



**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: Finland**



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.

*Korkein hallinto-oikeus in Finnish and Högsta förvaltningsdomstolen in Swedish.*

*The Supreme Administrative Court of Finland in English.*

2. What country/jurisdiction does your institution serve?

*Finland*

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

*Helsinki*

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.

*In Finnish: <https://www.kho.fi>*

*In English: <https://www.kho.fi/en>*

*In French: <https://www.kho.fi/fr>*

### 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 exercises judicial power as the final instance in administrative judicial procedure matters and supervises the judicial procedure within its field of competence.*

*Upon request, the Supreme Administrative Court may give statements on legislative issues to the government and may submit proposals to the government for initiation of legislative action.*

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

*The Supreme Administrative Court is the highest administrative court in Finland and the final instance in administrative judicial matters.*

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

*The judicial powers are exercised by independent courts, with the Supreme Court and the Supreme Administrative Court as the highest instances.*

*The other courts dealing with administrative cases are the regional administrative courts, the Administrative Court of Åland, the Market Court and the Insurance Court.*

### **C. Caseload**

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

*According to Supreme Administrative Court Act the Supreme Administrative Court consists of a President and at least fifteen Justices.*

*The Court has twenty permanent Justices and in addition to them, six temporary Justices in 2019. In cases referred to in the Water Act and the Environmental Protection Act as well as in cases concerning certain intellectual property rights such as patents, the chamber is composed of the judges and two part-time expert members having competence in the relevant field.*

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

*In the 2000s, the number of submitted cases has fluctuated between 4,000 and 6,000.*

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

*In the 2000s, the number of resolved cases has fluctuated between 4,000 and 6,000.*

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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.

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

9. Does your institution have chambers/divisions?

*Yes, it does. The President decides the number of chambers.*

10. If yes, provide the following details:

a. How many chambers/divisions?

*There are at least two chambers. At present there are three chambers.*

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

*Seven to nine Justices.*

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 are some special areas among chambers. However, all the chambers have a wide variety of different types of cases.*

*The first chamber focuses, first and foremost, on cases concerning international protection and immigration, and environmental cases in the widest sense.*

*The second chamber examines cases concerning taxation, economic activities, competition and public procurement and IPR, state aid, and residence permits.*

*The third chamber focuses on cases concerning social welfare and health care, municipal law, governmental functions and general administrative law.*

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

*Yes, they can move. The President decides after discussing with Justices.*

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

*Yes, it is.*

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?

*In judicial procedure matters, five members constitute a quorum, unless the law provides for another composition.*

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

*Yes.*

If yes:

(i) Based on what rules or factors?

*Based on the rules in Supreme Administrative Court Act.*

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

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?

*A decision to refer a judicial procedure matter to a plenary session is made by the President, and a decision to refer a matter to a composition of all the members of a chamber is made by the chairperson of the said chamber.*

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?

*The justices act in turn as a reporting justice at the judicial session.*

If yes, specify the additional roles and explain how these roles are assigned.

*The reporting justice familiarises him- or herself with the documents the case, may discuss the case with the referendary before the session and will be the first to speak at the session after the referendary's presentation. After deliberations and the decision, the reviewing justice will deliver the reviewed draft decision to the chairperson of the session. The designation as reviewing justice in relation to a particular judicial session is determined as the monthly session lists are drawn up.*

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 President decides how the categories of cases are assigned to the chambers.*

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

*The composition of the court in a particular case is determined based on the rules in the Supreme Administrative Court Act. The President can, however, decide to refer a judicial matter to the plenary session.*

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

*The President can temporarily relieve a justice from his or her work in the chamber to take on an administrative task.*

(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? If yes, please indicate:

*No*

- (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.

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

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

*We don't have a research unit for our Justices. There is, however, two information service and library professionals and several persons working as administrative assistants available in the chambers.*

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

*See 12 above*

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

*See 12 above*

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.

*See 12 above*

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 12 above*

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;

*Before the examination of the case by a chamber, the referendary establishes the questions of law and the facts of the case and prepares a memorandum and a draft decision.*

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

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

*The deliberations and the issue of the decision take place after the referendary has presented his or her written and oral statements in the chamber's session. After the chamber's session, the referendary works closely with the reporting justice in drafting the decision based on what was decided in the session.*

(d) Consideration and evaluation of the relevant law;

*See (a)*

(e) Undertaking comparative law analysis;

*See (a)*

(f) Drafting sections of judgments;

*See (a) and (b)*

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

*See (a) and (b)*

(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.*

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

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

*Only a few p.a. Approximately four to six oral hearings per year (i.e. the percentage is very low).*

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

*The decision to have an oral hearing in a case is made by the justices in session.*

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

*Yes, they can. However, the main rule is that an oral hearing takes place at the regional administrative court. At that level, an oral hearing shall be conducted if a private party so requests. The oral hearing requested by a party need not be conducted if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason. In the Supreme Administrative Court an oral hearing*

*shall be conducted if it is important for establishing of the facts of the case or to guarantee a fair trial. Most often, if oral hearing has not been conducted at the lower level even if it should have been, the decisions shall be repealed and the case remanded back to the lower court for oral hearing.*

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?

