Seminar organized by the Supreme Court of Ireland and ACA-Europe

How our courts decide: The decision-making processes of Supreme Administrative Courts

Dublin, 25 – 26 March 2019

Answers to questionnaire: Belgium

Seminar co-funded by the «Justice » program of the European Union

ACA Seminar
How our jurisdictions decide: The decision-making process
of Supreme Administrative Courts
Dublin, 25-26 March 2019

Supreme Court of Ireland

Questionnaire

I. Introduction

1.1 The seminar will focus on the process followed by our national Supreme Administrative Courts in reaching their decisions. Each court will have its own formal rules, whether provided for in substantive law or in the internal rules or formal procedures of the court. Furthermore, each legal system will have its own culture and traditions which will inform the way in which the decision-making process progresses.

1.2 The purpose of this questionnaire and the seminar which will follow is to provide a greater understanding of both the similarities and differences which exist between the decision- making process in the respective Supreme Administrative Courts. We hope to derive useful information therefrom for comparison purposes. It is hoped that this will provide useful information both for comparative purposes but also to give each Supreme Administrative Court a better understanding of the process which may have led to decisions of the courts of other EU member states.

1.3 The Dublin seminar on the 25th and the 26th March 2019 for which this preparatory questionnaire is being distributed is envisaged as a sister seminar to that which will be organised by our German colleagues in conjunction with the General Assembly of the 12th to the 14th May 2019 in Berlin. While there may be some small and unavoidable overlap between the issues raised it is intended that the Dublin Seminar will focus on the decision-making process of the court whereas the Berlin Seminar will focus on access to the Supreme Court and its functions including, for example, the question of whether 'filters' are provided for in administrative procedural law.

1.4 Further, while this project is independent of the ACA-Europe transversal analysis project on 'The Quality of Judgements', there will be an inevitable link between certain elements of the questionnaire formulated for that project and aspects of this questionnaire.

1.5 Please note that when answering the questions in this questionnaire it is not (with the exception of the statistical questions regarding caseload under Part C) necessary to consider proceedings which lead to the making of provisional orders.

1.6 In addition, in the event that your institution undertakes legislative functions such as providing advice on proposed legislation as well as the function of adjudicating cases in the context of court litigation, it is not necessary to include information pertaining to the legislative functions when responding to the below questions.

II. Questions

A. Background questions in relation to your Supreme Administrative Court/ Council of State

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.

Conseil d'Etat – Council of State

2. What country/jurisdiction does your institution serve?

All territory of the Belgian State

3. Where is your institution based (i.e. its seat)?

Brussels (Belgium)

4. Please provide a link to your institution's website (if available), including a link to the English or French version or pages of the website if available.

www.raadvst-consetat.be

B. The structure of your Supreme Administrative Court/Council of State

5. Please provide an outline of:

(a) The main functions of your institution (e.g. a first and last instance court, court of cassation or court of appeal);

The administrative litigation section of the Council of State rules, as a supreme administrative jurisdiction, by way of judgement on the appeals for annulment initiated against all administrative acts, and may grant q compensating indemnity following judgements of annulment or judgements recording an illegal action.

It also rules in cassation upon the decisions rendered by the administrative jurisdictions when they are established.

In certain specific matters the administrative litigation section exercises a competence of full jurisdiction (e.g. electoral litigation).

The competence of the administrative litigation section to rule in urgent proceedings and the competences pertaining to the legislative section are not dealt with in this

questionnaire, in compliance with the instructions of the Introduction (cf. *supra* I.5 and I.6).

(b) The nature of your institution (e.g. a Supreme Administrative Court or a Supreme Court with jurisdiction in other areas of law); and

Supreme administrative court

(c) Its place within the overall court structure in your country/jurisdiction.

High administrative jurisdiction which rules as supreme jurisdiction, and which is placed at the summit of the hierarchy of administrative litigation.

C. Caseload

6. How many judges[1] serve on your institution?

The administrative litigation section is headed by the First President and is, in addition, comprised of 10 chamber presidents and 20 Councillors of State.

