ADMINISTRATIVE JUSTICE IN EUROPE

-Report for Estonia -

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

Before the Soviet occupation, since 1919, the independent Republic of Estonia had a separate Code of Administrative Court Procedure and also a separate chamber for administrative jurisdiction at the Supreme Court, which started work in 1920. On the first two level cases covering administrative law were adjudicated in ordinary courts by specialized judges or in special chambers.

The first Code of Administrative Court Procedure after Estonia re-gained its independence came into force on 15 of September 1993. The second Code of Administrative Court Procedure entered into force on 01.01.2000. The Code of Administrative Court Procedure currently in force was adopted 27.01.2011 and entered into force 01.01.2012

According to the Constitution of Estonia and as elaborated by the Courts Act, Estonia has a three-level court system. Special courts are reviewing administrative acts. County courts and administrative courts adjudicate matters in the first instance. Courts of second instance, which are called courts of appeal (also called circuit courts), shall hear appeals against decisions or rulings of courts of first instance. Circuit courts have civil, criminal and administrative law chambers.

The court of the highest instance is the Supreme Court, situated in Tartu, which reviews court judgments by way of cassation proceedings. The structure of Estonia's court system is one of the simplest in Europe. The peculiarity of the system lies in the fact that the Supreme Court performs simultaneously the functions of the highest court of general jurisdiction, of the supreme administrative court as well as of the constitutional court. The Supreme Court consists of three chambers: Administrative Law Chamber, Civil Chamber and Criminal Chamber. In addition, the General Assembly of the Supreme Court elects eight members of the Constitutional Review Chamber from among the justices of the Supreme Court. The Chief Justice of the Supreme Court is an ex officio ninth member of the Constitutional Review Chamber.

Administrative acts can only be contested in an administrative court, and further in a circuit court (or in the administrative law chamber thereof) and then in the Administrative Law Chamber of the Supreme Court.

There are two administrative courts of first instance in Estonia (Tallinn and Tartu). In order to guarantee wider access to justice, these two courts have additional courthouses in other cities besides Tallinn and Tartu, where judges and their supporting legal staff work.

The decisions of administrative courts are reviewed by courts of appeal (circuit courts) in the second instance by way of appellate proceedings. There are two circuit courts in Estonia (one situated in Tallinn and the other one in Tartu) and both of them have administrative law chambers. An appeal shall be heard collegially in a circuit court with the participation of at least three judges.

At the Supreme Court, an administrative matter is dealt with by the Administrative Law Chamber sitting as a panel of at least three members, by the Special Panel (panel composed of justices of different chambers) or by the Supreme Court en banc (composed of all the 19 justices of the Supreme Court).

The competence of administrative courts and administrative court procedure is provided in the Code of Administrative Court Procedure.

2. Purpose of the review of administrative acts

The judicial review of administrative acts and measures taken by public authorities is aimed at submitting administrative authorities to law and protecting individual rights, in other words the rule of law. It is not only the review of the good functioning of the administration.

According to the article 14 of the Estonian Constitution, the guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments. On 1 of January 2002 the Administrative Procedure Act came into force. The aim of the act is to ensure that the principle of the rule of law are adhered to in administrative procedure. The Administrative Law Chamber of the Supreme Court has underlined in its decisions the need of the administrative court procedure to ensure effective protection of individual rights.

3. Definition of an administrative authority

Pursuant to § 8 of the Administrative Procedure Act “Administrative authority” means any agency, body or official which is authorised to perform public administration duties by an Act, a regulation issued on the basis of an Act or a contract under public law. Persons that act in administrative proceedings on behalf of an administrative authority shall be appointed within the administrative authority unless otherwise provided by an Act or regulation.

4. Classification of administrative acts

The classification identifies individual acts and general normative acts. It also separates unilateral acts and contracts awarded by administrative authorities.

An administrative act is an order, resolution, precept, directive or other legal act which is issued by an administrative authority upon performance of administrative functions in order to regulate individual cases in public law relationships and which is directed at the creation, alteration or extinguishment of the rights and obligation of persons.

A general order is an administrative act, which is directed at persons determined on the basis of general characteristics or at changing the public law status of things.

Administrative acts against which an action or protest may be filed with an administrative court are the orders, directives, resolutions, precepts or other legislation which regulate individual cases in public law relationships, issued by agencies, officials or other persons who perform administrative functions in public law. For the purpose of administrative court jurisdiction, public law contracts are also deemed to be administrative acts. A public law contract is a contract, which regulates public law relationships.

Measures against which an action or protest may be filed with an administrative court are activities, omissions or delays in public law relationships by agencies, officials or other persons who perform administrative functions in public law.

I –ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

Administrative acts can be contested in the administrative court or in the administrative authority, which issued the administrative act. In the latter case, the outcome of such contestation (the verdict) can be contested in the administrative court.

A person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file a challenge. Unless different jurisdiction is provided by law, a challenge shall be filed through the administrative authority which issued the challenged administrative act or took the challenged measure with an administrative authority which exercises supervisory control over the administrative authority which issued the challenged administrative act or took the challenged measure. If no authority exercises supervisory control over an administrative authority which issued an administrative act or took a measure, a challenge shall be adjudicated by the administrative authority which issued the administrative act or took the measure.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

According to the Constitution of Estonia and as elaborated by the Courts Act, Estonia has a three-level court system. Special courts are reviewing administrative acts. County courts and administrative courts adjudicate matters in the first instance. Courts of second instance, which are called courts of appeal (also called circuit courts), shall hear appeals against decisions or rulings of courts of first instance. The court of the highest instance is the Supreme Court, situated in Tartu, which reviews court judgments by way of cassation proceedings.

Administrative acts can only be contested in an administrative court. There are two administrative courts of first instance in Estonia (Tallinn and Tartu). In order to guarantee wider access to justice, these two courts have additional courthouses in other cities besides Tallinn and Tartu, where judges and their supporting legal staff work.

The decisions of administrative courts are reviewed by courts of appeal (circuit courts) in the second instance by way of appellate proceedings. There are two circuit courts in Estonia (one situated in Tallinn and the other one in Tartu) and both of them have administrative law chambers. An appeal shall be heard collegially in a circuit court with the participation of at least three judges.

At the Supreme Court, an administrative matter is dealt with by the Administrative Law Chamber sitting as a panel of at least three members, by the Special Panel (panel composed of justices of different chambers) or by the Supreme Court en banc (composed of all the 19 justices of the Supreme Court).

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

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8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

The competence and duties of administrative courts are governed by the Constitution of the Republic of Estonia and by laws adopted by the Estonian Parliament such as the Courts Act and the Code of Administrative Court Procedure.

There exist also internal rules of courts that do not regulate court procedure but set out the organisation of work of courts. The internal rules of the courts prescribe the duties of the chairman of the court, other judges and court officers subordinate to the chairman that arise

from the organisation of work of the court. The internal rules of a court are established by the chairman of the court with the approval of the full court.

In addition, courts themselves have provided case-law interpreting the competence of administrative courts. Most importantly, the Administrative Law Chamber of the Supreme Court and the Special Panel comprised of members of different chambers of the Supreme Court as well the Supreme Court en banc have ruled on the competences of administrative courts. The Supreme Court case-law also deals with distinguishing between the jurisdiction of administrative and ordinary courts. Courts of lower instance abide by the case-law of higher instance courts; most importantly by the case-law of the Supreme Court.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

Administrative courts are competent to adjudicate disputes arising in public law relationships unless the law provides a different procedure for determining such disputes. For example, the Code of Enforcement Procedure states that an appeal against a decision of a bailiff is to be filed to a county court.

According to the Courts Act, a county court hears civil, criminal and misdemeanour matters as court of first instance. A county court also performs other acts the performance of which is placed within the jurisdiction of the courts by law. There are four county courts in Estonia: Harju, Viru, Pärnu and Tartu. County courts can have several courthouses. County courts are not organised into chambers or divisions.

10. Internal organization of the administrative courts

There are two administrative courts of first instance in Estonia (Tallinn and Tartu). In order to guarantee wider access to justice, these two courts have additional courthouses in other cities besides Tallinn and Tartu, where judges and their supporting legal staff work.

The decisions of administrative courts are reviewed by courts of appeal (circuit courts) in the second instance by way of appellate proceedings. There are two circuit courts in Estonia (one situated in Tallinn and the other one in Tartu) and both of them have civil, criminal and administrative law chambers. An appeal shall be heard collegially in a circuit court with the participation of at least three judges.

