



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of  
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative  
Courts**

Berlin, 13 May 2019

**Answers to questionnaire: Austria**



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# ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg  
(Higher Administrative Court Berlin-Brandenburg)

## *Questionnaire*

### **Introduction**

One of the most important tasks of ACA- Europe is to foster mutual understanding of the jurisprudence of the member states. The recognition and evaluation of the jurisprudence of the Supreme Administrative Courts of other member states is a key prerequisite for the development of a European legal community. For this purpose it is not sufficient to be able to read the decisions of the other member courts. In order to really understand their jurisprudence it is also eminent to understand under what conditions and traditions our colleagues perform their duties.

The conditions Supreme Administrative Courts work under are among others strongly determined by the specific functions a Supreme Administrative Court has in its national legal order. The specific functions on their part might have strong influence on how the access to the Supreme Administrative Court is designed and what scope of assessment of a case is applied. This leads to a number of questions: Which “filters”, for example, does administrative procedural law incorporate into the procedure, if it does at all? Does the procedure require a special admission or can every case be brought to the Supreme Administrative Court by the parties? Are only legal questions or also facts to be discussed?

Dealing with these questions the seminar to be held in Berlin from 12<sup>th</sup> to 14<sup>th</sup> May 2019 hopes to contribute to a deeper mutual understanding of the decisions of the member states' Supreme Administrative Courts. It shares this objective with the closely linked seminar taking place in Dublin on 25<sup>th</sup> and 26<sup>th</sup> March 2019, which will lay an emphasis on the internal mode of decision making, asking how our courts decide. Both seminars will deal with different aspects of the ways of our judicial conduct, deliberation and reasoning which are all important to understand the jurisprudence of the different member states.

These aspects cannot be studied efficiently from manuals, so ACA-Europe seminars are the right place to assess these important features of the judge's daily work.

## I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

The administrative jurisdiction consists of three instances - firstly the administrative authorities, secondly the lower administrative courts and finally the Supreme Administrative Court.

b) Does your SAC also serve as a first instance court?

No, as one of Austria's three supreme courts the Supreme Administrative Court (VwGH) has final jurisdiction in matters of administrative law. As such it is placed above the lower administrative courts, which in turn ensure that administrative authorities such as tax offices, district authorities and the Federal Office for Immigration and Asylum act in conformity with the law.

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter?
- depending on the importance of the case?
- depending on a choice by the plaintiff (alone) or the parties (by agreement)?
- depending on other criteria?

Please explain.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

2.

a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load? Due to the high number of asylum applications in 2015/2016, there was an immense increase in the pending legal matters at all instances in this area. Also in legal matters concerning gambling law there was an immense increase in 2017 and in 2018. As to the field of asylum law, the applications for legal aid to file a final complaint make up a large amount of the overall case load in this field, whereas final complaints as such make up the case load in gambling law.

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

No, this is not possible.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law?
- the deliverance of single case justice?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

5. a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

See answer to question I. 1b).

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

See answer to question I. 1b).

6. a) Is there a separate constitutional court in your country?

Yes, the Constitutional Court, which is one of Austria's three jurisdictional orders, rules inter alia on the constitutionality of laws or whether a decision of a lower administrative court has violated a fundamental right.

b) Does the SAC in your country serve as a constitutional court?

No.

c) In how far does your SAC consider constitutional law, especially fundamental rights?

See answer to question I. 6b).

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

No.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

See answer to question I. 6b).

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

There is the possibility to challenge an administrative act before the Constitutional Court due to alleged infringement of fundamental rights and/or the violation of personal rights through the application of an unconstitutional law or an unlawful regulation. In case the Constitutional Court finds that the decision of the administrative court has not violated a fundamental right or personal rights as stated above, the complainant may apply for the complaint to be forwarded to the Supreme Administrative Court for a review regarding a possible violation of rights not guaranteed by laws considered constitutional law. Furthermore, it is also possible to appeal against the same decision at the Supreme Administrative Court as well as the Constitutional Court at the same time. While the standard of review of the Constitutional Court is

constitutional law, the Supreme Administrative Court controls the compliance of administrative decisions with laws not considered constitutional law.

## II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?

Yes, as a rule (with only two exceptions), final complaints, motions to set a deadline due to the breach of duty to issue a decision by an administrative court, requests for reopening a proceeding and reinstatement to the previous legal position to the Supreme Administrative Court must be drafted and submitted by a lawyer (or alternatively, in fiscal matters, by a tax adviser or certified public accountant).

