



CONFERENCE OF 7 JUNE 2010

« *PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE* »

QUESTIONNAIRE

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 applicants challenging a final administrative decision must be represented by a lawyer, unless he/she or his/her employee (member) acting on his/her behalf in court has legal background; this does not apply to cases that fall under substantive jurisdiction of district courts, or to judicial review of decisions or actions in matters related to health insurance, social security including sickness insurance, pension security, state social benefits, social assistance and unemployment insurance, active labour market policy and guarantee fund, provision of healthcare, misdemeanours, or asylum applications. Lawyer must be a member of the Bar Association.

- 2. Is the Supreme Administrative Court's jurisdiction limited to points of law ('administrative cassation') or can it also rule as an appeals court with cognizance of points of fact?**

The Supreme Court as the Supreme Administrative Court acts on appeals against judgments of regional courts to examine the lawfulness of decisions of public administration authorities. Supreme Court examines in the single instance the

decisions of public administration authorities, if provided by law. Supreme Court decides on the cassation principle. Substance of the dispute may only be considered when reviewing decisions on administrative penalties, and in some cases of civil rights and obligations if they are decided by the administrative authorities and if court reviews the legality of their decision.

- 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.**

A right to appeal is given against a regional court at all times. The court's decision on merits has the form of a judgement.

- 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?**

Legal order does not regulate the institute of the sanctions for abusing a regular remedies.

To any person who files grossly offensive submissions, may be imposed a procedural fine by the presiding judge of up to EUR 820 or up to EUR 1640 in case that the person successive grossly interferes with the course of the proceedings.

A right to be heard by the court is a fundamental right and it is applied without exemption.

Appeal court hear cases only in three-member panels, first instance court hear cases in three member panels or in some cases provided by law as a single judge.

- 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').**

Appeals do not go through receiving nor approval procedure before the submission to the Supreme Court. Admissibility of the appeal is assessed by panel of the appellate 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.).**

Code on Civil Procedure set out the time limit for decision making in asylum agenda for court which decides on the first level as well as for the court of appeal (2 and 3 months). Regarding the issues of dispossession of property, the court has a time limit established by law, which is 3 months from when the petition was filed in order to come up with the decision. Accelerated procedure which would include special procedural institutes is not recognized by Slovak legal regulations.

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

Unjustified or impermissible appeals (due to the missing the limit for appeal) may be solved by the appellate court regardless to the order things, as part of their own organization of work.

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

Neither for simple easy law provides a simplified process; it is on organization of work in the panel, if the identical or correlate cases are handled by the court out of sequence. However, the simplification of completion of the case, may lie in the simplified content of appeal court's decision, where it is sufficient to refer to the case law decisions or agree with the factual and legal conclusions of first instance decision.

- 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?**

Single judge may decide only in cases in which the court acts as first instance judicial authority. Single judge may not refer the case to the panel, as well as the panel may not refer the case to the single judge or to the enlarged panel.

- 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.)**

To the extent of the reasoning, see point 3. The court of first instance has to deal with all relevant grounds on which an action was brought.

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

Obligation to conduct an oral hearing is essential. The court may decide to not order an oral hearing in the first instance proceedings on judicial review of the lawfulness of the administrative authorities decisions only where this is agreed by parties, or in the proceedings on appeal, or in several proceedings e.g. proceedings on omission of the administrative authority to act.

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

Any person who grossly interferes with the course of the proceedings, in particular by failing to appear in court or respect court orders, or who disturbs the peace or files grossly offensive submissions, may be imposed a procedural fine by the presiding judge of up to EUR 820 or up to EUR 1640 in case that the person successive grossly interferes with the course of the proceedings.

8. Do judges raising legal arguments of the court's own motion always have to order deliberations to begun again or do they have to authorise the parties to submit new conclusions?

The extent of application and the grounds for application are binding for the court in the proceedings on judicial review of the decisions of public administration authorities. It is not common that the judge raise arguments on his/her own motion. Since the provisions of the Code on Civil Procedure apply also to the administrative justice, the possibility cannot be ruled out that, the court - in the case of its different assessment - will have to give parties the opportunity to make their views known.

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

The periods in respect of the submission of statements or written observations are provided by the judge. In so far this period is reduced and it has negative impact on outcome of the proceedings, the appellate court would probably hold that the party was deprived of the possibility of asserting his rights before the court.

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

It is possible to submit the documents electronically. Some kinds of submissions must be supplemented in writing or orally on record in no more than three days. Submissions signed by a secured electronic signature must not be supplemented.

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?

Failure to comply with the period provided by the judge may be waived by the court, while the failure to comply with the deadline fixed by law could lead to the rejection of the submission or possibly the Court would not accept the submission. The additional statements may be submitted until final deliberation of the panel. Courts in the administrative justice make findings on evidence only in so far as they are eligible for the judicial review of the lawfulness of the decision. The court decision is based on the findings of fact established by the administrative authority.

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?

Number of statements or submissions is not limited by the national law.

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

The summary statement is not governed by the national law.

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

The law does not prohibit that the documents or observations are submitted at the last minute.