The court of the highest instance is the Supreme Court, situated in Tartu, which reviews court judgments by way of cassation proceedings. The Supreme Court consists of three chambers: Administrative Law Chamber, Civil Law Chamber and Criminal Law Chamber. In the Supreme Court, an administrative matter is dealt with by the Administrative Law Chamber sitting as a panel of at least three members, by the Special Panel (panel composed of justices

of different chambers) or by the Supreme Court en banc (composed of all the 19 justices of the Supreme Court).

D. JUDGES

11. Status of judges who review administrative acts

Judges reviewing administrative matters have the same legal status as judges of ordinary courts. The total number of judges in Estonia is 242. 179 judges are appointed at the first instance courts (151 in county courts and 28 in administrative courts) and 44 judges at the second instance courts (10 administrative judges). The Supreme Court is composed of 19 justices (the Administrative Law Chamber has 5 members). All judges have the same social guarantees and position. Judges, also administrative court judges, are appointed for life. They cannot be transferred from one court to another without their consent. Education and training, as well as other requirements to become a judge are the same for administrative court judges as for county court judges.

The same applies to the appointment of administrative court judges, however sometimes the background of a second or third instance administrative judge can differ from that of ordinary judges. Namely, a person who has achieved high ranking in civil service before their career as a member of judiciary can also be appointed as a judge reviewing administrative acts in second and third instance courts without having been a judge before. Salaries of the judges are regulated by the Salaries of Higher State Servants Act; no difference is made between administrative judges and judges or ordinary courts.

12. Recruitment of judges in charge of review of administrative acts

Recruitment of administrative judges and judges of ordinary courts are the same. The Courts Act sets out general requirements for all Estonian judges as well as the path for becoming a judge.

Requirements for judges

A citizen of the Republic of Estonia may be appointed as a judge if he or she:
1) has acquired in the field of law at least an officially certified Master's degree;
2) has proficiency of the Estonian language at the level C1 or a corresponding level;
3) is of high moral character;
4) has the abilities and personal characteristics necessary for working as a judge.

The following shall not be appointed as a judge:
1) persons who are convicted of a criminal offence;
2) persons who have been removed from the office of judge, notary or bailiff;
3) persons who have been expelled from the Estonian Bar Association;
4) persons who have been released from the public service for a disciplinary offence;

5) persons who are bankrupt;
6) persons whose professional activities as an auditor have been terminated except termination on the basis of the application of an auditor;
7) persons who have been deprived of the qualification of a patent agent, except deprivation of qualification on the basis of the application of a patent agent.
8) who have been deprived of the profession of a sworn translator.

Becoming a judge

Judges are appointed to office on the basis of a public competition. The Minister of Justice announces a public competition for a vacant position of judge of a county court, administrative court and circuit court. The Chief Justice of the Supreme Court announces a public competition for a vacant position of justice of the Supreme Court. If several persons run as candidates for the vacant position of judge, the Supreme Court en banc shall decide who to propose to the President of the Republic to be appointed to office as judge. The Supreme Court en banc shall first consider the opinion of the full court of the court for which the person runs as a candidate.

Judges of first and second instances shall be appointed to office by the President of the Republic on the proposal of the Supreme Court en banc. Justices of the Supreme Court (including members of the administrative law chamber) shall be appointed to office by the Parliament, on the proposal of the Chief Justice of the Supreme Court.

There are several paths for becoming a judge. A person who has undergone judge’s preparatory service or is exempted therefrom and has passed a judge’s examination may be appointed as a judge of a county or administrative court (county judge or administrative court judge). A person who has worked as a sworn advocate or prosecutor, except an assistant prosecutor, for two years immediately prior to passing the judge’s examination and a person who has worked as a judge earlier and if not more than ten years have passed since his or her release from the office of judge need not have undergone judge’s preparatory service.

A person who is an experienced and recognised lawyer and who has passed a judge's examination may be appointed as a judge of a circuit court (circuit court judge). A person who worked as a judge directly before appointment shall be exempted from the judge’s examination.

A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court (Supreme Court justice).

Preparatory service for judges

A person who complies with the requirements set for judges may be appointed as a candidate for judicial office. During preparatory service, a candidate for judicial office shall be prepared for the office of judge. The duration of preparatory service is two years. A person who is an

experienced and recognised lawyer and with regard to whom the judge's examination committee finds without doubt that past experience enables the person to assume the office of judge without undergoing preparatory service may be exempted from preparatory service by a reasoned decision of the judge's examination committee. The judge's examination committee may exempt from preparatory service a person who has been employed as a law clerk or judicial clerk for at least two years. In addition, the judge's examination committee may reduce the preparatory service of a person by up to one year if the person has worked as an advocate or prosecutor, consultant of court, law clerk or judge for at least two years.

Judge's examination

Judge's examination consists of an oral and a written part. During the oral part of a judge's examination the theoretical knowledge of a candidate for judicial office is assessed. The written part of a judge's examination consists of a case-analysis.

Assessment of suitability

The suitability of the personal characteristics of a candidate for judicial office is assessed on the basis of an interview. The judge's examination committee may consider also other information concerning the candidate for judicial office which is important for the performance of the duties of a judge, make inquiries and ask for the opinion of the candidate's supervisor.

A candidate for judicial office shall pass a security check before being appointed judge, excluding the case if he or she holds a valid access permit to access state secrets classified as top secret or if the time of becoming a candidate he or she occupies a position which provides the right by virtue of office to access all levels of state secrets.

13. Professional training of judges

Pursuant to § 74 of the Courts Acts a judge is required to develop knowledge and skills of his or her speciality on a regular basis and to participate in training.

The Training Council is responsible for the training of judges. The Training Council is comprised of two judges of a court of the first instance, two judges of a court of appeal, two justices of the Supreme Court, and a representative of the Prosecutor's Office, the Minister of Justice and the University of Tartu.

Training of judges is based on the strategies for training of judges, annual training programs and the program for judge's examination. The strategies for training of judges, annual training programs and the program for judge's examination are prepared by the judicial training department of the Supreme Court and approved by the Training Council. The study and methodological materials necessary for the training of judges are prepared and the agreements

with the trainers are entered into by the judicial training department of the Supreme Court. The judicial training department of the Supreme Court organises the trainings.

14. Promotion of judges

Judges are appointed to office on the basis of a public competition. The general recruitment of judges is in more detail described in p 12.

A person who is an experienced and recognised lawyer and who has passed a judge's examination may be appointed as a judge of a circuit court (circuit court judge). A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court (Supreme Court justice). All judges of lower instances are free to participate in the competition for a position at the circuit courts or at the Supreme Court.

Judges can become a chairman of a court. According to the Courts Acts the chairmen of first and second instance courts are appointed from among the judges of the court for five years. The chairman of a court is appointed by the Minister of Justice after having considered the opinion of the full court. Tartu and Tallinn administrative courts have their separate chairmen.

15. Professional mobility of judges

The Supreme Court en banc may appoint a judge to office to another court of the same or a lower instance with the consent of the judge and on the proposal of the Minister of Justice. The Supreme Court en banc may appoint a judge of a court of first instance with his or her consent to permanent service in another courthouse of the same court.

A judge may be transferred to the service of the Supreme Court or the Ministry of Justice for up to three years or appointed as the Prosecutor General for five years at his or her request and with the consent of the chairman of the court. During service in the Supreme Court or the Ministry of Justice or as the Prosecutor General, the authority of the judge shall be suspended. The judge shall retain the judge’s salary and other guarantees during service in the Supreme Court or the Ministry of Justice. Upon appointment as the Prosecutor General, the judge shall be paid the salary of the Prosecutor General and he or she shall retain other judge's guarantees.

Upon election or appointment of a judge as a judge of an international court institution or participation as expert in international civil mission the authority and service relationship of the judge shall be suspended. Participation of a judge as expert in an international civil mission shall be coordinated with a chairman of a court and in case of judges of the courts of the first instance and judges of courts of appeal also with the Minister of Justice.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

A person may have recourse to an administrative court only for the protection of his or her rights. For other purposes, including protection of rights of another person or protection of a public interest, a person may only have recourse to the court in the cases provided in the law.

An association of persons which is not a legal person may file an action with an administrative court only in the cases provided in the law. The government, a local authority or a legal person in public law may bring an action against another public authority for the purpose of protection of its rights, including the right of ownership and any rights arising from public law contracts. A local authority may also bring an action if an administrative act or measure of another public authority significantly hinders or complicates the performance of the duties of the local authority.