7. How many cases[2] are brought to your institution per year on average?

Over the last three judicial years, an average of 3030 cases were enrolled but, as will be detailed below, all of these cases do not give rise to an oral hearing (see question 19).

8. How many cases does your institution process[3] per year on average?

Over the last three judicial years, an average of 2559 final judgements were pronounced, and an average of 280 judgements of non-admission in cassation were rendered. To evaluate the global workload, to this must be added an average of 818 interim judgements pronounced per judicial year (over the last three judicial years).

D. Internal organisation of the Supreme Administrative Court

[1] Please include figures concerning judges only and not the number of Advocates General (which will be dealt with under question 11) or judicial assistants/clerks/researchers (which will be dealt with under question 13.

[2] In this question 'cases' means the average number of incoming cases per year, whether litigious (in which the judge(s) decides a dispute) or non-litigious (where a case in which there is no dispute is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not deal solely with administrative law cases (for example, civil and commercial law, criminal law etc). It refers to both cases decided in writing and by oral hearing. It includes applications submitted to a Supreme Administrative Court before any filtering process is undertaken if such a mechanism exists.

[3] Please indicate the average number of cases that come to an end in your Supreme Administrative Court each year either through a judgement or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

9. Does your institution have chambers/divisions?

The administrative litigation section is distinguished from the legislative section (not dealt with in the questionnaire, *supra* I.6), and is divided into francophone and Dutch-speaking chambers.

10. If yes, provide the following details:

a. How many chambers/divisions?

The administrative litigation section is comprised of five chambers per linguistic role (French and Dutch), namely 10 chambers in total.

There also exists a bilingual chamber (French-Dutch) and a combined chamber (French or Dutch or German) responsible for germanophone litigation.

b. How many judges serve in each chamber/division?

Three judges

c. The nature of particular areas of specialisation in your Supreme Administrative Court by chamber or otherwise (if any) (e.g. commercial division, environmental division etc.).

The various chambers certainly have a certain specialisation in different litigation, but it is difficult to specify them, notably due to the fact that there are differences of distribution between the two linguistic roles.

The distribution of matters between the chambers is done each year by the First President by means of an order.

This distribution may be consulted on the website of the Council of State.

http://www.raadvst-consetat.be/?lang=fr&page=about_organisation_council_page12

d. Do judges move between chambers/divisions? If so, how is this transfer determined?

In theory, a judge is allocated to a determined chamber for an *a priori* unlimited term. In practice, a judge may nevertheless change chamber either upon their request or due to the requirements of the service. In any event, the change of allocation is a decision which is up to the court overseer responsible for the administrative litigation section; currently, this is the first president.

e. Is it possible for a judge to be assigned to more than one Chamber at a time?

Each Councillor of State is a deputy in all of the other chambers of the administrative litigation section.

Certain Councillors of State - which justified the knowledge of another language (French, Dutch or German) - are allocated both to a chamber of their linguistic role and to the bilingual chamber (French-Dutch) and/or to the combined chamber (French or Dutch or German) responsible for germanophone litigation.

f. Are there different levels of chambers, for example, an 'ordinary chamber' and Constitutional Review Chamber?

No.

g. How many judges are usually assigned to consider and decide an average case?

Three.

h. Does the number of judges assigned to decide cases vary? If yes:

(i) Based on what rules or factors?

In virtue of the Co-ordinated Laws on the Council of State (hereinafter the CLCS), a single judge rules:

1° on requests for stays and interim measures (not dealt with in the questionnaire, cf. *supra* I.5);

2° in the domain of recourse for annulment or recourse in cassation for which a party did not comply with the procedural timeframes, when the recourse must be declared as unfounded, discontinuance of appeal, must be stricken from the roll, or for a processing of applications which only give rise to succinct debates;

3° on the admissibility of recourse in cassation.

http://www.raadvst-consetat.be/?page=about_law&lang=fr

(ii) Who decides how many judges are assigned to consider and decide a particular case?

