



**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: Croatia**



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

**ACA Seminar**  
**How our Courts Decide: the Decision-making Processes**  
**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. 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 25<sup>th</sup> and the 26<sup>th</sup> 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 12<sup>th</sup> to the 14<sup>th</sup> 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 Judgments’, 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.

*Visoki upravni sud Republike Hrvatske*

*High Administrative Court of the Republic of Croatia*

2. What country/jurisdiction does your institution serve?

*Republic of Croatia*

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

*Zagreb, capital of the Republic of Croatia*

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.vusrh.hr](http://www.vusrh.hr)

### 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 High Administrative Court shall decide on the following:*

*1. appeals against the judgments of administrative courts and decisions against which an appeal is permissible;*

*2. lawfulness of general acts (bylaws);*

*3. conflict of jurisdiction between administrative courts;*

*4. in other cases laid down by law (in this cases the High Administrative Court is a first and last instance court, e.g. free access to information, competition law, public procurement law).*

- (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.

*In the Republic of Croatia administrative courts form a specialized branch of jurisdiction.*

*There exist four first instance administrative courts (Administrative Courts in Zagreb, Split, Rijeka and Osijek) and the High Administrative Court of the Republic of Croatia as the supreme administrative jurisdiction.*

*A special request for extraordinary examination of legality of final judgments is provided, according to which parties in an administrative dispute may, due to violation of the law, propose to the State Attorney's Office of the Republic of Croatia to file a request for extraordinary examination of legality of final decisions of the administrative court or the High Administrative Court. The Supreme Court of the Republic of Croatia, in a council composed of five judges, shall decide on the request. But it is very seldom used remedy and the Supreme Court of the Republic of Croatia consists of two departments (Civil and Criminal) with no separate administrative law department or panel.*

### **C. Caseload**

6. How many judges<sup>1</sup> serve on your institution?

*23 judges*

7. How many cases<sup>2</sup> are brought to your institution per year on average?

*In year 2017 (the information for 2018 is not completed yet) the Court has received 5040 cases.*

8. How many cases does your institution dispose of<sup>3</sup> per year on average?

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<sup>1</sup> 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).

<sup>2</sup> 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.

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

*In year 2017 (the information for 2018 is not completed yet) the Court has concluded 4545 cases.*

**D. Internal organisation of the Supreme Administrative Court**

9. Does your institution have chambers/divisions?

*Yes.*

10. If yes, provide the following details:

a. How many chambers/divisions?

*The High Administrative Court of the Republic of Croatia consists of 8 chambers (each specialized for exact substantive laws) and 2 chambers competent for the examination of lawfulness of bylaws. It has got 1 Department - competent for following the case law of CJEU and European Court of human rights, and there is a Division for following the Court's case law.*

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

*3 judges serve in 8 chambers (each chamber consists of 3 judges) competent for appeals and first instance administrative dispute, while 5 judges serve in 2 chambers (each chamber consists of 5 judges) competent for the examination of lawfulness of bylaws.*

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.).

*2 chambers are specialized for following substantive laws: health insurance, retirement, social protection, rights of disabled persons, asylum, rights of foreigners.*

*3 chambers are specialized for following substantive laws: financial law, labour law, competition law, public procurement law, free access to information.*

*3 chambers are specialized for following substantive laws: building licences, expropriation, environmental law, communal law, property law, free access to information.*

*All chambers are solving cases which do not fit into previous categories.*

*2 chambers competent for the examination of lawfulness of bylaws are not specialized for a particular law field, so any bylaw can be assigned to any chamber.*

d. Do judges move between chambers/divisions? If yes, how is such movement determined?

*Yes, it is a decision of the President of the Court, but the decision must be included into Annual Schedule Act in which all chambers are provided.*

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

*Yes, the judges who are assigned in those 8 chambers, are also members of 2 chambers competent for the examination of lawfulness of bylaws.*

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?

*3 or 5 judges (please see 10b).*

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

(i) Based on what rules or factors?

*Yes. The Administrative Dispute Act proscribes: the High Administrative Court shall adjudicate in a three-judge council, other than concerning the lawfulness of general acts when it shall adjudicate in a five-judge council.*

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

*It is proscribed by The Administrative Dispute Act. Please see the answer under previous question.*

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?

*Yes, as the Court has got no departments, there is a procedure for certain cases to be elevated to a plenary session which shall be convened when it is established that differences in understanding of the application of law exist among individual panels, or when a particular panel departs from a previously adopted interpretation of law.*

*A decision at a plenary session shall be adopted by a majority of the votes of all judges of the court.*

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.

*In appeal cases each judge is a rapporteur in case assigned to her/him, while the other judge in chamber is the president of the chamber. So the judge who is president of the chamber according to Annual Schedule Act is not necessary a president of the chamber in concrete case.*

*In cases which the High Administrative Court decides as a first and last instance court, each judge is a rapporteur and president of the chamber at the same time, in case assigned to her/him.*

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;

*None, the cases are distributed by an IT system.*

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

*None, the number is proscribed by law.*

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

*None, the Court has got not different level of chambers.*

(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.

*No.*

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

*The position of Advocate General does not exist in Croatian legal system.*

## **E. Research and Administrative Assistance**

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

*The Department competent for following the case law of CJEU and European Court of human rights is established. The Court has also got a Division for following the Court's case law.*

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

*The Court has got 15 court advisors, although they are not competent only for legal research.*

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

*No.*

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.