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

See answer to question II. 1a).

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

No.

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

No.

e) Are there specific (different) rules for representatives of administrative authorities?

Among others administrative authorities, which were involved in the proceedings before the lower administrative court, as well as the competent Federal Minister or the provincial government, who may also in certain matters submit a final complaint, can draft and submit their final complaints to the Supreme Administrative Court without a lawyer.

2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

As a rule, the Supreme Administrative Court only acts upon request. The decisions of administrative courts may be appealed within a timeframe of six weeks at the Supreme Administrative Court and unless otherwise provided by the Federal Constitution, the pleadings must be submitted to the concerned administrative court. Certain applications for legal aid to file a final complaint and further pleadings in a proceeding concerning a final complaint after its submittal can and must be directly submitted to the Supreme Administrative Court. In general, a sufficient number of identical copies of each pleading including exhibits shall be submitted so that one copy can be served on each of the parties or authorities, which have to be informed by the administrative court or the Supreme Administrative Court, and one copy can be retained for the files of the Supreme Administrative Court. Furthermore, a fee of 240 euros must be paid.

Lawyers, tax consultants and accountants are - depending on technical feasibility - obliged to participate in the electronic legal transactions, which means they have to lodge written pleadings electronically with the Supreme Administrative Court. In case they do not lodge written pleadings by means of the electronic legal transactions, they have to attest that the technical possibilities to use the electronic legal transactions are not available. Such an obligation does not exist for authorities and for natural or legal persons. Furthermore, there are no restrictions concerning office hours

and lodging of appeals by means of electronic legal transactions with the Supreme Administrative Court.

As to the content of a final complaint, the Supreme Administrative Court Act 1985 (Verwaltungsgerichtshofgesetz 1985 – VwGG) foresees certain requirements. According to § 28 para. 1 and 2 VwGG a final complaint shall contain the identification of the contested decision/order, the identification of the concerned administrative court, the facts of the case, the alleged infringement of rights not guaranteed by laws considered constitutional law (referred to as “points of the final complaint” and in case of authorities “declaration on the scope of appeal”), the reasons concerning the claimed unlawfulness of the decision/order, a specific demand (decision on the merits, dismissal or cassation) and the information required to determine whether the final complaint has been submitted in due time.

Furthermore, pursuant to § 25a para. 1 VwGG the administrative court has to decide in its decision/order whether or not a final complaint to the Supreme Administrative Court is admissible in accordance with Art. 133 para. 4 Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG) and has to give brief reasons for this finding. A final complaint is admissible, if the solution depends on a legal question of fundamental importance, in particular because the ruling departs from the case-law of the Supreme Administrative Court, such case-law does not exist or the legal question to be solved has not been answered in uniform manner by the previous case-law of the Supreme Administrative Court (Art. 133 para. 4 B-VG).

If the administrative court found in its decision/order that a final complaint to the Supreme Administrative Court is not admissible in accordance with Art. 133 para. 4 B-VG, a final complaint, which is then called “extraordinary final complaint” (*außerordentliche Revision*), must separately contain the reasons regarding its admissibility contrary to the finding of the administrative court (§ 28 para. 3 VwGG). In case the administrative court decides in its decision/order the final complaint to the Supreme Administrative Court to be admissible due to the aforementioned grounds, such a final complaint is called “ordinary final complaint” (*ordentliche Revision*). Pursuant to the case-law of the Supreme Administrative Court regarding the admissibility of a final complaint in conjunction with a legal question of fundamental importance (Art. 133 para. 4 B-VG, § 28 para. 3 VwGG), an ordinary final complaint must as well separately contain the reasons regarding its admissibility, if the complainant considers the reasoning of the administrative court regarding the admissibility to be insufficient or other legal questions of fundamental importance to be relevant for the case (see, for example, the decision of the Supreme Administrative Court from 30.6.2015, Ro 2015/03/0021 and also 27.11.2018, Ro 2018/14/0001).

**b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?**

As already mentioned in the previous answers a final complaint against the ruling of an administrative court is admissible, if the solution depends on a legal question of fundamental importance. A final complaint, which does not separately contain the reasons regarding its admissibility - thus actually containing a legal question of fundamental importance - will be rejected.

Once the final complaint is regarded admissible due to the submission on a legal question of fundamental importance, the Supreme Administrative Court examines the

decision of the administrative court with regard to the unlawfulness of its decision in relation to federal or provincial law and regulations in the subject matter, which is claimed by the complainant in the reasons of the complaint or in the declaration on the scope of appeal. The Supreme Administrative Court is not competent to review the respective decisions or the legal provisions applicable in the specific case in regards to their conformity with constitutional law.

