ADMINISTRATIVE JUSTICE IN EUROPE

Questionnaire on the inventory and typology of review by the courts of administrative authorities in the 25 Member States of the European Union

Preliminary Questions

1. The main aspects in the evolution of the review of decisions and acts of Administrative authorities.

Before the Soviet occupation, the independent Republic of Estonia had a separate Code of Administrative Court Procedure since 1919 and also a separate chamber for administrative jurisdiction of 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 the re-gaining of independence came into force 15 September 1993.

New Code of Administrative Court Procedure (currently in force) came into effect 1 January 2000.

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 and city courts and administrative courts adjudicate matters in the first instance. Courts of second instance, which are called courts of appeal or sometimes are called also, as district or circuit courts, shall hear appeals against decisions of courts of first instance. The courts of appeal are situated in Jõhvi, Tartu and Tallinn. The court of the highest instance is the Supreme Court, situated in Tartu. Supreme Court consists of four chambers: Administrative Law Chamber, Civil Law Chamber, Criminal Law Chamber and Constitutional Review Chamber. Thus, the Supreme Court is also a constitutional court with a special chamber for constitutional review comprising of 9 judges who are at the same time members of other chambers of the Supreme Court. Administrative acts can only be contested in administrative courts, and further in the administrative chamber of district court and then in the administrative chamber of the Supreme Court.

There are four administrative courts of first instance in Estonia (Tallinn, Tartu, Pärnu and Jõhvi) with altogether 26 judges working in them. However, according to the courts reform, there will be only two administrative courts of first instance which will cover all Estonia starting from 1 January 2006: Tallinn administrative court and Tartu administrative court. However, these two courts can have several court buildings and therefore the possibility to held hearings etc. will remain also for instance in Pärnu.

The decisions of county, city and administrative courts are reviewed by courts of appeal in the second instance by way of appeal proceedings on the basis of an appeal, appeal against a ruling or a protest. In courts of appeal matters are reviewed collegially, i.e. the adjudication of an appeal is conducted by a judicial panel comprising of three judges. A special administrative law chamber which reviews administrative matters by way of appeal proceeding has been formed with the Tallinn Court of Appeal. The Tartu Court of Appeal also

reviews administrative matters. The competence of administrative courts and administrative court procedure are provided by the Code of Administrative Court Procedure.

2. Does the review by the courts of administrative acts and actions aim to submit administrative authorities to law and protect individual rights, in other words the rule of law?

Yes, the review by the courts of administrative acts and actions aims to submit administrative authorities to law and protect 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 art. 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 January 2002 the Administrative Procedure Act came into force. The aim of the act is to ensure the principle of the rule of law to be considered 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. The definition of an administrative authority in Estonia includes public legal entities and in some cases private persons exercising public authority (notaries, bailiffs). Administrative authority means any agency, body or official, which is authorised to perform public administration duties by an Act of Administrative Procedure, a regulation issued on the basis of an Act or a contract under public law.

4. There is a classification of administrative acts in Estonia. 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 – Who reviews administrative acts?

A- Competent bodies

5. Is the review of administrative acts undertaken by general bodies related to the administrative authorities, and similar to courts? 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.

6. Answered in p. 1.

B- Rules governing competent bodies

7. /-/

8. The existence, competence and duties of administrative courts are governed by:
- the Constitution
- the Courts Act
- Code of Administrative Court Procedure (the most specific)

There are also internal rules of the courts, but they do not regulate procedure.
The abovementioned rules are set out in texts. Of course there is exists as well a case law interpreting the competences of administrative courts, especially the decisions of the Supreme Court. The administrative law chamber of the Supreme Court and the special panel comprised from members of different chambers of the Supreme Court have adjudicated about the competences of the administrative courts as well as about the jurisdiction of the administrative courts also in connection with distinguishing between the jurisdiction of administrative and ordinary courts. In practice, lower courts also refer to the judgments of higher courts: mostly the Supreme Court, but also district courts.

C- Internal organization and composition of competent bodies

9. /-/

10. There are four first instance administrative courts in Estonia (after the reform from 1 January 2006 - two first instance courts). The district courts have the function of appeal courts. There are three of them, but only two are adjudicating administrative matters. That means there are two courts of appeal for administrative matters. The highest instance is the Supreme Court, which includes an administrative chamber comprising of five judges.

Chart (from 1 January 2006):

3rd instance: Administrative Law Chamber of the Supreme Court (only cassation, court errors, petitions for review filed against court judgments)

2nd instance: district court of Tallinn (administrative law chamber) and district court of Tartu (only appeal)

1st instance: administrative court of Tallinn and administrative court of Tartu

D- Judges

11. Do judges who review administrative acts belong to a specific category?

Judges reviewing administrative matters have the same position as ordinary judges. There are altogether 247 judges in Estonia: 153 of them on county and city courts, 27 of them in administrative courts, 48 of them in district courts and 19 in the Supreme Court. All judges have same social guarantees and position. Judges, also administrative court judges are appointed for life. They cannot be transferred from one court to another without consent. Education and training, as well as other conditions to become a judge are the same for judges who review administrative acts as for ordinary judges. The same applies to the appointment of administrative matter judges, sometimes however the background of a second or third

instance administrative matter judge can differ from ordinary judges, thus persons who have achieved previously a high ranking in civil service can also be appointed as judges reviewing administrative acts of second and third instance without being a judge before. Salaries of the judges are regulated by the Courts Act, no difference is made between administrative matter judges and ordinary judges. Judges of the higher courts have slightly bigger salaries.

12. Recruiting of judges in charge of judicial review of administrative authorities.

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 city court, or administrative court. 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. 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.

An Estonian citizen, who has fulfilled: - an accredited law curriculum of academic studies, - has proficiency in the Estonian language at the advanced level, - is of high moral character and has the abilities and personal characteristics necessary for working as a judge, may be appointed judge.

