



**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: Czech Republic



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
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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 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 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.

Nejvyšší správní soud/ Supreme Administrative Court

2. What country/jurisdiction does your institution serve?

Czech Republic

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

Brno, Czech Republic

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.

<http://www.nssoud.cz/Uvod/art/1> (also available in English and German version)

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 Supreme Administrative Court decides mainly as a court of cassation. In some matters concerning national elections (parliamentary and presidential), elections to the European Parliament and matters of political parties and political movements the Supreme Administrative Court decides as a court first instance.

(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.

The administrative judicial system consists of specialized divisions of eight Regional Courts, which decide administrative disputes as courts of the first instance, and the Supreme Administrative Court as the instance of cassation.

The civil and penal judicial system consists of District Courts (86), Regional Courts (8), High Courts (2) and the Supreme Court.

C. Caseload

6. How many judges¹ serve on your institution?

32

7. How many cases² are brought to your institution per year on average?

	2015	2016	2017
Administrative law cases	2886	3246	3902
All cases	3400	3694	4564

8. How many cases does your institution dispose of³ per year on average?

approximately 3800 but the number increases each year

	2015	2016	2017
Administrative law cases	2915	2954	3442
All cases	3459	3424	4073

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions?

Yes, it has chambers.

10. If yes, provide the following details:

a. How many chambers/divisions?

10 general chambers, an extended chamber, a chamber for political matters, a chamber for the matters of competence complaints and a special chamber for the matters of jurisdiction conflicts.

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

3 judges in a general chamber

7 or 9 judges in an extended chamber

7 judges in a chamber for political matters

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 judgment or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

7 judges in a chamber for the matters of competence complaints

6 judges in a special chamber for the matters of jurisdiction conflicts

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.).

There is no specialisation by chambers, except of the chamber for political matters and the chamber for the matters of competence complaints and the special chamber for the matters of jurisdiction conflicts.

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

There is no rotation system but a judge can be moved by a change of a work schedule which is made by the President of the Supreme Administrative Court.

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

Generally, it is not possible. But a judge can be assigned to a general chamber and to a special chamber (extended chamber/chamber for political matters/chamber for the matters of competence complaints/special chamber for the matters of jurisdiction conflicts) at a time.

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

10 general/ordinary chambers and one extended chamber.

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

3

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

No, it does not.

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?

The extended chamber of 7 judges decides when a general chamber of the Supreme Administrative Court has in its decision arrived at a different conclusion to a conclusion which is expressed in a previous decision(s) made by the Supreme Administrative Court.

The extended chamber of 9 judges decides when a general chamber of the Supreme Administrative Court has in its decision repeatedly arrived at a different conclusion to a conclusion on which the administrative authority based its decision.

In the interests of uniform decision-making by Regional Courts plenary session may on a proposal of the President of the Court or the extended chamber adopt a legal position.

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 each case, there is a rapporteur. He/She is determined by a work schedule. He/she prepares a draft of a final decision.

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;

President of the Court issues a work schedule which determines the assignment of cases.

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

President of the Court is not allowed to determine the number of judges in a particular case.

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

President of the Court is not allowed to assign certain additional roles to judges.

(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.

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

No, it does not exist.

E. Research and Administrative Assistance

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

Special Department of Research and Documentation.

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

5 officials with legal education

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

No, they do not.

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.

Research support is pooled.

Administrative support is assigned to a concrete general chamber.

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 above

17. To what extent, if at all, do assistants*/*référéndaires* 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;
- (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 judgments;
- (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.

*** Assistants in the sense of law graduates who are assigned to a particular judge.**

Depending on their experience and length of employment they are allowed to do all activities above mentioned. The final decision still lies on the judge.

F. Oral hearings

18. Is there an oral hearing in all cases?

As a rule, the Supreme Administrative Court decides on a cassation complaint without a hearing.

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

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

Approximately 1 %.

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

If the Supreme Administrative Court considers it necessary or if it produces evidence, the Supreme Administrative Court orders a hearing to decide the case.

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

Parties can request an oral hearing but it is in the Court's consideration whether there will be an oral hearing or not.

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?

Only when there is a reason to consider ordering an oral hearing.

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

There are no time limits but the party is confined to make oral submissions concerning the matter of case.

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

They are permitted to address the Court until the final decision is given.

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?

Only to matters set out in the statements or written submissions of the parties. This does not apply to the points of law which the Court can raise of its own motion (see answer H.21)

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

They are permitted until the final decision is given.

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, it is not. Reasons for excluding the judge do not include circumstances that consist in the judge's actions in the proceedings concerning the matter or in his decisions in other matters.

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 checked="" type="checkbox"/> |
| 10-20 pages | <input type="checkbox"/> |
| 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, there is not.

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 Supreme Administrative Court is bound by the scope of the cassation complaint. This does not apply if the proceedings before the court of the first instance were invalid or if it was affected by a fault which may result in an unlawful decision on the matter itself or if the contested decision is non-reviewable, nor in cases where the decision of the administrative authority is null.

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

The case is assigned to a rapporteur (judge) by the work schedule. After secret deliberation(s) in the chamber, judges vote on the outcome of the case. Then the rapporteur makes a draft of the decision which is reviewed and signed by the presiding judge of the chamber.

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, it does not.

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

If yes, specify the relevant rules etc.

See answer 22.

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

Preferences are communicated by voting after deliberation(s). The votes are equal.

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?

Generally, they are equal but it depends on the content of the oral hearing.

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

No, there are none.

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?

A case is assigned to a particular judge (rapporteur). He/she discusses it in a chamber and after secret deliberation(s) in the chamber he/she writes a draft of the final decision on behalf of the institution. Then it is reviewed and signed by the presiding judge of the chamber.

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

In writing.

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)?

No, there is not.

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

No, there are none.

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.

2015	2016	2017
154 days	142 days	142 days

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

No, there is not.

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.

Yes, cases concerning invalidity of national or European elections or voting must be decided within 20 days.

In all cases, the final decision has to be made in writing within 30 days since it was awarded.

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.

Cases should be decided without undue delay.

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?

No, it is not.

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?

No, it is not.

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?

No, it has not.

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

Not applicable.

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

Not applicable.

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?

Thank you for completing this questionnaire.