Pursuant to the Code of Administrative Court Procedure an applicant in court may seek:

1) the full or partial annulment of the administrative act (annulment action);
2) the issue or an administrative act or the taking of an administrative measure (mandatory action);
3) a prohibition to issue certain administrative act or take a certain administrative measure (prohibition action);
4) compensation for harm caused in a public law relationship (compensation action);
5) elimination of unlawful consequences of an administrative act or measure (reparation action);
6) a declaration of nullity of an administrative act, a declaration of unlawfulness of an administrative act or measure, or a declaration ascertaining other facts of material importance in a public law relationship (declaratory action).

Pursuant to the Code of Administrative Court Procedure administrative court may:

1) annul the administrative act in part or in full;
2) order that an administrative act be made or an administrative measure be taken;
3) prohibit the making of an administrative act or the taking of an administrative measure;
4) award compensation for harm caused in a public law relationship;
5) issue an enforcement order requiring elimination of the consequences of the administrative act or administrative measure;
6) ascertain that the administrative act is null and void, that the administrative act or measure is unlawful, or ascertain a fact that is of material importance in the public law relationship.

There are also possibilities for different recourse and claims for compensation provided by the State Liability Act which constitutes the bases of and procedure for the protection and restoration of rights violated upon the exercise of powers of public authority and performance of other public duties and compensation for damage caused. The State liability cases in Estonia are solved in the administrative jurisdiction.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

Where a judgment depends fully or in part on the presence or absence of a fact which is the subject matter of other pending court proceedings or whose presence must be ascertained in administrative proceedings or in other court proceedings, the court may order a stay of proceedings until the conclusion of the other proceedings.

The court may order a stay of proceedings until a judgment entered in another administrative matter becomes final, provided the matter concerns interpretation of a rule of law which is of crucial importance also for determining the matter at hand. A stay of proceedings may only be ordered if there are at least ten like matters in which the court is conducting proceedings.

The court may order a stay of proceedings in order to allow determination of a constitutional review matter in which proceedings have been opened in the Supreme Court, until the judgment of the Supreme Court becomes final, if this may affect the validity of a legislative act applicable in the administrative matter.

18. Advisory functions of the competent bodies

An administrative court only has judicial functions; judges cannot be at the same time members of legislative or executive powers. Judges shall not be employed other than in the office of judge, except for teaching or research. There are some judges, especially in higher instances who teach or participate in research activities. However, sometimes when so asked by the executive or the legislature, the judges, especially the justices from the Supreme Court give their expert opinions on drafts of procedural laws and laws concerning judiciary as well as court administration or even in administrative law matters besides the administrative court procedure also about the Administrative Procedure Act. Some judges have even participated as experts in law-making procedure. Furthermore, one could say, that the judgments are sometimes also seen as guidelines, this is even more important in a country with an administrative law still in constant developing and true especially concerning the general principles of administrative law and their application. The administrative authorities follow the principles and rulings given in court judgments. In some cases the judgments are very eagerly looked forward by the administrative authorities, in order to make sure they are solving particular problems properly or to get some guidelines to change their practice.

19. Organization of the judicial and advisory functions of the competent bodies

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F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

The positions set out in a decision of the Supreme Court on the interpretation and the application of law are mandatory for the court conducting a new hearing of a matter. Besides that the judgments of the Administrative Law Chamber of the Supreme Court often have a more far- reaching precedent value. The Chamber can change its previous case-law only by referring the case to the Full Panel (to all the justices of the chamber).

The Supreme Court has also the functions of a constitutional court (it has a Constitutional Review Chamber). When exercising those functions, the Supreme Court has the competence to declare a law or parts of it null and void. This results in the Parliament having to adopt new regulation or the matter will be left unregulated.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

On the whole, access to the courts in the system of control of administrative authorities does not have any preconditions; there are no mandatory challenge proceedings (the term objection proceedings or internal administrative review is also used in some English translations) except the complaints of imprisoned persons as the Imprisonment Act establishes a compulsory pre-trial procedure for them.

A person who finds that his or her rights are violated or his or her freedoms are restricted by an administrative act or in the course of administrative proceedings may file an action.

22. Right to bring a case before the court

Only a person who finds that his or her rights have been violated or his or her freedoms have been restricted by an administrative act or measure has the right to file an action with an administrative court. An action for the establishment of the existence or absence of a public law relationship or the unlawfulness of an administrative act or measure may be filed by a person who has legitimate interest in the matter. For other purposes, including protection of rights of another person or protection of a public interest, a person may only have recourse to the court in the cases provided in the law.

An action may be brought against a procedural act without contesting the administrative act or administrative measure, if that act or measure infringes the applicant’s non-procedural rights

independently of the administrative act or measure, or if the unlawfulness of the procedural act would inevitably lead to the issue of an administrative act or the taking of an administrative measure which infringes the applicant's rights.

A person may also request that an administrative act not to be issued or administrative measure not to be taken if the administrative act or measure would violate the rights of the person and would probably bring about consequences which would be impossible to eliminate upon later contestation of the administrative act or measure.

A protest against an administrative act or measure may be filed with an administrative court by an agency or official to whom the corresponding right is granted by law.

An association of persons, including an association, which is not a legal person, may file an action with an administrative court in the interests of the members of the association or other persons if the corresponding right is granted to the association by law.

An agency, official or other person performing administrative functions in public law may file an action against an individual or against a legal person in private law only in the cases provided by law. In a dispute concerning issues of service, an official is deemed to be an individual. In review, by way of administrative court procedure, of actions against an individual, or a legal person in private law, such individual or legal person has the rights and obligations of an agency, official or other person performing administrative functions in public law, taking into consideration the nature of the action filed against the individual, or the legal person in private law. Every person shall file an individual action with a court.

The government, a local authority or a legal person in public law may bring an action against another public authority for the purpose of protection of its rights, including the right of ownership and any rights arising from public law contracts. A local authority may also bring an action if an administrative act or measure of another public authority significantly hinders or complicates the performance of the duties of the local authority.

23. Admissibility conditions

The admissibility of an action means that the court assesses the right of action as well as conformity to substantive and formal requirements.

The legal situation in Estonia meets the requirements and suggestions set in the Recommendation R (2004) 20 of the Committee of Ministers to member states of the Council of Europe on judicial review of administrative acts, article B p.2a.

Persons or bodies wanting to challenge an administrative act or operation have to demonstrate an interest in the annulment of the act (see previous point). They have to prove that one of their rights has been infringed.

Unless different jurisdiction is provided by law, an action or a protest shall be filed with the administrative court of the seat or place of service of the agency, official or other person who issued the administrative act or took the administrative measure against which an action or protest is filed.

An action is to include the following information:

1) the applicant's name, personal identification code, or date of birth or registry code if the applicant has no personal identification code, as well as address and particulars of any means of telecommunication;
2) names, addresses and particulars of any means of telecommunication of other participants of the proceedings;
3) if the applicant has a representative, the representative's name, address and particulars of the means of telecommunication;
4) the name of the administrative court;
5) the claim made in the action pursuant to section 37 of the Code of Administrative Court Procedure;
6) the content, name, date and number the disputed administrative act or measure and the name of the administrative authority which issued the administrative act or measure, provided that the presentation of such information is possible;
7) the cause in fact of the action;
8) evidence which confirms the facts asserted by the applicant, including specific reference as to which evidentiary item is to support which fact;
9) how and when the applicant learned of the disputed administrative act or measure;
10) whether the applicant wishes the matter to be heard in a court session, by way of written proceedings or in simplified proceedings;
11) a list of the annexes to the action.

24. Time limits to apply to the courts

An action for the annulment of an administrative act may be filed with an administrative court within thirty days after the date on which the administrative act was made public, unless otherwise provided by law.

If an administrative authority refuses to issue an administrative act or take a measure, an action requiring the issue of the administrative act or the taking of the measure may be filed within thirty days after the date on which refusal was communicated, unless otherwise provided by law.

An action for compensation for damage caused by an administrative act or measure may be filed within three years after the person filing the action became aware or should have become aware of the damage and of the person who caused it, but not later than within ten years after the administrative act was issued or the unlawful measure was taken.

An action for declaration of an administrative act or measure unlawful may be filed within three years after the administrative act was issued or the unlawful measure was taken.

An action for the establishment of the existence or absence of a public law relationship may be filed without a term.

25. Administrative acts excluded from judicial review

The law does not distinguish any administrative acts or actions that are not open to review by the courts.