The following shall not be appointed judge:

- a person who is convicted of a criminal offence;
- a person who has been removed from the office of judge, notary public or bailiff;
- a person expelled from the Estonian Bar Association;
- a person who has been released from public service for a disciplinary offence;
- a bankrupt person.

Considering that the candidate fulfils the above-mentioned criteria, the recruiting consists of following steps:

- first, there is a competition to be appointed as a candidate for judicial office (a complex exam, interview).
- Then the candidate needs to fulfil a preparatory service. The duration of the preparatory service is two years, but it may be reduced, if the person has been employed for at least two years as a senior clerk or clerk of a sworn advocate, assistant prosecutor or in any other position, which requires high qualification in law. A person who has been employed as a judge or who, for at least two years immediately before running as a candidate, has worked as a sworn advocate or prosecutor may be exempted from preparatory service or the person's term of service may be reduced by a reasoned decision of the judge's examination committee.
- Judges shall be appointed to office on the basis of a public competition. The Minister of Justice shall announce a public competition for a vacant position of judge of a county or city court, administrative court and circuit court.
- After that (providing there is a vacancy) a judge's exam is to be passed. Judge's examination shall consist of an oral and a written part. The oral part of a judge's examination means the assessment of the theoretical knowledge of a candidate for judicial office. The written part of a judge's examination means case analysis. A

person who worked as a judge directly before appointment shall be exempted from the judge's examination.

- The suitability of the personal characteristics of a candidate for judicial office shall be assessed on the basis of an interview. The judge's examination committee may consider also other information concerning the candidate for judicial office which are important for the performance of the duties of a judge, make inquiries and ask for the opinion of the candidate's supervisor.
- Candidate for judicial office must pass a security check (with the duration of 3 months) before being appointed judge, for which he or she shall submit, through the judge's examination committee, the form used to apply for an access permit to state secrets classified as top secret, and his or her consent for collection of information concerning him or her.
- 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*. The concrete court or the concrete chamber of the Supreme Court in case of the Supreme Court justices, where the judge shall serve, is decided by the Supreme Court *en banc*, thus the judge shall be appointed to court service by the Supreme Court *en banc.*
- Justices of the Supreme Court (including higher administrative matters justices) shall be appointed to office by the Parliament, on the proposal of the Chief Justice of the Supreme Court. There are some other differences in the appointment of Supreme Court justices as well; first of all they do not need a preparatory service even if they have not served as judges before. There will be however a public competition. Before proposing a candidate to the parliament, the Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court *en banc* concerning a candidate. Furthermore, the Council for Administration of Courts provides an opinion on the candidates for a vacant position of a justice of the Supreme Court. Then the candidates are being interviewed by the Constitutional Committee of the parliament. The Chief Justice of the Supreme Court shall be appointed to office by the Parliament on the proposal of the President of the Republic.

13. Professional training of judges.

Before becoming a judge a university degree in law is needed plus see above (answer to p. 12) the conditions for judges recruitment: preparatory service, exam, etc. As to the constant and additional training of judges who are already in office, a judge is required to develop the knowledge and skills of his or her specialty on a regular basis and to participate in training. The Training Council is responsible for the training of judges. The Training Council shall be 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. The judge members of the Training Council are elected by the judges themselves at the annual general assembly of Estonian judges (court *en banc* comprised of all Estonian judges). Support services shall be provided to the Training Council by a foundation established for the training of judges (Estonian Law Center, a non-profit organization founded in 1995 in order to provide comprehensive program of legal training

seminars to the Estonian legal community). The judges do not pay for the training; the hours of the training are working hours. The judges are free to attend all the trainings, but 10 days per year are compulsory. There are mostly specialised trainings (like taxes, foreigners law etc) but also common, like computer, negotiation, psychology etc.

14. The judges career structure.

Judges shall be appointed to office on the basis of a public competition. The recruitment of a judge was 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. A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court. All judges of first instance administrative courts are free to participate in the competition of a judge's position at the appeal court level.

The Supreme Court *en banc* may appoint a judge to office to another court of the same or a lower level with the consent of the judge and on the proposal of the Minister of Justice.

In the first instance courts a judge may become a president (chairman) of the court if the Minister of Justice so appoints. The Minister of Justice shall make the appointment after having considered the opinion of the respective full court. The chairman of a circuit court shall be appointed from among the judges of the same court for seven years. The Minister of Justice shall appoint the chairman of a court after having considered the opinion of the full court of the circuit court.

15. The judges' professional mobility.

A judge may not be transferred from one court to another without his or her consent. In the interests of administration of justice, the Minister of Justice may transfer a judge of a court of the first instance or a court of appeal, with the consent of the judge, temporarily to another county or city court after having previously considered the opinion of the chairman of the court where the judge permanently administers justice. A judge may be transferred to the service of the Supreme Court or the Ministry of Justice 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, the authority of the judge shall be suspended. He or she shall however retain the judge’s salary and other guarantees during service in the Supreme Court or the Ministry of Justice. A judge may return to the same court to a vacant position of judge by giving at least one month’s advance notice thereof. The Supreme Court *en banc* may appoint a judge who wishes to leave the service in the Supreme Court or the Ministry of Justice to another court of the same level or a lower level as a judge with his or her consent. If after leaving the service in the Supreme Court or the Ministry of Justice, a judge does not have the opportunity to return to his or her former position of judge, and he or she does not wish to be transferred to another court, the judge shall retain the judge’s salary and other guarantees during one year.

E- Role of competent bodies

16. What are different kinds of recourse against administrative acts and action?

The court can declare an administrative act unlawful, but it can also annul it or part of it.
The court has the right to a full review of an administrative act, action or contract.
To be more precise, an administrative court has the right:
1) to annul an unlawful administrative act wholly or partially and, if possible, issue a precept for the reversal of the administrative act, indicating the method of reversal;

2) to issue a precept for execution of an unlawfully suspended administrative act, for the issue of an unissued administrative act or for an untaken measure to be taken;
3) to declare an administrative act or measure unlawful if the legitimate interest of the person who filed the action or protest in such finding is expressed in the action or protest;
4) to order the payment of compensation for damage caused in public law relationships;
5) to establish the existence or absence of a relationship in public law;
6) to dismiss the action or protest.