The president of the chamber, on the basis of the co-ordinated laws (cf. (i)).

i. Is there a procedure for certain cases to be elevated to a grand chamber or plenary session? If yes, how is this decided and how many judges decide?

There are two types of referral of a case to a larger panel:

- Either referral before the general assembly of the administrative litigation section: this decision is taken by the court overseer responsible for the administrative section, and this in order to endure the coherence of the jurisprudence (see article

92, § 1, and 92, § 2, paragraph, of the laws on the Council of State, co-ordinated on 12 January 1973, hereinafter the CLCS);

- Or referral to combined chambers of the administrative litigation section: this referral is also decided by the court overseer responsible for the administrative litigation section for cassation matters (see article 92, § 2, of the CLCS). This referral is either done to ensure the coherence of the jurisprudence (paragraph 1) or done in an obligatory fashion if the contested decision was rendered, by the first jurisdiction, in combined chambers or in general assembly (paragraph 3).

A specific case also deserves to be mentioned: that of the referral of the general assembly for "fringe" litigation (art. 93 of the CLCS).

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?
If yes, specify the additional roles and explain how these roles are assigned.

The judge-rapporteur is given the task by the president of the chamber of reporting on the hearing and drawing up the draft ruling.

Even if this remains exceptional, given the role of the advocate general's office [auditorat] (see question 11), it may also lead to various investigatory measures (site visit, correspondence with the parties, hearing of witnesses, designation of experts, etc.). On this subject, referral is made to articles 16 to 25 of the order of the regent of 23 August 1948, determining the procedure before the administrative litigation section of the Council of State.

http://www.raadvst-consetat.be/?page=about_law&lang=fr

k. How significant is the role of the Chief Judge or President of the court in determining:

(i) The assignment of cases to chambers or panels of judges;

The First President decides each year on the allocation of matters to chambers by order or, during the year, for operating reasons - in concert with the presidents of the concerned chambers.

Each new case is, from day to day, attributed by the First President to the competent chamber on the basis of the above-mentioned order.

(ii) The number of judges assigned to consider and decide a particular case;

See above, h and i.

(iii) The assignment of certain additional roles to judges (see (f) above);

(iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

See above, i.

Except in the cases laid down in law, the First President never intervenes in the unfolding of a case. If the designated chamber refers a case to him, it is because it is of the opinion that this case must be processed by another chamber, e.g. a bilingual chamber, the general assembly or the combined chambers. On this occasion, the First President applies the co-ordinated laws and refers the case to the court panel which is legally competent.

11. Does the position of Advocate General exist in your legal system?

YES through the Advocate General's office (Auditorat).

If yes, please indicate:

(i) The number of Advocates General or equivalent members of your institution;

(ii) The function of the Advocate General in the context of your institution; and

(ii) The extent to which the Advocate General participates in proceedings before your institution.

(i) The Belgian Council of State is, asides the Council in the strict sense of the term (= the Councillors of State – see question 6), also comprised of an Auditorat (Advocate General's office) comprising an auditor general, 14 first auditor heads of section and 64 first auditors, auditors and deputy auditors, (art. 69, 2°, of the co-ordinated laws on the Council of State) [4]. The auditors are, like the Councillors of State, magistrates.

[4] To which must be added 12 auditors appointed in the context of the temporary extension "in order to be able to reduce or avert the delay in the administrative litigation section, or deal with the workload in the legislative section" (art. 123, § 1, of the co-ordinated laws on the Council of State). This temporary increase ended on 31 December 2015. Nevertheless, on the justified suggestion of all of the heads of section, the number of members of the Advocate General's office mentioned in article 69, 2° (= the above-mentioned legal framework) may, if needed, be increased via royal decree deliberated in the Council of Ministers by six first auditors, auditors and deputy auditors by linguistic role, for a renewable period of two years at the maximum (art. 123, § 1, of the same co-ordinated laws). This framework is now practically extinguished.