26. Screening procedures

Adjudication of disputes in public law for which a different procedure is prescribed by law (for instance constitutional matters) does not fall within the competence of administrative courts, the courts need therefore to verify the jurisdiction and the competence of the court. In the first and second instance there are no special screening (filter) procedures foreseen except for verifying the competence of the court and also the conditions that an action and requirements that an appeal must meet, see answers to the points 21-23. These preliminary procedures and pre-trial proceedings do not include court hearings except in the cases, where it is questionable, whether an action is filed after the expiry of the term for filing actions and where it has to be proven by a testimony of a witness.
In the Supreme Court however there exists a system according to which not all complaints are admitted to adjudication. The Supreme Court shall accept an appeal for cassation if:

1) the appeal contests the correctness of application of a provision of substantive law or requests annulment of a court decision due to material violation of a provision of court procedure which has or may have resulted in an incorrect court decision;

2) a judgment of the Supreme Court is essential for the uniform application of the law.

An appeal shall not be accepted if the Supreme Court is convinced that the appeal is obviously unjustified. The Supreme Court shall decide on acceptance of an appeal without summoning the participants in the proceedings. Acceptance for proceedings of matters which fall within the jurisdiction of the Supreme Court shall be decided by a panel of at least three members of the Supreme Court on the basis provided for in law regulating judicial procedure (one of them is a justice of the Administrative Law Chamber). A matter is accepted for proceedings if the hearing thereof is demanded at least by one justice of the Supreme Court. Acceptance of an appeal shall be decided after requiring submission of the documents. If the Supreme Court is convinced that the request for acceptance of an appeal is justified or unjustified, the Supreme Court may accept or refuse to accept the appeal without prior request of the documents. Upon non-acceptance of an appeal, the basis for non-acceptance shall be indicated in the ruling (but this is only a reference to a relevant article in the Code of Administrative Court Procedure). If an appeal is not accepted, the court files shall be returned to the corresponding courts and the appeal together with the ruling on refusal to accept the appeal shall be included in the circuit court file. Copies of the ruling shall be sent to all the participants in the proceeding.

27. Form of application

There exists no specific form of application. The Code of Administrative Procedure Act foresees the content of action.

The application has to be presented in writing, using computer or a typewriter. The Supreme Court has established that the application can also be presented in readable handwriting.

28. Possibility of bringing proceedings via information technologies

Petitions and other documents which must be in written form may also be submitted to the court electronically if the court is able to make printouts and copies of the submitted document. A document shall bear the digital signature of the sender or be transmitted in another similar secure manner which enables the sender to be identified. The sender is deemed to be clearly identifiable if a certificate of authenticity created with the aid of the private key of the sender is added to the e-mail.

An electronic document is deemed to be submitted to the court when it is saved in the database prescribed for the receipt of court documents. The sender of the document is sent an electronic confirmation thereof. If the court is unable to make printouts or copies of the document, the sender of the document is immediately informed thereof.

The court may deem a petition or another procedural document submitted by e-mail by a participant in a proceeding to be sufficient even if it fails to comply with the requirements provided in the Code of Administrative Court Procedure and, above all, the requirement of bearing a digital signature, unless the court has doubts about the identity of the sender and the sending of the document, especially if documents with a digital signature have been sent earlier from the same e-mail address to the court in the proceeding of the same matter by the same participant in the proceeding, or if the court has agreed that petitions or other documents may also be submitted thereto in such manner.

In addition E-File proceedings information system (hereinafter e-file system) has been implemented. The E-File system is a central information system which provides an overview of the different phases of the criminal, civil, administrative and misdemeanour procedures, procedural acts and court adjudications to all the parties involved. E-file database belongs to the state and is maintained for processing proceedings information and personal data in court proceedings. The E-file system enables the exchange of information simultaneously between different parties.

The purpose of E-file system is:

1) to provide an overview of matters in which proceedings are conducted by the courts;
2) to reflect information concerning the acts made in the course of proceedings;
3) to enable the organisation of work of the courts;
4) to ensure the collection of court statistics necessary for making legal policy decisions;
5) to enable the electronic sending of information and documents.

The following are entered in the E-file system database:

1) information concerning matters in which proceedings are conducted or have been terminated;
2) information concerning the acts made in the course of proceedings;
3) digital documents;

4) information concerning the body conducting the proceedings, participants in the proceedings and parties involved in the proceedings;
5) court decisions.

All court judgments are made available to the public via Internet. Judgments of courts of first and second instance are made available on the website of Riigi Teataja (www.riigiteataja.ee). Decisions delivered by the Supreme Court are made available on the website of the Supreme Court (www.riigikohus.ee).

29. Court fees

For filing an action with an administrative court and for filing an appeal pursuant to appellate procedure, a state fee shall be paid pursuant to law. The state fee for bringing an action for judicial review is: 15 Euros in the first and second instance court, 25 Euros in the Supreme Court. The latter is called a payment of security on cassation.

If an action is filed with an administrative court for the compensation for damage or return of that which was received by way of unjust enrichment, a state fee is three per cent of the amount the payment of which is applied for but the amount payable shall not be less than 15,97 Euros and not more than 750 Euros.

If a court finds that a person is insolvent, the court may, at the request of the person, fully or partially exempt the person from payment of a state fee or security on cassation.

If an appeal in cassation is allowed and a petition is satisfied in full or in part, the security shall be refunded on the basis of a judgment or a ruling of the Supreme Court. If an appeal in cassation or a petition is dismissed, the security shall be transferred into the public revenues. Security shall be transferred into the public revenues also if the appeal in cassation, appeal against a ruling, or a petition for review or petition for the correction of a court error is not accepted.

30. Compulsory representation

The recourse to a solicitor/lawyer or counsel is not compulsory.

The court explains the possibility of receiving state legal aid when the court finds that a natural person who is a participant in proceedings is unable to personally protect his or her rights or that his or her essential interests may be insufficiently protected without the assistance of a lawyer.

31. Legal aid

There exists state legal aid granting of which is regulated in the State Legal Aid Act. State legal aid means providing a natural person or a legal person with a legal service at the expense of the state. State legal aid is granted to a natural person or a legal person in connection with

proceedings in an Estonian court or administrative body or otherwise in the protection of their rights if deciding thereon is within the competence of an Estonian court.

A natural person may receive state legal aid if the person is unable to pay for competent legal services due to the person's financial situation at the time the person needs legal aid or if the person is able to pay for legal services only partially or in instalments or if the person's financial situation does not allow for meeting basic subsistence needs after paying for legal services.

The granting of state legal aid will be decided on the basis of an application of a person. An application for state legal aid submitted in the course of judicial proceedings will be adjudicated by an order of a court. Refusal to grant legal aid can be challenged before courts.

State legal aid is provided by members of the Bar Association.

32. Fine for abusive or unjustified applications

There is none. However, according to the case law of the Administrative Law Chamber of the Supreme Court, one of the purposes of the payment of security on cassation has been also avoid abusive applications. This was previously more accurate, since the amount of the payment on security on cassation was one-half of the minimum monthly wages. Nowadays it is a fixed sum of 25 Euros and therefore can hardly be considered as preventing abusive applications.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The following fundamental principles govern the main trial hearing:
- right to obtaining all information concerning the case (right to examine the file, make copies of the file),
- right to participate in the court hearing (and know the panel of the court hearing the matter),
- right to the defence/the right to a fair hearing,
- right to submit petitions of challenge and applications,
- right to give statements to the court,
- right to submit reasons and considerations related to all questions which arise in the course of the hearing of the matter in court, contest petitions, reasons and considerations submitted by other participants in the proceedings, submit questions to other participants in the proceedings,
- right to submit evidence (participate in the inspection and examination of evidence, submit questions to the witnesses and experts)
- principle of investigation (during proceedings in a matter, an administrative court can, if necessary collect evidence on its own initiative),
- right to a hear the matter within reasonable time,
- obligation to exercise one's procedural rights in good faith.

There exists the principle of a public hearing, except for the cases when the applicant asks the court to declare it closed. A court may declare that a session or a part of it be held *in camera* in order to maintain a state or business secret, protect the private or family life of a person, maintain the confidentiality of messages or in the interests of a minor or the administration of justice.

The participants in proceedings have also other procedural rights provided for in the Code of Administrative Court Procedure.

These principles derive from national law (legislations or/and case-law) as well as European law (Convention for the protection of Human Rights and Fundamental Freedoms, Law of the European Communities, especially case law of the European Court of Justice).

34. Judicial impartiality

In Estonia justice is administered solely by the courts. No one has the right to interfere with the administration of justice. Acts which are directed at disturbing the administration of justice are prohibited in courts and in the vicinity thereof.