An administrative court has the right to annul only a secondary condition of an administrative act if:
1) the agency, official or other person performing administrative functions in public law who issued the administrative act was required to issue the administrative act without the secondary condition;
2) annulment of the secondary condition separately from the administrative act does not damage the public interest or restrict the rights and freedoms of third persons.

In other cases of contestation of a secondary condition, an administrative court may annul the unlawful administrative act wholly and issue a precept for the issue of a new administrative act.
If a person filing an action applies for the whole or partial annulment of an administrative act or for a measure to be taken and the application concerns the payment of a certain amount of money, the administrative court, if the action is allowed, shall determine in the judgment the amount payable and order the payment of the amount for the benefit of the person who filed the action.

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. Do mechanisms exist for the delivery of a preliminary ruling?

An administrative court does not give itself preliminary rulings; neither does the Administrative Law Chamber of the Supreme Court. But an administrative court shall suspend proceedings if the hearing of a matter is not possible before the adjudication of another matter (also in another jurisdiction), until the entry into force of the decision. An administrative court may suspend proceedings also during the time when the constitutional review matter is adjudicated in the proceedings of the Supreme Court, until entry into force of a judgment made in the matter, if this may affect the validity of legislation of general application subject to application in the administrative matter. The administrative courts can set aside a law which they think is unconstitutional in concrete matter and not apply it, but they cannot annul unconstitutional laws. The latter can be only done by the Supreme Court as a constitutional court. Proceedings are suspended by a ruling of the administrative court. An appeal may be filed against a ruling on the suspension of proceedings. Proceedings shall be resumed on the application of a participant in the proceedings or on the initiative of the court once the circumstances which constituted the grounds for the suspension of the proceedings cease to exist. Proceedings are resumed by a ruling of the administrative court. Proceedings shall be resumed from the point at which they were suspended

18. Does a competent body have only judicial functions or does it also have an advisory role vis-à-vis the executive or the legislature?

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. /-/

F- Allocation of duties and relationship between competent bodies

20. Do the highest appeal courts have an instrument or a procedure to ensure the harmonised and uniform application and interpretation of law?

The positions set out in a decision of the Supreme Court on the interpretation and application of the 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 a full composition of its members.
The Supreme Court has also the functions of a constitutional court (it has a Constitutional Review Chamber). Exercising those functions, the Supreme Court has the competence to declare a law or parts of it null and void. That means either the parliament has to adopt new regulation or the matter will be left unregulated.

II – How are administrative acts and actions reviewed by the courts?

A – Access to justice

21. How significant are the pre-conditions for access to the courts in the system of control of administrative authorities?

On the whole, access to the courts in the system of control of administrative authorities does not have any preconditions; there are no mandatory objection proceedings (the term challenge proceeding or internal administrative review is also used in some English translation). 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 objection. An objection cannot be filed against an act or measure of an administrative authority over which the Government of the Republic exercises supervisory control.

In a few fields, obtaining of a prior administrative act constitute preconditions for review by the courts. About the pre-conditions for a complaint see also answers to p. 22 and 23.
An administrative court which receives an action or protest verifies the compliance of the action or protest with the requirements provided for in the Code of Administrative Court Procedure which among others foresees that the action must state the rights or freedoms of the person filing the action which are violated or restricted by the contested administrative act or measure, and in an action for the establishment of the existence or absence of a public law relationship or the unlawfulness of an administrative act or measure to set out additionally the legitimate interest in the establishment of the fact in question of the person filing the action
After acceptance of an administrative matter, however pre-trial proceedings are conducted in which the court prepares the matter so that it can be adjudicated without interruptions in one court session.

22. Who may 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. There are also judgments of the Administrative Law Chamber of the Supreme Court interpreting the legitimate interest which state, that the legitimate interest cannot be public interest, but the legitimate interest can on the other hand exist also in preventive or rehabilitating purposes.
According to the State Libality Act, a person may also request that an administrative act be not issued or administrative measure be not 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.

23. Specify the conditions that must be satisfied in order for an application for judicial review to be admissible.

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.

The persons or bodies that want 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.

In the process of amending the Code of Administrative Procedure, which is being proceeded in the Parliament at the moment, there have been made proposals to foresee that all actions and protests shall be filed of the seat or place of the person or body filing the action or protest.

There are also some other so to say technical requirements, which have to be met while filing the action or the protest. An action or protest shall be filed in writing and shall set out the following:
1) the name and permanent residence or seat (postal address) of the person filing the action or protest and the position and telecommunications numbers of the person filing the protest;
2) the clearly expressed request of the person filing the action or protest pursuant to § 6 of this Code;
3) the name of the agency or the name and the position of the official or other person performing administrative functions in public law who issued the contested administrative act or took the contested measure;
4) the reasons why the person filing the action or protest finds that the administrative act or the measure is unlawful.

24. Is recourse to the courts subject to time limits?

An action for 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.

If an action is filed after the expiry of the term for filing actions with an administrative court, the action shall set out the request for restoration of the term and the reasons why the term was allowed to expire.

In pre-trial proceedings, an administrative court verifies whether an action was filed within a specified term and, after having obtained the opinions of the other participants in the proceedings, adjudicates an application for restoration of the term for filing an action. An administrative court shall satisfy an application for the restoration of a term if the court finds that the term was allowed to expire for good reason. If an administrative court finds that an action was filed in violation of a term and an application for the restoration of the term was not submitted, or if the administrative court denies an application for the restoration of a term, the court shall terminate the proceedings by a ruling. An appeal against a ruling on adjudication of an application for restoration of a term or a ruling on termination of proceedings may be filed with a circuit court within ten days after the receipt of the ruling.
Against a ruling of the circuit court on adjudication of an application for restoration of a term or a ruling on termination of proceedings a may be complained (an appeal in cassation proceedings) to the Administrative Law Chamber of the Supreme Court.