Moreover, the principle of interdiction of novation applies to the procedure of the Supreme Administrative Court. The Supreme Administrative Court shall, unless it finds unlawfulness due to lack of jurisdiction of an administrative court or due to violation of procedural rules, review the contested decision or order on the grounds of the facts assumed by the administrative court within the scope of the alleged infringement of rights or within the scope of the declaration on the scope of appeal. If it finds that there may be relevant reasons within the scope of the alleged infringement of rights or of the declaration on the scope of appeal regarding the unlawfulness of the contested decision or order, which so far have not been notified to one of the parties, the parties shall be heard and, if necessary, the hearing adjourned.

In other words, the Supreme Administrative Court examines the legality of decisions of administrative courts based on the factual and legal situation at the time when the examined decision was issued by the administrative court. The aforementioned alleged infringement of rights and the declaration on the scope of the final complaint determine the subject matter of the proceedings.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

Since the Supreme Administrative Court has final jurisdiction in all administrative matters, it is obliged to refer a case to the ECJ for a preliminary ruling.

This obligation, however, only applies if the question concerning European Union law is decision-relevant for the case and this question is covered by the points of the final complaint. If the final complaint is to be dismissed on formal grounds or because there is no legal question of fundamental importance, the aforementioned obligation does not apply.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance? A final complaint against a ruling of an administrative court can be submitted by natural or legal persons, who claim to be violated in their rights by the court ruling, by the administrative authority involved in the proceedings before the lower administrative court, and by the Federal Minister in certain.

A final complaint against the ruling of an administrative court is admissible pursuant to Art. 133 para. 4 B-VG, if the solution depends on a legal question of fundamental importance, in particular because the ruling departs from relevant prior decisions of the Supreme Administrative Court, such case law does not exist or the legal question to be solved has not been answered in uniform manner by the previous case-law of the Supreme Administrative Court. In this context see also answer to question II. 2a) regarding the distinction between ordinary and extraordinary final complaints.

If the ruling entails only a small fine, federal law may provide that a final complaint against such a decision is inadmissible. § 25a para. 2-4 VwGG entail a list of acts, which are exempted from the control of the Supreme Administrative Court. § 25a para. 2 VwGG states, for example, that a final complaint is inadmissible against orders regarding preliminary decisions by an administrative court, against orders concerning the dismissal of late or inadmissible request for submission and concerning legal aid decisions by an administrative court. Para. 3 leg. cit. states that a separate complaint is inadmissible against procedural orders. Such orders can only be contested in the final complaint filed against the decision concluding the legal matter. Furthermore, § 25a para. 4 leg.cit. foresees in an administrative penal or a fiscal penal matter that if a fine up to 750 euros and no prison sentence was allowed to be imposed and a fine up to 400 euros was actually imposed in the decision, a final complaint due to infringement of rights is inadmissible.

Furthermore, in accordance with § 29 para. 5 of the Proceedings of Administrative Courts Act (Verwaltungsgerichtsverfahrensgesetz - VwGVG) and with § 25a para. 4a VwGG, a final complaint to the Supreme Administrative Court is not admissible, if, after the decision of the administrative court has been pronounced or served, the parties explicitly waived their right to file a final complaint. Such a waiver must be announced to the administrative court in a written way or recorded in the minutes. In case such a waiver was not given by a legal professional authorized by representation or in the presence of such a person, the waiver can be revoked within three days in a written way or explained on record. A waiver is only permissible, if the party had previously been informed about the consequences of such a waiver. In case the decision of the administrative court had been pronounced orally (§ 29 para. 2 VwGVG), a final complaint is only permissible after a request for a written copy of the decision according to § 29 para. 4 leg.cit. by at least one entitled person.

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

See answer to question II. 3a).

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

See answer to questions II. 2a) and 3a).

b) If there is a preliminary assessment, please give details:

- Which court decides (lower court or SAC)?

Pursuant to § 25a para. 1 VwGG the administrative court also has to decide in its decision/order if it considers the final complaint to be admissible and has to give its reasons for reaching to this decision. See in detail answer to question II. 2a).

- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?



No. If the administrative court found the final complaint to be admissible but the Supreme Administrative Court does not, it is not bound by the administrative court's opinion and vice versa.

- If the SAC decides, is there a specific procedure of admittance before the SAC?  
Please give details!