The main guarantees for independence of judges are the following: Judges shall be appointed for life and may be removed from office only by a court judgment. Criminal charges against a judge of a court of the first instance and a court of appeal may be brought during their term of office only on the proposal of the Supreme Court en banc with the consent of the President of the Republic. Criminal charges against a justice of the Supreme Court may be brought during his or her term of office only on the proposal of the Chancellor of Justice with the consent of the majority of the membership of the Parliament.

Judges shall be appointed to office on the basis of a public competition (for more information see p 12). Upon assuming office, a judge shall take the following oath: “I swear to remain faithful to the Republic of Estonia and its constitutional order. I swear to administer justice according to my conscience and in conformity with the Constitution of the Republic of Estonia and other Acts.”

Judges shall not be employed other than in the office of judge, except for teaching or research. Employment other than in the office of judge shall not damage the performance of official duties of a judge or the independence of a judge upon administration of justice.

A judge shall not be:

1) a member of the Parliament or member of a rural municipality or city council;
2) a member of a political party;
3) a founder, managing partner, member of the management board or supervisory board of a company, or director of a branch of a foreign company;
4) a trustee in bankruptcy, member of a bankruptcy committee or compulsory administrator of immovable;
5) an arbitrator chosen by the parties to a dispute.

The salaries of judges are calculated taking as the basis the highest salary rate of higher state servant. In 2014 the highest salary rate of higher state servants is 5,200 euros. The highest

salary rate is indexed by 1 April each calendar year. Coefficients applicable to salaries of judges are the following:

1) The coefficient for the salary of the Chief Justice of the Supreme Court shall be 1.0, i.e. 5200 Euros.
2) The coefficient for the salary of a justice of the Supreme Court shall be 0.85.
3) The coefficient for the salary of a judge of a circuit court (second instance court) shall be 0.75.
4) The coefficient for the salary of a judge of a county or administrative court (first instance court) shall be 0.65.

As to the impartiality, according to the Code of Administrative Court Procedure an administrative matter must be dealt with justly and fairly. The Code of Administrative Court Procedure also prescribes the obligation to judge to remove himself/herself from hearing a matter.

A judge shall not adjudicate an administrative matter and shall remove himself or herself in the following cases:

1) in a matter in which he or she is a participant in the proceeding or a person against whom a claim arising from the proceeding may be filed;
2) in a matter of his or her spouse or cohabitee, and in a matter of a sister, brother or direct blood relative of his or her spouse or cohabitee even if the marriage or permanent cohabitation has ended;
3) in a matter of a person who is his or her direct blood relative or other person close to him or her;
4) in a matter in which he or she is or has been a representative or adviser of a participant in the proceeding or in which he or she participated or had the right to participate as the legal representative of a participant in the proceeding;
5) in a matter in which he or she has been heard as a witness or expert providing an opinion;
6) in a matter in which he or she participated in pre-trial proceedings, in the preceding court instance or in making a decision in arbitration proceedings;
7) if any other circumstances exist which give reason to doubt the impartiality of the judge.

35. Possibility to rely on the new legal arguments in the course of proceedings

The participants in proceedings have the right to submit petitions of challenge and applications and submit reasons and considerations related to all questions which arise in the course of the hearing of the matter in court during the main trial until the main hearing is closed. The other party has the right to ask to be given time to answer the newly-raised arguments, which may result in the postponement of the main hearing.

The other parties (the agency, official or other person performing administrative functions in public law who issued the administrative act or took the measure against which an action or protest is filed; the parties to a public law contract; a third person if the rights or freedoms of the person which are protected by law may be adjudicated in the hearing of the matter; to a public law contract) also have the right to bring new evidence, raise new legal arguments and/or submit new petitions (or withdraw submitted petitions). In other words, parties have equal rights during court procedure.

In the first instance an administrative court hears a matter to the extent requested in the action or protest. An administrative court is however not bound by the wording of an action or protest. A person filing an action or protest may amend a request set out in the action or protest until the summations in an administrative court if the rest of the participants in proceedings consent to the amendments or if the court deems the amendments purposeful. A participant in a proceeding is presumed to consent to the amendments of a request set out in an action or protest if the participant does not contest the amendments of the request or indicates in a document submitted to the court or in the oral hearing of the matter that the participant is bound to the amended action or protest.

If in an appeal new evidence is submitted which was not submitted in the court of first instance or the hearing of new witnesses is requested, the appeal must set out the reasons why the evidence could not be submitted or the witnesses heard in the administrative court of first instance. A circuit court can take into consideration new evidence, which was not submitted to the court of first instance if the court finds that the evidence was not submitted for good reason. Claims which were not filed in the court of first instance cannot be filed in a circuit court. If during the preparation of a matter a circuit court finds that the evidence verified by the administrative court of first instance and the additional evidence submitted by the participants in the proceedings is not sufficient for the just adjudication of the matter, the court may propose to the participants in the proceedings that they submit additional evidence, or collect evidence on its own initiative.

The Supreme Court verifies on the basis of an appeal in cassation whether the circuit court and the court of first instance have observed the provisions of court procedure and applied the law correctly. A judgment of the Supreme Court is based on the facts established by the judgment of a lower court. The Supreme Court cannot establish facts, which constitute the cause of an appeal. The Supreme Court is not bound by the limits of the appeal and the judgment can automatically be annulled in the case of a serious violation of a provision of court procedure by the lower courts.

36. Persons allowed to intervene during the main hearing

Participants of proceedings are:
1) the parties (the applicant and the respondent);
2) a third party;
3) an administrative authority joined to the proceedings.

An administrative authority of the government or of a local authority participates in the proceedings in the name of the government or of the local authority.

A third party may be joined to the proceedings pursuant to an application of a participant of the proceedings or of the court’s own motion at any stage of the proceedings and in any judicial instance until the judgment becomes final. A third party may also seek to be joined to the proceedings by appealing a decision entered in the matter. In such a case the issue of joinder is decided at the same time that the question of opening of proceedings on the appeal is determined. Unless the court determines otherwise, any procedural acts performed prior to the joinder of a third party are valid with respect to the third party.

An administrative court may join to the proceedings an administrative authority whose opinion it seeks:
1) if the authority performs supervision of the respondent;
2) if the subject matter of the dispute concerns the tasks of the authority;
3) if the authority has issued or should have issued an opinion or has issued or should have issued an endorsement in the administrative proceedings which gave rise to the dispute;
4) if there are other reasons which suggest that the authority's opinion or the information that the authority holds is likely to facilitate determination of the matter.

An administrative authority joined to the proceedings enjoys all the rights of a participant of proceedings set out in the Code of Administrative Court Procedure, except for the rights and duties which have been reserved exclusively to the parties and third parties.

37. Existence and role of the representative of the State ("ministère public") in administrative cases

There is no special representative of the state, who represents the interests of the state and can submit pleadings in cases concerning administrative law. State authorities are involved in cases only as parties to the case or persons involved to the case as agencies or officials exercising supervision or somehow connected to the matter as representatives of state or local government.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement »

The Chancellor of Justice is an independent official whose duties are to ensure that the legislation valid in Estonia is constitutional and that the fundamental rights and freedoms are protected.

Under Constitutional review or procedure of norms, the Chancellor of Justice verifies that laws, regulations and other legislations of general application are in conformity with the Constitution and other laws.

The Chancellor of Justice supervises the following legislations of general application:

1) acts of the Parliament;

2) decrees of the President of the Republic;

3) regulations of the Government of the Republic;

4) regulations of the Ministers;

5) regulations of local government councils, rural municipality governments and city governments;

6) legislations of general application by legal persons of public law.

The Chancellor of Justice shall verify conformity with the Constitution and laws of legislations of general application either on the basis of an application or on his or her own initiative. The Chancellor of Justice has an obligation to verify conformity with the Constitution and law of accepted legislations of general application, but in some cases he shall also do it on the basis of draft legislations.

If the Chancellor of Justice finds that the legislation of general application is unconstitutional and contrary to the laws:

1) he may propose to the body that passed the legislation (this may be the Parliament, Government of the Republic, a minister or local government, etc.) to bring the legislation into conformity with the Constitution and the law. Issuer of the legislation of general application shall present its statement to the Chancellor of Justice in 20 days. If the proposal is ignored, the Chancellor of Justice shall submit a request to the Supreme Court to declare the legislation of general application unconstitutional or invalid.

2) He may submit a memorandum to the drafter of the legislation of general application to bring it into conformity with the Constitution and the law, at the same time setting a deadline for removal of the discordance. In the event of disregard to the recommendations made in the memorandum the Chancellor of Justice may submit a proposal to the issuer of legislation. If the proposal is ignored, the Chancellor of Justice shall submit a request to the Supreme Court to declare the legislation of general application unconstitutional or invalid.