25. Are there certain administrative acts or actions that are not open to review by the courts?

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

26. Are applications for review by the courts subject to screening procedures? Distinguish between first instance, appeal, and highest jurisdiction.

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. How must the applications be presented? Are there specific forms or is the applicant free to choose the format?

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.

The Code of Administrative Procedure foresees the facts that have to be presented if the application, but no specific forms exist.

The action must clearly express the request of the person filing the action or protest, the content of the contested administrative act or measure, the reasons why the person filing the action or protest finds that the administrative act or the measure is unlawful, the rights or freedoms of the person filing the action which are violated or restricted by the contested administrative act or measure, thus the application needs to be founded (see also answer to the p. 23).

28. Has the possibility of bringing proceedings via the Internet been envisaged or is it already possible?

The possibility of bringing proceedings via the Internet is possible provided that the applicant is able to prove his or her identity by specific certification (the digital signature). Reading of the digital signature requires special technical possibilities, which all courts in Estonia possess.

At the moment, none of the proceedings of the court are being done via Internet. Through, all the judgments are published via Internet. The ones including delicate personal data are published without facts identifying the applicant.
There have been also plans to introduce an "e-fail" in Estonian courts in the future.

29. Is there a pecuniary charge for lodging an application for judicial review?

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 pecuniary charge for lodging an application for judicial review is:
10 Estonian crowns in the first and second instance court (0,66 Euros can be seen as a stamp duty)
400 Estonian crowns in the Supreme Court (25 Euros), this is called a payment of security on cassation.
A document, which certifies the payment of security on cassation, shall be annexed to an appeal in cassation. The appeal of cassation will be not examined if the payment of security on cassation has not been paid. An application for release from payment of security may be filed with a circuit court together with an appeal in cassation. An appeal may be filed against

a court ruling by which a court refuses to release a person from the payment of a state fee or security.
The court can decide that the pecuniary charge is not needed when the applicant proves that he or she is not able to pay the charge.
If a court finds that a person is insolvent, the court may, at the request of the person, fully or partially release the person from payment of a state fee into the public revenues by a ruling. Release from payment of state fee in a court of first instance shall not release a person from payment of state fee for an appeal filed against the decision of the court of first instance. An application for release from payment of state fee for an appeal filed pursuant to appellate procedure shall be filed with an administrative court together with the appeal.
As to the security for an appeal in 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, petition for review or petition for the correction of a court error is not accepted.

30. Is recourse to a solicitor/lawyer or counsel compulsory?

The recourse to a solicitor/lawyer or counsel is not compulsory. If the judge believes, that the applicant would be more able to defend his or her rights with the help of a solicitor/lawyer, the judge recommends the applicant to hire a solicitor/lawyer.
In the Supreme Court in the oral hearings sworn advocates or senior clerks of sworn advocates may be representatives of the parties. This does not apply to the representatives of agencies, officials or other persons performing administrative functions in public law and to the representatives of supervisory agencies and state or local government agencies involved by the court - they can be represented also by their officials and lawyers.

31. As regards the costs of the proceedings, can they be paid through legal aid?

Possibilities to refund fees of a solicitor/lawyer through legal aid exist. State legal aid is granted on the bases and pursuant to the procedure prescribed in the State Legal Aid Act. The person has to prove that he or she is not able to hire a lawyer and the judge appoints him or her a lawyer free of charge (financed by the state). Only members of the Estonian Bar Association can render services financed through legal aid. The applicant is free to nominate the solicitor/lawyer he or she wants to represent him or her, provided he or she has a written consent of the particular lawyer. If the applicant gives the court false facts about his or her economic situation, the applicant will have to pay the sum of the aid back to the state. Legal aid is granted to natural or legal persons not only in connection with proceedings in an Estonian court, but also in connection with proceedings in an administrative authority. Legal aid is granted by the court conducting proceedings in the matter or the court whose jurisdiction would include conducting proceedings in the matter. Refusal to grant legal aid can be challenged before the courts.

32. Is there a 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 more accurate before, since the amount of the payment

on security on cassation was one-half of the minimum monthly wage, now days it is a fixed sum of 400 crowns and therefore can hardly be seen as preventing abusive applications.

B – Main trial

33. Which fundamental principles govern the main trial hearing?

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. How is the judicial impartiality ensured?

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:
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 not be employed other than in the office of judge, except for teaching or research.
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 (this prohibition will be in force until 1 January 2008 starting from then a judge may not belong to the leadership of a political party or its audit or revision authorities);
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.
Judges shall be appointed to office on the basis of a public competition.
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."
A judge's salary is a sum which equals to four average salaries in Estonia in the previous year. In addition to a salary, judges shall receive additional remuneration for years of service as follows:
1) as of the fifth year in employment as a judge – 5 per cent of the salary;
2) as of the tenth year in employment as a judge – 10 per cent of the salary;
3) as of the fifteenth year in employment as a judge – 15 per cent of the salary.
A person who has been employed as a judge for at least fifteen years has the right to receive a judge's old-age pension when he or she attains the pensionable age. The amount of a judge's old-age pension shall be 75 per cent of his or her last salary.

As to the **impartiality**, a judge must perform his or her official duties in an impartial manner and without self-interest and shall comply with service interests also outside service. The participants in proceedings have the right to submit objections against the judges hearing their matter if they have doubts in judge's impartiality.
A judge cannot participate in the hearing of a matter and shall be removed if he or she is directly or indirectly personally interested in the outcome of the matter or if other circumstances give reason to doubt his or her impartiality. A judge shall be removed if:
1) he or she has participated in a previous hearing of the matter as a witness, expert, interpreter, translator or representative;
2) he or she is a relative (parent, child, adoptive parent, adoptive child, brother, sister, grandparent or grandchild), the spouse or a relative by marriage (spouse's parent, child, adoptive parent, adoptive child, brother, sister, grandparent or grandchild) of a party or other participant in the proceeding;
Persons who are related to each other by blood or by marriage as shall not be included in the same panel of a court.
A judge who participates in the hearing of a matter in the court of first instance cannot participate in the hearing of the matter in the circuit court or Supreme Court. A judge who participates in the hearing of a matter in a circuit court cannot participate in the hearing of the matter in a first instance court or the Supreme Court. A judge who participates in the hearing of a matter in the Supreme Court cannot participate in the hearing of the matter in a county, city or circuit court.