When a final complaint reaches the Supreme Administrative Court it first (apart from formal requirements which are also examined) considers if there is a legal question of fundamental importance (see above). If no such question is involved, it rejects the case by order.

- If the lower court decides (in a negative way), can the SAC still admit a case?  
Yes. If the final complaint is declared inadmissible by the administrative court the party can still file a final complaint with the Supreme Administrative Court. However, in this final complaint the applicant has to give reasons why they consider the final complaint to be admissible against the lower court's opinion (see also answer to question II. 2a).

- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?  
Ex officio.

c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?  
No.

d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?  
See answer to question II. 2a).

e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?  
Austria only has one court instance (placed above the administrative authority); therefore this question does not apply.

f) Are there specific requirements in certain fields of law?  
No, however, there are certain restrictions (see answer to question II. 3a)

g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?  
In 2017 the numbers of disposed applications, which are to be subdivided in annulments or decisions on the merits, dismissals, rejections, discontinuances of proceedings and others (eg. decisions about applications for legal aid). In total this adds up to 33 % others (in particular decisions about applications for legal aid), 15 % annulments or decisions on the merits, 8 % discontinuances of the proceedings, 4 % dismissals and 40 % rejections.

Looking at final complaints specifically the percentages are as follows:

Ordinary complaints:

- 35 % annulments or decisions on the merits

- 20 % dismissals
- 30 % rejections
- 3 % discontinuances of proceedings
- 12 % others

Extraordinary complaints:

- 23 % annulments or decisions on the merits
- 4 % dismissals
- 66 % rejections
- 4 % discontinuances of proceedings
- 3 % others

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

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6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

See answers to questions II. 2a and 3a.

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

Art. 129 B-VG states that in all provinces administrative courts of the province exist. For the Federation there is the Federal Administrative Court and the Federal Fiscal Court. Pursuant to Art. 130 B-VG these courts pronounce judgments on complaints against rulings by administrative authorities for unlawfulness, against the exercise of direct administrative power and compulsion for unlawfulness and on the ground of breach of duty to reach a decision. Placed above the administrative courts is the Supreme Administrative Court (Art. 133 B-VG).

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

There is no procedure of admittance of complaints against decisions of administrative authorities to the administrative court. However, there is such a procedure when bringing a case to the Supreme Administrative Court (see II. 2a and 3a).

The Federal Constitution does not provide regulations for the scope of review; this is outlined in in § 27 VwGVG, which foresees that unless the decision of an administrative authority is unlawful due to lack of jurisdiction, the administrative court shall review the decision, the contested exercise or the contested instruction based on the complaint (§ 9 para. 1 sub-para. 3 and 4 leg. cit.) or on the declaration concerning the scope of the complaint (see also § 9 para. 3 leg.cit.).

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

In 2014, following one of the most comprehensive reforms of Austria's system of administrative justice, new administrative courts of first instance at a federal and regional level took up operations. The reform created eleven new administrative courts,

the so called “9+2 model”, one for each of the nine provinces, one for review of the decisions of federal agencies, and one for the review of administrative decisions in financial matters. The Supreme Administrative Court is competent to review the rulings of these lower administrative courts, thus retaining final jurisdiction in all administrative matters. Also with this change the Supreme Administrative Court was assigned jurisdiction in asylum matters as final instance and the restrictions regarding the access to the Supreme Administrative Court as mentioned in the previous answers were introduced so that the Supreme Administrative Court can concentrate on the clarification of legal questions of fundamental importance.

### III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- other?

2. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

- cassation of the decision of the lower court and remitting the case back to the lower court?
- **cassation of the administrative act?**
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- **issue an administrative act itself?**
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- issue a legal opinion/authoritative interpretation of the law without connection to a single case?
- **other?**

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

[See answer to question II. 2b.](#)

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

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b) If not, what are the differences?

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4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

All procedures before the Supreme Administrative Court are governed by the VwGG (see above). If a complaint is not suitable to be heard it has to be rejected pursuant to § 34 VwGG. However, if a complaint (ordinary or extraordinary) proves to be suitable to be heard the Supreme Administrative Court issues a decision pursuant to § 42 VwGG, which either dismisses the complaint as unfounded, annuls the decision and remands it back to the lower Administrative Court or decides on the merits itself (§ 42 para. 4 VwGG). If the Supreme Administrative Court decides on the merits it has to apply (unless otherwise provided) the provisions that the administrative court would have to apply.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

§ 39 VwGG describes in which cases an oral hearing before the Supreme Administrative Court is to be held. After termination of the preliminary proceeding a hearing before the Supreme Administrative Court is to be held on the complaint if the complainant, within the period allowed for the final complaint, or another party, within the period for submitting the answer to the final complaint, has requested a hearing to be held.