Twelve auditors per linguistic role (French and Dutch) are allocated, in priority, to the legislative section, and thus do not participate in the administrative litigation section (art. 76, § 1, paragraph 6, of the CLCS)

(ii) and (iii)

Management of the Advocate General's office - role of the Advocate General's office in procedures before the Council of State

The auditor general and the deputy auditor general, each as concerns him regarding his linguistic role, distribute the cases among the members of the Advocate General's office and steer their work.

The first auditors heads of section participate in this steering. The deputy auditor exercises these functions under the direction of a first auditor head of section or a first auditor designated by him (art. 75 of the above-mentioned co-ordinated laws).

The auditors assess the dossiers submitted to the administrative litigations section of the Council of State, and participate in the activities of the legislative section (art. 76, § 1 of the same co-ordinated laws).

Thus the auditors in administrative litigation, in seeing to the accomplishment of preliminary measures, participate in the assessment of the case (art. 76, § 1, para. 1, of the same co-ordinated laws) and draft a report, which contains, in general, a summary of the facts of the case and the arguments of the parties, as well as an examination on the well-foundedness of the latter.

In this context, the auditor possesses certain investigatory powers. Thus he may, for example, correct or complete the designation, by the applicant, of the adverse party. He may also correspond directly with all authorities and administrations and request of them, as well as of the parties, all useful information and documents and impose a deadline on the parties to supply the requested information and documents. Failing communication of the latter in said timeframe, he drafts the report as it stands. He may demand any additional explanations from the parties and lawyers (art. 12 and 16 General procedure regulation - Order of the Regent of 23 August 1948). The auditor may hear the parties and any other persons, make any onsite findings, and designate experts and determine their missions (art. 17, 19 and 20 of the above-mentioned regulation). This list is not exhaustive.

If an investigation takes place, the administrative litigation section orders that it be effected either at its hearing, or by a member of the Council of State, or by the competent member of the judge advocate's office designated by the auditor general. The auditor general or the member of the judge advocate's office designated by him may automatically proceed to perform the investigative measures (art. 25, para. 1 of the above-mentioned laws). According to article 76, § 1, paragraph 1 of the co-ordinated laws, the auditors may only be made responsible for investigations decided upon by the administrative litigation section by means of an order. The auditor general may order that the witnesses are heard under oath (art. 25, para. 2 of said co-ordinated laws).

This report of the auditor is notified to the parties, who may react in the last statements of case. If the report concludes a rejection and the applicant party does not request the continuance of the procedure within a timeframe of 30 days counting from the notification of the report, there is a presumption of discontinuance by the applicant party (art. 21, last paragraph of the above-mentioned co-ordinated laws). The administrative litigation section may, on the other hand, according to an accelerated procedure, annul the contested act or regulation if the adverse party or the party with an interest in the settlement of the dispute does not initiate a request to continue the procedure within a timeframe of 30 days after the notification of the auditor's report in which the annulment is proposed (art. 30, § 3, of the same co-ordinated laws).

The auditor may also accelerate the procedure by drafting a "succinct debates" report.

The auditors give their opinions to the administrative litigation section during the public hearing at the conclusion of the debates (art. 76, § 3 paragraph 5 of the same co-ordinated laws). This opinion consists in indicating the decision which the auditor would take if he were responsible.

If applicable, the report of the auditor may be limited to the ground for dismissal or the ground on the merits which enables the solution of the dispute. In this case, the administrative litigation section rules by means of a judgement on the conclusions of the report (art. 24, para. 2 of the same co-ordinated laws). If it turns out that the conclusions of the report do not enable the resolution of the dispute, in its order the chamber may instruct the advocate general's office, according to the case, to examine one more means or exceptions which it

specifies, or the later examination of recourse together with an investigative measure which it orders in its judgement (art. 24, para. 3 of the same co-ordinated laws).

It is important to note that in its report and opinion, the auditor is independent and is not subject to instructions by his head of section (or of the Council) on the content of this report or opinion.
He is not party to the dispute but acts as an *amicus curiae*.
In more than 70% of cases, the litigation section of the Council follows the conclusions of the report and the opinion of the auditor.

