



**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: Slovenia



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 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.

The formal title in english is: The Supreme Court of the Republic of Slovenia (in slovenian language: Vrhovno sodišče Republike Slovenije).

2. What country/jurisdiction does your institution serve?

The Supreme Court of the Republic of Slovenia is, according to Article 127 of the Constitution, the highest court in Slovenia.

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

Its seat is in Ljubljana.

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.

Official website of The Supreme Court of the Republic of Slovenia: <http://www.sodisce.si/eng/>

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);

It is the last instance court in Slovenia.

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

In administrative disputes first-instance decisions (as a rule) come under the jurisdiction of the Administrative court of the Republic of Slovenia as a specialised court. Court of appellate jurisdiction in cases of administrative review is The Supreme Court of the Republic of Slovenia as The General Court. Within The Supreme Court adjudication in administrative disputes is conducted by Administrative Review Department of The Supreme Court.

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

In administrative disputes decisions are made by the Administrative Court of the Republic of Slovenia and by the Supreme Court of the Republic of Slovenia. Adjudication of first instance is carried out by the Administrative Court, unless otherwise stipulated by law, the decisions on complaints against the decision of first instance in administrative disputes are made by the Supreme Court. The decisions on extraordinary legal remedies are made by the Supreme Court. In certain cases the Supreme Court decides as a court of first instance.

C. Caseload

6. How many judges¹ serve on your institution?

See the answer to a question number 9.

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

¹Please 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).

²In 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.

There were 648 cases lodged in 2017 before Administrative Review Department of The Supreme Court.

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

There were 725 cases disposed in 2017 before Administrative Review Department of The Supreme Court.

D. Internal organisation of the Supreme Administrative Court

9. Does your institution have chambers/divisions?

The Supreme Court is organized in six judicial departments: Criminal Department (6 judges), Civil Department (8 judges), Commercial Lawsuits Department (4 judges), Labor and Social Security Disputes Department (5 judges), Administrative Review Department (7 judges) and Department For Case Law Monitoring (1 judge).

10. If yes, provide the following details:

a. How many chambers/divisions?

See the answer to question number 9.

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

See the answer to question number 9.

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.).

See the answer to question number 9.

³Please 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. Do judges move between chambers/divisions? If yes, how is such movement determined?

Judges can move between divisions only in accordance with Annual Work Schedule.

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

Yes.

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 an administrative dispute The Supreme Court adjudicates on the appeals and on the revisions within a panel of three judges.

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

(i) Based on what rules or factors?

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

A single judge decides on the stay of the proceedings. In disputes between the Administrative Court and the Supreme Court over their jurisdiction, the decisions are made by the Supreme Court within a panel of five judges.

Composition of the court is stipulated by the Administrative Dispute Act (ADA-1).

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?

No.

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.

Each judge is assigned certain role: the President of the panel, the Judge-Rapporteur and the Judge-member.

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

The President of the Supreme Court issues The Annual Work Schedule in accordance with Judicial Order issued by Minister for Justice. According to The Annual Work Schedule there is no assignment of specific cases in administrative disputes to certain panel of judges.

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.

Slovenian legal system is not familiar with such an institution or a person. On the other hand it recognises the representative of the State who may submit pleadings in cases concerning administrative law for the protection of public interest as an intervenient or for the protection of state interest as a claimant. The public interest is generally represented by the State Attorney's Office.

E. Research and Administrative Assistance

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

The Supreme Court judges are assisted by judicial advisers. The assistance is provided also by judges of lower courts who are assigned to work at the Supreme Court. There are 10 judicial advisers advisers and 2 county court judges at the Administrative Review Department of the Supreme Court. That makes total of 1,7 assistant available for each judge. A judicial advisor is required to have law degree and Bar exam and provides assistance to a judge, such as: legal research and law analysis, draft judgments, substantive comments.

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

See the answer to a question number 12.

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

Not usually.

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.

Judicial advisers deal with cases from a specific legal area, e.g. procurement, international protection, tax law etc. In this respect they provide assistance to every judge.

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 the answer to a question number 15.

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;
- (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.

See the answer to a question number 12.

F. Oral hearings

18. Is there an oral hearing in all cases?

A decision on legal remedies (ordinary judicial review) is usually made in a session. In the appeal proceedings The Supreme Court may render a decision with a main hearing, if it establishes that all or some of the evidence already presented should be presented again

before The Supreme Court in order to state the facts correctly, or if it believes that new facts should be established and new evidence should be presented that would be beneficial for the clarification of matters.