35. After the application has been lodged, can the applicant rely on legal arguments raised for the first time in the course of the 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 mean the main hearing is cancelled and will take place later.
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, such as if:
1) the matter was adjudicated by a court (judge) who pursuant to law did not have the right to adjudicate the matter;
2) the decision of the court concerns a person who was not summoned to court pursuant to the requirements of law;
3) the judge has not signed the judgment or any of the judges has not signed the judgment or the judgment has been signed by judges (a judge) who were (was) not designated in the judgment;
4) the minutes of the court session are not included in the file concerning the matter.

36. Which other persons can intervene during the main hearing?

The persons who can be involved are the following:

1) 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;
2) an agency or official exercising supervision;
3) a representative of a state or local government agency.

An administrative court may involve above mentioned persons to provide an opinion with regard to a matter.

A third person may also file an appeal or an appeal in cassation if he or she is not pleased with the judgement of previous instance.

37. Is there a representative of the State ("ministére public") who may submit pleadings in cases concerning administrative law?

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.
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. There are no time-limits as to the filing of the protest.

38. Is there a institution or a person who plays a role analogous to that of the role played by the French *comissaire du gouvernement* before the *Conseil d'Etat* that is to say, who is completely independent and impartial and who delivers an opinion in open court, analysing the legal arguments and suggesting how the case ought to be disposed of in a case?

The Chancellor of Justice (also called as Legal Chancellor, has also functions of an ombudsman) is in his or her activities an independent official who reviews the legislation of general application of the legislative and executive powers and of local governments for conformity with the Constitution of the Republic of Estonia and the Acts of the Republic of Estonia. The Chancellor of Justice analyses proposals made to him or her concerning the amendment of Acts, passage of new Acts and activities of state agencies, and, if necessary, presents a report to the Parliament. If the Chancellor of Justice finds that legislation of general application, in full or in part, is contrary to the Constitution or the law, he or she shall propose to the body which passed the legislation that the legislation or a provision thereof be brought into conformity with the Constitution and the law within twenty days. Everyone has the right of recourse to the Chancellor of Justice in order to have his or her rights protected by way of filing a petition to request verification whether or not a state agency, local government agency or body, legal person in public law, natural person or legal persons in private law performing public duties adheres to the principles of observance of the fundamental rights and freedoms and to the principles of sound administration. If the body which passed legislation of general application has not brought the legislation or a provision thereof into conformity with the Constitution or the law within twenty days after the date of receipt of a proposal of the

Chancellor of Justice, the Chancellor of Justice shall propose to the Supreme Court that the legislation of general application or a provision thereof be repealed. However these issues concern the constitutionality review and not administrative jurisdiction of the Supreme Court.

39. How can proceedings come to an end before a decision is reached by the court?

If a person filing an action or protest fails to eliminate the deficiencies (see the requirements in point 23) within a specified term, the administrative court shall, by a ruling, return the action or protest to the person filing the action or protest.
An administrative court terminates proceedings by a ruling:
1) if the matter does not fall within the competence of an administrative court;
2) if the person who filed an action or protest discontinues the action or protest and the court accepts the discontinuance;
3) if an administrative act against which an action or protest is filed has been repealed, or an unissued administrative act has been issued, or a suspended administrative act has been executed or a measure taken, except if the person who filed the action or protest applies for the hearing of the matter;
4) if there is a decision in the same matter which has entered into force or if the discontinuance of an action or protest in the same matter has been accepted by a court ruling;
5) upon the death of the person who filed the action, or the death of the individual, or legal person in private law against whom the action was filed, if the legal relationship under dispute does not allow legal succession, or upon the dissolution of a legal person without legal succession;
6) if the participants in the proceedings settle and the court approves the settlement.
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. Does the court registry itself forward the various written applications and pleadings to the parties?

Yes. All the documentation presented by one party to the court is forwarded to the other party.

41. Who is responsible for providing the evidence? The parties or the court?

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. How is the hearing conducted? Is it public? Can it take place *in camera* and in which circumstances? Who can take part in the hearing and how?

The hearing is oral and public (see also answer to p. 33). 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 district courts and the Supreme Court can adjudicate matters without court hearing (in written proceedings) when the court finds it possible and where the parties have not requested a court hearing.

The parties or witnesses in prison do not have to come to the court, there are certain cameras and monitors in prisons and in courtrooms that let the person communicate with the court and *vice versa.*
All parties to the case are free to participate in the court hearing. The hearing is conducted by the judge (or judges, if the case is being solved by several judges as is at circuit court and Supreme Court level). As court hearings are public, all citizens are free to participate in the hearing. As the witnesses who are going to testify at the hearing cannot participate in the hearing before the testimony is given, the judge asks the hearing is opened whether there are no witnesses-to-be among the public. If there are none, everyone is free to stay. If there are people, whom one party has brought to the court to testify, they are sent out to wait in the court-house. If the judge satisfies the application to listen to the witnesses, the witness is sent in.