*Yes, see 19. (b) above.*

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

*No*

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

*There are no formal rules placing restrictions on how long the parties can address the court. The chairperson will actively direct the proceedings at the oral hearing.*

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 purpose of an oral hearing is establishing the facts of the case. A party requesting an oral hearing must state why the conduct thereof is necessary and what evidence is to be presented at the hearing. The court can also decide to conduct an oral hearing if it is necessary in order to establish the facts. The oral hearing may be limited to concern only a part of the matter, to clarify the opinions of the parties or to receive oral evidence, or in another comparable manner.*

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

*Yes*

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?

*According to chapter 13, section 7 (2) and (3) of the Code of Judicial Procedure a judge is disqualified from re-hearing the case or a part thereof in the same court, if there is justifiable reason to believe that he or she has a prejudice in the case on the basis of his or her earlier decision in the case or for another special reason. In addition, a judge is disqualified if another circumstance, comparable to the circumstances referred to in [Chapter 13] gives rise to a justifiable doubt of the impartiality of the judge in the case.*

*A party has to enter a plea of the disqualification of the judge without delay.*

**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
- 20-30 pages
- 30-40 pages
- 40-50 pages
- 50+ pages

*There is significant variance in the length of written submissions, depending on the subject matter of the case and whether the appellant is represented by legal counsel or not. We may have one sentence written by hand or more than 50 pages of extremely careful and detailed text by an attorney or even people e.g. opposing a certain project having an impact on the environment.*

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 Supreme Administrative Court can raise points of law of its own motion.*

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

*The deliberations and the issue of the decision take place in the chamber's session. After the chamber's session, the decision is finalized.*

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?

*The official languages of the Supreme Administrative Court are Finnish and Swedish. If the language of the case is Swedish, the decision shall also be given in that language. In oral hearings and on-site inspections every party or participant may use his/her own mother tongue. However, the internal language of the court is Finnish (i.e. deliberations in behind closed doors).*

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

If yes, specify the relevant rules etc.

*Yes, after the referendary's presentation of the case, the reporting justice offers his or her comments followed by the other justices, in order of seniority (most junior justice first), with the chairperson speaking last. Voting takes place in the same order, but, in the last formal vote, the order of seniority is obeyed irrespective of the role of reporting justice. Based on internal rules.*

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

*The case is discussed and decided in the session.*

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?

*The purpose of the oral hearing is to establish the facts of the case. The case is decided based on the facts as established in the written submissions (the whole case file) and in 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?

*In the Administrative Judicial Procedure Act, there is an important section concerning the scope of review (sec. 33). The administrative court is responsible for reviewing the matter. Where necessary, it shall inform the party or the administrative authority that made the decision of the additional evidence that needs to be presented. The court shall on its own initiative obtain evidence in so far as the impartiality or fairness of the procedure and the nature of the case so require.*

## **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?

*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?

*The reporting justice works, with the assistance of the referendary assigned to the case, in drafting the decision. The reporting justice delivers the reviewed draft decision to the chairperson of the session for comments. If the chairperson has so decided in the session, the draft can be circulated among all the justices of the deciding composition for comments. In hard cases, including precedents, also a new session to develop the reasoning can be arranged. It is also possible that several rounds to comment the draft decision are necessary. The system is based on solid court practice in the framework of the statutes concerning the Court.*

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

*A protocol is established of what was decided in the session. In an oral hearing, the session is (audio) recorded. The judgment of the Court shall be given in writing as a document and signed by the justices and the referendary (also available in electronic form).*

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*

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

*The decision in a case where leave to appeal is nor granted is standardized and extremely brief, consisting only of one page.*

## **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.

*As at 31 October 2018 the average length is appr. 6,9 months, the median being 4,9 months (the average not including matters concerning aliens is 11,2 months)*

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.

*No. However, certain groups of cases have been defined as urgent in law (e.g. psychiatric care, child welfare cases etc.).*

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.

*The President is according to law responsible for ensuring that cases shall be handled without undue delay. In the negotiations between the Ministry of Justice and the Supreme Administrative Court certain timeframes are agreed upon.*

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?

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?

*Yes, it is. The heavy case-load in relation to the resources available is the primary cause.*

**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. A developed system for electronic case management shall be adopted next year.*

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

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

**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.**