Such a motion can be withdrawn only with the consent of the other parties. A hearing is to be held if the rapporteur or the panel-president deems holding the hearing to be suitable or the panel decides to hold it.

Irrespective of any motion filed by a party, the Supreme Administrative Court may abstain from holding an oral hearing in the following scenarios:

- if the proceeding is to be discontinued or the final complaint is to be rejected,
- the contested decision or the contested order is to be repealed on the grounds of unlawfulness due to lack of jurisdiction of the administrative court;
- the contested decision or the contested order is to be repealed on the grounds of unlawfulness resulting from the fact that rules of procedure have been violated;
- the contested decision or the contested order is to be annulled in accordance with settled case law of the Supreme Administrative Court due to unlawfulness of its contents;
- no other party has submitted an answer to the final complaint and the contested decision or the contested order is to be repealed;
- the pleadings of the parties and the files of the proceeding before the administrative court reveal that an oral hearing is not expected to further clarify the legal matter and the refraining from the hearing does not conflict with Art. 6 para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms or with Art 47 of the Charter of Fundamental Rights of the European Union.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

Strictly speaking decisions of the Supreme Administrative Court are only binding in the case in which the Supreme Administrative Court has granted a final complaint and the administrative courts as well as the administrative authorities are obliged to immediately establish, with the legal means available to them, the legal situation corresponding to the legal opinion of the Supreme Administrative Court in that matter.

This obligation, however, only applies in case of unchanged circumstances and legal situation.

The exception to this rule, however, is statutorily determined by § 38a VwGG. If a substantial number of proceedings on final complaints is pending in which legal issues of the same kind are to be resolved or if there is reason for the assumption that a substantial number of such final complaints will be filed, the Supreme Administrative Court may issue an order stating so. This order contains the legal provisions applicable in such proceedings, the legal issues to be resolved on the basis of those legal provisions and information about which final complaints will be treated by the Supreme Administrative Court. Upon expiry of the day of publication of said order in legal matters in which an administrative court would have to apply the legal provisions named in the order and to resolve the legal issue therein only such actions may be carried out, orders or decisions taken which cannot be affected by the decision of the Supreme Administrative Court or do not finally settle the issue and do not allow for delay. The period for a final complaint does not start; a period allowed for a final complaint that has already started is suspended. The period for filing a request for deadline and the periods for decisions provided for in federal or provincial legislation are suspended. For all proceedings pending at the Supreme Administrative Court that are not named in the order only such actions may be carried out or orders and decisions issued which cannot be affected by the decision of the Supreme Administrative Court or do not finally settle the issue and do not allow for delay.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

They are not formally bound by previous decisions of the SAC and are therefore free in their decision making, however, if the administrative court deviates from previous jurisprudence of the Supreme Administrative Court it opens up the possibility of successful appeal of said decision (see Art. 133 para 4 B-VG above).

The exception of § 38a VwGG also applies.

b) If so, under which conditions can they deviate from a decision of the SAC?

See above.

c) Is the SAC bound by law to follow its own previous decisions?

If the Supreme Administrative Court has annulled a decision/order and remanded the case to the administrative court the case is restored to the situation it was in before the annulled decision/order was issued. Pursuant to § 63 para. 1 VwGG in continued proceedings the administrative court and administrative authority are bound by the fundamental reasons for the annulment (not obiter dicta). If the decision issued by the administrative court in the continued proceedings is in turn again appealed with the Supreme Administrative Court, the Supreme Administrative Court itself is bound by its legal opinion issued in the earlier decision. The Supreme Administrative Court cannot deviate from this binding effect (not even through a decision issued by an enlarged panel). As stated above, the binding effect only applies in case of unchanged circumstances and legal situation.

If a deciding panel finds that the legal issue to be resolved has so far not been answered uniformly by the Supreme Administrative Court or if the panel wants to deviate from previous jurisprudence of the Supreme Administrative Court, it has to decree

so by order and the deciding panel has to be enforced by four more justices (enlarged panel) which then decides said case.

Also in cases of § 38a VwGG the Supreme Administrative Court is bound by an order pursuant to this provision.

d) If so, under which conditions can it deviate from its previous decision?  
See above.

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

The Supreme Administrative Court does not have sections but decides in panels. If a panel wants to deviate from prior jurisprudence of the Supreme Administrative Court it has to form an enlarged panel (see above).