3) The Chancellor of Justice can also submit a report to the Parliament to bring to attention the problems in legislation.

39. Termination of court proceedings before the final judgment

The court terminates proceedings in the matter by a ruling:
1) if the applicant has previously already submitted to the administrative court an action which makes the same claim on the same cause and a judgment or court ruling concerning termination of proceedings in the matter has become final in respect of the action;
2) in the case the time-limit for bringing the action has lapsed;
3) when the court accepts abandonment of the action or approves a compromise;
4) if the administrative act contested in the action has been declared invalid, or the administrative act demanded in the action has been issued or the administrative measure taken;
5) in the case of the death or dissolution of a party, if the legal relationship in which the dispute arose does not allow succession or assignment.

If proceedings are terminated, a person has no further recourse to the court in the same matter. An appeal may be filed against a ruling on termination of proceedings.

40. Role of the court registry in serving procedural documents

Any actions and appeals as well as any court rulings which establish and start the run of a time-limit, any other procedural documents which establish time-limits, and any summonses

are to be delivered to participants of proceedings, except where such have been notified to the participants during a court session.

Procedural documents may be served by the court registry in court premises, electronically, through postal service provider, by registered letter, by unregistered letter or fax, through bailiff, court official, another person or institution, by public service or arranged by participant in proceeding.

41. Duty to provide evidence

It is presumed, that parties provide all evidence needed for adjudication. Though, according to the principle of investigation, an administrative court is required to establish the facts relevant to the matter and, if necessary, collect evidence on its own initiative for such purpose.

42. Form of the hearing

Court hearing of a matter is public unless otherwise prescribed by law. The court has the right to prohibit a person who has expressed contempt for the court and, in order to protect the interests of a minor, to prohibit the minor from attending a public hearing of a matter.

The court declares a proceeding or a part thereof closed at the initiative of the court or based on a petition of a participant in the proceeding if this is clearly necessary:
1) for the protection of national security or public order and above all, for the protection of a state secret or classified information of a foreign state or information intended for internal use;
2) for the protection of the life, health or freedom of a participant in a proceeding, witness or other person;
3) for the protection of the private life of a participant in a proceeding, witness or other person unless the interest of public proceeding exceeds the interest of protection of private life;
4) to maintain the confidentiality of adoption;
5) in the interests of a minor or a mentally handicapped person and above all, for hearing such persons;
6) to protect a business secret or other similar secret unless the interest of public proceeding exceeds the interest of protection of the secret;
7) for hearing a person obligated by law to protect the secrecy of private life of persons or business secrets if the person is entitled by law to disclose such secrets in the course of a proceeding;
8) for the protection of the confidentiality of messages transmitted by post, telegraph, telephone or other commonly used means.

Failure by a party or third party to attend the court session does not prevent the court from hearing the matter if the party or third party has been duly notified of the time and place of hearing the matter and he or she has not given advance notice to the court of a valid reason preventing his or her attendance or has not substantiated his or her failure to attend. In the contrary case, the hearing of the matter must be adjourned. The court does not adjourn hearing a matter for the reason that a participant of the proceedings cannot attend the court session in person if that participant is represented at the court session and the court does not

deem the participant's personal attendance of the court session necessary. In the case that an administrative authority joined to the proceedings fails to appear at the court session, the court makes its decision without that administrative authority if the court considers this to be possible. In the contrary case, the hearing of the matter must be adjourned.

Court hearings are public meaning that all citizens are free to participate. The exception is the witnesses that are going to testify at the hearing – they cannot participate in the hearing before the testimony is given. Normally the judge asks at the beginning of the hearing whether there are witnesses-to-be among the public. When witnesses-to-be are in the courtroom they are asked to wait outside the courtroom until their testimony is given.

43. Judicial deliberation

A collegial court panel adjudicates the dissenting opinions relating to a matter by voting. A judge does not have the right to abstain from voting or to remain undecided. In the event of voting on a series of issues, a member of the court panel who has maintained a minority position does not have the right to abstain from voting on a subsequent issue. Upon an equal division of votes, the vote of the chair governs. A judge who maintains a minority position may present a dissenting opinion. A dissenting opinion which is appended to a court decision is published together with the court decision.

Besides the judges adjudicating a matter, persons who are present in the court due to a reason related to their acquisition of higher education in law or persons employed by that court in the capacity of an adviser and judicial candidates undergoing in-service training with that court may be present at the deliberations and voting of the court with the court's permission unless there is reason to doubt their impartiality. A judge or another person present at the deliberation shall not disclose the contents of the discussions which take place during the deliberations. The duty to maintain the confidentiality of deliberations applies for an unspecified term

C. JUDGMENT

44. Grounds for the judgment

A judgment must be in conformity with the law and state its reasons.

A judgment is composed of an introduction, an operative part, explanations, a descriptive part and reasons.

The reasons of the judgment state the following:
1) facts which are declared to have been proved in the course of investigation of the evidence by court and the evidentiary items which the court relies on in declaring those facts proved;
2) such evidence taken in the matter which the court considers unreliable or irrelevant, together with reasons why the court considers that evidence to be unreliable or irrelevant;
3) facts which the court has declared generally known, together with reasons why the court considers them generally known;

4) reasons why the court does not agree with the assertions of the participants of the proceedings;
5) the law applied by the court;
6) conclusions of the court.

45. Applicable national and international legal norms

The reference norms are mainly acts, laws and regulations of the state, but also case-law (mostly decisions of the Supreme Court). The constitution is being referred to quite often. The courts are using more often international norms, Convention for the protection of Human Rights and Fundamental Freedoms as well as the case law of the European Court of Human Rights. Starting from 1.05.2004 the regulations and directives of the European Union and the case law of the ECJ is quite often referred to.

46. Criteria and methods of judicial review

A specific review is reserved for the acts interpreting the exercise of discretionary powers by administrative authorities.

In assessing the lawfulness of an administrative act issued or an administrative measure taken as a result of the exercise of a discretionary power, the court also verifies compliance by the administrative authority with the limits and objective of the power, and with other rules which govern the exercise of discretion. The court does not conduct a separate assessment of the expediency of a discretionary decision. When verifying the lawfulness of an administrative act or measure, the court does not engage in an exercise of the discretionary power in the place of the administrative authority.

The court cannot exceed the limits given by the application, though (for example if the court sees, that an act is unlawful but if the applicant has not contested it, the court cannot declare the particular act unlawful). If an administrative court sees that a law or a regulation, which is relevant in order to solve the case, is in contradiction with the constitution or European law, the court shall not apply it and initiates a constitutional review at the Supreme Court.

47. Distribution of legal costs

Legal costs are the state fee, the security payable in relation to certain proceedings (e.g. when filing an appeal in cassation with the Supreme Court) and the costs essential to proceedings.

Costs essential to proceedings are:
1) the costs of witnesses, experts and interpreters or translators;
2) the costs of obtaining documentary evidence and physical evidence;
3) the costs of inspections, including the necessary travel expenses of the court;
4) the costs of delivery and forwarding or procedural documents through a bailiff and of delivery and forwarding in a foreign jurisdiction, or of extra-territorial delivery and forwarding to Estonian citizens, and the costs of issuing procedural documents;
5) the costs of publishing a summons or notice in the edition “Ametlikud Teadaanded” or by other means.

The general rule is that procedure expenses are to be borne by the party against whom judgment is given in the matter. In the case of a partial grant of the action the procedure expenses are divided in proportion to the grant. In the case that an action is granted in part and to an extent that was proposed during proceedings by way of a compromise by one of the parties, the court may order the party who did not agree to the compromise to pay the entire amount or a large part of the procedure expenses. There exist some exceptions to the rule; e.g. should it be highly unjust or unreasonable to order a party against whom judgment was given to pay the expenses of the adverse party, the court may order the parties to bear a part or all of their own expenses.

To obtain compensation for procedure expenses, a list of procedure expenses and the expense documents are to be submitted to the court before the commencement of summations. In the case the expense documents and the list of procedure expenses are not submitted, the compensation of expenses is not awarded. The court only orders compensation of procedure expenses which are necessary and reasonable.

48. Composition of the court (single judge or a panel)

In an administrative court (first instance), an administrative matter is decided by a single judge. The president of the court may assign a matter to be determined by a panel of three judges: 1) if the matter is particularly complicated; 2) if a point of principle is at issue in the matter; 3) in other cases where this is in the interests of the administration of justice.

