Conference ACA-Europe
“PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE”
Luxembourg – June 2010

Questionnaire – Slovenia

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 the proceedings before the Supreme Court, the party must be represented by an attorney or other person who has passed the State Legal Examination, unless the party herself is a lawyer who has passed the State Legal Examination. There are no other requirements regarding lawyer's qualifications or seniority.

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 cognizanze of points of fact?

Both. The answer depends on the procedure in which the Supreme Administrative Court decides. In an appeal procedure, in which the decision on the merits (judgement) or a procedural decision of the court of first instance is not final, points of fact can be challenged; in revision procedure against final judgement, facts cannot be in question. Practically all on the merits decisions of the court of first instance are final, so most of the appeal cases are against the procedural decisions by which the procedure finishes. An appeal against the decision on the merits (judgement) issued by a court of the first instance is allowed only if this court has ascertained facts differently than the Administration and has upon these new facts changed the administrative act; and if court of the first instance decided on an plaintiff's lawsuit in which he claimed that his constitutional right were infringed.

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.

In an appeal procedure (see answer I.2.) there are no limitations.

In a revision procedure (see answer I.2.) the Supreme Administrative Court allows the revision only if:

- the monetary right or obligation of the party is higher than 20.000 Euro;
- an important legal question is raised by the party;
- the judgement of the court of first instance regarding an important legal question is in contradiction with the legal practise of the Supreme Court;
- the legal practise of the court of first instance regarding an important legal question is not unified and the Supreme Court has no legal practise on this important legal question;
- the decision rendered by the court of first instance has severe consequences for the party.

The party that files a revision has to convince (with facts and proof) that his revision is allowed.

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 right to be heard? Are reasons provided for the decision? Is the session heard by several judges or just one?

There are the same monetary (up to 1.300 Euro) or other measures as in a civil procedure (article 11 of the Civil procedure Act). They are applied by the court as a matter of course without the principle right to be heard, but an appeal against such a decision is provided by a Constitution even if a decision is made by a Supreme Court in the first instance. So this decision has to be reasoned. Without the reasons an appeal would not be possible. The decision in the first instance is rendered by three judges, and five judges decide on the appeal.

5. Do appeals have to go through an admission or authorisation procedure before being brought before 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').

Appeals and revisions (see answer I.2.) are both filed before the court of the first instance (Administrative court).

In appeal cases the court of the first instance tests if the appeal is filed on time (if the deadline is provided by the law), if an appeal is perfect (perfect is an appeal that states the number of the decision against which it is filed and if is signed by the applicant) and allowed (allowed is an appeal that is filed by a party who has the right to file it; has not denounced the right to an appeal; has not before that filed an appeal and withdrawn it; and if the applicant has no legal interest). If the appeal doesn't meet any of stated criteria, than the court of the first instance rejects the appeal. Against this decision an appeal is possible to the supreme court. If the court of the first instance doesn't reject an appeal this can be made by the Supreme court.

In revision cases the court of the first instance sends the revision to the Supreme administrative court and it either rejects the revision for the same reasons an appeal can be rejected or it declares it as not allowed (see answer I.3.).

For both legal remedies court fee must be payed (unless the party is acquitted for reason of poverty). If court fee isn't payed in time than the law presumes that the party has withdrawn his legal remedy and the procedure is stopped.

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 no accelerated procedures for emergency situations (apart from proceedings for interim relief), but the deadlines for rendering a decision are shorter in urgent cases like asylum, constitutional rights cases, etc.

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

See answer II.1.

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

See answer 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?

In the proceedings before the court of first instance, the Administrative court decides in a panel consisting of three judges.

The cases, in which the value of the claim does not exceed 20.000 EUR and the case does not concern an important legal question, if procedural rulings are challenged, if the state of facts and applicable law is simple, or if the challenged act has such shortcomings, that it cannot be reviewed, may be adjudicated by a single judge.

The Supreme Court decides on appeals and revisions in a panel consisting of three judges. A single judge of the Supreme Court decides in case the proceedings are to be terminated for procedural reasons or if an appeal is to be dismissed in case the procedural prerequisites are not fulfilled (i.e. the appeal was filed too late, the party is not represented by attorney).

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.)

In the proceedings before the court of first instance the court isn't obligated to respond to all arguments if the arguments are the same as in the proceeding before administrative procedure. It can simply write that it agrees with the reasons that the administration has given in his decision. To any new arguments raised in the proceeding the court has to provide grounds, unless arguments are not relevant to the case.