The members of the Advocate General's office do not participate in the examination of admissibility of the recourse in administrative cassation (art. 76, § 1, paragraph 4, of the same co-ordinated laws).

When, after having noted the opinion of the auditor responsible for the report, the auditor general believes that in order to ensure the coherence of the jurisprudence a case must be handled in the general assembly of the administrative litigation section, the first president orders referral to said assembly (art. 92, § 1, last paragraph of the above-mentioned co-ordinated laws). When, after having noted the opinion of the auditor responsible for the report, the auditor general considers that in order to ensure the coherence of the jurisprudence the recourse in cassation (which has been declared admissible) must be processed in the combined chambers of the administrative litigation section, the first president or the president (if he is responsible for the administrative section), orders referral to the combined chambers of this section (art. 92, § 2, para. 3 of the same co-ordinated laws). If he considers that the interest of the case necessitates it, the first president or the president, if he is responsible for the administrative litigation section may decide, in derogation with the preceding, to refer the case to the general assembly of the administrative litigation section. He does the same where, after having noted the opinion of the auditor responsible for the report, the auditor general believes that to ensure the coherence of the jurisprudence, the case must be handled by the general assembly (art. 92, last paragraph of the same co-ordinated laws).

The members of the Advocate General's office are responsible for keeping updated, conserving and making available in the form of automated files the documentation relating to

jurisprudence and opinions of the Council of State (art. 76, § 2 of the same co-ordinated laws).

E. Research and Administrative Assistance

12. What level of research and/or administrative assistance is available to your institution?

The Council of State has its own very complete library.

The members of the Council of State also dispose of (via a collective subscription) internet access to databases (legislation, jurisprudence, doctrine) managed by private publishing houses (StradaLex, Jura, etc.).

The Council of State also has a co-ordination office (comprised of 4 magistrates) mainly responsible for keeping legislation updated, codifying/co-ordinating certain texts and making its documentation available to members of the two sections (or even the public - refLex). On a day-to-day basis, the tasks accomplished by the co-ordination office concern mainly the legislative section. (See article 77 of the CLCS).

The members of the Advocate General's office of the Council of State are responsible for keeping updated, conserving and making available in the form of automated files the documentation relating to jurisprudence and opinions of the Council of State (see art. 76, § 2 of the CLCS).

13. How many officials provide legal research support to your institution?

This role is assumed in various manners by different categories of people within the institution. It is thus not easy to provide a precise number.

We may, for example, identify the following persons:

- Certain Councillors of State benefit from the assistance of a legal attaché who may perform legal research; this does not exist in all of the chambers;
- All of the chambers benefit from the assistance of registrars; the majority of such registrars are, today, jurists capable of providing occasional help for legal research, even if this is not their main task;
- The Advocate General's office of the council of State also benefits from multiple legal attachés responsible, among other things, for supplying the databases mentioned above (question 12).

14. Do officials which provide legal research assistance to your institution also provide administrative assistance?

Yes, partially.

15. Are research and administrative supports pooled (i.e. shared between judges) or assigned individually to judges or is there both a pool and some researchers assigned to individual judges? Please explain.

No, in principle no pooling (see above, question 13).

The few legal attachés are, in general, assigned to one or another Councillor of State in a relatively random fashion. Given the budgetary restrictions, there are indeed not many of them left. It is thus impossible to assign one or more to each chamber, nor, *a fortiori*, to each Councillor.

16. If research and administrative support is assigned individually to judges, is there also a research and documentation or equivalent department which provides additional pooled research support?

See question 12: The Council of State has a co-ordination office (comprised of 4 magistrates) mainly responsible for keeping legislation updated, codifying/co-ordinating certain texts and making its documentation available to members of the two sections (or even the public - refLex).