*The Department competent for following the case law of CJEU and European Court of human rights consists of 3 judges (2 of them are also assigned to chambers). The 3<sup>rd</sup> judge in this department is a head of the Division for following the Court's case law.*

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?

*Please see the answer under 12.*

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

- (a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case; *No.*
- (b) Undertaking legal research to assist a judge to make a decision in a case; *No.*
- (c) Discussing aspects of a case with a judge orally or in writing; *No.*
- (d) Consideration and evaluation of the relevant law; *No.*

- (e) Undertaking comparative law analysis; *No.*
- (f) Drafting sections of judgments; *No.*
- (g) Putting forward a suggested or preliminary decision for judge(s) to consider; *No.*
- (h) Any other element that you consider is relevant in this context.

*The Court advisors are dealing their own cases under the control of a judge.*

## **F. Oral hearings**

18. Is there an oral hearing in all cases?

*No. In the appeal cases if the Court holds that it is necessary, it may hold a hearing.*

*In cases which the Court shall adjudicate as the first and last instance: the court may resolve a dispute by a decision without holding a hearing: 1. if the respondent acknowledged the statement of claim in full; 2. in a case where the adjudication is based on a final judgement rendered in a model dispute; 3. if the court establishes that a particular decision, action or administrative contract is defective in a way which prevents an assessment of its lawfulness; 4. if the complainant disputes only the application of law, the facts of the case are indisputable, and the parties in the complaint or in the response to a claim are expressly not asking for the holding of a hearing.*

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

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

*The Court has got no evidence about a percentage of cases typically involves an oral hearing. But, in appeal cases it is very seldom, while in a cases which the Court shall adjudicate as the first and last instance is a rule.*

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

*In the appeal cases it is proscribed that whether an oral hearing will be held it is the decision of the Court.*

*In cases which the Court shall adjudicate as the first and last instance it is proscribed by law when the Court may resolve a dispute without holding an oral hearing.*

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

*It is obligatory in the first instance administrative dispute.*

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 never takes place among the judges before the oral hearing.*

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

*It is not proscribed by law, but usually after the oral hearing is concluded, any oral submissions won't be allowed.*

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

*It is not exactly proscribed, but new facts may not be presented in an appeal and usually the Court will not take into consideration submissions which are addressed after the expiry of the deadline for lodging an appeal.*

*In the first instance procedure, after the oral hearing is concluded, any submission won't be allowed.*

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?

*It may involve so.*

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

*Only if an oral hearing is postponed, but not concluded.*

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?

*No.*

## **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 | <input type="checkbox"/> |
| 5-10 pages  | <input type="checkbox"/> |
| 10-20 pages | x                        |
| 20-30 pages | <input type="checkbox"/> |
| 30-40 pages | <input type="checkbox"/> |
| 40-50 pages | <input type="checkbox"/> |
| 50+ pages   | <input type="checkbox"/> |

20. 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**

21. 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 Court can raise points of law of its own motion (ex officio).*

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

*In camera. The judges are talking about the case, the decision is issued by majority, dissenting opinions are allowed, but they are not presented to the public.*

23. 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?

*No.*

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

If yes, specify the relevant rules etc.

*No.*

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

26. 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?

*It is not necessary that the oral hearing will influence the court's discussion, deliberation and decision-making at all. It depends on the circumstances of a specific case.*

27. 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**

28. 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 judgment?

*The decision is delivered on behalf of the institution.*

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

*In appeal cases the judge rapporteur writes the judgement and the president of the chamber for a concrete case signs the judgement. In other cases, the president of the chamber for a concrete case writes and signs the judgement (please see the answer under 10j.).*

*There are no formal rules governing this, it is well established case law.*

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

*It is recorded in IT system.*

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

*Yes. In the reasoned explanation of judgement, the court shall present claims of the parties, facts they presented and evidence they proposed, facts established by the court, why and*

*when they were established, and if they were established through the evidentiary procedure, the evidence presented and assessed. The court shall in particular state the provisions of substantive law applied in deciding about the dispute and declare itself regarding proposals and objections of the parties about which it did not present any reasons during the dispute. The operative ruling must be reasoned if it serves to reject a proposal of the party or to resolve opposing proposals of the parties, and may be reasoned where the court deems that is necessary.*

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

*No.*

#### **J. Timeframes for the decision-making process**

33. 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.

*On average the approximate length of procedure before the High Administrative Court is 140 days.*

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

*No.*

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

*There are some laws which provide specific mandatory timeframe for the High Administrative Court: e.g. free access to information (90 days) and public procurement law (30 days, but the provision is at the moment under Constitutional Court's review).*

36. 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.

*For cases with no specific mandatory framework, the Court takes into consideration case law of European Court on human rights.*

37. 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?

*The Court usually abides mentioned timeframes. There can be some difficulties, e.g. the need to consider the question of law at plenary session (please see the answer under 10i.).*

38. 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?

*Please see the answers above (questions 36. and 37.).*

## **K. Developments over time**

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

*Yes, the mandatory timeframe for particular category of cases has been introduced.*

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

*No.*

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

*The speediness itself doesn't mean an improvement of a good quality.*

## **I. Further comments or observations**

42. 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?

*No.*

**Thank you for completing this questionnaire.**