15. Can new arguments be raised during the procedure?

The extent of application and the grounds for application are binding for the court. In principle, the arguments as to the facts and points of law should be set out in the application and/or the legal remedy against the administrative decision. They also may be supplemented later on, but not after the time limit for the submission of the application. The court does not consider objections or arguments brought up after the expiry of statutory time limit. The same provisions govern the second-level judicial procedure - appeal proceedings.

16. Can new arguments be raised on appeal?

If new arguments as to the facts and points of law are submitted for the first time at the appeal stage, they cannot lead to a more favourable decision for the individual concerned.

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?

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.

Answer to the questions 17 and 18:

In the administrative justice of the Slovak Republic we can not give an example of the exceeding of reasonable time for reviewing the lawfulness of the administrative decision held by the European Court of Human Rights.

The average length of the procedure is nowadays 6 - 12 months at the courts of the first instance – regional courts, depending on the area of the matter. It cannot be excluded that the procedure in some cases takes up to 2 years.

Number of completed cases at the first instance of administrative justice is from 13 000 till 15 000 cases by year.

At the appeal court – Supreme Court is the number of pending cases 4,5 times higher than the average number of the cases registered during month. The administrative division of the Supreme Court in 2009 registered approx. 5500 cases (of which 5300 were appeals against first-instance decision); the number of cases

pending is 1500, of which 2 cases where the procedure takes more than two years (due to interruption of procedure) and 27 cases in which the procedure takes more than 1 year. Duration of the reminding procedures is up to 1 year (of which 450 cases up to 2 months). 19 judges worked at the administrative division of the Supreme Court of the Slovak Republic in 2009.

III. Performance criteria

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

The criteria for measuring the performance of court activity are not established at the Supreme court. At the regional courts the indicative criteria are established, not for the purpose of the control of judges, but rather for the purpose of determination of the number of judicial positions. Such criteria are defined by the Ministry of the Justice and they are not binding.

- 2. Are there statistical data on the average length of proceedings in the Supreme Administrative Court and the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court?**

The statistical data are included in the Statistical Yearbook of the Ministry of the Justice. The data on the average length of procedure mean the total length of procedure at first instance along with the appeal procedure.

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

Differences in the length of procedures, even of a substantial nature, exist depending on the nature of the case. These differences can not be described in further detail, because the statistics in the administrative justice do not provide sufficient information on this.

- 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?**

The possibility to request the Supreme Court to give an opinion on a new point of law is not governed by law. In the cases of mass litigation is sometimes possible that the regional court decides in 1-2 cases and the other case are decided by the regional court only after the decision is made in the appeal proceedings.

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

There is not a positive correlation between the number judges of the supreme court and the number of cases decided by this court. In the year 2009 the number of the judges decreased by 2 judges, while the number of the cases has increased

enormously in one type of disputes. Due to significant application of the precedent and to the shortening of the procedure, along with the higher level of the performance of judges, the Supreme Court coped successfully with this increase.

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

For 22 judges of the administrative panels of the Supreme Court work from 1st January 2010 7 assistants of the judge and 4 clerks (senior court officials). Current court budget allows to increase the number of assistants only gradually. According to the law, every judge of the Supreme Court may have his/her own assistant.

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?

Specialization is only in the affairs of the social security and social protection; other fields of specialization based on the internal organization and on the working schedule have been changed during 2009 and become much less significant.

Ad informandum:

For better orientation it is important to note that administrative justice in the Slovak Republic is performed in the general judicial system, which consists of district courts, regional courts and the Supreme Court. However, administrative justice at the first instance is conducted by regional courts, while the Supreme Court is an appeal court. Legal remedy against the judgement of the Supreme Court is not available. The Supreme Court has exclusive jurisdiction in reviewing of decisions issued by public authorities in matters of security screening, telecommunication licences and regulation of telecommunication market and in the area of licences and regulation of electronic media. At the Supreme Court and at the majority of the regional courts are created administrative divisions consisting of judges who decide on matters of administrative justice. Status of judges in the administrative judiciary is the same as the status of other judges. Procedural arrangements for the administrative proceedings are contained in the Code of Civil Procedure in a separate fifth section, which provides specifics of court procedure in the administrative judiciary and its general provisions apply also to the administrative judiciary.

In order to prevent backlog in administrative justice we see the following possibilities of improvement:

1. In establishment of administrative divisions of regional courts and in supporting specialization of judges in the area of social security, economy (taxes, tariffs, tenders, economic competition), general administrative and environment.
2. In admission of procedural code regarding the conduct in the area of administrative decision making, in order to express the special function of the judicial review of the lawfulness of the administrative authorities decisions
3. In participation of consultants in the preparation of decisions.

4. In substitution of ordinary appeal by appeal on points of law as a form of particular remedy only in the area of review of specific legal issues and issues worth special consideration (limitation of legal remedies). However, such enactment's implementation asks for crucial improvements in public administration decision making, transfer of information concerning decision making of administrative courts to public administration entities and acceptance of precedent court decisions by the public administration entities.

5. In personal strengthening of divisions of the Supreme Court, especially by assistants and board responsible for the evidence and publication of the court decisions.

6. In providing special training for the judges coming to administrative courts, including internship in a foreign country.