17. To what extent, if at all, do assistants/référendaires provide support to judges in your institution as regards specifically:

As was detailed in question 13, the chambers possess some legal attachés. These may play a role in points (a) to (h) evoked below.

(a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case;

(b) Undertaking legal research to assist a judge to make a decision in a case;

(c) Discussing aspects of a case with a judge orally or in writing;

(d) Consideration and evaluation of the relevant law;

(e) Undertaking comparative law analysis;

(f) Drafting sections of judgements;

(g) Putting forward a suggested or preliminary decision for judge(s) to consider;

(h) Any other element that you consider is relevant in this context.

F. Oral hearings

18. Is there an oral hearing in all cases?

No, not necessarily (see below, question 19 a-b-c).

19. If there is not an oral hearing in all cases:

(a) What percentage of cases typically involves an oral hearing?

On average, about 88% of cases involve a hearing.

(b) On what basis (formal rules or informal determinations) is it determined which cases will have an oral hearing?

Before the administrative litigation section of the Council of State, the procedure is mainly written (exchange of procedural acts).

In theory, each case is however meant to have a hearing of oral arguments. There is the possibility for the parties to renounce the hearing by means of a joint declaration, but this possibility is never used.

However, many cases conclude with judgements said to be "without hearing." This means that due to the procedural behaviour of the parties, the laws on the CS and the various procedural regulations lay down either the presumption of discontinuance of the case (applicant's failure to act) or accelerated procedures for annulment (failure to act of the adverse party).

(c) Can parties to a case request an oral hearing? If yes, what is the significance or consequence of such a request?

As detailed below, the parties are in principle always called to the hearing, without having to request it. However, in certain accelerated procedures due to the failure to act of one or the other party, this audience finally does not take place - except if the concerned party requests it.

20. Does deliberation take place between the judges before the oral hearing? If so, is this the practice in all cases or in some cases?

No, the deliberation always occurs after the hearing.

21. Are time limits imposed on parties making oral submissions before your institution?

The oral arguments take place at the hearing, until the conclusion of the debates.

22. Are parties permitted to address the Court for an uninterrupted period of time? If so, for how long?

Concerning the timeframe for recourse in annulment, the latter is 60 days counting from the publication of the notification or the cognizance. After this deadline, the recourse is inadmissible.

In other specific litigation (cassation and full jurisdiction, for example), the timeframe for recourse may be less than 60 days.

With regard to the contact with the Council of State, the parties have the possibility to contact the registry throughout the entire procedure.

23. Is discussion in the oral hearing confined to matters set out in the statements or written submissions of the parties or may it involve broader legal discussion between the lawyers/a party and the Court?

The procedure being written before the Council of State, only the elements raised in the application and the statements of case may be evoked at the hearing. In a substantially new element intervenes, the debates are re-opened while permitting, if applicable, the filing of procedural documents and a complementary report. However, nothing forbids a request for specifications or explanations at the hearing regarding what is detailed in the documents.

When the dossier is being examined, the judge rapporteur may send a message to the parties to inform them that they will be questioned on a particular point in the forthcoming hearing.

24. Are parties permitted to file further written submissions following an oral hearing?

No, unless the judgement pronounced after this hearing orders the re-opening of debates.

25. Is it possible for a judge to be excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias?

In practice, the Councillors of State abstain from giving legal opinions at the hearing and it is legally forbidden for them to give consultations to the parties (co-ordinated laws, art. 109, 1°). Grounds for recusal of Councillors of State are the same as those laid down by the Judicial Code for magistrates of the judicial order and, according to the Court of cassation,

the point of view expressed by the judge in an academic publication does not necessarily render him incompetent to handle a dispute touching upon this point of law (Cass., 15 October 2010, C.10.0580.N/1).

G. Written submissions of parties

26. What is the usual length and level of detail of written submissions of parties provided to your institution? Please indicate the approximate number of pages (1.5 line spacing) of a 'typical' written submission

0 – 5 pages	☐
5-10 pages	☐
10-20 pages	**X**
20-30 pages	**X**
30-40 pages	☐
40-50 pages	☐
50 + pages	☐

27. Is there a maximum length for written submissions filed by parties in a case? If yes, please provide details.

No.