43. When and how is judicial deliberation conducted? Who can take part in it?

After the summations, a court shall retire to make a judgment, and shall give notice of the time and manner the judgment will be made public. The courts make judgments on behalf of the Republic of Estonia. If the judgment is made by collegial body, judges shall resolve differences of opinion which arise in the adjudication of a matter by majority vote, unless otherwise provided by this Code. In a circuit court and in the Supreme Court, the judge in charge of preparation of the matter shall give his or her opinion first, unless he or she is the presiding judge in the matter, and voting shall continue according to seniority in office, starting with the most junior judge. Upon an equal division of votes, the vote of the presiding judge decides the matter. The presiding judge shall vote last. A judge does not have the right to abstain from voting or to remain undecided. The judge who maintains the minority position does not have the right to abstain from voting on any subsequent difference of opinion. He or she shall accept the opinion of the majority in the previous vote. A judge who maintains a minority position may present a dissenting opinion. In Estonia the judges who remained in minority in circuit court or Supreme Court may write their dissenting opinions and they are made public.
Judicial deliberations are taken place in the presence of only by judges, the advisers and practicants are allowed to take part in the deliberations on special consent. The disclosure of discussions which take place during the deliberations of judges is prohibited. A judge shall not disclose discussions which take place at the time the decision is made. The duty of confidentiality of deliberations applies for an unspecified term and remains in force also after termination of the service relationship. If a retired judge does not comply with the duty of confidentiality or the duty of confidentiality of deliberations, his or her judge's pension may be reduced by not more than 25 per cent as a disciplinary punishment. The pension shall not be reduced for longer than one year.

A judgment of an administrative court shall be pronounced in the court room or made public in the court office within fifteen days after the end of court session (in the Supreme Court the judgments are made public no later than within thirty days after the hearing took place, at the end of a session, the court shall announce when and how the decision will be made public After having heard the participants in the proceedings, the Supreme Court shall proceed to make a decision. A copy of a decision shall be served on the participants in the proceedings in the office of the Administrative Chamber, or at their request, shall be sent to them by post within five days after the decision is made. The date of a decision is the date on which it is signed.) At the end of the court session, the court shall communicate when and where the judgment shall be pronounced or made public. If the participants in the proceedings so desire,

they may receive copies of a court judgment or court ruling from the court office after the judgment or ruling is pronounced or made public. A copy of a court judgment or court ruling shall be immediately sent to the agency or 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 was filed, and to the person who filed the protest.
The date of a court judgment is the date on which the judgment is made public.

C – Judgement

44. How are the grounds of the decision given?

The grounds of the judgment are given in details. The aim is: the judgment has to be lawful and grounded. The parties and the public have to understand, why the court made a particular decision. From the beginning of 2006, the judgment can be made without grounds on condition, that both of the parties have declared at the hearing they won't appeal the judgment. Presumably those cases are going to be very rare.
A court judgment shall be lawful and reasoned. Upon making a judgment, a court shall evaluate the evidence, decide which facts are established, which Act or legislation established on the basis of an Act applies in the matter and whether the action should be satisfied. If several complains are filed in a matter, the court shall make a judgment concerning all of them. judgment shall consist of an introduction, descriptive part, statement of reasons and conclusion. The introduction of a judgment sets out the name of the court making the judgment, the names of the judges, the time of the court session, the time and place the judgment is made, the number of the matter, the names of the parties and their representatives. The descriptive part of a judgment shall set out the action, the reasons therefore and the objections of the other party. If it is a judgment of a higher court the judgments of previous courts will be described. The statement of reasons of a judgment shall set out the facts established by the court, the conclusions reached on the basis thereof, the evidence on which the conclusions of the court are based and the Acts which were applied by the court. In a judgment, a court shall substantiate its reasons for not agreeing with the allegations of a party or another. A court shall analyse all gathered evidence in a judgment. If a court disregards any evidence, it shall justify this in the judgment.
The conclusion of a judgment shall set out the position of the court concerning the satisfaction of an action or not, wholly or partially, and the procedure and term for appeal/cassation against the judgment except if it is a Supreme Court judgment. If a party requests that the court divide the legal costs, the court shall indicate how the legal costs are divided in the decision. Spelling and calculation mistakes in a court judgment may be corrected before the court judgment is made public.

45. What are the reference 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. May 2004 the regulations and directives of the European Union and the case law of the ECJ is quite often referred to. Personal conviction of a judge is usually not used as a base for conclusions made in the judgment.

46. Which criteria and methods of review are used by the court?

A specific reviewal is reserved for the acts translating the exercise of discretionary powers by administrative authorities. If an agency, official or other person performing administrative functions in public law is authorised to act on the basis of discretion, a court shall also verify whether an administrative act was issued or a measure taken in adherence to the limits and purpose of discretion, the principles of proportionality and equal treatment and other generally recognised principles of law. In other cases, the court can find, whether other decisions, more respectful of citizens' rights, were possible. 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). The Administrative Law Chamber of the Supreme Court tends to prefer teleological interpretation to the interpretation based on purely the text of legislation. 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 will not apply it and launches a constitutionality review control at the Supreme Court.

47. How are legal costs apportioned?

Legal costs are:
1) state fees;
2) costs essential to proceedings;
3) security (in the Supreme Court by filing an appeal in cassation).
Costs essential to proceedings are:
1) fees for experts, interpreters and translators and compensation for witnesses;
2) costs of obtaining documentary evidence and conducting inspections and on-the-spot visits of inspection of physical evidence;
3) costs for legal assistance (an advocate who participates in a matter as a representative or the costs of another person who provides legal assistance);
4) postage and costs of serving summonses;
5) costs relating to the publication of summonses and notices in the newspaper;
6) wages which a participant in the proceeding does not receive due to absence from work, and travel and accommodation expenses and daily allowance.
The principle is: the loser party pays both his or her and the winning party's legal costs. If an appeal is satisfied in part, also in the case of adjudication of a dispute arising from an administration contract, legal costs shall be divided in proportion to the satisfied part of the appeal. There is one exception: the other party (against whom the application is filed) is a state or local government authority usually having lawyers on the pay-list. Therefore, if the state or local government authority wins the case and has legal costs, the court decides, whether hiring of a lawyer was inevitable. Secondly the court decides whether the amount paid on legal costs is in proportion to the complexity of the proceeding. The court has though the competence to diminish the amount of legal costs to be compensated or to decide to let each party pay for their own legal costs. A court may reduce the costs of an advocate who participates in a matter as a representative or the costs of another person who provides legal assistance if such costs are unreasonably high. For the payment of legal costs to be ordered, a list of legal costs and expense receipts shall be submitted to the court before the summations. If a list of legal costs and expense receipts are not submitted, payment of legal costs shall not be ordered. If a participant in a proceeding abuses the procedural rights of the participant by failing to appear in a court session without good reason or otherwise delays the proceeding in bad faith, the court may order the participant to pay a portion of the legal costs borne by the other participants in the proceeding. A third person bears the costs relating to the conduct of

an assessment or an on-the-spot visit of inspection or the summoning of a witness as legal costs if the person has applied to the court for the performance of such procedural acts.