In extraordinary review procedures (extraordinary judicial review) The Supreme Court usually considers a case at a closed session. It may also call a public hearing on its own initiative if the decision is important in order to ensure legal certainty or evolution of the law and when it ascertains that there is an overriding public interest.

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

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

In the year 2018 only two cases involved a main hearing.

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

See the answer to a question number 18.

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

The Supreme Court is not obliged to adjudicate with a main hearing in case of parties request. It is wholly at the discretion of the Supreme Court to conduct a main 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. This is the practice in all cases.

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

As a general rule, the period allowed to each main party is not limited to a maximum.

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

No. The Court frequently interrupts the parties when they are speaking in order to clarify points which appear to it to be of relevance.

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 court investigates the facts of the case within the bounds of the allegations contained in the written submissions.

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

No.

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?

A judge can be prohibited to exercise the judicial function if any circumstances render his impartiality doubtful.

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

10-20 pages.

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?

In the light of the principle of iura novit curia, The Supreme Court is not bound by the points of law raised by the parties.

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

All the members of the panel take part in the deliberation, whereas the member who delivers an opinion plays an active role as a judge rapporteur. Judge acting as a rapporteur writes

the draft decision and cannot at the same time be a judge presiding the panel. The President of the panel signs the decision.

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, only in the Slovenian language.

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

If yes, specify the relevant rules etc.

The Supreme Court adopts a judgement or a resolution with a majority of votes. Special minutes on consultations and voting are kept and they must be signed by all members of the panel and by the recording clerk. The dissenting opinion is possible only in extraordinary review procedures. It is the means for public presentation of judges' views.

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

First, judges equip themselves with information about their colleagues' preferences and questions about a particular case. Then, after gathering the information, they bargain with one another in order to craft their opinion. Oral arguments are integral to this process.

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?

A question cannot be answered because there were not enough public hearings in order to determine their influence.

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

There aren't any other rules.

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 Supreme Court.

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?

See the answer to a question number 22 (Section H).

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

See the answer to a question number 24 (Section H).

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. Judgments are the final outcome of The Supreme Court. Orders are decrees from a judge commanding a specific party to do a specific act, e.g. The Supreme Court may ask a person to present a mandate or other authorization in writing from that party.

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

Judgement is a ruling on the substance of the case. By a procedural decision The Supreme Court can abrogate the decision of the first-instance court and reject the action if in the procedure in the first-instance court the provisions regarding preliminary assessment of the action were violated.

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.

The approximate length of time between the introduction of the case into the system of The Supreme Court and the final resolution of the case is 11,4 months for adjudication on the revisions and 5,7 months for adjudication on the appeals.

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

Generally speaking, there is no specific mandatory timeframe for deciding cases. They are decided in accordance with the relevant caseload. Emergency proceedings in which the periods for issuing a court ruling is shorter than usually in administrative disputes are regulated for example in the following acts: Referendum and Public Initiative Act (48 hours), Personal Data Protection Act (no specific timeframe, the Act states that the procedure is urgent), National Assembly Elections Act(48 hours), etc.

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.

See the answer to a question number 34.

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.

See the answer to a question number 34.

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?

Usually The Supreme Court abides by the mandatory timeframe.

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?

See the answers to questions above.

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 system of extraordinary judicial review has changed.

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

Before the amendments to the ADA-1 the parties could file a request for revision against a final ruling issued at the first instance court if:

- the value of the contested part of the final administrative act exceeded EUR 20.000;*
- the substance of the matter concerned the decision on a relevant legal issue or if the ruling of the court of first instance deviated from the case law of the Supreme Court with regard to the legal issue that is essential for the decision, or if there were no uniform position concerning this legal issue in the case law of the court of first instance and the Supreme Court had not yet adjudicated on the matter;*
- the decision that was being contested in the administrative dispute, had very grave consequences for the party.*

According to abovementioned amendments the provisions of the Act regulating civil procedure are applied, unless otherwise provided by the ADA-1. Thus as a first step the parties have to file a request for revision against a final ruling issued at the first instance within thirty days of the serving of a final decision. The Supreme Court allows the revision only if the substance of the matter concerns the decision on a relevant legal issue or if the ruling of the court of first instance deviates from the case law of the Supreme Court with regard to the legal issue that is essential for the decision or if there is no uniform position concerning this legal issue in the case law of the court of first instance and the Supreme Court has not yet adjudicated on the matter or if there is no uniform position concerning this legal issue in the case law of the Supreme Court. After The Supreme Court's affirmative decision (to allow the revision), the revision must be filed within fifteen days of the serving such a decision.

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

The changes guarantee equal access of citizens to the Supreme Court regardless of the value of the contested final administrative act and reinforce its role of safeguarding the uniformity of judicial practice.

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.