

## CONFERENCE OF 7 JUNE 2010

### « PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE »

#### QUESTIONNAIRE<sup>1</sup>

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).

#### **Responses for the UK by Lord Justice Carnwath, Senior President of Tribunals**

**General comment** *The UK does not have a Supreme Administrative Court in the civil law sense. The Supreme Court and the Court of Appeal (or in Scotland Court of Sessions) handle appeals of all kinds including those relating to administrative justice. Beneath them, the new Upper Tribunal (Administrative Appeals Chamber, Immigration and Asylum Appeals Chamber, Tax and Chancery Chamber) handle appeals on points of law from the First Tier Tribunals, which deal with a range of matters of administrative character (including, eg, tax, social security, immigration, mental health, war pensions etc) They are in turn subject to appeal with permission to the higher courts, but only with permission on points of general importance. In responding I shall refer principally to the position of the Upper Tribunal.*

#### **I. Techniques for limiting the number of appeals**

- 1) Must those wishing to refer a matter to the Supreme Administrative Court be represented by a lawyer? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority ?

*There is no requirement for a lawyer in the Upper Tribunal*

- 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 Upper Tribunal's jurisdiction depends on finding an error of law, but having so found it is enabled to decide the case for itself and hear evidence of that purpose.*

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

- 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.  
*Permission is required to appeal to the Upper Tribunal, either from the First-tier Tribunal or from the Upper Tribunal itself. Permission will normally be granted if there is a realistically arguable point.*
- 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?  
*There are no financial penalties for abuse, but the permission requirement ensures that this is not normally a problem in practice.*
- 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').  
*Yes Permission is required for an appeal to the Upper Tribunal. It may be granted either by the First-tier Tribunal or by the Upper Tribunal. As already noted, permission will normally be refused if the issue is not considered realistically. (As noted above, permission for onward appeal from the Upper Tribunal to the Court of Appeal will be refused unless there is a point of general importance or some other "compelling circumstance", which is narrowly interpreted in practice.)*

## **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.).  
*Accelerated procedures are available at all levels of the court system to deal with urgent cases. The procedures vary according to the court or tribunal, and to the needs of the situation. Such cases may be heard by single judges in many cases. They may be heard initially on the application of one party only, resulting in an interim order pending a full hearing. The evidence will normally be in written form.*
2. Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? If so, refer to the questions listed under II,1.  
*The permission requirement ensures that clearly unfounded appeals are dealt with speedily. Conversely, where the appeal is clearly well founded, the tribunal has power to conduct an immediate review.*

3. Are there accelerated procedures for cases that should be straightforward? If so, refer to the questions listed under II,1.  
*See previous answer*
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?  
*Most cases in the Upper Tribunal are dealt with by single judges. Panels of two or three judges are normally convened only for cases raising issues of particular difficulty or significance.*
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.)  
*Yes. The rules relating to formulation of grounds are flexible.*
6. Is it possible to conduct procedures entirely in writing, with no need for a hearing?  
*Yes. Many appeals in the Upper Tribunal are dealt with on written submissions only.*
7. Can any party not cooperating with the procedure be penalised?  
*There are no financial penalties for non-cooperation as such. A wasted costs order may be made against a legal representative, but this is very rare. In extreme circumstances a party who fails to cooperate can be debarred from continuing with the appeal.*
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?  
*The tribunal may raise legal arguments of its own motion, and feel obliged to do so if one of the parties is unrepresented. Case-law suggests that a tribunal has a duty to raise what it regards as an "obvious" point, whether or not the parties have done so. The only constraint is that the parties should be given adequate notice and opportunity to respond.*
9. Does the procedure allow the deadlines for submitting statements and documents to be shortened?  
*Yes, all time limits may be shortened or extended*
10. Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically?  
*The rules permit documents to be submitted electronically, subject to practice directions.*
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?  
*Time limits for submitting documents may be extended by the tribunal*

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 general limit to the number of statements, but the tribunal has wider case management directions to ensure that material is presented in a suitable form.*
13. Is it compulsory to submit a summary statement closing the written submissions?  
*There is no general rule, but a closing statement by each party would normally be expected.*
14. Once the investigation has been closed, is it possible to submit new documents, written submissions or written observations at the last minute?  
*The tribunal has discretion to allow further submissions after the hearing, but this is discouraged in practice, and normally special reasons will need to be shown*
15. Can new arguments be raised during the procedure?  
*Yes, with permission of the tribunal.*
16. Can new arguments be raised on appeal?  
*Yes, with permission, but this will normally be refused if the new arguments depend on new evidence which should have been given at the hearing in the First-tier.*
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?  
*There are no special procedures other than appeal. But excessive delay is not a serious problem in practice.*
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.  
*I am not aware of any relevant decisions on this issue.*

### **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?  
*Targets are set for administrative purposes for handling cases, from the time of receipt to disposal. These are set by the Tribunals Service, which administers the Upper Tribunal, after consultation. However, they do not purport to measure judicial activity as such, and are not binding on the 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?  
*Statistics are kept for administrative purposes, as above*
3. Are there significant differences in the length of procedures depending on the nature of the case?  
*Yes Given the wide range of subject-matter and complexity of cases in the Upper Tribunal, there may be significant variations in length of procedures.*
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?  
*There are no special procedures for lower tribunals to seek opinions of the Upper Tribunals, but it is normally possible to arrange a suitable appeal as a test case. This would be normally arranged by agreement between the Presidents of the relevant First-tier and Upper Tribunal Chambers.*
5. What is the ratio between the number of judges in the Supreme Administrative Court and the number of cases settled each year?  
*I am not aware of any useful figures for this purpose. Given the range of cases handled in the Upper Tribunal, it is difficult to draw any general conclusions.*
6. What is the ratio between the number of judges and the number of assistants?  
*The question is not readily answered in our system. Judges normally deal with their cases individually. Although there are some legal assistants in some chambers, there are relatively few.*
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?  
*Yes the different chambers of the Upper Tribunal are designed to ensure specialist handling of different types of case.*

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24.3.10