48. Is it more usual for the case to be decided by a single judge or by a number of judges?

The principle is: the proceeding in a first instance court is decided by a single judge. The exception is in very difficult cases, where a party has requested it or where the judge has decided it would be more appropriate to decide the case by several judges. In that case there will be three judges who all have equal right and responsibility regarding the proceeding.

In the district court (second instance) the case is always decided by three judges.

In the Supreme Court the case is usually also decided by three judges, but in difficult matters by all members of the Administrative Law Chamber (five judges) or if the case involves also constitutional matters even by all of the judges of the Supreme Court (19). At a reasoned proposal of a member of the Administrative Chamber of the Supreme Court, a matter may be referred for hearing to the full panel of the Administrative Chamber (5 judges). A matter shall be referred for hearing to the full panel of the Administrative Chamber of the Supreme Court also if the majority of the panel of the court hearing the matter wants to amend an existing opinion of the Administrative Chamber on the application of the law.

49. Where the case is heard by several judges, is the expression of individual judicial opinion allowed?

Where the case is heard by several judges, the expression of individual judicial opinion is allowed. Dissenting opinion is also possible in the Supreme Court. The dissenting or concurring opinions of the Supreme Court justices are published together with the judgments and they are not very rare, especially in constitutional matters. In administrative matters there are less (hardly) dissenting opinions.

50. Is the decision delivered in writing or orally?

The decision in administrative procedure is always delivered in writing.
A judgment of an administrative court shall be pronounced in the court room or made public in the court office within fifteen days after the end of court session. At the end of the court session, the court shall communicate when and where the judgment shall be pronounced or made public (see also answer to p. 43). The judgments of the Administrative Law Chamber of the Supreme Court are always delivered only in writing, they are never pronounced in public.

D - Effects of decisions and execution of judgement.

51. What is the authority of the decision?

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 a 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, which exceeds the effects only for 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. Can the court limit the effects of the judgment on time?

The court can decide upon the details of the effects of the judgment. A court may set a term for the execution of a court judgment, which begins to run upon entry into force of the judgment.

53. Is the right to the execution of judicial decision guaranteed?

The Code of Administrative Procedure says: A decision shall be executed after it has entered into force. A court judgment shall be executed immediately in the cases provided by law, 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 6410 euros on the participant in proceeding at fault.

54. Is there a policy to reduce the length of time needed for the proper disposal of cases before the courts? If so, how is that implemented?

Many of the administrative cases are difficult and time-consuming. In addition, there are not enough administrative judges in Estonia. The judges are over-burdended. The outcome is: cases in administrative court tend to take a long time. In some cases the applicant resigns because the judgment wouldn't have any effect anymore (too much time has passed).

There are many ideas and proposals from the administrative bodies of judiciary, Ministry of Justice and judges themselves, how to fit the time needed for the proper disposal of cases in a reasonable time. On the 1st of January 2006 a territorial reform of first instance courts (including administrative courts) enters into force. As a result of the reform the now existing four first instance administrative courts are united into two (as mentioned in the answer above to the p. 1). That change is supposed to relieve the overflow of applications in Tallinn administrative court, where the average score of applications per judge is more than twice as high as in the other three first instance administrative courts.

The laws do not envisage specific compensation to be awarded for loss caused by excessive delays in handling down judgments and/or to end the unreasonable time of a trial.

E – Remedies

55. How are various functions or/and competencies shared out between the lower courts and the supreme courts?

All of the matters are first being adjudicated in the first instance court. The appeal against the first instance court judgment is made to the district court (second instance court); the cassation to the Supreme Court. The first instance and appeal courts have the same functions. The Supreme Court only decides on the law and not any more on the facts of the case. There are no differences in substantial matters; such as for example certain cases can be heard in first instance form the Supreme Court etc. The only cases, where the Supreme Court is a court of first instance, are certain cases concerning constitutional matters: complaints against the decisions of electoral committee of the republic of Estonia or matters concerning the unlawfulness of a political party, etc.

56. Are there remedies to challenge a judgment before a higher court? Describe these remedies and their functioning?

Estonia has a three-ring court system, where all of the judgments of lower courts are appealable. The Supreme Court has the capacity to decide whether to accept the cassation (to decide the case) or to reject it. The Supreme Court does not have to give grounds on such a decision, except refer to the relevant article in law which gives the Supreme Court such power of discretion (see also answer to p. 26). The Supreme Court's decision only concerns implementation and interpretation of a law. The Supreme Court does not have the capability to decide about factual matters (does not evaluate evidence).

F – Emergency proceedings and summary jurisdiction/applications for interim relief

57. Are there emergency and summary jurisdiction 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. What types of requests can be made to the emergency and summary jurisdictions? Ascertainment of the situation? The obligation for administrative authorities to communicate a document? The suspension of the execution of an administrative act? The payment of a provision?

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. Are there different kinds of summary jurisdiction? General or specific to certain litigants?

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 – Can administrative disputes be settled by non-judicial bodies?

60. Can disputes be settled by administrative authorities themselves? How?

The disputes can be settled by administrative authorities or their supervisory bodies or commissions themselves in objection procedures. However, generally the objection procedure in the administrative authorities is not obligatory. Thus one can turn to the administration or right away to the administrative court.

A person whose challenge is dismissed or whose rights are violated in objection 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. Can administrative disputes be settled by independent bodies?