In appeal and revision cases (see answer I.2.) the Supreme court must respond to all arguments and statements that are relevant to the case.

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

The proceedings are initiated by filing a written claim. In the preparatory proceedings, that is the proceedings before the main hearing, it is common for the parties to exchange one or two written submissions.

As determined by Article 51 of the Administrative Dispute Act (hereinafter: ZUS-1), the court adjudicates after a main (oral) hearing. However, the court may adjudicate without conducting a hearing:

- if the state of facts, which was the basis for the challenged administrative act, is not disputable between the parties;
- if it is evident from the claim, the challenged act and the case file documentation that the claim is founded and the administrative act should be annulled;
- if the state of facts is disputable between the parties, however, the parties state in the court proceedings only the facts, which by law cannot be taken into account by the court, or are not relevant for the decision,
- if the court has already decided on a substantially similar case between the same parties.

In the proceedings before the Supreme Court, the cases are adjudicated *in camera*. The law allows the Supreme Court to conduct an oral hearing only as an exception in the proceedings with appeal or a motion to reopen the proceedings.

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

No.

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?

Before the court of first instance the court can authorise the parties to submit new conclusions in writing and is not obligated to to order deliberations.

Before the supreme court the answer to both questions is no. There are deadlines for filing an appeal or revision (see answer II.9.). The Supreme court has to render a decision upon arguments risen in them. There are no new deliberations and the parties cannot submit new conclusions. The Supreme court makes a decision if it can, or overrules the decision of the court of first instance and returns the matter back to new procedure before the court of first instance.

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

Deadlines provided by the ZUS-1 cannot be shortened. Other deadlines are set up by the court. The deadline for submitting an appeal (see answer I.2) is 15 days and in revision (see answer I.2.) cases 30 days after the party has received the decision of the court of first instance. This deadline cannot be extended and any statements or documents filed after the deadline are rejected.

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

Yes. By law the parties are allowed to file their claims and other documents in electronic form, however the implementing regulations determining the technical and other details concerning filing of documents have not yet been issued by the Ministry of Justice, thus electronic submissions are not yet possible.

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?

All deadlines, whether they are set by law or the court, must be respected by parties, otherwise negative some sort of negative consequences.

Failure to submit a legal remedy[1] in due time for example result in its dismissal. Failure to correct the formal deficiency of its suit against an administrative act in a deadline, set by the court of first instance, also results in the dismissal of a case (art. 31 ZUS-1).[2]

On the other hand, failure of the defendant (the state, represented by one of its administrative authorities) fails to produce all the files of the administrative procedure in the deadline set by court, the court decides on the matter without these documents (art. 38 ZUS-1), which essentially gives the plaintiff a much stronger position in the proceedings.

Similar consequence is foreseen for some other documents and written submissions (such as "preparatory submission", response to plaintiff's law suit, response to an appeal or a revision). If these are not submitted in due time, the court will simply continue the proceedings without them.

Concerning the submission of (documentary) evidence no special deadlines are set, though certain important restriction must be taken into account. First of all there is a general limitations on the submission of new arguments about factual basis of the case and new evidence (see answers on questions 15 and 16), meaning all such documents will be deemed as irrelevant. Secondly the court can order the parities to submit facts and evidence, to clarify their preparatory submissions, to submit documents and other relevant material, and especially to comment on facts, important for the decision, in a certain deadline the court sets. If parties do not respond in due time, the court decides on the matter without further investigation, under the condition that the admittance of these documents would delay the procedure, that the party did not explain her delay and that the party was informed of the consequences of not meeting the deadline (art. 45 ZUS-1).

ZUS-1 also allows *restitutio in integrum* if a party that missed a certain obligatory deadline and is therefore precluded from making certain procedural actions.

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1 Action, appeal, revision or a motion to reopen the proceedings.

2 But only if the uncorrected deficiency of a suit makes it impossible for the court to continue the proceeding and if the court does not find any of the reasons for the annulment of the administrative act.

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?

No there are no limitations. And additional statements can be submitted, not just in preliminary phase of the procedure but also at the oral hearings if carried out.

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

No. However after the latest changes to Civil Procedure Act (hereinafter: ZPP), which is "suitably" used in administrative dispute proceedings (art. 22 ZUS-1), the court can demand that a party presents a written summation of a documentation of great volume. The court sets a deadline for such a summation of written documentation, and if the party does not meet the court demand, the documentation is deemed inadmissible (art. 226 ZPP).