In a circuit court (second instance), an administrative matter is decided by a three-member panel.
In the Supreme Court, an administrative matter is dealt with by the Administrative Law Chamber sitting as a panel of at least three members, by the full panel (5 justices), by the Special Panel or by the Supreme Court en banc. A matter is referred to the full panel when the judges of a panel hearing a matter have fundamentally dissenting opinions in the application of law or when it proves necessary to amend an opinion of the Chamber presented in an earlier judgement. A matter is referred to the Special Panel in case a panel of the Supreme Court upon hearing a matter does not concur with an earlier opinion of another Chamber in questions concerning the application of law. The Special Panel is composed of the members from up to three Chambers. A matter is referred for review by the Supreme Court en banc (i.e. by all the justices of the Supreme Court), if it is considered necessary to adopt a different opinion in the application of law than expressed in recent judgment of the Supreme Court en banc or when the adjudication of the matter by the Supreme Court en banc is essential for the uniform application of the law.

In the case that, during the proceedings, there is a change in the panel assigned to determine a matter, proceedings in the matter must be commenced anew. The new panel is not required to repeat procedural acts performed by the previous panel unless a corresponding application is submitted by a party or third party in the matter.

49. Dissenting opinions

A collegial court panel adjudicates the dissenting opinions relating to a civil matter by voting. A judge who maintains a minority position may present a dissenting opinion. A dissenting opinion which is appended to a court decision is published together with the court decision. This principle applies to the Supreme Court as well as to the courts of lower instance. However, dissenting opinions are very rare at the first and second instance courts.

50. Public pronouncement and notification of the judgment

In administrative procedure the judgment of the court is always delivered in writing.

A court judgment is publicly announced through the court office or pronounced in a court session. In case the judgment of the court is not pronounced at the concluding hearing of the case the court announces the time and the manner of public announcement of the judgment at the last court session. If the matter is heard without holding a court session or if a participant of the proceedings did not attend the court session, the court notifies the participants of the scheduled time of announcement of the judgment. The court also notifies the participants of any changes in the scheduled time of public announcement.

Only a valid reason, in particular, the significant volume and complexity of the matter, justifies public announcement of a judgment later than 30 days after the last court session in which the matter was heard or after the due date for submission of applications and documents in written proceedings,. The public announcement of the judgment may not be scheduled to take place later than 60 days after the last court session in which the matter is heard or after the due date for submission of applications and documents in written proceedings. The expiration of the time-limit for public announcement of a judgment in itself does not constitute grounds for annulment of the judgment.

The scheduled time of public announcement of a judgment and any changes in the schedule are published on the court's webpage without delay after such time or changes are decided.

The judgments of the Administrative Law Chamber of the Supreme Court are only announced in writing; they are never pronounced in public.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata, stare decisis*

Execution of a decision which has entered into force is mandatory for the participants in the proceedings and their legal successors.

Facts which are established in one administrative matter by a court judgment which has entered into force shall not be contested in another administrative matter in which the same participants in the proceedings participate.

The positions set out in a decision of the Supreme Court on the interpretation of the law are obligatory for the court conducting a new hearing of the same matter.

After the entry into force of a judgment or ruling, the participants in the proceedings or their legal successors shall not file the same claim on the same basis with a court.

The judgments of the Supreme Court have in practice a precedent value, with exceeding effects beyond the parties. Thus the solution presented in the Supreme Court judgment can be used in other cases, where similar legal issues arise. The Supreme Court tends to refer to its previous judgments.

52. Powers of the court in limiting the effects of judgment in time

When granting a claim, the court may establish a time-limit for execution of the judgment, or any other important conditions relating to execution of the judgment. At the same time, the court may also determine that the execution of the judgment is to be ensured by some form of interim relief or that interim relief is to be applied until a new administrative act is issued in the stead of the administrative act annulled in the judgment.

The court may declare the judgment to be subject to immediate execution pursuant to the conditions and procedure specified in the Code of Administrative Court Procedure.

53. Right to the execution of judgment

The Code of Administrative Procedure prescribes that a decision shall be executed after it has entered into force. A court judgment shall be executed immediately in the cases provided by law (e.g. judgments concerning payment of public officials wage), or if the court has ordered the immediate execution of the judgment in the cases provided by law. Judgments requiring monetary payment are enforced by bailiffs. For the rest of the judgments there is no state authority to ensure the execution of the judgments. For a failure to comply with a precept contained in a court judgment, the court shall impose a fine of up to 32 000 Euros on the participant in proceeding at fault.

54. Recent efforts to reduce the length of court proceedings

The Estonian Ministry of Justice launched at the beginning of year 2013 the project “More Efficient Administration of Justice”. The project started off at the Harju County Court but has gradually and in parts spread to other courts as well (including the administrative courts).

In the co-operation agreement signed between the Ministry of Justice and the Harju County Court the target was set that by the end of the project at the end of 2014, the average duration of administration of justice in Harju County Court will not exceed 100 days in any type of procedure.

The following activities have been performed in the Harju County Court to achieve the targets:

1) The former consultants have been replaced by judicial clerks having higher qualification; additional positions of judicial clerks have been established in the Court (62 appointed to office);
2) Increasing the efficiency of serving procedural documents. To increase the efficiency of serving procedural documents, a model for service of procedural documents was developed in Harju County Court which prescribes that personal service of documents by a court security guard will be used more in the future and use of Estonian national postal service Eesti Post's services will be decreased.
3) Increasing the contribution of session clerks within the proceedings group (a judge, a judicial clerk and a session clerk). The range of daily tasks of session clerks has been expanded: the minutes-taking of court sessions and issuing of summons are supplemented by additional tasks (sending letters, making queries, etc.).
4. Structural changes in the Court's office. Structural changes have been implemented in the Court's office, in order to increase the efficiency of its work.
5. An Analyst and a Senior Analyst start working. A new position of an Analyst has been established in the Court, with the tasks of analysing the Court's duration of proceedings and highlighting problems in order to provide the Chairman of the Court and the Court House Managers and the Legal Service Manager with the information needed for increasing the efficiency of the Court's work processes and, via management, aiding the administration of justice pursuant to procedure.

Pursuant to the co-operation agreement, the achievement of the project's final targets will be assessed at the end of 2014.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

All the cases are first adjudicated at the first instance courts. An appeal against the decision of the court of first instance can be filed with circuit court (second instance court). An appeal in cassation is filed with the Supreme Court.

First and second instance courts have similar functions. The Supreme Court, however, does not decide on the facts of the case but is only concerned with implementation and interpretation of law.

The only cases, where the Supreme Court acts as the court of first instance, are certain cases concerning constitutional matters (e.g. complaints against the decisions of electoral committee of the republic of Estonia).

56. Recourse against judgments

Estonia has three-level court system, where all the judgements of lower courts are appealable. The Supreme Court has the capacity to decide whether to accept or reject an appeal for proceedings. The Supreme Court does not have to motivate why the appeal was refused to be accepted for proceedings – it is sufficient for the Supreme Court to refer to the relevant provision providing the Supreme Court with such power of discretion. The Supreme Court

does not decide on the facts of the case but is concerned with implementation and interpretation of law.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

The filing of an action or protest shall not prevent the execution or issue of an administrative act or taking of a measure against which the action or protest is filed unless otherwise provided by law.
An administrative court may issue a ruling on the provisional protection of the rights of a person filing an action in all stages of proceedings at the reasoned request of the person filing the action or on its own initiative, if otherwise execution of a court judgment is impracticable or impossible. The judge hearing an interim relief is (can be) the same judge hearing the main proceedings.

58. Requests eligible for the emergency and/or summary proceedings

In order to issue a ruling on provisional legal protection, an application may be filed together with an action or after the filing of an action, or a challenge in mandatory pre-trial proceedings.
An application for provisional legal protection shall be reviewed in written proceedings or at a court session. Submission of evidence and the opinions of other participants in the proceedings may be required only if this is possible without delay. Upon issue of a ruling on provisional legal protection, the public interest and the rights and freedoms of third persons shall be taken into account. The ruling may be conditional. The ruling on provisional legal protection enters into force as of the moment of communication.

A court may annul or amend a ruling on provisional legal protection in all stages of proceedings at the request of a participant in the proceedings or on its own initiative.

By a ruling on provisional legal protection, an administrative court may:
1) suspend the validity or execution of a contested administrative act;
2) prohibit the issue of a contested administrative act or taking of a contested measure;
3) require an administrative authority to issue an administrative act being applied for or take a measure being applied for or terminate a continuing measure;
4) apply other measures for securing an action specified in clauses

An administrative court shall send a ruling on provisional legal protection promptly to the corresponding agency or official or other person performing administrative functions in public law for execution.