There are no independent bodies to settle administrative disputes in Estonia. The functions of the Chancellor of Justice have been described before under 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:
1) sex;
2) race;
3) nationality (ethnic origin);
4) colour;
5) language;
6) origin;
7) religion or religious beliefs;
8) political or other opinion;
9) property or social status;
10) age;
11) disability;
12) sexual orientation, or
13) other attributes specified by law.
If the parties agree on an agreement by the Chancellor of Justice, the agreement can be challenged in administrative courts only in procedural questions (if the conciliation procedure by the Chancellor of Justice has been unlawful).

62. Can administrative disputes be resolved by means other than recourse to the courts?

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

VI – Administration of justice and statistic data

A – Financial resources made available for the review of administrative acts?

63. On average, what proportion of the State budget is allocated to the administration of justice? Specify for administrative justice when it exists and is distinguished from ordinary justice.

Court budget per inhabitant in euro is 12,24 (2004). Unfortunately, it is not possible to specify the figure for administrative justice.

The total budget of first and second instance courts in 2005 is 18 million euros (0,53 per cent from the State budget.
The budget of first instance administrative courts in 2005 is 1,05 million euros (0,03 per cet from the State budget).

64. Specify the total number of magistrates and judges working within the legal system concerned.

Estonia has two city and 14 county courts with a total of 153 judges working in them.
There are three courts of appeal in Estonia with altogether 48 judges working in them.
There are 27 first instance administrative judges.
19 judges work in the Supreme Court.
The total number of judges working in Estonian courts is 247.

65. What percentage of judges is assigned to the review of administrative authorities?

There are altogether 44 administrative judges (27 of them in first instance courts, 12 in district courts, and five of them in the Supreme Court). Therefore the percentage of judges is assigned to the review of administrative authorities is about 20 per cent.

66. Apart from registry staff, are judges helped by assistants in their research and decisions? Specify the number on assistants (overall and per judge) and their professional training.

Judges are helped by assistants in their research and decisions. The number of professional assistants is:
12 in the first instance courts (per 27 judges);
6 in the district court (per 12 judges)
4 in the Supreme Court (per 5 judges).

The assistance ought to have higher academic education in law (meaning master degree in 3+2 higher education system).

67. Is there a library, and what kind of works and documentary resources can be found there?

All courts have libraries containing Estonian laws, the Estonian national law magazines "Juridica", law textbooks. The Supreme Court library is also equipped with books and journals in foreign languages.
There is a Legal Information Service integrated into the structure of the Supreme Court, the service distributes the information necessary for the administration of justice and enters data in the register of Supreme Court decisions.

68. Do You have access to information technology? In which proportion? And for which kind of task?

All the work in the courts is computerized.
Judges 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 of the computers in the courts have internet connection. Every member of the court staff has a personal computer.
There are file management systems, databases about judgments in subject matter and forms for decisions. The judges use computer programmes in writing their decisions.

69. Do competent bodies and courts have a website to publicise themselves and to communicate with the public?

All courts have websites in Estonian, English and Russian. The web-pages display the times of court hearings (court hearings diary), rules of the office of the court, and other public information for people, who are involved in proceedings as well for general public. For example Supreme Court press realises are addressed specially to general public and journalists.

The relevant websites of administrative jurisdictions of Estonia are as follows:
Tallinn Administrative Court: http://www.kohus.ee/6655
Tartu Administrative Court: http://www.kohus.ee/3521
Pärnu Administrative Court: http://www.kohus.ee/3519
Jõhvi Administrative Court: http://www.kohus.ee/6656

Tallinn District Court: http://www.kohus.ee/6657
Tartu District Court: http://www.kohus.ee/3523
Jõhvi District Court: http://www.kohus.ee/3525

The Supreme Court: www.nc.ee
All the Supreme Court judgments are available free of charge on the web-site of the court. Decisions of the Supreme Court are organised, systematised (alphabetical table of matter) while presented on the web-page. The information on the web-pages concerns also explication of the judicial system of Estonia, proceedings, state fees, how to write a petition to a court, the order of court sessions etc

B – Other statistics and figures

70. How many new applications are registered every year with the court registry or the authority in charge of registering them?

The total number of incoming administrative cases per year is:

2003	2004
2566	3233

The number of application of proceedings in administrative matters in the Supreme Court in 2003 was 440 and in 2004 was 635.

71. How many cases are heard every year by the court or other competent bodies?

The total number of administrative cases solved by the courts is:

2003	2004
2268	3012

The total number of administrative matters adjudicated in the Supreme Court in 2003 was 75 and in 2004 was 85 (but one has to keep in mind, that there exists a screening system in the Supreme Court).

72. Could You provide figures concerning cases currently lodged with courts or competent bodies which have not yet been disposed of?

Of all administrative cases solves by administrative courts in 2004, there were:
9% applications in tax cases;
10% applications concerning property reform (restitution);
4% applications concerning civil service;
11% applications lodged by prisoners concerning the conditions of their imprisonment;
66% other disputes.

73. What is the average time taken between the lodging of a claim and a judgment?

Unfortunately, such statistics are not yet available. One can estimate the time to be one year.

74. Indicate the percentage and the rate of the annulment of administrative acts decisions against administrative authorities by the lower courts.

Year	**2003**		**2004**	
	In numbers		In numbers	
Cases solved	2268		3012	
Application dismissed	819		805	
Act or action annulled or declared unlawful	328		494	
Preception for execution given	9		19	
Payment of compensation	9		8	
Rights of applicant have been restituted	48		26	
Compromise	42		23	

75. Could You indicate the volume of litigation per field?

See answer in point 72.

C – the economics of administrative justice

76. Do studies by researchers or work produced by practitioners demonstrate particular concerns by the courts, for example about orders for damages; do they deal with the influence of heavy awards against administrative authorities or public budgets? Do they consider the implications of their decisions in terms of costs for public finances?

There do not exist any above asked researches.