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

The preparatory phase of the procedure does not have an official ending but leads directly to court's decision on the case or to an oral hearing. Therefore it is always possible possible to submit new documents, written submissions or written observations even at the last minute, considering all the limitations the submission of new arguments about factual basis of the case and new evidence (see answers on questions 15 and 16),

15. Can new arguments be raised during the procedure?

New arguments and new evidence is inadmissible if parties did not submit those arguments and evidence during the administrative procedure (that is disputed in front of the court) and if they had the chance for their submission during the administrative procedure (art. 20 ZUS-1).

16. Can new arguments be raised on appeal?

New arguments and evidence can be submitted if it seems possible that the party could not without its fault submit those arguments and evidence before the end of oral hearings in the first instance proceedings or, if there were no oral hearings, before the end of the first instance proceedings (art. 74 ZUS-1). New arguments and evidence can be submitted in revision procedure if arguments and evidence are related to decisive breaches of procedural rules by the court of first instance that can be invoked in the revision procedure (art. 87 ZUS-1).

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?

Yes. After the judgement in the case of *Lukenda v. Slovenia* by the European Court of Human Rights delivered on 6 October 2005, Slovenia adopted the Act Regulating the Protection of Right to Trial without Undue Delay. It gives the parties of all court proceedings a chance to issue an appeal with a motion to accelerate the proceedings and a right of just satisfaction if the "reasonable time" has been exceeded. The "appeal with a motion" must be submitted of the president of the court, who, if an appeal is not inadmissible, must demand a report on the case from the judge-rapporteur. The president of the court also has the power to order a priority handling of the case or to appoint another judge-rapporteur. Just satisfaction for exceeding the reasonable time in handling of the case can be, according to the afore mentioned act, monetary compensation, a written statement by the state's attorney acknowledging the infringement of the right of a trial without undue delay or the public publication of a court's judgement, acknowledging the infringement.

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?

In the judgement no. I Up 152/2006 delivered 23 February 2006 the Supreme Court (administrative department) for example held that there was no undue delay because the criminal court held an oral hearing of the person accused on 24. 5. 2005, whereas all the formal conditions (from Criminal Procedure Act) for the oral hearing were met on 14. 12. 2004, because the co-accused went on a hunger strike and was therefore not fit to stand trial.

In the judgement no. I Up 308/2005 delivered 16 November 2006 the same court held that the right of a trial without undue delay was infringed in a civil case concerning the division of common property of ex-spouses, despite the fact that this cases are in no way defined as priority cases, because the civil court in all the time since the filling of an action for the division of common property (4. 10. 2001) to the filling of action for the infringement of the right of a trial without undue delay (5. 10. 2004) did only one procedural action – it handed the plaintiffs action to the defendant. No evidence was presented that the parties contributed to the delay.

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 quantitative criteria for measuring the court's activity. Art. 50 of the Court Rules defines what a is "a judicial backlog" in certain court proceeding. For first instance administrative dispute cases and for appeal and revision proceeding at the Supreme Court a case is considered to be a judicial backlog if it is not settled in 6 months time since its submission to the court.

Qualitative criteria are in preparation and will be issues by the Judicial Council, which also has powers in regards to the appointment and career advancement of judges.

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 duration of an appeal procedure at the administrative department of the Supreme Court in 2009 was 292 days and the number of of appeal cases resolved was 754. If a case was returned to the Supreme Court (cassation by the Constitutional Court) the average duration of an additional procedure was 68 days and the number of cases resolved after the additional procedure was 2.

Average length of a revision procedure at the Supreme Court in 2009 was 903 days and number of revision cases settled was 1187. If a revision case was returned to Supreme Court the additional average length of such a procedure was 132 days and number of cases resolved in such manner was 7.

Average duration of a procedure at the court of first instance in 2009 was 366 days and the number of cases resolved was 4808. If a case was returned to the court of first instance (cassation by the Supreme Court) the average duration of an additional procedure was 133 days and the number of cases resolved after the additional procedure was 27.

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

Yes, cases law defines as „priority cases“ (like asylum cases) are regularly resolved in the given deadline.

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, there is no such provision in force.

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

In 2009 2052 cases were settled by 13 judges. In majority of cases judges were working in collaboration with their legal assistants.

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

The current status is: 11 judges, 12 legal assistants[3] and 5 first instance judges temporarily working as legal assistants at the administrative department of the Supreme Court.

3 4 of them are on maternity leave.

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

A sort of specialization is defined by the Supreme Court's internal rules. According to these rules some of the judges are specialised for tax cases.

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