A participant in proceedings may file an appeal against a ruling on provisional legal protection or a ruling by which an application for provisional legal protection is denied. A ruling of a circuit court concerning the appeal against such ruling is not subject to appeal if the ruling of a circuit court has the same outcome than that of the first instance court.

According to the case law of the Supreme Court, if the circuit court overrules the first instance court ruling on provisional legal protection, an appeal in cassation to the Supreme Court has been made possible. If a ruling on provisional legal protection is issued in the first place by a circuit court, an appeal against the ruling may be in any case filed with the Supreme Court.

59. Kinds of summary proceedings

The summary jurisdiction proceedings do not differ depending on specific litigants. Upon issue of a ruling on provisional legal protection, the public interest and the rights and freedoms of third persons shall be taken into account.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

The disputes can be settled by administrative authorities or their supervisory bodies or commissions themselves in challenge proceedings. However, generally the challenge proceedings in the administrative authorities is not obligatory (in this respect there is a difference concerning the complaints of imprisoned persons – bearing in mind that such complaints are numerous the Imprisonment Act establishes a compulsory pre-trial procedure). Thus, one can address the administrative authority or right away an administrative court.

A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an action with an administrative court under the conditions and pursuant to the procedure provided by the Code of Administrative Court Procedure.

Pursuant to the procedure provided for in the Code of Administrative Court Procedure, an action with an administrative court may be filed:
1) for repeal of an administrative act or a portion thereof, the repeal of which has been applied for by a dismissed challenge;
2) for issue of an administrative act, the issue of which has been applied for by a dismissed challenge;
3) against a decision on a challenge if it violates the rights of a person regardless of the object of the challenge proceedings.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

There are no independent bodies to settle administrative disputes in Estonia. The functions of the Chancellor of Justice have been described in p. 38. The Chancellor of Justice can also settle some disputes concerning the equal treatment of persons. Everyone has the right of recourse to the Chancellor of Justice for the conduct a conciliation procedure if he or she finds that a natural person or a legal person in private law has discriminated against him or her on the basis of sex, race, nationality (ethnic origin), colour, language, origin, religion or religious

beliefs, political or other opinion, property or social status, age, disability, sexual orientation or other attributes specified by law.

If the parties agree on an agreement presented by the Chancellor of Justice, the agreement can be challenged in administrative courts only in procedural questions.

62. Alternative dispute resolution

The alternative is an application to the administrative body itself, see answer to p. 60.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

Court system's budget per inhabitant in Euros is 21,74 (2009) millions – total budget for court system is 28,8 million Euros for 1,3 million Estonian inhabitants. Unfortunately, it is not possible to specify the figure for administrative justice.

The total budget of first and second instance courts in 2009 is 25 million Euros (0,41 per cent of the state budget. The budget of the Supreme Court in 2009 is 4,1 million Euros (0,07 per cent of the state budget).

The first and second instance courts are financed from the state budget through the budget of the Ministry of Justice. Courts of the first instance and courts of appeal are administered in co-operation between the Ministry of Justice and the Council for Administration of Courts. The Supreme Court, being an independent constitutional institution, administers itself and is financed directly from the state budget.

64. Total number of magistrates and judges

The total number of judges in Estonia is 242.

179 judges are appointed at the first instance courts (151 in county courts and 28 in administrative courts). 44 judges are appointed at the second instance courts (10 administrative judges). The Supreme Court is composed of 19 justices (the Administrative Law Chamber has 5 members).

65. Percentage of judges assigned to the review of administrative acts

About 18% of the total number of judges is assigned to the review of administrative acts (43 out of 242).

66. Number of assistants of judges

The numbers of legal assistants (law-clerks) are the following:
First instance (administrative courts) – 24 (per 28 judges)
Second instance (administrative chambers) – 11 (per 11 judges)
Supreme Court (administrative chamber) – 13 (per 5 justices)

67. Documentary resources

The Supreme Court has the department of legal information that deals with the case-law analysis. Case law analysis is carried out in the Supreme Court by analysts who work in a separate department and are not involved in adjudication. The standpoints and findings expressed in the analysis are not binding upon judges.

Case law analysis is a process of studying court decisions (and if necessary, other court documents as well) in all of its aspects in order to identify problems in the uniform application of law by the courts. In the course of such a research an analyst ascertains the scope of problems that exist in the field of application of material and/or procedural norms. Case law analysis is not counting numbers.
Research topics arise from the legal reality. For example, a judge can call an analyst and describe a problem they have encountered. Several topics are raised at national or international law conferences and meetings. Also, the chambers of the Supreme Court often suggest special issues for study. Last but not least, analysts themselves often identify problems that need further investigation, since they study multiple court cases on a daily basis.

Case law in private law, criminal law, administrative law and, from 1 March 2011, European law is analysed. In the field of European law, the case law of European Court of Human Rights and European Court of Justice is analysed. As of 1 January 2013, 72 analyses have been prepared, of which 33 discuss private law and civil procedural law, 18 discuss administrative law and administrative court procedure, 8 penal and criminal procedural law and 5 constitutional review and European legislation. Eight analyses combine several areas.

In addition, all courts have libraries containing legal texts, legal textbooks and Estonian law journals. The library of the Supreme Court is also equipped with books and journals in foreign languages.

68. Access to information technologies

All the work in the courts is computerized. Judges can obtain the following information over the Internet:
• All Estonian laws (also their previous redactions as well as consolidated versions of the laws currently in force);
• All court judgments (all of the judgments of the Supreme Court, all of the judgments of lower courts since 2001);
• All legal acts of the European Union and ECJ case-law;
• International conventions, contracts etc.
• Other materials which the judges find necessary for adjudication.

All the computers in the courts have internet connection. Every member of the court staff has a personal computer.

In addition, the E-File proceedings information system has been implemented. The E-File system is a central information system which provides an overview of the different phases of the criminal, civil, administrative and misdemeanour procedures, procedural acts and court adjudications to all the parties involved.

69. Websites of courts and other competent bodies

The Ministry of Justice administers a portal dedicated to first and second instance courts (http://www.kohus.ee/en) and court procedure. Contacts and information on first and second instance administrative courts can also be found on this website.

Court rulings of first and second instance courts can be accessed via the website of Riigi Teataja (https://www.riigiteataja.ee/index.html). The same website also provides information on dates and venues of court hearings.

The website of the Supreme Court (http://www.riigikohus.ee/?lang=en) can also be accessed via the portal of lower instance courts. All the reasoned judgments of the Supreme Court can be accessed via the website of the Court by using search tools or keyword tree. In addition the website provides information on the structure and functioning of the Supreme Court, on the dates of court hearings, on how to issue a petition, on state fees etc.

B. OTHER STATISTICS

70. Number of new applications registered every year

Total number of new applications registered in 2013 (01.01.2013–31.12.2013) was 4972

First instance courts: 2957

Second instance courts: 1245

Supreme Court: 770

71. Number of cases heard every year by the courts or other competent bodies

Total number of cases heard in 2013 (01.01.2013–31.12.2013) was 4106

First instance courts: 2687

Second instance courts: 1326

Supreme Court: 93 (a system of granting a leave for appeal)

72. Number of pending cases

Total number of pending cases in 2013 (31.12.2013) was at the

First instance courts: 1026

Second instance courts: 640

Supreme Court: balance of cases at the beginning of year 2013 was 32; balance of cases at the end of the year 2013 was 42

73. Average time taken between the lodging of a claim and a judgment

First instance courts: 144 days (year 2013); 171 days (year 2012); 165 days (year 2011)
Second instance courts: 335 days (year 2013); 329 days (year 2012); 235 (year 2011)

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Second instance courts: In 2013 12, 1% of the total number of judgments delivered by first instance administrative courts were annulled in full or in part or the judgment was amended.

Supreme Court: Total number of administrative cases heard – 93. In 62 cases the decision of the lower instance court was annulled; in 16 cases the decision of the lower instance courts was not amended; in 15 cases the statement of reasons by lower instance courts was amended.

75. The volume of litigation per field

Of the total number of cases (2687) heard by first instance administrative courts:
- Ca 29% (758 out of 2687) were cases concerning judicial administration;
- Ca 18% (496 out of 2687) were cases concerning tax law;
- Ca 9% (241 out of 2687) were cases concerning aliens;
- Ca 5% (146 out of 2687) were cases concerning public order;
- Ca 5% (140 out of 2687) were cases concerning social law;
- Ca 5% (137 out of 2687) were cases concerning planning and construction;
- Ca 29 % (769 out of 2687) were cases concerning other matters.

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

There do not exist any above asked researches.