position.

However, the position has been adopted by the Court twice so far.

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

In 2008, there were 30 judges and 3.871 settled cases, so the average ratio is 1:129. In January 2010 the Court had 30 judges (1 on maternity leave) and 2 temporary delegated judges.

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

The ratio is 1:2, every judge may have two assistants.

- 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?

Generally, there are no specialised judges for certain kind of cases. The requirement of specialisation is not provided in the Code of Administrative Justice or any other regulation.

However, on 29 April 2004 the plenary session of the Supreme Administrative Court decided that Financial Administrative and Social Administrative Divisions be established with effect as from 1 May 2004. The establishment of the divisions anticipated foreseen specialization within the court. The Financial Division comprised of six chambers. It adjudicates cassation complaints in the matters of taxes and duties, accounting, foreign investment protection, prices, securities, collective investment, pension funds, additional pension insurance, insurance, competition and public procurement, hallmarking, lotteries and other games. The Social Administrative Division comprises of three chambers. This division adjudicates in particular matters of pension insurance, restitution in lump-sum payments, sickness insurance, social security insurance and employment insurance, health insurance, health service and hygiene, social assistance, State social support, social and legal protection of children, employment, safety at work, interest and profession self-regulatory bodies and civil service. Matters concerning state control, administrative punishment, free access to information, administration fees and regional self-regulatory bodies are assigned to judges of both divisions according to the work schedule and depending on what subject-matter they relate to. The remaining agenda is assigned to individual judges according to the work schedule regardless of their specialization.

In recent times there were expressed some thoughts about liquidation of the divisions.