H. Consideration of the case

28. Can your institution raise points of law of its own motion (i.e. ex officio) or is it limited to the points raised by the parties to the case?

The procedure being written, only the argumentation developed in the procedural documents, and particularly in the application, is examined.

The Council of State is however competent to automatically raise the breaching of the rules which bear upon public order, for example those which govern the admissibility of the recourse or means, or the competence of the author of the document.

29. How is discussion, deliberation and decision-making structured in your institution?

There are no rules in this matter.

30. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language?

The Council of State knows the three official languages of the country (French, Dutch and German), but each Councillor is allocated to a chamber pertaining to his linguistic role and deliberates in his language.

In certain specific circumstances, the deliberation may take place in multiple languages (general assembly, combined chambers, etc.). However, a judgement is only pronounced in the original language of the concerned dossier.

Only the bilingual chamber handles cases and renders judgements in two languages.

The combined chamber responsible for germanophone litigation (see question 10 a and e) is confronted with three national languages but only applies one procedural language per dossier (on the basis of the rules contained in the CLCS).

31. Are there rules, processes, or conventions about how discussions and votes take place?

If yes, specify the relevant rules etc.

There are no rules in this matter.

32. How are preferences for particular outcomes communicated between the judges?

At the time of the deliberation, and in the confidentiality of the latter.

33. Where there is an oral hearing, to what extent does the oral hearing (as opposed to written submissions) influence the court's discussion, deliberation and decision-making?

Very rarely, since everything has been already expressed in the procedural documents. The hearing may on the other hand may have a greater importance for urgent proceedings, in particular extremely urgent proceedings, not analysed in this questionnaire (cf. *supra* I.5).

34. Are there any other procedural rules or conventions that you believe impact significantly on the way in which cases are considered?

No.

I. The decision of the institution

35. Is the decision delivered on behalf of the institution or is it open to each individual judge assigned to the particular case to deliver a separate judgement?

No, all of the judgements are pronounced in the name of the Council of State, and there is no mechanism for dissenting or concurring judgements.

36. If the decision is delivered on behalf of the institution, does one judge write for the institution? If not, please explain how the judgement of the court is written for your institution. Are there formal rules or informal practice governing this?

It is the Councillor rapporteur who draws up the draft judgement after tripartite deliberation cf. *supra* 10.j.

37. How is the court's ruling/reasoning recorded?

The thesis of the parties and the judicial reasoning are detailed in writing in the judgement.

38. Is there a distinction in your Supreme institution between the Judgement (i.e. reasons) and the Order (i.e. the operative ruling of the court)?

From the structural viewpoint, the operative part concludes the judgement and is reiterated either in the word "Decision" or in the words "On these grounds, the Council of State decides:"

Before this operative part, the grounds follow the "Parties' arguments" and are expressed under the heading "Evaluation."

39. Are there any other distinctions of this nature in the decisions delivered by your institution?

No.

J. Timeframes for the decision-making process

40. How long, on average, between consideration of a case by your institution and the making of a decision? Please indicate the approximate length of time between the introduction of the case into the system of the Supreme Administrative Court (rather than the time when the case first comes before a judge for consideration) and the final resolution of the case through, for example, the pronouncement of the final decision.

Over the previous judicial year and that in progress, the average time to process a "classic" case (containing solely an application for annulment and not being the object of procedural specificities) is about 26 months.

41. Is there a specific mandatory timeframe for deciding all cases? If yes, please provide details.

There is a timeframe for all procedures for annulment: the judgement must be pronounced within twelve months of the day upon which the auditor's report on the case was established (article 15 of the order of the Regent of 23 August 1948, previously mentioned).

42. Are there specific mandatory timeframes for particular categories of cases? If yes, please provide details of the categories of cases and the relevant timeframes.

The main timeframes (which are procedural) are the following:

- Article 11 *bis* of the CLCS: When the Council of State annuls an act, the applicant party has the possibility (within sixty days) to request a compensating indemnity. If it does this, the Council of State must then rule upon this request for a compensating indemnity within 12 months of the notification of the judgement recording the illegal act.
- Article 20, §§ 3 and 4, of the CLCS: When it is seised for recourse in annulment, the Council of State must rule on its admissibility within a month of the reception of the dossier of the concerned jurisdiction (the King has the possibility, via a royal decree, to reduce this timeframe to 8 days, but he has never done this). If the recourse in annulment is declared admissible by order, the Council of State must rule on this recourse within 6 months of the order.
- Article 15 of the GPR: When it is seised for an application for annulment, the Council of State must rule within 12 months of the day upon which the report of the advocate general's office was drawn up.

If a stay was orders through a judgement, it must rule upon the application for annulment within six months of the pronouncement of this judgement (article 17, § 5 of the CLCS).

Other timeframes exist, notably in the litigation in full jurisdiction or in certain more specific provisions, such as article 26*bis* of the CLCS[5].

[5] As a reminder, in urgent proceedings, see article 17, § 5, of the CLCS : If the Council of State is seised for a stay of judgement, it must pronounce upon this within 45 days. If the stay is ordered, the Council of State must

43. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details.

The reasonable timeframe as laid down in the jurisprudence of the European Court of Human Rights.

44. If there are mandatory timeframes applicable to the decision-making process in your institution , is it ever difficult for the court to abide by these timeframes? If yes, what are the main reasons for this?

As detailed above (see question 42), the timeframes in which the Council of State is invited to rule are procedural timeframes, not obligatory timeframes. Procedural specificities or an excessive temporary workload may explain why they may not always be complied with. There is also a minimum "irreducible" timeframe linked to the exchange of procedural documents among the parties as well as a double examination (advocate's office then Council).

45. If there are no mandatory timeframes for deciding cases, but by convention or practice, there is a certain amount of time that is considered appropriate for the decision-making process to take, is it ever difficult for the court to abide by this timeframe? If yes, what are the main reasons for this?

See question 44 above.

K. Developments over time

46. Have the processes you have outlined in the preceding answers been subject to any significant changes in the last five years?

The latest reform of 2014 introduced as a major novelty the request for a compensating indemnity in the co-ordinated laws.

---

then rule upon the application for annulment within 6 months of the pronouncement of the judgement which ordered the stay.

The Council of State rules on this matter in equity, whereas previously the indemnification following judgements of annulment or recording an illegal act came under the exclusive competence of the judicial jurisdictions.
This reform required a revision of the Belgian constitution.
Also in 2014, the Council of State was given new instruments and certain of its available tools were enlarged. It also has the possibility to enjoin something to the parties (under pain of penalty), it has the option to give explanations in its judgements and maintain the effects of certain annulled acts. The Council of State also grants, since this year, procedural indemnities (cost of legal fees).

47. If yes, have these changes had an effect on the way cases are considered and decided?

These modifications necessarily impact the judges' working methods; the processing of cases became in certain respects weightier. As regards the granting of a possible compensating indemnity, there is a brand-new role for the Council of State. The judges had to familiarise themselves with this new duty.

48. Do these changes constitute an improvement in your view? If yes, please provide details.

Yes, without a doubt, and including for the person answerable to the law who requests a compensating indemnity of the Council of State following a judgement recording an illegal act. This removes the necessity for a new procedure before another judge.
The other reforms also aim to economise procedures.

I. Further comments or observations

49. Is there anything about your institution and/or its particular decision-making processes that you believe is not captured in the questions above, or any contextual information that you believe would aid our understanding of the decision-making processes in your court?

A characteristic of the Council of State is that a double examination of cases is systematically undertaken: first by the Advocate's office (see question 11), which proposes a solution to the dispute, and then by the Council, which decides. This double examination necessarily has repercussions upon the average case processing time.

Thank you for completing this questionnaire.

*****